the Constitution remain firm and stable.” His rejection of the “exercise (of) power that can be identified merely with a revolutionary government” that makes its own law42 and his exhortation to “remain steadfast on the rule of law and the Constitution,” which is but to say that no one should be above or below the law. So let me conclude, as I began, with the President’s call uttered on the first anniversary of the proclamation of the 1973 Constitution, thus:

“XXX XXX Whoever he may be and whatever position he may happen to have, whether in government or outside government, it is absolutely necessary now that we look solemnly and perceptively into the Constitution and try to discern for ourselves what our role is in the successful implementation of that Constitution. With this thought, therefore, we can agree on one thing and that is: Let all of us agree, let all of us then pass away as a pace in the development of our country, but let the Constitution remain firm and stable and let institutions grow in strength from day to day, from achievement to achievement, and so long as that Constitution stands, whoever may be in power be, whatever may his purpose be, that Constitution will guide the people and no man, however, powerful he may be, will dare to destroy and wreck the foundation of such a Constitution.

“These are the reasons why I personally, having proclaimed martial law, having been often induced to exercise power that can be identified merely with a revolutionary government, have remained steadfast on the rule of law and the Constitution.”43

42 Pres. Marcos at satellite world press conference of Sept. 20, 1974: “I insist that not only individuals but also we ourselves in government and the military be guided by a Constitution and that Constitution be respected. This was one of the agreements with those with whom I met before we agreed to proclaim martial law, and that is, that we would follow the Constitution and not establish a revolutionary form of government and start fighting all over the country again.” (Phil. Daily Express issue of September 21, 1974).

THE HISTORY OF MARRIAGE LEGISLATION IN THE PHILIPPINES

SAMUEL R. WILEY, S.J.

Law is one of the most enduring and significant records of a people’s history. But law also follows and mirrors the changing life of a people, its gradual growth and sometimes its cataclysmic changes. Social and attitudinal changes affect the law and while legal reactions yield more slowly to such influences, inevitably they are forced to do so. One of the most significant factors in the development of modern society has been the changed status of woman in society. Their legal struggle has been capitalized in the Women’s Rights Movement and today women are moving on all fronts to rectify the legal discriminations against them which are still contained in many juridical formulations of the past. Quite naturally therefore the Civil Code of the Philippines, originally promulgated in 1950 but in reality containing much that was based on the past, is being closely scrutinized with a view to change in this respect. Before looking to the future however, it is always useful to review the past. Hence it is the purpose of this study to attempt to give a history of the development of marriage legislation in the Philippines from pre-colonial days until the promulgation of the Civil Code of the Republic.

It may come as a surprise to some to realize that into this mold has been poured a mixture of the two great legal systems of the western world. But it should not be forgotten that these systems were built on the foundation of ancient Malay customs and laws as well as on the precepts of Moslem law in the areas of southern Mindanao and the Sulu archipelago. Through the Conquistadores and missionaries of Catholic Spain the great principles of Roman law which had formed the Spanish legal tradition entered into the bloodstream of the simple barangay system of the pre-colonial Philippines and their effect on the ultimate formation of the Filipino nation cannot be underestimated. This legal tradition was embodied in the Spanish Civil Code of 1889 and was firmly implanted in the legal soil of the Philippines when the American occu-
pier of the twentieth century added to this already rich store; the principles and flexibility of the Common Law of England as it had developed in the United States of America. The two systems converged in the Civil Code of 1850 and elements of both traditions can be found in the legislation now in force. As the only Christian nation of the Far East, with a population predominantly Catholic, it is not surprising that any civil legislation touching the institution of marriage was of supreme interest to the Catholic clergy and laity. As initiatives are under way to change some of the provisions of the present Civil Code on marriage, a glance backward on the development of marriage legislation in the Philippines may be helpful to an understanding of our present problems.

THE COLONIAL PERIOD

Pre-Spanish Marriage Law

It might appear at first glance that the importance of pre-Spanish customary law is merely academic. Actually many of the principles of native Malay law and custom have survived the invasions of both Latin and Anglo-Saxon institutions, and are deeply woven into the social fabric of the Filipino people. In the new Civil Code of the Philippines, customs have a definite judicial value.

Although the natives of the Philippines had developed their own alphabet before the coming of the Spanish Conquistadores, very few of these writings have come down to us due to the fragile character of the leaves and bark strips which served as writing material. Our knowledge is gleaned chiefly from the writings of the

1 CIVIL CODE OF THE PHILIPPINES, Art. 7. "Law is repealed only by subsequent one, and their violation or non-observance shall not be excused by custom, or custom or practice to the contrary."

Art. 11. "Customs which are contrary to law, public order or public policy shall not be encouraged." Art. 12. "A custom must be proved as a fact, according to the rules of evidence."

Commenting on the above articles together with Art. 8, which provides for the application or interpretation of law by judicial decision Padilla affirms: "The sources of derecho are: (1) law; (2) jurisprudence; and (3) customs (Art. 11). In the case of Cho Jesu vs. Bernas, 34 Phil. 691, 692 (1910) the dispute was over the settlement of a decision in a cockpit held on June 16, 1913. The referee of the fight had settled for the defendants, and the plaintiff brought suit. The Justice of the Peace declared it was a draw. Then the Court of First Instance dismissed it as it knew of no laws governing cockfights. Upon appeal, it was held, "Such an excuse is the least acceptable because... the Civil Code, in the second paragraph of article 6, provides "facts the customs of the place shall be observed, and, in the absence thereof, the rules of principles of law."

In commenting on the growth of a Philippine Common Law the Supreme Court declared in part that: "The past twenty years have developed a Philippine Common Law or case law based almost exclusively on civil law conflicts with local customs and institutions, upon Anglo-American Common Law. There has been developed, and will continue, a common law in the jurisdiction. This common law is effective in all the subjects of law in this jurisdiction, in so far as it does not conflict with the express language of the written law or with local customs and institutions." In re Shoop, 41 Phil. 213, 232-233 (1920).

early missionaries and modern studies of present-day primitives by ethnologists and anthropologists.

Among the early Visayans, the members of the chief's family disdained to marry below their station. In accord with almost universal custom in the Orient, the parents or even the grandparents of the prospective spouse arranged the union. Sometimes this was carried out in child bride marriage. A frequent condition of the marriage was that the groom should serve the parents of the bride in their home for months or even years before the marriage. The enduring character of this custom has been such that as late as 1969 the Father of the First Provincial Council of Manila saw fit to single it out for comment. A dowry was also demanded of the groom or his family. A breach of promise to marry required that damages be paid in the form of property loss. Should a slave marry a freeman, then half of the children were slave and half were free.

While monogamy was the general rule, it was considered quite lawful to have concubines in addition to the legitimate wife. Divorce was relatively easy since the woman could obtain it together with the right to remarry by returning the dowry to the man or his parents plus an additional amount equal to the dowry. If she did not remarry, then only the dowry had to be forwarded. A husband taking for separation lost half the dowry; if there were children at the time of this separation then the entire dowry was held in trust for them by the grandparents. Gamboa in his introduction to Philippine law offers the following interesting description of the three different classes of marriage ceremonies among the early Filipinos.

The chiefs send as go-between some of their timapuas to negotiate the marriage. One of these men takes the young man's lance from his father and when he reaches the house of the girl's father he thrusts the spear into the staircase of the house; and while he holds the lance thus, they invoke their gods and ancestors, requesting them to be present at the marriage.

After the marriage is agreed upon — that is to say — after fixing the amount of the dowry which the husband pays to the wife (which among the chiefs of these islands is generally the sum of 100 pesos) — they go to bring the bride from the house of her parents. One of the Indians takes her on his shoulders; and arrives at the foot of the stairway of the bridegroom's house, the Indians go up, and says that she will not enter. When many entreaties have proved useless, the father-in-law comes out and promises to give her a slave; who will go up. She mounts the staircase, for the slave; but when

2-El Sindo de Manila regraba la practica de algunos padres de aqui de tener al pretendiente en casa, . . los padres de la prometida, prostando sus servicios di± y noche por tiempo limitado antes del matrimonio; por los meses abundo e inmunado, que tres consigo esa practica. CE. SI€GO D9 DE MARRO, p. 91; TAMAYO, FILIPINO DEL PARROCO ELEMENTARY LAW 296.

3 Filipino society at the time of the conquest was divided into three classes: the chiefs or ruling class, the freemen (timapuas), and the slaves. The political structure rested on the family as a unit.

The barangay, a communal organization, was composed of the head of a family, his relatives and dependents, and his slaves. A number of barangays, each of which had its own chief, might be located in the same town and might be subordinate to a still higher chief. GAMBOA, PHILIPPINE ELEMENTARY LAW 377.
she reaches the top of the stairway and looks into her father-in-law's house and sees the people assembled within, she again previous bad and the father-in-law must give her another slave. After she has entered, the same thing takes place, and he must give her a jewel to make her sit down, another to make her begin to eat and drink before she will drink. While the betrothed pair are drinking together, an old man rises, and in a loud voice calls all to silence as he wished to say: "If a man should through dissolute conduct fail to support his wife she with her children, and shall not be obliged to return anything that he has given her, and she shall have freedom and permission to marry another man. And therefore, should the woman betray her husband, he can take away the dowry that he gave her, leave her, and marry another woman. Be all of you witnesses for me to this compact." When the old man has ended his speech, they take a dish filled with clean, uncooked rice; and an old woman comes and joins the hands of the pair and lays them upon the rice. Then, holding their hands thus joined, she throws rice over all those who are present at the banquet. Then the old woman gives a loud shout, and all answer her with a similar shout, and the marriage contract or ceremony is complete.

The finagler do not follow these usages, because they have no property of their own. They do not observe the ceremony of joining hands over the dish of rice, through respect for the chief, for that ceremony is for chiefs only. Their marriage is accomplished when the pair unite in drinking *pitilla* from the same cup. Then they give a shout, and all the guests depart, and they are considered as married, for they are not allowed to drink together until late at night. The same ceremony is observed by rich and respectable slaves.

But the poor slaves, who serve in the houses, marry each other without drinking and without any go-between. They observe no ceremony, but simply say to each other, "Let us marry." 4

**Spanish Law**

With the definitive conquest of the Philippines by the energetic action of Miguel Lopes de Legazpi, and the expeditions of his equally successful grandson, Salcedo, there began a gradual implantation of the laws of the conquerors. This was accomplished either by the express declaration of a Royal Decree, or by implication. As a consequence there were three distinct fonts of law during the colonial period: 1) the laws of the Peninsula itself, which were extended without change to the colonies; 2) laws decreed explicitly for the Philippines either by the sovereign or the Royal Audiencia or the Consejo de las Indias; and finally 3) the great mass of legislation promulgated by Rome for the newly discovered mission territories, and applied either through the bishops or the religious orders, usually along the medium of the Spanish crown. 5

A survey of this law, brief though it be, is necessary to a full understanding of the development of law in the Philippines.

6 Las Leyes de las Indias, 1590, of GAMBOA, supra, at 68.
7 Cf. SABADIE, HENRI, LES SOURCES DU DROIT CIVIL ESPAÑOL, p. 31.
8 Supra, p. 46.
9 "La importancia del elemento romano es fundamental y persistente, constituyendo el mas poderoso de los factores juridicos que infuencian en nuestra vida historicamente en su favor, a partir de la Glasa y los Glosadores, esfuerzos interesados de juristas y de reyes." BENEYTO, supra, at 51, id. at 16, p. 7.
10 Cf. GAMBOA, supra, at 51; BENEYTO, id. at 65.
11 BENEYTO considers it inexact to call the Liberindiescurs, the Fuero Juso. The latter is really a later romanization of the former territorial Visigothic code. Cf. BENEYTO, supra, at 91 for his complete explanations.
12 Id. GAMBOA, supra, at 51.
13 The principles of the Fuero Juso were actually applied in the decisions of the Supreme Court of the Philippines, as late as the case of Legarda vs. Valdez, 1 PC 145, 149 (1902) the Fuero Juso was referred to in showing that the penalty of banishment was not a cruel or unusual punishment.
Wisely, it was promulgated in 1556. In it the Gothic influence was more pronounced. 4) Las Siete Partidas.— This second work of the greatest Spanish legislator of the Middle Ages, represents more clearly the reacceptance of the Roman law, than being revived by the School of Bologna. Ten years of labor went into its formation prior to publication in 1556, and it was a Digest of Spanish and Roman law divided into seven parts. However, it was supplementary in character and did not annul the Fuero Real. 5) Leyes de Toro.— Formulated at the request of the Cortes of Toledo to settle contradictory interpretations of previous laws, they were promulgated in 1565 by D. Juan, and show an even greater introduction of the principles of Roman law. 6) Novísima Recopilación.— This compilation was promulgated in 1567 and contained all the laws in force since the Fuero Real and the Partidas. Although in itself, it was far from a perfect solution, it marked the beginning of modern codification in Spain. The growth of this extra-peninsular legislation, created more by necessity than desire, finally resulted in the Recopilación de las Leyes de Indias. This veritable mass of colonial law was edited in 1680 in the reign of Charles II, and it was ordered that no other codula or decree would have force unless it were contained therein.

Not constituting a temporal epoch as did the Roman and Gothic laws, but rather running like a thread through the entire history of Spanish law is the canonical element. The Church from the earliest times held an important position in the social life of the Iberian peninsula. Consequently the influence of her laws on many points was decisive, and due to the competence of her tribunals and the diffusion of canonical principles in the late Middle Ages not a few norms of canon law passed into the civil law, while numerous social institutions conformed to the wishes of the Catholic faith in their form and organization. Especially during the period of revival of the Roman law, canon law took its place along-side the former and was cited with the same respect. At this point, it is well to recall that the most eminent of the Decretists was a Spaniard, St. Raymond of Penafort. Marriage Law

Prior to the Council of Trent there were two forms of marriage in Spain recognized during the entire course of the Middle Ages, both by the Church and by the civil power. The first form was that in which the spouses presented themselves to the priest for his blessing, and consequently it was celebrated “in facie ecclesiae”. The second form, which coexisted with the first was originally called a marriage “a yuras”, i.e. made with an oath, but without the external ceremony and blessing of the priest. For this latter reason, it was also called clandestine. However in all cases this was considered a legitimate and sacramental marriage and produced the same obligation as that which was celebrated with all due solemnity. Therefore these clandestine marriages were never civil marriages in the modern sense of that term, for the Church always admitted their validity and recognized the canonical effects which they produced.

As a matter of fact long before the enactments of Trent, the state opposed clandestine marriages. The civil power to facilitate them for the sole reason that it did not contest the rights of the Church in a matter so fundamental and delicate. However from the end of the 11th Century we find evidence of the displeasure of the civil power with these clandestine unions. The whole object of the civil law was to have the marriage publicly witnessed. The Fuero Real laid down penalties for them. The Partidas prohibited them as secret (ascondidos) marriages. Still more severe were the Leyes de Toro, which failed to recognize the rights or heredity if the marriage was not blessed. Thus the tendency to publicity plus the influence of the Church led naturally to the reforms of the Council of Trent.

Commentators on the Civil Code usually state that from the time of the celebration of this Council, there was in Spanish national law no recognized law of marriage other than that of Trent, until the enactment of the first Provisional Law of Civil Marriage in 1870. This statement is not entirely accurate and needs some qualification. As Puig Peña observes, some requirements of a civil marriage were brought down in the Novísima Recopilación, such as those stipulating the paternal consent and the so-called special permissions for certain officials before they could marry.
Colonial Marriage Law

Not long after the discovery of the Philippines, the Church met and solved some of the principal difficulties connected with the marriages of the newly converted Indians. Special faculties were granted to missionaries of the various religious orders and the bishops of the Indies such as the Constitutions of Paul III, Altitude, on June 1, 1537; that of Pius V, Romant Pontifices, on August 2, 1571; and that of Gregory XIII, Populis on January 25, 1585.21 The latter Pontiff in the same year clarified the concept of the "Neo-fitos" (newly converted Indians), and "Mestizos" (children of mixed Indo-European blood), who were to enjoy these privileges and dispensations.22 These and many other discussions have been brought to Holy See at that time formed the basis of modern mission law. The missionaries arriving in the Philippines had behind them the accumulated experience of their predecessors in Mexico and South America, so that both the marriage law of Trent and the procedure in vogue in the Peninsula underwent some modifications when applied to the neophytes of the Indies.

Among the faculties enjoyed by the missionaries were those of dispensing from the various matrimonial impediments. The first concessions of this type was given in favor of the missionaries of the Society of Jesus, and later it was communicated by Gregory XIII to all the bishops of the Indies.23 These special faculties were known as the Vicennal faculties because they were renewed every twenty years.24 The literature that has grown up around these faculties and their subsequent history would take us far beyond the scope of this brief summary. Suffice it to say that in any historical examination in the Philippines the influence of the Church's law as applied and interpreted by her missionaries was paramount.25

21 These Papal Constitutions in virtue of can. 1125 of the Codex Juris Canonici, have been made part of the current canon law of marriage. Cf. J. E. Camara, Documents and Cases, VI, VII, VIII; HERNÁEZ, COLECCION DE BULAS, BREVIOS Y OTROS DOCUMENTOS RELATIVOS A LA IGLESIA DE AMERICA Y FILIPINAS, I, 55-78; CAPPELLO, DE MATRIMONIO, f. 787 ff.
22 "...Seguro el derecho común, dice Marquez, se reparte por neefito el que es nuevo en la fe hasta los diez años, cuyo deceno ya pasado, deja de ser neefito al convertirse a la fe. Mas según el derecho de Indianas llamadas Neofitos todos los oriundos de la India Oriental y occidental, así como también los oriundos de la Africa y de todas las regiones transmarinas, son inmunes Anthropos al matrimonio, quos quiddam aquos al matrimonio, y dispensas, concedas sese, como en general todos los indígenas dichos aunque sean hijos de padres cristianos y hayan sido bautizados desde la infancia..." HERNÁEZ, id., at 1.
23 For the text of the Constitutions of the Indies, HERNÁEZ, id., at 51.
27 Id. Real cedula de 16 de Agosto de 1731; Real cedula de 21 de Marzo de 1804; Real orden de 9 de Agosto 1779 y de 19 de Noviembre 1783.
28 A petition had been made to the King by one Don Bonifacio Sauz de Viamonte, contador real de las islas de Manila, to marry one of the natives of those Islands. The reply delegating the governor-general to grant permission in such cases according to his discretion was given in a Real orden de 13 de Julio de 1706. The title of the church, however, had to consult the Real Camara. (Real Cedula de 8 de Marzo de 1787). ZAMORA, id.
issue in favor of permitting such marriages. The reasons prof-
ffered by the ministers of State who were consulted offer an in-
teresting insight into motives that determine policy. The strongest 
argument in favor of such intermarriage was that it could only 
benefit the state, resulting in the augment of the population, 
which is the first and greatest object of policy. Secondly, the 
majority of the ministers were against the liberty to marry. In 
those cases where the Royal permission was still needed, informa-
tion was to be sent on the case along with the con-
sultative vote of the respective audiencia. Besides officials and 
nobles, restrictions were placed on the marriages of students and 
members of the universities, seminaries, and colleges for the Indies 
which were subject to the royal patronage and protection. The 
interest of the civil power in marriage legislation in the Philip-
pines is shown by the large number of cedulas and decrees dis-
patched on this topic. For the relatively brief period from 1770 
until 1817, Streit in his monumental work, Biblioteca Missio-
nen, cites no less than seventeen royal cedulas. These dealt with 
every possible aspect of matrimonial law, dispensation, faculties for 
military chaplains, separation, proclamation of the bans, etc.

Although it was considered the province of the ecclesiastical 
authority to decide the qualifications of age necessary for a valid 
and licit marriage, yet the pastors and missionaries could not au-
thorize marriage unless the parties were capable according to 
the civil laws as outlined above. Failure to conform thereto would 
subject the delinquent priest or pastor to expatriation, and depra-
tion of all temporalities. Even a cursory examination of the 
very amount of material available convinces one that gradually 
there was growing up in Spain and her colonies a definite civil 
law of marriage. This tendency was confirmed by a Royal Order 
of October 21, 1867 which in lieu of the Civil Register already 

28 Cedula — originally this was a slip of parchment, a scroll. In the 
administrative terminology of this period of history, a Real Cedula was the 
equivalent of a royal letter patent. Spanish colonial history abounds 
with them, and they are the source of much of our knowledge of the legislation 
for the Indies.

29 Real cedula of 15 de Octubre de 1805, to the Real Audiencia de Cuba 
given in Zamora, loc. cit.

30 ZAMORA, BIBLIOTECA DE LEGISLACION ULTRAMARINA VII, 
1794, Real Orden Circular, 3 de abril de 1848 por Gracia y Justicia. Cf. 
also COLECCION LEGISLATIVA DE ESPA\'A, tom. 49, p. 765. "La que 
se guarda y cumplo según regia general la circular de 3 de abril de 1848 
sobre el modo de instruir los expedientes para contrar matrimonio los Mi-
istrados de la Audiencia de Manilla, y autorizando al Presidente de la misma a 
fin que pueda conceder licencias en nombre de S.M. para los matrimonios de 
conciencia sin gratia morata. (25 de Marzo de 1856, Secretaria del despacho 
de Gracia Justicia)."

31 C. SLAIGHT-ROBERTSON, THE PHILIPPINE ISLANDS, XLV:216-220; 
MATRAY Y RICCI, EL MORALISTA FILALETHICO AMERICANO, I, n. 
1722; STREIT, BIBLIOTECA MISSIONUM, VI, n. 1206; NOVISIMA 
RICOPILACI\'ON DE LA LEGISLACION DE ESPA\'A, tomo 1, 1875; 
32 CF. STREIT, id. VI, IX, for the years mentioned, e.g. Real Cedula 
— 8 de julio de 1770; 8 de septiembre de 1770; 24 de abril 1781, etc.; also MAT-
RAYA, id. en. 998, 1811, 1828, 1890.

33 For the rights of the ecclesiastical authorities, cf. Real Cedula of 25 de 
octubre de 1795, ZAMORA, id. V, pp. 226-5; also the Real orden circular de 
Julio de 1806, id.

34 The pertinent legislation gave seven provisions relative to the keeping 
of the parochial books, the fifth having to do with the registration of mar-
rriages. It read: "Que en las partidas de matrimonio, se exprese, ademas de 
edos nombres, natalidad y profesion de los contrayentes, su edad, y 
padres; la edad de los primeros, y si han cumplido en la celebracion, de 
aquel seremos en los requisitos ecolo\'gicos, por la Iglesia y las leyes civiles." 
RODRIGUEZ, LA LEGISLACION ULTRAMARINA, tomo 15, p. 974.

35 MACRESA Y NAVARRO, COMENTARIOS AL CODIGO CIVIL 
ESPA\'OL, 250 f.

36 E. PUIG FEFA 61.

37 Ord. circular de 20 de junio de 1874 in the Gaceta de Madrid for the 
following day, June 21, 1874; also MACRESA, id.
future code. According to Base 3 of this law, the system of the two forms of marriage was to be incorporated in the new civil code. This was actually effected in the Civil Code and it settled the bitter controversy of the previous two decades.40

Meantime in the Philippines, the law of marriage continued to be as it had been in the past, that of the Partidas and the Novisima Recopilacion. The law of Civil Marriage of 1870 was never extended to the Islands with the exception of Articles 44 to 78 thereof. These were promulgated in the Archipelago in 1883. However they relate merely to the rights and obligations of husband and wife, and do not touch either the forms of marriage or the subject of divorce.41 On July 1, 1889, the new Civil Code of Spain was extended to the overseas colonies of Cuba, Puerto Rico and the Philippines. According to the terms of the decree, the code was to take effect twenty-days after its promulgation, the latter being the date of its insertion in the official publications of the Islands.42 The extension of the law of the Peninsula to the colonies was in full accord with previous policy which had always favored the closest possible similarity between the two.43 The order affecting this transfer of law was sent by Becerra, the Minister of Ultramar, from Madrid on August 6, and was approved by the Governor-General of the Philippines, Weyler, on September 12, 1889. However the decree and the code itself were not published in the Official Gazette, until November 17th. According to the norms laid down in the royal decree, the Civil Code did not enter into effect in the Philippines on December 7, since twenty days had to elapse after the date of publication.44

What followed then as regards the law of marriage contained in the Civil Code has been the source of much speculation as to duties and documents, but one fact is clear. Certain classes in the Philippines persuaded the Governor-General, on the recommendation of Madrid, or on his own authority, suspended titles 4 and 12 of the Civil Code, Book I, containing the

40 Base 39—"Se establecerán en el Código dos formas de matrimonio: el canónico, que deberán contrar todos los que profesan la religión católica, y el civil, que se celebrará del modo que determinen el mismo Código, en armón con lo prescrito en la Constitución del Estado. El matrimonio canónico producirá todos los efectos civiles respecto de las personas y bienes de los cónyuges y sus descendientes, cuando se celebre en conformidad con las disposiciones de la Iglesia católica, admitidas en el Reino por la ley 13, cit. 14, libro 1, de la Novisima Recopilacion. Al acto de su celebración asistirán el Juez municipal y otro funcionario del Estado, con el solo fin de verificar la inmediata inscripción del matrimonio en el Registro civil." MANRESA 22 ff.

41 Civil Code, Art. 42: La ley reconoce dos formas de matrimonio: el canónico que deben contraer todos los que profesan la Religión católica: y el civil que se celebrará del modo que determina este Código.

42 Benedicto vs. de la Rama, 3 Phil. 34, 42 (1906).

43 Real decreto de 1 de julio de 1889 de la Queen Regent, Maria Cristina. Cf. CODOGO CIVIL DE ESPAÑA, edicion oficial, Introduction.

44 Id., Expiration of the reasons for the extension by the Minister of Ultramar, Manuel Becerra.

45 Cf. GACETA DE MANILA, Domingo, 17 de noviembre de 1889, Año XXIX Num. 317, p. 1852.

Innovations relating to marriage, divorce, and the civil registry.45 Mr. Justice Willard, writing the opinion of the Supreme Court of the Philippines in the case of Benedicto vs. de la Rama says of this order of the Governor-General:

This order purports to have been issued by the governor-general by order of the government at Madrid, and although it is stated in the Compilation Legislative de Ultramar (vol. 14, p. 2160) that no decree of this kind was ever published in the Gaceta de Madrid and that a copy thereof could not be obtained in any governmental office, yet we cannot assume that none was ever issued.

Sanchez Roman says: "By reason of the lack of that preparation which was proper in a matter of such great importance, it seems, according to reports which merit a certain amount of credit (for no order has ever been published), that the Government of the Philippines after taking the opinion of the Audiencia of Manila consulted the colonial office concerning the suspension of titles 4 and 12 of Book I. This opinion was asked in respect to title 4 on account of certain class influences which were strongly opposed to the application of the formula of marriage which gave some slight intervention to the authorities of the State through the municipal judge or his substitute in the celebration of the canonical marriage. As to title 12, the opinion was asked by reason of the fact that there was no such officer as municipal judge who could take charge of the civil registry.' (2 Derecho Civil, p. 64)

Moreover, the power of the governor-general, without such order to suspend the operation of the code, was well settled. A royal order so stating was issued at Madrid on September 19, 1876, and with the cum of the governor-general published in the Gaceta de Manila on November 15, 1876. It was suggested at the argument that this order of suspension was imperative because it did not mention the book of the Code, in which the suspended titles 4 and 12 were to be found. The Civil Code contains four books. All of them except the third contain a title numbered 4, and the first and fourth contain a title numbered 12. Title 4 of book 2 deals with rights of property in water and mines and with intellectual property. Title 4 of book 4 relates to the contract of marriage and sale, and title 12 to insurance and other consequence of that class. There is no such intimate relation between these two titles of this book as between titles 4 and 12 of book 1, the one relating as it does to marriage and the other to the civil registry.

The history of the Law of Civil Marriage of 1870 is well known. As a consequence of the religious liberty proclaimed in the constitution of 1869, the whole basis was wanting in these Islands, and prior to the promulgation of the Civil Code in 1889, no part of the law was in force here, except articles 44 to 78, which were promulgated in 1889. Of these articles those enumerated to 55 are found in title 4, but they relate merely to the rights and obligations of husband and wife and do not touch the forms of marriage nor the subject of divorce. If these provisions of the Civil Code on these subjects could be suspended by the certain class influences mentioned by Sanchez Roman, the only regulations in the Islands would be canonic and the only judge competent to declare a divorce would be ecclesiastical. There can be
no doubt but that the order of suspension refers to title 4 and 12 of book 1, and it has always been so understood. It follows that articles 42 to 107 of the Civil Code were not in force here as law on August 15, 1888, and therefore are not now.47

This opinion of Justice Willard sums up very well the state of the law of marriage in the Philippines Islands during the last decade of the Spanish regime. The principal change in the Insular Law as regards marriage, which was found in title 4 of the Civil Code of Spain, had force in the Philippines for a scant twenty-three days, namely from December 8th until December 31st of 1889. From that date until the termination of Spanish rule, lawful marriage in the Philippines continued to be what it was prior to the introduction of the new civil code.48

Revolutionary Marriage Law

For a very brief period in 1898, and over a limited locality, the Filipino insurgents enacted and put in force their own civil law of marriage. The law was contained in a series of rules entitled “Regimen de las Provincias y Pueblos”, which had been drawn up by Apolinario Mabini, one of the leaders of the revolutionary movement. There is no mention of the ecclesiastical marriage in the document which was fully in keeping with the anti-clerical spirit of those tumultuous times. The law, as drawn up by Mabini, was promulgated by the revolutionary general, Emilio Aguinaldo, at Cavite, on June 29, 1898.

In the section devoted to trials, the civil register and the census Rule 27 provided for a marriage register. Before a marriage could be entered into this book, the following had to be fulfilled:

1) The contracting parties had to sign a paper declaring to the barrio chief that by mutual consent they wished to marry, and asking to have the contract noted in the public register. If the parties were less than 25 years of age, the paper had to be signed by their respective fathers, or in defect of these, by their mothers, and if both were wanting, by their elder brothers who had completed 23 years of age.

2) In the absence of all the above mentioned persons, authorization had to be obtained from the barrio council, and the authorization had to accompany the petition.

3) Those who had completed their twenty-third year must each have a witness who would sign the petition with them; a minor authorized to marry by the council of the barrio must also be accompanied by a witness.

4) Upon receipt of the petition duly signed by all concerned, the barrio chief was to proclaim the forthcoming marriage by affixing the petition itself to the main door of the council hall, and by issuing the same aloud three times on a feast day or market day.

5) Upon the lapse of three weeks, and no objection having been made by anyone, the parties in the presence of the barrio chief and of those who had signed the petition, are to express their free and spontaneous desire to enter a conjugal society and to bind themselves to an indissoluble common life as long as they shall live. To this effect they are to make a formal promise of mutual fidelity and of educating their children in the love of God, neighbor and country. The contract was to be signed by all those present.49

THE AMERICAN REGIME

With the entrance of the American forces into the city of Manila on August 13, 1898, a new element was injected into the social and legal history of the Philippines. Through the medium of the Civil Code of Spain, the fundamental principles of Roman law had become part of the legal heritage of the Filipino; now they were to receive the concepts of the Common Law of England, as it had developed in the legal tradition of the United States.

The change in sovereignty and the new policy of treating all religions as equal before the law, necessitated a modification of the marriage law. In so doing, the new legislators were not completely unmindful of existing law and custom; indeed the instructions later issued by the Philippine Commission by President McKinley urged them to change the substantive law of the country as little as possible, but to modernize the procedure.50 At the time the United States acquired the Philippines, the only laws on marriage in force in the Islands were Articles 44 to 78 of the Law of Civil Marriage in 1870, which merely referred to the rights and duties of the spouses, and as regards the form of marriage, the decrees of the Council of Trent as contained in the Novissima Recollocation. This was the only form of marriage that could be validly celebrated in the Philippines at that time.51 It remained in force until December 18, 1899, when the Military Governor in virtue of the powers vested in him promulgated the law of marriage known as General Orders No. 68.52 This law, as amended by General Orders No. 70 remained in force until 1929.53
The new law of marriage, known hereafter as Act No. 3619, was approved by the legislature on December 4, 1929, and took effect six months after its approval. While following the lines of General Orders No. 68, it went more into detail and attempted to resolve some of the particular problems that had arisen in connection with the administration of the previous law.

In outward form it was divided into six chapters comprising forty-seven sections. The first chapter dealt with the requisites of marriage, of which two — the legal capacity of the parties and their consent, freely given — were considered essential for validity. The parties were free to choose either a civil or religious form, provided that the solemnizing official was authorized to witness the marriage. While a license was prescribed, it was not considered a condition for the validity of the marriage. In deference to Catholicism, the requirement for civil proclamations was waived if the Church required its own proclamations, and the license could be issued to them immediately upon application therefor. The second chapter dealt with marriages of an exceptional character that did not require a marriage license. These included marriages celebrated in *articuló moráis*, at a great distance from the municipality, at the time of religious revivals and missions, and those celebrated between Mohammedans and pagans. Chapter III stated the causes for annulment and the provisions for legitimacy, while Chapter IV concerned itself with the authority needed to celebrate marriages and the regulations and fees pertaining thereto. Penal Provisions for infringement of these laws formed the subject of the fifth chapter and the sixth and final chapter contained a repealing clause and the date for effecting the new law.

The importance of Act No. 3619 for the future of marriage legislation in the Philippines would be difficult to exaggerate. It represented a sincere effort on the part of the legislators to take cognizance of the divergent attitudes then prevalent in the Islands and reach a solution that would be both workable and agreeable to all concerned. The influence of this legislation on the marriage provisions of the new Civil Code is unmistakably predominant.

The divorce law of any nation is linked essentially to the law of marriage and is necessary to its full understanding. During the Spanish régime there was no other law of divorces in the Philippines than that of the *Siete Partidas*. This followed quite logically from the suspension of the pertinent provisions of the Spanish Civil Code by Governor-General Weyler, and such continued to be

Act No. 3619 amended Act No. 3619. The new law of marriage, approved by the legislature on December 4, 1929, and took effect six months after its approval. While following the lines of General Orders No. 68, it went more into detail and attempted to resolve some of the particular problems that had arisen in connection with the administration of the previous law.

In outward form it was divided into six chapters comprising forty-seven sections. The first chapter dealt with the requisites of marriage, of which two — the legal capacity of the parties and their consent, freely given — were considered essential for validity. The parties were free to choose either a civil or religious form, provided that the solemnizing official was authorized to witness the marriage. While a license was prescribed, it was not considered a condition for the validity of the marriage. In deference to Catholicism, the requirement for civil proclamations was waived if the Church required its own proclamations, and the license could be issued to them immediately upon application therefor. The second chapter dealt with marriages of an exceptional character that did not require a marriage license. These included marriages celebrated in *articuló moráis*, at a great distance from the municipality, at the time of religious revivals and missions, and those celebrated between Mohammedans and pagans. Chapter III stated the causes for annulment and the provisions for legitimacy, while Chapter IV concerned itself with the authority needed to celebrate marriages and the regulations and fees pertaining thereto. Penal Provisions for infringement of these laws formed the subject of the fifth chapter and the sixth and final chapter contained a repealing clause and the date for effecting the new law.

The importance of Act No. 3619 for the future of marriage legislation in the Philippines would be difficult to exaggerate. It represented a sincere effort on the part of the legislators to take cognizance of the divergent attitudes then prevalent in the Islands and reach a solution that would be both workable and agreeable to all concerned. The influence of this legislation on the marriage provisions of the new Civil Code is unmistakably predominant.

The divorce law of any nation is linked essentially to the law of marriage and is necessary to its full understanding. During the Spanish régime there was no other law of divorces in the Philippines than that of the *Siete Partidas*. This followed quite logically from the suspension of the pertinent provisions of the Spanish Civil Code by Governor-General Weyler, and such continued to be

Act No. 3619, et al. Under the new independent Philippine law, a divorce decree takes effect after the legislature and receiving the President's signature are known as Republic Acts, and are numbered in the order of their passage.
THE CIVIL CODE OF THE PHILIPPINES

With the end of the second World War in the Far East, the United States, in keeping with its promises, granted complete autonomy to the Filipino people, and on July 4th, 1946, the Republic of the Philippines was created. For many years under the Commonwealth Government, the need for a complete revision of the Civil Code had been felt. While the basic law had continued to be the Civil Code of Spain, one of the hardest problems for those using it was to determine which of its provisions were still in force and which were not.

40 Cf. Barreto Gonzales vs. Gonzalez, 58 Phil. 67, 72 (1933); "Litigants cannot compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be effected by decree of divorce of foreign courts in a manner which our Government believes is contrary to public order and good morals." Sitang on. Canson, 37 O.G., 3145.

41 During the Japanese occupation, under Executive Order No. 141, the causes for divorce were: 1) adultery of the wife and concubinage on the part of the husband, 2) attempt by one spouse against the life of the other, 3) a second or subsequent marriage by either spouse before the former marriage has been legally dissolved, 4) leprosy contagious disease, 5) incurable insanity, 6) impotence, 7) criminal conviction of either of a crime whose penalty is not less than six years' imprisonment, 8) repeated assault and battery, 9) to endanger the lives of either of them, 10) unjustified desertion for one continuous year prior to filing the action, 11) slander by deed or gross insult so as to make further living together impracticable. The Official Journal of the Japanese Military Administration, XI, (Manila, Simbun Sya, 1943), 33-38.


43 Shortly after transferring the legislative authority from the Government-general to the Philippine Commission, that body enacted the Code of Civil Procedure (Act 190). While purporting to be merely procedural, this Code repealed by implication an appreciable part of the Civil Code. The courts of the Islands have been engaged for the last seventeen years in determining the extent to which the Code of Civil Procedure has resulted from, rather than been merely procedural, legislation.


HISTORY OF MARRIAGE LEGISLATION

The first effort to create a new civil law had been made very early in the American regime, when at its opening session, the First Philippine Assembly adopted a concurrent resolution to create a Code committee. It was not, however, until two years later, in May 1908, that Act No. 141 was passed; this law created a code committee composed of a president and four members to revise the Civil, Commercial, Penal, and Procedure Codes, as well as the Mortgage and Land Registration Act.52 No new civil law resulted from this legislation, and the Revised Penal Code which finally appeared, owed its existence to another committee which was appointed by the Department of Justice on October 18, 1927.6 No further action was taken on the matter until 1940 when the late President Manuel Quezon named another committee to revise the Civil Code. Presided over by Jorge Bocobo, it was composed of eminent Philippine jurists, but its activity was brought to a halt by the Japanese attack on the islands in December 1941.

With the advent of independence, previous desires crystallized and a Code Commission of five members was created by Executive Order No. 48, dated March 20, 1947. The stated reason for this action was, "the need for immediate revision of all existing substantive laws of the Philippines and of codifying them in conformity with the customs, traditions, and idiosyncrasies of the Filipino people and with modern trends in legislation and the progressive principles of law."1

As chairman of the Code Commission, Dr. Jorge Bocobo preserved continuity with the former commission's work. The other members of the commission were: Guilermo B. Guevara, Pedro Y. Ylagan and Francisco R. Capistrano; the fifth member was not appointed when the Code Commission made its final report. The Commission's function was to cease on June 30, 1948, by which time it was hoped that they would have completed and submitted drafts of the new Civil, Penal and Commercial Codes.

SPAIN WITH PHILIPPINE NOTES, Preface to 1st Edition, viii; TOLENTINO, ANNOTATED, THE CIVIL CODE, I, viii, where it is said that, "we cannot place blind faith... in Willard's Notes to the Civil Code, because articles of the Civil Code, as finally printed in 1887, have been repealed but which have been held in force by the decisions of the Supreme Court..." Thus, the civil law of the Philippines is now composed of laws of Spanish and American origin. Id. at 4.

In virtue of this act, the following members of the Code Committee were appointed: Pres. -- Hon. Manuel Arriola; Members: -- Mr. Rafael del Pan, Mr. W. L. Goldsbrough, Mr. W. J. Bohde, Mr. Francisco Ortega. GAMBRA, ELEMENTARY PHILIPPINE LAW, 16.

Actually Del Pan had his new Correctional Code ready within five years after the appointment of the first code committee, but it was not enacted due to serious opposition within and against the legislature. Cf. ALBERT, THE REVISED PENAL CODE ANNOTATED, Preface, xi, xii.


f. The independence of the Philippines should pave the way for a more Filipinoized civil law... Students of our law have frequently encountered problems which do not conform, and are sometimes antinomous, to our customs and traditions... (e.g. dowry)" Thus TOLENTINO, note 68, at I. 5, before the actual enactment of the new civil code.

The work of preparing the New Civil Code began on May 8, 1947. It was aided by the researches made by two of the members while they were members of two previous Code Commissions. The first draft was completed on October 27, 1947, the final draft was finished and was submitted to His Excellency, the President of the Philippines. A report, known as the, “Report of the Code Commission on the Proposed Civil Code of the Philippines”, was begun in September 1947 and was completed on January 26, 1948, and also submitted to the President. This explained briefly:

I. Nature of the Proposed Civil Code
II. Fundamental Principles, New Subjects and Principal Reforms
III. Other Important Changes Recommended
IV. Translational Provisions, and
V. Repealing Clause

The Proposed Civil Code consisted of 2,291 articles, but when it was sent to Congress for approval, some of its provisions were eliminated, and the Code was approved as amended with 2,270 articles. The law approving the new Code was known as Republic Act No. 386, and was passed on June 13, 1949. The Code itself was to take effect one year after its publication in the Official Gazette, which took place in June, 1949. Hence the new Civil Code has been in law as of July 1st, 1950.

According to the commissioners themselves, the Civil Code is based on the Spanish Civil Code of 1889, which itself owes much to the Civil Code of France. However many new provisions have been embodied from the codes, laws, and judicial decisions of other countries, among them the States of the American Union, especially California and Louisiana, France, Argentina, Germany, Mexico, Switzerland, England and Italy. Many articles merely restate doctrines laid down by the Supreme Court of the Philippines. As yet, there is no a few amendments have no precedent in foreign law, but consecrate Filipino customs or rectify unjust or unwise provisions of the former code.

Of the articles included in the new Code, approximately twenty-five per cent are taken in their entirety from the Spanish Code; about thirty-two per cent are amended articles of the Code in force.

Padilla, Civil Code Annotated, 6: The Secretary of Justice in his opinion No. 6, Series 1950, followed the official date of issue of the Official Gazette on June, 1949, and not the actual date of release for circulation on August 30, 1949.

“The adoption of provisions and precepts from other countries is justified on several grounds: (1) The Philippines, by its contact with Western culture for the last four centuries, is a rightful beneficiary of the Roman Law… that legal system as developed in Spain has been the chief regulator of the juridical relations among Filipinos… (2) The selection of rules from the Anglo-American law is proper: (a) because of the clash of American culture… incorporated into Filipino life during the nearly half a century of democratic apprenticeship under American auspices; (b) because of economic relations; and (c) because the American and English courts have developed certain equitable rules that are not recognized in the present Civil Code.” Report of the Code Commission, 3.

HISTORY OF MARRIAGE LEGISLATION

at the time of adoption, and nearly forty-five per cent are new in the sense that they are not found at all in the former Code. In all twenty-four new subjects have been introduced.

The language of the Civil Code is English. The Commission translated from the original Spanish those articles or parts of articles that were preserved from the Civil Code of 1889. Some clarification has to be made on this point because in the use of some terms while the nearest equivalents in English were sought for the Spanish words, it is obvious that these English terms do not have the same meaning in Anglo-American law as their counterparts in the Spanish-Philippine law. Thus in the words of the Code Commission, “... the receptacle is English, but the content is Spanish-Philippine law. Therefore, these translated words should be understood, not in the light of the Anglo-American law but in that of the Spanish-Philippine law as embodied in the Project of the Civil Code.”

Not only in the use of its language does the Philippine Code present difficulties to the interpreter, but even linguistically, clear provisions pose problems due to the reluctance of the Code Commission to reveal their sources.

Marriage Law

It is in the title devoted to marriage that one notes a great divergence from the provisions of the Spanish Code. This is due to two factors. Firstly, that title of the Civil Code of 1889 which dealt with the marriage contract, was, as we have seen already, enforced for a very short period by the Spanish regime. Consequently it never became as deeply integrated into the legal system of the Archipelago, as the other portions of the Spanish Civil Code. On the advent of the American regime it became necessary to formulate a marriage law and the legislators who drew up General Orders No. 68 leaned heavily upon their own Anglo-American system. With the introduction of the principle of separation of Church and State, the canonical form was insufficient of itself to produce any civil effect without some sort of approbation from the civil government. Subsequent additions and improvements in the marriage legislation, e.g., the divorce bill of 1917 and particularly the Marriage Law of 1929 — form the background of the present title on marriage.

One of the most disputed dispositions was the abolition of absolute divorce and the introduction in its place of mere legal separation.10 Needless to say this was not effected without much discussion and pressure. Fr. Juan Ylla, writing in the Boletin Ecclesiastico, gives us some of the background of this struggle. The Code Commission, presided over by Dr. Jorge Bocobo, opposed this change tenaciously. This is evident in the Commission's own

10 Id., 48 and text.
11 Supra, note 48 and text.
12 Atty. 97-107.
report, which states: "The proposed Civil Code does not increase the grounds of absolute divorce. Relative divorce is revived, so that the petitioner may choose this less radical remedy if he or she does not desire the matrimonial bonds to be dissolved."35

It was the influence of the Philippine Congress, moved by the outcry of Catholics which forced the expurgation of the provisions for absolute divorce from the proposed new code. Had this not been done, it is extremely doubtful whether the new code would have passed the legislature at all. Despite this fact, there was an intense campaign on the part of certain groups to restore the former divorce law. Public audiences were held in the halls of session of the legislature before a joint committee of the Senate and the Congress. The spokesman of the anti-divorce group was a Judge of the Court of Appeals, Pastor Endencia, and of the pro-divorce group, Juan Nabong. When the latter tried to confuse the issue by expurgating divorce and annulment proceedings, he was vigorously opposed by Dra. Josefa Gonzalez-Estrada, Dean of Women of the University of Santo Tomas.36

One modification of the marriage law of the Civil Code was effected in favor of Moslems. This was known as Republic Act No. 394 and by its provisions, divorce was permitted to Mohammedans residing in the non-Christian provinces, in accordance with Moslem customs and practices. This act was in force for a period of twenty years from the date of its approval, June 17, 1949. This is the only exception to the inviolability of the marriage bond permitted under the present Philippine law.37

If we compare Title III of Book I of the new Civil Code with the Marriage Law of Act No. 3613 and the Divorce Law of Act No. 2710, we find that the new legislation contains forty-four articles on marriage and ten on legal separation, whereas the former law had forty-seven articles on marriage and eleven on absolute divorce. Of the new provisions, seven are taken unchanged from the prior legislation; another thirty of the older articles have been modified in the new code, ten of them substantially, and twenty only accidentally. Eighteen provisions are entirely different, so that in all we may say that two-thirds of the articles of the present marriage law introduced changes that are worthy of note.

CONCLUSION

There is no doubt that during the past twenty-five years, social change has characterized Philippine society. Every problem of the modern world is present and the realities of marriage and family life are often far removed from the clean-cut phrases of the law. There is no doubt that new social realities call for a re-examination of the present Civil Code's provisions for marriage.

36 Article of Juan Ylla, O.P., Sessio Informativa in the Boletin Eclesiastico, August, 1951, p. 670.
37 Republic Act No. 394. The twenty year period expired on June 18, 1969 but was extended indefinitely by Presidential Decree No. 793 issued on May 4, 1975.