Administrative Law and the Public Law Environment of the Philippines

Cornelius J. Peck

University of Washington School of Law

Follow this and additional works at: https://digitalcommons.law.uw.edu/wlr

Part of the Administrative Law Commons, and the Comparative and Foreign Law Commons

Recommended Citation
Available at: https://digitalcommons.law.uw.edu/wlr/vol40/iss3/4

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.
The first view of administrative law and the administrative process in the Philippines is a familiar one to an American lawyer. Even the names of important agencies are the same as, or very similar to, the names of important agencies of the United States government. Thus, there is a Securities and Exchange Commission, a Civil Aeronautics Administration, a Philippine Patent Office, a Food and Drug Administration, a Bureau of Internal Revenue, a Bureau of Immigration, and a Bureau of Customs. Some departmental names are also familiar: Justice, Agriculture and Natural Resources, Commerce and Industry, and Labor. And, though many of the some 200 other bureaus, offices, commissions, etc. of the executive branch of the Philippine government have exotic names, an American lawyer recognizes in their number a proliferation of agencies similar to that which has occurred in the United States in response to demands for increased governmental regulation and services.

More important are the similarities of governing principles derived from a constitution which was patterned largely on the United States Constitution. Thus, one finds in the cases concern for maintaining a separation of powers, for an adequacy of standards to guide the exercise of delegated powers, and for the proper role of the courts in reviewing administrative action. American decisions and American treatises are frequently cited as authorities on these and other questions. The Constitution, statutes, rules and regulations, and almost all recent court decisions have been promulgated in the English language. Moreover, many of the basic statutes have been drafted from American models.
incorporating on many occasions the exact language found in the American models.

Thus, the Philippine Securities Act, which created the Securities and Exchange Commission, contains many provisions taken from the provisions of the American Securities Act of 1933 and Securities Exchange Act of 1934. As Professor Fernandez' contribution to this symposium shows, the Philippine Industrial Peace Act drew heavily upon the American National Labor Relations Act, as amended by the Taft-Hartley Act, and from the Norris-LaGuardia Act as well. Similarities of draftsmanship can also be found in a comparison of the Philippine Minimum Wage Law and the American Fair Labor Standards Act of 1938. As the contributions of Messrs. Vega, Short, and Romulo indicate, there is much in both the substantive and procedural Philippine internal revenue laws traceable to American models. The American influence in the customs and immigration laws is also apparent. Filipino draftsmen have not limited their search for models to federal legislation. Thus, the act establishing the Philippine Public Service Commission and delineating its powers was based upon the New Jersey Public Utilities Commission Act and delineating its powers was based upon the New Jersey Public Utilities Commission Act. It also appears that the draftsmen of the Philippine workmen's compensation statute drew upon American models.

Differences in the general scheme of things are also apparent. Thus in the Philippines one finds no counterpart to the Anti-Trust Division

---

of the United States Department of Justice or the Federal Trade Commission. On the contrary, in a fairly recent speech, the then Chairman of the Philippine National Economic Council spoke of the necessity of promoting corporate and industrial mergers to strengthen the Philippine economy and place it in a sound financial and competitive position. More important, there is no administrative procedure act establishing principles of general applicability for all rule-making and adjudicatory functions of administrative agencies. Nor, as will be discussed in greater detail, are rules and regulations or administrative adjudications published in a comprehensive or satisfactory fashion.

The threshold question for most American lawyers is the extent to which one may rely upon Philippine administrative agencies for a fair and predictable pattern of behavior. To put it otherwise, the question is to what extent may one plan and structure various endeavors free from an arbitrary, personalized, unpredictable or capricious exercise of governmental power by administrators. The answer would appear to be that in general such planning and structuring can be done, though it may upon occasion involve accommodation to policies which to an American seem unwise or perhaps even unfair.

THE INTEGRITY OF THE COURTS

The Courts in the Philippines enjoy an enviable reputation for integrity and fairness. Though charges of bribery and corruption are directed freely at members of Congress and officials, both high and low, of the Executive branch, no comparable suggestions are made about the manner in which the judicial branch of the government disposes of the business coming before it. In part this difference may reflect no more than that the making of such charges is considered an appropriate, if

15 Article 186 of the Penal Code does contain a provision imposing a penalty upon persons who engage in conspiracies or combinations in restraint of trade or commerce or who monopolize any merchandise. No civil consequences of such a violation of the Code are stated, nor does the article make provision for restraint or prevention of violations in suits brought by the Attorney General. Possibly a provision of a prior act, P.A. No. 3247, § 4 (1925), PHIL. ANN. LAWS tit. 21, § 85 (1956), might be construed to authorize such suits, but at present there is no departmental staff engaged in the investigation of and prosecution for violations.

There is a small staff of approximately 12 employees of the Fair Trade Board in the Department of Commerce and Industry, but its activities are limited to such gross misconduct as mislabeling or violation of trademarks.

16 Address by Sixto Roxas, Corporate Mergers and Joint Ventures, Rotary Club of Manila, October 17, 1963; reproduced in mimeograph form by the American Chamber of Commerce of the Philippines.

17 There is a comprehensive Administrative Code, but its provisions relate primarily to matters of internal operations of the government rather than to the relationship between government agencies and persons whose activities are subject to regulation by those agencies.
not indispensable, part of political life in the Philippines. In addition, evidence of bribery and corruption of members of Congress and officials of the executive branch has been found and the conclusion is inescapable that they have in fact existed on a scale far greater than anything known in the United States since the Teapot Dome scandal or even earlier.

The cynical philosophy that law exists only for those who are silly enough to follow it or foolish enough to get caught undoubtedly has a substantial number of adherents in the Philippines. However, law as a profession enjoys tremendous prestige in the Philippines—so much so that one of the country's economic problems lies in the attraction that membership in the bar has for people whose talents and energies could more effectively be utilized in other professions and disciplines. It seems quite certain that law is respected as the governing principle for those controversies which come before the courts and

---

18 For example, unfounded charges of bribery appear to have played a significant and effective part in bringing about the adoption of the Retail Trade Nationalization Act, R.A. No. 1190 (1954), PHIL. ANN. LAWS tit. 52, §§ 15-22 (1957), and in subsequently defeating efforts to repeal or amend it. AGPALO, THE POLITICAL PROCESS AND THE NATIONALIZATION OF THE RETAIL TRADE IN THE PHILIPPINES 37, 48-49, 53, 100-01, 119-20, 194, 215-18 (1962).


20 A survey of the prestige evaluation of various occupations in the Philippines indicated that lawyers were deemed to enjoy a status higher than engineers or managers of business companies, and in fact were outranked only by physicians and Congressmen. Tiryakian, The Prestige Evaluation of Occupations in an Underdeveloped Country: The Philippines, 63 AMER. J. OF SOC. 390, 394 (1958). Of course, many Congressmen are also lawyers and the legal profession is considered an avenue to success in politics. In the United States the public gives a high ranking to the professional ability of lawyers, but ranks most other professions higher insofar as general reputation is concerned, according to a comprehensive survey conducted by the Missouri Bar and the Prentice-Hall Foundation. See the Prentice-Hall Practicing Attorney's, Letter of July 3, 1963, reprinted in 35 N.Y.S.B.J. 374 (1963) and 25 ALA. LAW. 192 (1964). See also the summary and discussion of statistical techniques used in the survey reported in 35(2) Wis. B. BULL. 20 (April, 1962).

In 1961 there were 66 schools authorized by the Philippine government to offer courses in law. BUREAU OF PRIVATE SCHOOLS, LIST OF AUTHORIZED PRIVATE SCHOOL AND COURSE, 1961-1962 (1961). Approximately 2000 students graduated from law schools in 1962. Balbastro, The Present State of Law Education, Mirror Magazine, August 25, 1962, p. 35. The number enrolled must have been proportionately much greater because of drop-outs caused by the economic strain of completing the four year program.

In 1964 the United States, with a little more than six times the population of the Philippines, had approximately 13,000 students registered in the third year of law school. LAW SCHOOL REGISTRATION—1964, 17 J. LEGAL ED. 223 (1965). Thus the ratio of law graduates to population is approximately the same in both countries, despite the fact that the under-developed economy of the Philippines does not present the variety of business problems which occupy the time of American lawyers.

Law school attendance in the Philippines has been curtailed in recent years because of a requirement, made effective January 1, 1964, that candidates for admission to the bar have a bachelor of arts or bachelor of science degree in addition to the degree awarded by an authorized law school. PHIL. R. CT. 138(6).
that the integrity of the courts in the Philippines is comparable to that of courts in the United States.

Thus quite recently the Supreme Court of the Philippines held importation of rice by the government to be illegal. The importation ostensibly made for military stockpiling purposes pursuant to a Presidential program, was actually designed to ensure the availability of rice for civilian consumption at low prices. The holding thus upset what might be considered to be a program with considerable political appeal and what was certainly a program of major importance to the executive branch. For the Court, however, the matter was controlled by statutory prohibitions of importation of rice by the government. Greater independence would have been shown had the Court issued an injunction against further importation or given an adequate explanation of why an injunction would not issue. But the executive branch apparently recognized the authority of the Court and undertook to comply with its views.

The Court likewise recently upset an executive reorganization plan upon the ground that it transferred the jurisdiction over claims under the Minimum Wage Law from the regular courts—the courts of first instance—to regional offices of the Department of Labor without statutory authority for the transfer. Another recent decision declared null and void an executive order authorizing the Deportation Board to issue warrants for the arrest of aliens undergoing investigation to determine whether they are deportable. Earlier the Supreme Court held that the President had exceeded the powers given him by statute in creating a board of tax appeals with an exclusive jurisdiction which ousted the jurisdiction of courts of first instance to review administrative tax determinations.

The power of the Philippine Supreme Court to declare legislation unconstitutional is given express recognition but is subject to a limitation not found in the United States Constitution. The Philippine Constitution contains the provision that, "All cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme

---

Court en banc, and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court. The provision is not considered to apply to ordinances, executive orders, or regulations. Some measure of the freedom of the Court in determining the constitutionality of legislation may be found in current concern that the recently enacted Agricultural Land Reform Code will be declared unconstitutional. Undoubtedly, the concept of judicial supremacy is firmly established in the legal system of the Philippines.

This is not to say that all that comes from the Philippine courts is commendable and beyond criticism. Indeed, many of the opinions of the Supreme Court are subject to the elementary criticism that they are poorly written. Too many lack the careful and deliberate consideration of the problems presented and an appreciation of the implications of the language used. That this should be so is understandable when consideration is given to the number of cases decided by that Court each year. For example, in 1960 the Supreme Court of the Philippines disposed of 1,628 cases, writing full decisions in 893 cases and somewhat shorter resolutions in 735 cases. By comparison, the Supreme Court of the United States in its 1960-1961 term disposed of only 133 cases with full decisions, and in doing so only 118 opinions had to be written for the Court because some opinions disposed of more than one case. A consequence of poorly written decisions is a generally pervasive loss of certainty and predictability and, all too often, aberrant decisions in which justice is not done in conformance with the prevailing standards.

An American lawyer will find in certain decisions the manifestation of a Filipino nationalism which he recognizes as a threat to the interests

26 PHIL. CONST. art. VIII, § 10.
29 Manglapus, Land, Industry, and Power, 39 J. AM. CHAMBER OF COMMERCE 409, 411-12 (1963). Cf. Republic v. Baylosis, L-6191 (Jan. 31, 1955), 11 DEc. L.J. (PHIL.) 181 (1955), reaffirming former holdings that expropriation of lands for subdivision into small lots and conveyance to individuals, even though upon payment of just compensation, is not in the public interest and for public use unless the land to be expropriated is held in such a large estate that its expropriation will benefit many people.
30 See SINCO, op. cit. supra note 27, at 518-40.
31 Statistics obtained from an unpublished source at the Supreme Court of the Philippines.
32 The Supreme Court 1960 Term, 76 HARV. L. REV. 40, 85, 87 (1961). Of course, the U.S. Supreme Court has a tremendous case load of petitions for certiorari, but the practice of denial without opinion and attribution of no significance to that denial eliminates many of the problems which the Philippine Court must face.
of his American clients as well as to other aliens in the country. The origins of this nationalism and the justification for structuring law on a nationalistic basis are subjects which might be discussed at great length. Philippine nationalism will be discussed in greater detail later. For present purposes, it is sufficient to recognize its presence as an intellectual bias of the judiciary just as in the United States a wise lawyer will recognize the intellectual biases of respected judges with regard to matters of racial equality, freedom of communication, or federalism.

For example, in the leading case of *Krivenko v. Register of Deeds of Manila*, the Supreme Court held that an alien could not acquire an urban or residential lot in Manila because it constituted "agricultural land." A constitutional provision prohibited the transfer of private agricultural land to persons who are not qualified to acquire lands of the public domain. Aliens are not so qualified in the Philippines. Suspicions of nationalism are aroused by a conclusion that private residential land in an urbanized area is private agricultural land. They are fortified by the manifested eagerness and insistence of the Court that it decide the question.

Prior to decision of the case, the appellant alien had moved to dismiss his appeal, and the Solicitor General had agreed to the dismissal. The case would accordingly, appear to have been moot. But the Court was aware that the Secretary of Justice had issued a circular directing registrars of deeds to register transfers of residential lots to aliens. The Court insisted that it announce its decision so as to avoid "... the harmful consequences that might be brought upon the national patrimony." The emotive factors involved in the case are well demonstrated in the opening lines of a concurring opinion:

> Today, which is the day set for the promulgation of this Court's decision, might be remembered by future generations always with joy, with gratitude, with pride. The failure of the highest tribunal of the land to do its duty in this case would have amounted to a national disaster. We would have refused to share the responsibility of causing it by, wittingly or unwittingly, allowing ourselves to act as tools in a conspiracy to sabotage the most important safeguard of the age-long patrimony of our people, the land which destiny or Providence has set aside to be the permanent abode of our race for unending generations.

Other manifestations of nationalism, which to Americans may take on unfortunate aspects of racism, may be found in decisions dealing

---

33 79 Phil. 461 (1947).
34 Id. at 467.
35 Id. at 481.
with citizenship and naturalization. Thus, while it is clear that under the Philippine Constitution the principle of \textit{jus soli} does not now apply to confer citizenship by birth in the country, judicial decisions had established the proposition that citizenship was acquired by birth in the country before the adoption of the Constitution.\footnote{Torres v. Chim, 69 Phil. 518 (1940) ; Haw v. Collector, 59 Phil. 612 (1934) ; Go Julian v. Government, 45 Phil. 289 (1923) ; United States v. Lim Bin, 36 Phil. 924 (1917) ; Lim Teo v. Collector, 24 Phil. 64 (1913) ; Roa v. Collector of Customs, 23 Phil. 315 (1912).} Soon after the country had obtained its independence, the Supreme Court of the Philippines declared these decisions to have been based upon an erroneous conclusion that the fourteenth amendment of the United States had been applicable to the Philippines.\footnote{Tan Chong v. Secretary, 79 Phil. 249 (1947). The majority opinion unfortunately fails to deal adequately with a distinction which may be drawn between persons born in the Philippines of alien parents prior to the American occupation and those born there following ratification of the Treaty of Paris. See the concurring opinion of Hilado, J. Id. at 259. See also United States v. Lim Bin, 36 Phil. 924, 927-29 (Malcolm, J. concurring).} The Court announced that the principle of \textit{jus soli} did not apply to the determination of Philippine citizenship, either before or after the adoption of the Constitution, except to the extent that citizenship had been conferred upon particular individuals through the doctrine of \textit{res adjudicata}.

Thereafter citizenship was to be determined by the principle of \textit{jus sanguinis}, under which citizenship at birth depends upon the citizenship of the parents.

The change in policy was of greatest significance to the resident Chinese population of whom there may be one-half million in the islands.\footnote{In 1953 only 153,000 Chinese aliens were registered by the Bureau of Census and Statistics. Agravat \textit{op. cit. supra} note 18, at 19. However, informed authorities estimate the resident Chinese population to be considerably greater than that shown by the official statistics. Raven Holt, \textit{op. cit. supra} note 19, at 25; Hartendorp, \textit{History of Industry and Trade of the Philippines—The Magsaysay Administration} 204 (1961). A leading authority believed there were somewhat less than 200,000 alien Chinese in the Philippines in 1947. Purcell, \textit{The Chinese in Southeast Asia} 653 (1951).} Their situation has been made no easier by a judicial tightening of the requirements for naturalization that has made it almost impossible to obtain the Supreme Court’s approval of a petition for naturalization.\footnote{The last naturalization proceeding in which the Supreme Court gave approval to the petition seems to be Pablo Uy Yao v. Republic, L-14184 (Aug. 31, 1960), 17 Dec. L.J. (Phil.) 122 (1961). In at least one recent case, the Supreme Court found basis}

\[\textit{velayo}, \textit{philippine citizenship and naturalization} 18-19 (1958). If so they became citizens of the Philippines under the Treaty of Paris and subsequent legislation of the U. S. Congress.\]
versed earlier precedents, a determination that the applicant is a citizen may not be made in a naturalization proceeding. Nor may a person obtain a declaratory judgment to establish his citizenship.42

Similar manifestations of nationalism may be found in the decision of the Supreme Court43 sustaining the constitutionality of the Retail Trade Act.44 The administration of the Act will receive detailed consideration later. For present purposes it suffices to say that the Act prohibits persons who are not citizens of the Philippines and partnerships or corporations which are not wholly owned by Philippine citizens from engaging in the retail trade, with an exception in favor of aliens actually engaged in retail trade on May 5, 1954. The Court concluded that the legislation was constitutional despite the fact that the Philippine Constitution, like the United States Constitution, contains a guarantee of equal protection of the laws to all “persons” and not merely to all citizens.45

The exigencies of war46 or a national interest in limiting alien control for denial of a petition for naturalization despite a motion of the Solicitor General stating his belief that there was no legal basis for denial. Petition of Eng Ching Guan, L-15691 (March 27, 1961), 17 Dec. L.J. (Phil.) 692 (1961). The court has also recently held that the required character witnesses are not proven to be credible by the “mere fact” that they are members of the bar, Serwani v. Republic, L-18219 (Dec. 27, 1963), and that the witnesses must give testimony affirmatively proving that the petitioner does not suffer from any of the disqualifications for naturalization. Manuel Yap v. Republic, L-13944 (March 30, 1962), 18 Dec. L.J. (Phil.) 534 (1962).


45 PHIL. CONST. art. III, § 1 (1). While the equal protection clause of the U.S. Constitution runs only to state action, for at least some purposes the test of due process incorporates the concept of equal protection of the laws. Bolling v. Sharpe, 347 U.S. 497 (1954).

of coastal shipping have provided the basis for finding classifications based on race or citizenship to be reasonable in the opinion of the United States Supreme Court. But the decision of the Philippine Supreme Court sustaining the Retail Trade Act makes it quite clear that the spirit of nationalism is so strong among its members that they found little difficulty in reaching a conclusion which might be surprising to American lawyers: citizenship provides a valid criteria for regulation of ordinary economic activities. The attitude of the Court is well reflected in the following passage:

If political independence is a legitimate aspiration of a people, then economic independence is none the less legitimate. Freedom and liberty is not real and positive if the people are subject to the economic control and domination of others, especially if not of their own race and country. The removal and eradication of the shackles of foreign economic control and domination, is one of the noblest motives that a national legislature may pursue. It is impossible to conceive that legislation that seeks to bring it about can infringe the constitutional limitation of due process. The attainment of legitimate aspiration of a people can never be beyond the limits of legislative authority.

Knowledge that the legislation was directed primarily at the resident Chinese and that it will not take full effect against Americans until 1974 may provide some consolation to the American observer. But the measure of protection which the Philippine Supreme Court will provide to aliens against nationalistic legislation has been disclosed, and the prudent lawyer will take note accordingly.

Nationalistic bias can also be expected to play a part in the construction of statutes. In a recent decision the Supreme Court held that employment of an alien by a Filipino in the retail trades is forbidden

---


That the Court had in mind the Chinese retailers is revealed by its use of statistics concerning the retail trade presented and its categorizations concerning retail trade. The classifications used were Filipino retailers, Chinese retailers, and other retailers. Those statistics revealed that in 1951 the 17,429 Chinese retail establishments made 46% of the gross sales whereas less than 500 other alien retailers made less than 1% of the gross sales. Likewise, the Court's description of the alien retailer's traits would fit few Americans: "He has shown in this trade, industry without limit, and the patience and forbearance of a slave. Derogatory epithets are hurled at him, but he laughs these off without murmur; insults of illbred and insolent neighbors and customers are made in his face but he heeds them not, and he forgets and forgives. The community takes no note of him, as he appears to be harmless and extremely useful." Lao Ichong v. Hernandez, L-7995 (May 31, 1957), p. 5 mimeographed copy.

49 See text accompanying notes 125-31 infra.
by the Philippine Anti-Dummy Law.\textsuperscript{51} To reach such a construction one must conclude that employment of an alien employee, who does not share in the profits of the business and who has nothing to do with the management or control of the business, violates a prohibition against allowing an alien "...to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein, with or without remuneration..."\textsuperscript{52} Again the prudent lawyer concerned with a problem of construction of a Philippine statute will take note of the possible effect of nationalism.

\textbf{INTEGRITY OF THE ADMINISTRATIVE PROCESS}

One passing upon the integrity of the administrative process in the Philippines would do well to distinguish between those things which affect the efficiency of the process and those things which demonstrate a corrupt departure from the standards imposed on the process by law. Insofar as efficiency is concerned there is little doubt that there is much that could be improved upon in the Philippines and that the level of performance is below that to which Americans are accustomed. For example, the author can state from personal experience that the process of registering as an alien residing in the country consumes at least a full day. The product is a certificate bearing a photograph and fingerprints of the alien and at least seven signatures and initials of the officials before whom he has appeared after considerable delay and waiting. The document with its initials and signatures has the proverbial iceberg proportions as far as the supporting papers, stamps, initials, and signatures are concerned. The process of obtaining clearance to leave the country is even more lengthy and time consuming.

Filipinos are well aware of the inefficiency of the administrative process and improvement appears possible. An impressively frank and detailed series of case studies in Philippine public administration\textsuperscript{53} has been published recently. It contains, for example, an account of how obtaining approval for the use of funds, saved in the construction of twenty wells, for the construction of one more well required nineteen clearances and approvals, obtained only after a delay of 273 days.\textsuperscript{54}

\textsuperscript{52} Such a construction is not totally without reason. However, it does attribute to Congress the use of very cumbersome language to express a prohibition against employment of an alien in any capacity.
\textsuperscript{53} deGuzman, \textit{Patterns in Decision-Making} (1963).
Another study of the sale of a government-owned fertilizer plant reveals an amazing amount of bidding, re-bidding, evaluation and re-evaluation by multiple and overlapping authorities, extending over a period of two years and three months, all to the loss and discomfort of the private parties who attempted to make the purchase.55

Some of the inefficiency of the service comes from an undesirable centralization of authority, with the consequence that the approval of high ranking officials must be obtained for matters which would be handled in a routine fashion in the United States.56 Another cause of inefficiency is the involvement of several employees at each stage of processing a matter—an involvement which provides a justification for their employment as well as serving as a check on deficiencies in the communication and understanding of governing rules and regulations. Moreover, government employees do not receive pay commensurate with their responsibilities,57 and the potential for corruption is so great that no one person can be given responsibility for a matter of any importance.

Corruption, as has been suggested, can be distinguished from inefficiency of the administrative process, even though the inefficiency of the process may lead to corruption by those who desire more speedy action. A rough distinction may also be drawn between that type of corruption under which a more speedy disposition of a pending matter may be obtained, and that kind of corruption under which legal rights or other expectations can be enjoyed only through compensation of those who exercise the dispensing power of government. Since the end of World War II, the administrative process in the Philippines has unfortunately seen enough of both types.

During the war, subversion of regulations established under Japanese authorities was, of course, frequently a patriotic and loyal act for a civil servant. The practice learned can be put to other uses. Independence came soon after the end of the war amidst a state of inflation and economic desolation and government employees were subject to great temptations in their efforts to provide an adequate income for themselves and their families. The severe economic problem of reconstruction called for and received economic control programs which provided great opportunities for employees inclined to accept illegal supplements.

57 Id. at 66, 71.
to their salaries. The problem survived the period of its creation.

Thus in his address on the state of the nation on January 22, 1962, President Macapagal invited attention "... to the decadent state of our public morality." An annex to his Five Year Socio-Economic Program stated that as of that time one of the basic problems of public administration was that, "Rampant official corruption exists. This is encouraged by economic controls, red tape, partisanship, poor pay, high standards and cost of living, and a breakdown of moral standards in the community." The same authoritative source states that "Illegal tax evasion is practiced extensively. The actual number of returns is only half of what it ought to be." In such a situation one suspects a certain amount of connivance between taxpayers and tax collectors, and those inclined to lend credence to the proverb concerning the relationship of smoke and fire will note that a survey conducted by the Joint Legislative-Executive Tax Commission indicates that only sixty-five per cent of the taxpayers were willing to state affirmatively that tax officials are generally honest. In private conversations some informed Filipinos will render an even harsher judgment on the integrity of revenue agents.

President Macapagal's program of moral regeneration appears to have improved the situation. In January 1962, pursuant to his direction, the Central Bank issued a circular which for most purposes eliminated the system of exchange control. That program had undoubtedly been the most productive source of bribery and corruption in the government, and, in light of the stability which the peso has enjoyed in the free market, its demise cannot be regretted. Macapagal also seems to have stepped up the enforcement of the internal revenue laws,

---


59 Address on the State of the Nation to the Fifth Congress of the Republic of the Philippines 3, January 22, 1962.

60 MACAPAGAL, op. cit. supra note 56, at 69.

61 Id. at 74.

62 Joint Legislative-Executive Tax Comm'n, Survey on Tax Consciousness in the Philippines, 8 PHIL. TAX J. 69, 96 (1953). No opinion was expressed by 31.2% of the persons interviewed and only 3.3% expressed the view that tax officials were not generally honest. An uncritical, or at least non-committal, response to a government survey, even with a promise of confidentiality, would seem expectable on the part of those interviewed.

63 CENTRAL BANK CIRCULAR No. 133 (Jan. 21, 1962). A limited control was maintained in the requirement that twenty percent of export receipts be surrendered to the Central Bank for exchange at the rate of $2.00 to $1.00 instead of the prevailing free market rate.

though it has been suggested privately that the enforcement program seemed to bear some relationship to his political opposition. Interest in administrative law is high, and a recently established law center at the University of the Philippines has undertaken as one of its first projects drafting and obtaining the enactment of an administrative procedure act.

More important in the long run than these events is the fact that Filipinos still consider charges of corruption to have political value. From this one may infer that adherence to standards established by law is an ideal sufficiently valued by the general public that over the years government will probably come closer to it. Nor does the civil service now lack competent and dedicated employees. Indeed, the author became impressed in interviewing government legal officers over a period of months that challenges of an agency program would produce unfeigned responses from them along lines so familiar to American lawyers: (1) the action taken is permitted or required by regulations; (2) the regulations are within statutory authorization; (3) the statute is constitutional.

Indeed, in some respects the administrative process in the Philippines is more judicialized and less subject to political influence than comparable portions of the administrative process in the United States. Thus, administration of the Philippine Industrial Peace Act has been committed primarily to The Court of Industrial Relations. The judges of that court are required to have the same qualifications provided in the Constitution for members of the Supreme Court, and hold office during good behavior until they reach the age of seventy or become incapacitated. By contrast, in the United States members of the National Labor Relations Board are appointed to terms of only five years, and the political impact upon the NLRB has been so pronounced that those familiar with the course of NLRB decisions may refer to them as being the product of the Kennedy Board, the Eisenhower Board, or the Truman Board. Indeed, following the most recent reconstitution of the NLRB one labor reporting service added a new index entry to cover recent Board decisions overruling prior decisions.

68 See, e.g., Leedom, Recent Decisions and Changes at the National Labor Relations Board, 49 L.R.R.M. 84 (1962); Wirtz, Two Years of the New NLRB, 36 L.R.R.M. 205 (1955).
The Philippine Securities and Exchange Commission is headed by a Commissioner who holds office during good behavior. In point of fact, the present Commissioner of the Philippine Securities Exchange Commission was appointed in 1950, and has thus survived three changes of administration. He has been in the service of the government of the Philippines since 1930. By way of contrast, it may be noted that members of the United States Securities and Exchange Commission are appointed for terms of only five years, and that during the period from July 1, 1960, to May 31, 1962, there were eleven different individuals holding the five positions available as commissioners. The present Workmen's Compensation Commissioner is a woman who has worked in the Bureau of Workmen's Compensation for more than forty years, advancing through the ranks to her present position. The Commissioner and Associate Commissioners of the Public Service Commission are appointed to office until they reach the age of seventy or until removed in the same manner as judges after inquiry by the Supreme Court of the Philippines. The Presiding Judge and the Associate Judges of the Court of Tax Appeals are appointed to office until they reach the age of seventy or are removed in the manner applicable to the removal of appellate judges. Moreover, a number of important subordinate posts have been held for substantial periods of time by employees who have become expert in the affairs of the agency with which they are connected.

Thus, one might conclude that there has been a greater influence of politics at the upper levels of administration in the United States than in the Philippines because of the relatively short terms for which agency heads are appointed in the United States. Another factor insulating Philippine agency heads from political forces is the lack of any substantial doctrinal differences between the major political parties in the

---

75 E.g., The present chief of the Legal and Enforcement Division of the S.E.C., Attorney Arcadio Yabyabin, joined the staff in 1938 immediately after receiving his LL.B. degree. 11 Commentator 44 (March 1950).
76 The undesirable shortness of the terms of agency heads and the intrusion of political considerations in their appointment were the subject of special comment and criticism in the Landis Report to President-elect Kennedy. Subcomm. on Administrative Prac. and Proc., Senate Comm. on the Judiciary, 86th Cong., 2d Sess., Report on Regulatory Agencies to the President Elect 11-13, 66-68 (Comm. Print 1960).
country. The result is a lack of pressure for removal of agency heads because of a conflict over the philosophy of administration of the agency program. What political pressures are placed on agency heads are much more likely to be those relating to patronage or individual advantage.

THE LACK OF PUBLISHED MATERIALS

As previously mentioned, there is no equivalent of the Federal Administrative Procedure Act in Philippine law. One of the consequences is a deplorable lack of published administrative rules and adjudicatory decisions. The American lawyer whose practice has brought him in contact with administrative agencies in a state which does not require that administrative rules be published is in a position to imagine the problems posed.

An Official Gazette, published weekly, does contain a good number of recently adopted administrative rules. At one time there was basis for hoping that the Supreme Court would hold that the provision of the administrative code which requires the publication of statutes in the Official Gazette fifteen days before the statutes become effective was also applicable to all administrative rules. In 1954 the Court held that under this provision a circular of the Central Bank requiring foreign currency to be sold to the Central Bank must be so published before its violation could provide the basis for imposing a penalty. Four years later it held that an unpublished Central Bank circular changing the classification of a commodity to one upon which a refund from the foreign exchange tax was not available could not bar the claim of an importer who relied upon past practices. Unfortunately, the Court soon thereafter limited the application of the provision of the Administrative Code to rules providing criminal penalties for their violation. And more recently it has held that unpublished changes in the classifications of commodities which might be imported were effective against an im-

---

78 PHIL. ADMIN. CODE § 11. The Philippine Administrative Code is not to be confused with an administrative procedure act. A substantial part of the Code does relate to the organization, powers, and general administration of the government, but it is primarily concerned with matters which in the United States would be considered matters of public administration, such as salaries and compensation of employees or the powers of municipalities and provinces, rather than the relationship between an administrative agency and the private individuals and organizations which the agency regulates.
porter who knew of the basic circular in which the changes were made, apparently upon the basis that one taking advantage of the circular was estopped to contest its validity as implemented.²²

The consequence is a state of partial publication and confusion that makes it impossible to rely upon the Official Gazette as a source of administrative rules. (Indeed, even if all rules had been published in the Official Gazette it would be of little assistance to the practitioner since there is currently no index.) Some agencies state that they publish all rules in the Official Gazette; some publish only substantive rules;²³ some publish only substantive rules the violation of which will result in the imposition of penalties;²⁴ and some, such as the Bureau of Immigration, have not published rules even though violation will result in administrative penalties. An agency as important as the Securities and Exchange Commission has not published procedural rules, but generally follows the rules of court adapted to meet agency needs. Descriptions of organization and general procedures are generally lacking. Of course, there is little consistency in the behavior of various agencies with regard to public notice and public participation prior to rule-making. On the other hand, personnel at the various agencies visited by the author were extremely cooperative in supplying copies of those rules which were available in the offices, though in many cases it was apparent that the supply had become depleted so that none remained for public distribution and, indeed, even within the offices there may have been a shortage of copies of some of the rules.

The problem of publication is even more severe with regard to publication of decisions in cases of adjudication. The Court of Industrial Relations does publish its decisions in mimeograph form for those who wish to subscribe, and a substantial number of the decisions of the Court of Tax Appeals are privately published in the Philippine Tax Journal. On the other hand, the Public Service Commission occasionally cites its prior decisions even though it has not published those decisions despite a statutory provision expressly providing for publication.²⁵ The Securities and Exchange Commission, which also accords precedential value to its decisions, has likewise not published those

---

²³ This was stated in interviews to be the policy of the Department of Commerce, the Public Service Commission, the Securities and Exchange Commission and the Bureau of Customs.
²⁴ This was stated in an interview to be the policy of the Central Bank.
decisions, though it does maintain a file which is open to inspection by attorneys for private parties.

The state of publication of administrative rules and adjudicatory decisions is perhaps considered tolerable by members of the Bar in the Philippines because of the generally unsatisfactory state of publication of legal reports and materials. The official printed reports of the Supreme Court are more than thirteen years behind in reporting current decisions—they reach only to the early 1950's. The Supreme Court does publish its decisions in mimeographed form, but lack of indexing and binding make the mimeographed reports quite unsatisfactory. Some of the Supreme Court and Court of Appeals decisions are published in the Official Gazette, but as previously mentioned, it too lacks an index. Moreover, whatever the criteria for selection—perhaps that of giving each justice equal public exposure—important decisions may not be published in the Official Gazette. To a certain extent the gap has been filled by the law reviews which serve as uncritical reporters of decisions with a concomitant adverse effect upon their scholarly functions. Indeed, many publications which from their titles would appear to be treatises too frequently turn out to be mere compilations of statutes, rules and regulations, and related court decisions bound under the same cover and providing no research value other than a limited physical convenience.

It seems highly probable that corrective forces will emerge in the Philippines to remedy the problems associated with this unfortunate state of publication of legal materials. The interest in an administrative procedure act, mentioned above, indicates that the time may be near. It seems to the author, however, that one of the most valuable A.I.D. projects which the United States might undertake in the Philippines—far more effective in sustaining that country's commitment to values and ideals which this country embraces than support for the building of roads, bridges, and irrigation ditches—would be assistance in establishing an adequate system of publication of court decisions, rules and regulations, and decisions in cases of administrative adjudication.

86 Thus Lao Ichong v. Hernandez, L-7995 (May 31, 1957) sustaining the constitutionality of the Retail Trade Act was not published in the Official Gazette. Nor was the decision in Macario King v. Hernaez, L-14859 (March 31, 1962), holding it illegal for a Filipino engaged in the retail trades to employ an alien in the business in any capacity. The King case was, however, reported in the privately published Decision Law Journal, 18 DEC. L.J. 457 (Phil.) (1962).

87 The Decision Law Journal, privately published, has become a relatively current unofficial reporter of most Supreme Court decisions and constitutes a good source for American lawyers seeking to follow current developments in Philippine case law.
Centralization and Coordination

In the Philippine Government an American observer will find a strange combination of centralization and a significant lack of coordination in a number of important areas. Some aspects of this combination will simplify matters for an American; others will produce frustrations.

Law in the Philippines has none of the problems of federalism with which American lawyers are so familiar. There are provinces, each headed by a provincial governor, but they constitute no more than corporate bodies which, like municipalities, administer certain national laws within their boundaries. Like municipalities, they have no constitutional powers of legislation, and in fact have been granted only very limited powers by the central government." The Constitution provides that the President of the Republic shall "exercise general supervision over all local governments as may be provided by law," and, where authorized by statute, he may remove local officials from office. President Macapagal summarized the current situation in his proposed five year socio-economic program by saying:

Local governments are generally weak in finance and personnel. Even the more prosperous provinces and cities are not able to keep a substantial share of the revenues they collect. Local government chief executives in these provinces and cities do not even enjoy authority to manage their offices effectively. The only participation of local government executives in economic and social development planning is their work as chairman [sic] of local community development councils. Here, their effectiveness is sharply curtailed by the very limited funds at their disposal. This weakness of local government is probably a heritage of three hundred years of highly centralized Spanish rule, surviving the American attempt to promote decentralization. In any event, it finds parallels in the organization of the judicial system. Thus, while there are courts of first instance in sixteen judicial districts with numerous branches established throughout the islands, the Court of Appeals,

89 Phil. Const. art VII, § 1.
90 Sinco, op. cit. supra note 88, at 286-89. But see Lacson v. Roque, L-6225 (Jan. 10, 1953), 9 Dec. L.J. (Phil.) 12 (1953), holding that the making of libelous or defamatory statements did not constitute grounds for removal of the mayor of Manila.
91 Macapagal, op. cit. supra note 56, at 71.
consisting of the Presiding Justice and seventeen associate justices, has its seat in Manila, where in practice all appeals are heard. The Supreme Court also holds its sessions in Manila, except during the hot, dry season when the Court is removed to the mountain city of Baguio. The Office of the Solicitor General, with the entire staff of seven assistant solicitors general and fifty-three solicitors is also located in Manila. While the Republic of the Philippines is usually represented in the courts of first instance by provincial fiscals (attorneys), the more important cases, including tax and customs cases, are handled by the attorneys in the Office of the Solicitor General, and it is with attorneys in this office that negotiations for settlement must be conducted.

The same kind of centralization is found in the administrative process. Thus the Public Service Commission holds hearings only in Manila, taking depositions before justices of the peace for those in the provinces who cannot afford to travel to Manila. When consideration is given to the fact that the jurisdiction of the Public Service Commission extends to the granting or revocation of a license to engage in such a humble activity as the operation of a jeepney (a jeep converted to a small bus and capable of transporting eight to ten passengers) it is seen that centralization exists at some cost and lack of convenience for those subject to regulation. The same kind of centralization can be found in agencies with functions as varied as those of the Securities and Exchange Commission, the Anti-Dummy Board, or the Workmen's Compensation Commission, all of which operate without regional offices. Workmen's compensation claims are heard locally by hearing officers from the Department of Labor. The Court of Industrial Relations, located in Manila, likewise has branches in which cases may be heard by commissioners on behalf of the court. However, the centralization even within these offices undoubtedly inconveniences the parties whose cases come within their jurisdiction.

At times the Supreme Court of the Philippines has unfortunately supported an even greater centralization of authority by holding that administrative remedies have not been exhausted unless an appeal is taken from a departmental secretary's decision to the President himself. (It has more wisely on other occasions refused to require such

---

94 PHIL. ANN. LAWS tit. 27, § 24 (Supp. 2, 1963); PHIL. ANN. LAWS tit. 27, § 32 (1956).
95 PHIL. ADMIN. CODE § 1659 (1963 Cum. Supp.).
96 PHIL. ADMIN. CODE § 1681 (1958).
an appeal, explaining that a departmental secretary is no more than the alter-ego of the President.) President Macapagal has noted:

A tendency to centralize or "pass the buck upwards" is widespread in the government. The resulting centralization at the highest administrative rungs, and especially in Malacanang [Executive Mansion], compounds the internal red tape in the department and agencies.99

This centralization has frequently failed to produce coordination in the development of government programs and policies. For example, the second ordinance to the Philippine Constitution guarantees Americans parity rights with Filipinos in the exploitation of natural resources and the operation of public utilities until July 4, 1974. As Professor Cortes' contribution to this symposium demonstrates, the various government agencies concerned have failed to arrive at a policy with respect to how existent or previously granted rights of Americans will be handled after 1974. The Public Service Commission will not issue a franchise to an American owned utility extending beyond that date; the Bureau of Mines and the Bureau of Lands apparently now grant American companies twenty-five year leases to exploit natural resources without any limitation relating to the expiration date of the ordinance. Of course, to the extent that the ordinance was intended to stimulate the flow of American capital to the Philippines, failure to formalize a policy on the matter giving some protection to Americans after 1974 results in frustration of the purpose for its adoption.

Another area of particular interest to Americans in which a lack of coordination is apparent is the administration of the Retail Trade Act. Indeed, it might be more appropriate to describe the situation as involving a conflict in interpretation rather than a lack of coordination. Thus, the Secretary of Justice issued an opinion in 1955 holding that an alien might transfer a retail business from one municipality to another.100 This interpretation was for some time followed by the Department of Commerce,101 which has the responsibility for registering alien retailers under the Act. However, in 1958 the Department of Commerce, without reference to the opinion of the Secretary of Justice, determined that thereafter no request of an alien for transfer of his

89 Macapagal, op. cit. supra note 56, at 70-71. (Emphasis added.)
100 Ops. Sec'y Justice 8 (1955).
business from one municipality to another would be allowed. A series of opinions of the Secretary of Justice issued in response to inquiries of the Department of Commerce reveal a continuing disagreement over whether an alien retailer may add additional lines of merchandise to those which he sold at the time the Retail Trade Act became effective. A similar conflict in approach can be found with respect to the length of time during which a partnership dissolved by the death of a partner should be allowed to wind up its affairs in the retail trade; with respect to whether equipment covered by lease should be considered capital for the purposes of an exception to the Act; or with respect to whether a Filipino common law wife of an alien is barred from engaging in the retail trade. The disagreement between the departments has effects upon administration. While the Department of Commerce is in charge of registration of alien retailers, it cannot get city and provincial fiscals to initiate prosecutions for violation of the Act because they follow the contrary opinions of the Secretary of Justice.

Filipinos are, of course, aware of the lack of coordination. President Macapagal commented on the problem in outlining his five year socio-economic development program, and a Program Implementation Agency was established in an attempt to achieve coordination. Success may still be far away, but as American lawyers know, interdepartmental conflicts and a lack of coordination likewise trouble the administrative scene in the United States.

NATIONALISM AND THE ADMINISTRATIVE PROCESS

As indicated in the discussion of the integrity of the courts, nationalism is at the present time a strong force in the Philippines. As the visitor soon learns, there is a considerable amount of groping for national identity—a groping understandably necessary for a people

---

102 DEP’T OF COMMERCE, PROVINCIAL CIRCULAR (July 8, 1958). Nor did the Department explain why its position did not conflict with a decision of the Supreme Court approving such a transfer. Hassaram Dialea & Lachmiv Hassaram v. Perdices, L-8647 (June 29, 1957).
105 Letter of Secretary of Justice to the Secretary of Commerce, Aug. 10, 1961.
107 MACAPAGAL, op. cit. supra note 56, at 69-70.
who have lived under foreign domination for almost four hundred years. Both the Spanish and American occupiers left strong impressions upon the culture. Indeed, English is the unifying and common language of the people, none of the eight or ten major dialects of the indigenous languages being generally understood throughout the islands. Nevertheless, the sense of nationalism is real and perceptible. Inevitably, a force so strong has had an effect on the administrative process.

It needs saying in these days when so much thinking is devoted to the development of international cooperation and minimization of nationalism that development of nationalism is not always undesirable. That nationalism provides a mobilizing force can be seen from the history of countries which have had well established national traditions. A strong case can be made for the proposition that development of the sense of Philippine nationalism is essential to Philippine progress and, in the long run, to the benefit of the United States.\(^{110}\)

It likewise should be emphasized that the "nationalization" of business which has occurred in the Philippines (as well as that which is likely to occur in the future) does not involve the appropriation of property or the operation of businesses by the government. It is instead being accomplished through the exclusion of aliens from activity in the field. This course was followed despite the existence of a Constitutional provision authorizing the transfer of private enterprises to the government upon payment of just compensation or the direct establishment and operation of industries by the government.\(^{111}\) The Constitutional provision was adopted more out of a nationalistic desire to enable Filipinos to control their economy than as a commitment to socialism or government operation of business.\(^{112}\) The commitment instead is to private enterprise conducted by Filipinos.

---


\(^{111}\) Phil. Const. art. XIII, § 6 provides: "The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government."

\(^{112}\) Sinco, *op. cit. supra* note 88, at 470. It has long been an established policy in the Philippines for the government to sell or dispose of business enterprises established by the government out of necessity whenever private capital is willing and able to take over. The second basic principle of Macapagal's Five Year Integrated Program for Socio-Economic Development states that the task of economic development belongs principally to private enterprise and not the government. *Macapagal, op. cit. supra* note 56, at 1. See also, Samonte & Vidallon, *The Sale of the Maria Cristina Fertilizer Plant*, in de Guzman, *Patterns of Decision Making* 55 (1963). There has been a continuing divergence between policy and performance with the result that government still owns and operates a number of important businesses, among them being a government telephone system and the railroad system.
Reliance upon Filipino citizenship of the owners of business enterprises may in the long run prove to be both inadequate and inappropriate as a means of ensuring development of the Philippine economy so as to serve best the interests of the people of the Philippines. As the Granger movement in the western states attested a hundred years ago, citizenship provides no sure check against individual maximization of private gain at public expense. Nor is there any assurance that an individual will keep or invest his wealth in the country of which he is a citizen unless forced to do so by control of foreign exchange and investments. Until such time as the Philippines become a capital exporting country, insistence upon citizenship as a qualification for the operation of business enterprises will have the effect of slowing the flow of investments which could bring about a more rapid expansion of the economy. Legislation directed at undesirable economic practices and activities instead of citizenship would avoid the nationalistic and even racial character of some existing Philippine legislation while carrying with it the built-in guarantee to foreign investors that the policies pursued will not be too harsh or harmful because they also apply to citizens of the Philippines.

At the present time, American citizens and business enterprises have been spared much of the conflict with nationalistic legislation of the Philippines by virtue of the Second Ordinance appended to the Philippine Constitution and by the parity provisions of the Laurel-Langley agreement, discussed by Messrs. Salens and Belman in their contribution to this symposium. Of course, that protection will soon expire. Even without a legally favored position, Americans might expect favorable treatment in the Philippines because of what Americans consider a special relationship between the United States and the Philippines. Without question, there is a reservoir of good will for Americans in the Philippines. The Philippine orientation to the United States for new ideas and techniques for advancement in many fields is strong and creates a climate of acceptability for Americans. President Macapagal stated in discussing the Philippine need for foreign investment "...in desiring foreign capital, we are partial and have a preference for American capital."

On the other hand the current interest in nationalism and the search for a national identity has brought about a re-evaluation of the relationship between the Philippines and the United States, and the

---

result is not as favorable to the United States as many Americans might hope. A strong case can be made for the proposition that a result of American occupation for forty years was the creation of a distorted colonial economy, unduly dependent upon the United States as an outlet for agricultural products and deficient in manufacturing capacity because of American dominance.\textsuperscript{114} Certainly the events of World War II left the Philippines in a very weak position economically and politically when they received the independence in 1946 which had been previously promised. Benefiting from that weakness, Americans were able to insist upon amendment of the Philippine Constitution to give Americans equality with Filipinos in the exploitation of natural resources as a price for continuing the U.S. trade relations and obtaining the war damage payments upon which the Philippine economy depended. That insistence has left unhappy memories with even close friends of the United States.\textsuperscript{115} The presence of American military bases on Philippine soil continues to be a further source of aggravation in the relationship between the two countries.\textsuperscript{116} Even Macapagal's warm invitation to American capital carried with it the qualification that the preference was for ventures with substantial Filipino capital and management participation.\textsuperscript{117}

The preference for ventures with substantial Filipino capital and management participation is a preference in attitude rather than in formulated legislative policy. Although a number of bills regulating foreign investment have been introduced in Congress,\textsuperscript{118} none has yet been enacted. The Securities and Exchange Commission, which licenses foreign corporations to do business in the Philippines,\textsuperscript{119} has apparently never denied such an application upon grounds other than those relating to solvency. In only one case, that involving a Japanese corporation, has it refused to take action with respect to the application. (That refusal apparently was based upon uncertainties concerning the relationship between Japan and the Philippines in the absence of a final treaty of peace between them).

\textsuperscript{114} See Jenkins, \textit{American Economic Policy Toward the Philippines} 38-39 (1954).
\textsuperscript{116} For an account of the difficulties arising up to 1960 in connection with the American bases in the Philippines, see Hartendorf, \textit{History of Industry and Trade of the Philippines—The Magsaysay Administration} 169-201 (1961).
\textsuperscript{117} Macapagal, \textit{supra} note 113, at 406.
\textsuperscript{118} For a discussion of some of the proposals made, see Guevara, \textit{The Senate and House Bills on Foreign Investments}, 33 \textit{Phil. L. J.} 612 (1958).
The need for foreign capital to finance developments is recognized, as is the need for providing an investment climate which will attract that capital.\textsuperscript{120} However, not all action taken on the administrative scene in recent years has been conducive to creating a climate favorable to exclusively alien owned businesses. Thus, it seems quite apparent that the exchange control program which existed until January of 1962 was administered so as to wrest the import and export business from aliens and to confer it upon Filipinos. The Chinese were the primary target in the program, but the number of American exporters and importers also declined significantly despite the allegedly equal legal position which they enjoyed under the Laurel-Langley agreement.\textsuperscript{121} The exchange control program was also administered so as to favor the establishment of industries with at least 60% Filipino ownership. Imports of competing alien owned industries were pegged to production ceilings which allowed the Filipino owned industries to absorb the growth of the markets.\textsuperscript{122} Indeed, at the present time the legislation creating an exemption from customs and taxation on machinery, equipment, and spare parts imported to establish a plant in what are called "basic industries" provides that if the applications are in excess of the market, the applicant which has the greater Filipino participation shall be given preference.\textsuperscript{123}

The challenges made to the validity of the exchange control program do not seem to have raised the question whether the equal protection clause of the Philippine Constitution precludes such discrimination against aliens. The answer suggested by the decision upholding the constitutionality of the Retail Trade Nationalization Act is that it would not.\textsuperscript{124}

**NATIONALISM AND THE RETAIL TRADES**

As previously indicated, the Retail Trade Nationalization Act of 1954\textsuperscript{125} prohibits any person who is not a citizen of the Philippines and any association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines from engaging in

\textsuperscript{120} For example, Macapagal's five year integrated socio-economic program envisaged that new foreign capital would provide eleven percent of the planned investment. MACAPAGAL, \textit{op. cit. supra} note 56, at 17.

\textsuperscript{121} HARTENDORP, \textit{op. cit. supra} note 116, at 270-73; GOLAY, \textit{The Philippines; Public Policy and National Economic Development} 317-21 (1951).

\textsuperscript{122} HARTENDORP, \textit{op. cit. supra} note 116, at 351-61. See also GOLAY, \textit{op. cit. supra} note 121, at 312-21.


a retail business. An exception allows individual proprietors engaged in a business on May 15, 1954, to continue in business until death or voluntary retirement. Another exception permitted associations, partnerships, and corporations to continue in business for a period of ten years from the date of approval of the Act. It seems quite clear that the purpose of the legislation was to remove the resident alien Chinese from their position of dominance in the retail trades in the Philippines.126 Despite this limitation of the major objective, administrative proliferation of the legislative policy has produced results adverse to American interests, and perhaps even in conflict with the parity rights guaranteed Americans under the Laurel-Langley agreement.127

The first indications were that there would be no problems under the Act for American Corporations until 1974, when the Laurel-Langley agreement expires. An opinion of the Secretary of Justice issued in 1954 held that American citizens and juridicial entities were exempt from the prohibitions against aliens engaging in the retail trade and, indeed, that they need not register as aliens under the Act.128 The reasoning was that a provision of the Act,129 stating in effect that nothing in the Act should impair the rights of American citizens and juridicial entities under the executive agreement which preceded the Laurel-Langley agreement, precluded discrimination against American interests.

In 1963, however, the Undersecretary of Commerce requested the opinion of the Secretary of Justice as to whether a wholly-owned subsidiary of Tidewater Oil Company, an American corporation of which 98% of the outstanding capital was owned by American citizens, could engage in retail trade. The Secretary of Justice responded130 that the Laurel-Langley agreement did not preclude the Philippine Government from insisting that American corporations engaged in retail business be 100% owned by American citizens. The reasoning was that since Filipino citizens cannot engage in retail business through the corporate form unless the corporation is 100% owned by Filipinos, there is no discrimination in requiring that American corporations so engaged be 100% owned by Americans.

126 See note 48 supra.
127 See the contribution of Messrs. Salans and Belman to this symposium for a more complete exposition of the developments here summarized.
128 Ops. Sec'y Justice 175 (1954).
There is a question of whether the 1963 opinion repudiates by implication the 1954 decision—the 1963 opinion states only what the Laurel-Langley agreement does not require, whereas the 1954 opinion construed a provision of the Act to establish an exemption for American businesses. There is also a possibility that the opinion of the Secretary of Justice will be overruled judicially or diplomatically. For present purposes the significant fact is that nationalism asserted itself in the administrative process so as to create a serious problem for Americans who thought they were protected until 1974 against restrictions based upon lack of Filipino citizenship. And the problem has been presented to almost all American corporations in the Philip-

131 The status of diplomatic negotiations as well as litigation testing the applicability of the Retail Trade Nationalization Act to American Businesses in the Philippines is summarized elsewhere in this symposium by Messrs. Salans and Belman. One more argument favoring the American position seems worthy of mention. Article VII of the Laurel-Langley Agreement, Sept. 6, 1955 [1956] 6 U.S.T. & O.I.A. 2981, T.I.A.S. No. 3348 provides:

"1. The United States of America and the Republic of the Philippines each agrees not to discriminate in any manner, with respect to their engaging in business activities, against the citizens or any form of business enterprise owned or controlled by citizens of the other and that new limitations imposed by either Party upon the extent to which aliens are accorded national treatment with respect to carrying on business activities with its territories, shall not be applied as against enterprises owned or controlled by citizens of the other Party which are engaged in such activities therein at the time such new limitations are adopted, nor shall such new limitations be applied to American citizens or corporations or associations owned or controlled by American citizens whose States do not impose like limitations on citizens or corporations or associations owned or controlled by citizens of the Republic of the Philippines." (Emphasis added.)

A close reading indicates that Article VII prohibits not only discrimination, but also the imposition of new limitations upon which aliens are accorded national treatment with respect to carrying on business activities. Moreover, the protection against new limitations runs not only to citizens but to enterprises owned or controlled by citizens. The 1963 opinion of the Secretary of Justice improperly reduces the whole set of guarantees to one prohibiting discrimination against individual citizens.

Under the reading suggested here, enterprises owned or controlled by citizens of a party are entitled to protection against the imposition of new limitations upon the extent to which they will be accorded national treatment regardless of whether they are 100% owned by citizens of a party. They are not to be subjected to new limitations upon engaging in business activities for lack of national characteristics of the other party. The Retail Trade Nationalization Act is just such a limitation. None of the non-discriminatory purposes for requiring a 100% Filipino ownership of a retail business is served by requiring an alien, American-owned firm to be more American than it is.

Support for the view that Article VII established separate categories of (1) citizens and (2) corporations and associations owned or controlled by American citizens as to which new nationalistic limitations could not be imposed may be drawn from the fact that, where the parties desired to pierce the corporate veil and deal with the percentage of ownership of corporations controlled by American citizens, they did so. Section 2 of Article VI requires that American citizens who wish to develop natural resources of the Philippines may do so only through a corporation organized under the laws of the Philippines at least 60% of the capital stock of which is owned or controlled by American citizens. It would be a strange agreement that obligated the Philippine government to permit a corporation only 60% owned or controlled by American citizens to exploit and develop what has been called the patrimony of the nation but allowed the Philippine government to require a higher degree of American ownership or control with respect to an ordinary business such as the retail trade.
pines if their stock is sold on a public exchange. In such cases it is almost inevitable that there will be some alien ownership.

Another dimension of the problem, again created through administration of the Retail Trade Act rather than by controlling statutory language, comes from the determination of what constitutes retail business. Upon request of the Department of Commerce and Industry, the Secretary of Justice has delivered a number of opinions on the subject. The consequence is that a sale of goods is considered retail if the purchaser uses or consumes the goods instead of selling them to another in approximately the same form received. It is the use to which the purchaser puts the goods rather than the quantity sold which is determinative. (Similar conclusions have been reached with respect to more comprehensive statutory definitions of retail trade for the purposes of some sales tax statutes in the United States.) Thus in the Philippines, a corporation with a small percentage of alien ownership may not sell 1000 tires directly to a transportation company, because the company will consume the tires in transporting passengers rather than reselling the tires. A bulk sale of lubricating oil to a factory is considered retail trade because the oil is consumed in lubrication of the machinery rather than transferred to another purchaser. The sale of fertilizer in large quantities for use on a farm is likewise a retail sale.

Alien owned corporations may avoid the prohibitions of the Retail Trade Nationalization Act by making sales through marketing organizations which are wholly owned by Filipino citizens. These outlet organizations may be economically unnecessary, but they cannot be mere puppets manipulated by the manufacturer. As will be seen, an Anti-Dummy law, the violation of which entails substantial criminal penalties, is relevant to these situations.

NATIONALISM AND EMPLOYMENT

Because of the generally low salary level in the Philippines as well as the expense of transportation and home leave programs, self-interest of alien employers would in most cases lead to Filipinization of their employment as soon as possible and without government supervision. A substantial Filipinization of managerial employment of American owned companies has taken place entirely aside from the pressures of nationalization. Harten-
of aliens. In general, a person coming to the Philippines for pre-
arranged employment will be required to have a special non-immigrant
visa, which, according to statute, is to be issued only upon a petition
establishing that no person can be found in the Philippines willing and
competent to perform the labor or service for which the non-immigrant
person is desired.\textsuperscript{135} To this statutory condition, the Department of
Labor has administratively added the requirement that in every
instance of alien employment at least two Filipino understudies shall
be trained to take over the job.\textsuperscript{136} The administrative requirements
with regard to procedures to be followed in establishing the lack of
qualified Filipino workers, establishment of a training program, and
government supervision of the training program are detailed.

The problem of hiring alien employees becomes particularly acute
with respect to employment in an economic activity reserved to Fili-
pino citizens or business organizations with a required percentage of
Filipino ownership. As mentioned above, the Supreme Court has held
that any employment of aliens in the retail trades by a Filipino is
forbidden by the Philippine Anti-Dummy law.\textsuperscript{137} Pursuant to that
law, imprisonment of not less than five nor more than fifteen years,
plus a fine, may be imposed upon a person who violates its provisions.
(Employment of technical personnel may be authorized by the Presi-
dent of the Philippines.\textsuperscript{138})

The Supreme Court’s decision makes it clear that the law is violated
by any employment of an alien in wholly Filipino owned retail busi-
nesses and that violations are not limited to employment of those
who share in the management, control, or profits of the business. The
statute makes it clear that the same restrictions apply to employment
by businesses engaged in development of natural resources or opera-
tion of public utilities, which must be 60% owned by Filipinos or
Americans. Assuming the correctness of the Supreme Court decision
and the administrative position with regard to the broad meaning of
retail business, it would seem that employment of an American citizen
by a manufacturing corporation making bulk sales to processors or
other manufacturers who consume or change the nature of the product
violates the Anti-Dummy law even though the business is 100%
owned by American citizens. A fortiori, there is a violation if the business is not 100% owned and the latest opinion of the Secretary of Justice is correct in suggesting that only American corporations 100% owned by American citizens may engage in retail business. Indeed, the logic of the decision would also seem to reach to employment of American citizens by either American or Filipino corporations engaged in the development and exploitation of natural resources or operation of a public utility.

These suggestions may seem extreme, but only in 1963 did the Secretary of Justice reach the conclusion that a corporation engaged in the exploitation and development of natural resources could have alien directors. Since the Constitution requires only a 60% Filipino ownership, and no legislation exists increasing the proportion of Filipino ownership required, the answer would have seemed a foregone conclusion. But the Anti-Dummy legislation had been thought to bar aliens from directorships. Only after considerable debate and argument did the Secretary render an opinion to the effect that alien shareholders are exempt from the prohibitions otherwise applicable to the directorships of such corporations.

Possible Avoidance of Nationalistic Regulation

Of course, 60% Filipino ownership and a board of directors 60% of whom are citizens of the Philippines does not ensure Filipino control of a corporation. The alien owner of a block of stock constituting 40% or less of the voting stock may have actual voting control of the corporation if the remainder of the stock is widely distributed among the public. Whether this type of control violates the Anti-Dummy law has not been determined.

139 Article VII of the Laurel-Langley Agreement extends protection only to American citizens engaging in "business activities"; it does not protect those seeking employment in the Philippines. Thus it does not guarantee one engaged in business the right to employ American employees. The practice of the Bureau of Immigration is to require Americans employed in the Philippines to obtain non-quota immigrant visas as persons coming to prearranged employment, thereby making it clear that Americans employed in the Philippines are considered as being in the same class as other aliens.

See Ops. SEC'Y JUSTICE 225 (1963), stating by way of dictum that American firms engaged in the retail business may not employ aliens.

140 Article VI of the Laurel-Langley Agreement provides only that the exploitation and development of natural resources and the operation of public utilities shall "be open" on equal terms to corporations 60% of the capital stock of which is owned by citizens of the United States; it does not provide for American equality in employment by such corporations.


142 The view was expressed informally by the Executive Secretary of the Anti-Dummy Board that no attack would be made upon election of Filipino directors by aliens owning a controlling block of 40% of the stock unless the aliens engaged in flagrant manipulation of the directors.
Other possibilities exist for avoiding conflict with the nationalistic policies pursued in the Philippines, apparently with the administrative approval. Thus, aliens currently are engaged under operating contracts in exploitation of mines owned by Filipino citizens, and the Bureau of Mines has not opposed such arrangements. Another possibility lies in alien control of all operations after actual extraction of minerals. Presumably, the same distinction would be valid with respect to lumbering operations. Sizeable pineapple plantations have been established by alien owned firms on land leased to them by the government owned National Development company, but these arrangements have been subjected to criticism.  

Concern that the investment climate of the Philippines be such that it will attract needed foreign investment capital may lead to modification of the nationalistic policies established by legislation and extended by administration. Indeed, last year attempts were made, with support from highly placed government officials, to obtain amendments to the Retail Trade Nationalization Act. But nationalism will remain a strong force in the Philippines, and, as this survey indicates, it may be proliferated in the administrative process beyond that which might be suggested upon first reading of a statute. The wise course for any American investor, as for any other alien investor, is to associate with Filipino investors, and, to the extent possible, to utilize Filipino management.

Comments on Selected Agencies

As mentioned at the beginning of this article, there are approximately 200 bureaus, offices, commissions, and other Philippine administrative agencies. There is neither time, space, nor reason to discuss the operations of each. Some of the more important agencies, such as the Bureau of Internal Revenue and the Court of Industrial Relations are the subject of special consideration in other articles in this symposium. What follows are a few comments respecting other Philippine administrative agencies which are unusual or of particular importance.

The Anti-Dummy Board

Many departments and agencies are involved in the administration

---

144 Support for such amendments came from the Secretary of Commerce and Industry, the Chairman of the National Economic Council, and the Chairman of the Program Implementation Agency. See Kiunisola, Retail Trade Controversy, Philippines Free Press, June 27, 1964, p. 5.
of the laws establishing Philippine citizenship as a condition for engaging in a particular business or economic activity. In 1954, a special agency named the Anti-Dummy Board was established to implement enforcement of all such laws. The Secretary of Justice is ex officio chairman of the Board, thus adding to his already substantial duties. The Board members and its executive secretary are all part-time employees, supervising a staff of only thirty employees. Following the pattern of centralization, all the staff is based in Manila. The primary function of the staff is the investigation of complaints filed with the Board. As might be expected from the number of laws and the pervasive influence of the resident Chinese in economic affairs, the Board has had a difficult time in keeping up with its caseload. Originally, it publicized its mission so as to encourage the filing of complaints; more recently, the program of publicity has been dropped. As of February 1964, the Board had referred 274 cases to provincial and municipal fiscals for prosecution—the Board itself having no power to impose penalties for violation of the laws. The referrals resulted in only ten convictions, with almost all the remaining referred cases still pending. The first case referred in 1954 was not decided until 1961. Because of its record of limited success there have been proposals made to abolish the Board, placing reliance instead upon the various agencies and departments charged with administration of nationalization laws to discover and bring about prosecution of violators.

THE JUSTICE DEPARTMENT

The Department of Justice is one of the ten named executive departments. A number of what would be independent agencies in the United States are under the Department for executive or administrative purposes. Included are the Public Service Commission, the Anti-Dummy Board, the Land Registration Office, and the Court of

---

147 These were the facts at the time of an interview with the Executive Secretary of the Board in February, 1964.
148 Three of the convictions involved violation of the Retail Trade Nationalization Act, two involved alien ownership of land, two involved illegal transportation activities, and there was one each involving a logging enterprise, a fishing enterprise and a falsification of citizenship.
Industrial Relations.153 The courts of first instance154 are similarly placed under the Department. The supervision exercised seems to be limited to matters of internal operation rather than to the substance of the programs administered. Other offices under the executive supervision of the Department of Justice and the Secretary of Justice include the Office of the Solicitor General, the Bureau of Prisons, the Bureau of Immigration, and the offices of provincial and municipal fiscals.155

The Solicitor General is charged with representation of the Government in all official investigations or proceedings requiring the services of a lawyer.156 In practice, authority with respect to routine cases is delegated to provincial and municipal fiscals, and solicitors from the Office of the Solicitor General appear in courts of first instance only on important cases. The solicitors from the Office of the Solicitor General handle the cases in the Court of Tax Appeals, including those cases involving customs matters. In the event of a conflict on a matter of interpretation or policy affecting a case in litigation, the view of the Solicitor General would probably prevail over that of his departmental or agency client. On the other hand, claims, including tax claims, can be compromised by the departmental client prior to institution of litigation.157

The Secretary of Justice, rather than the Solicitor General, is the legal advisor for the Government and all government owned or controlled enterprises as to matters which have not reached the stage of litigation. His opinions, which do not bind the requesting department or agency, are rendered only upon request of government officials. However, by making a request of an appropriate official, a private party may frequently obtain the advisory opinion on the subject he desires.158

**The Securities and Exchange Commission**

The Securities and Exchange Commission enjoys a good reputation with businessmen and lawyers in the Philippines. It administers the Philippine equivalent of the American Securities Exchange Act of 1934 and a recently adopted Investment Company Act, patterned after

---

154 PHIL. ADMIN. CODE § 83 (1958).
155 Ibid.
156 Ibid.
159 Santos, Advisory Opinions of the Secretary of Justice, 36 PHIL. L.J. 523 (1961).
the American Investment Company Act of 1940. Like the American S.E.C., it possesses such a tremendous amount of bargaining power in the administration of these statutes that its advice is accepted in most cases by those seeking to market securities. Consequently, it holds very few hearings involving the application of these statutes. Perhaps if its small staff of 150 were expanded it could undertake additional investigations and thus discover violations which do not now reach its attention.

The legal officer who hears a case involving an alleged violation of the Securities Act is charged with the responsibility of presenting the evidence tending to establish guilt. He has discussed the case with investigative personnel prior to the hearing. He also prepares a draft decision for the Commissioner's approval. Obviously these procedures might be held to involve an unconstitutional combination of functions. Officials of the S.E.C. argue that the legal officer is under no obligation to prove a violation, and point to the possibility of judicial review as vindicating the procedure followed.

In addition to the enforcement of the Securities Act and the Investment Companies Act, the Philippine S.E.C. is charged with performance of the functions of registering domestic corporations and licensing foreign corporations to do business in the country—functions usually performed by secretaries of state in the United States. It also has jurisdiction of complaints of alleged violations of all the corporation laws of the country, and thus hears the type of cases involving intra-corporation affairs, which in the United States are heard in the state and federal courts.

The usual source of these cases is in the written complaints of shareholders. If the legal officer of the Trial and Investigative Section to whom a complaint is assigned believes that it alleges a violation of the corporation law, he refers it to the named respondents, who have ten days within which to answer. When issue has been joined, the case is set for hearing. In most cases the complainant and respondent are represented by private counsel. The S.E.C. has not published procedural rules governing these cases, but proceeds under the Rules

---

159 See notes 3, 4, and 5 supra.
160 See notes 3, 4, and 5 supra.
of Court, making such adaptations as seem appropriate. The com-
plainant bears the burden of proof, and the legal officer hears the

case in the manner of a judge. Briefs or memoranda may be filed
after the hearing. The legal officer prepares a decision, which after
review and possible revision by the Chief Legal Counsel, is submitted
to the Commissioner for approval.

Review of S.E.C. decisions is obtained upon petition filed in the

Supreme Court; the review is limited to questions of law. However, the S.E.C. may resort to actions in the Courts of First Instance to have those defying its orders held in contempt. Some matters upon which the S.E.C. has passed have become involved in litigation in the Court of First Instance and thus have been subjected to a collateral and perhaps improper review by those courts.

Because of its involvement in what would be considered intra-
corporate matters in the United States, the advisory function of the
Philippine S.E.C. is considerably greater than an American lawyer
might expect. The S.E.C. will give answers in writing to formal
inquiries made by private parties under both the Securities Act and
the general corporation laws. Informal advice may also be obtained
through consultation with the agency legal staff. The importance of
this source of information is more fully appreciated when considera-
tion is given to the fact that decisions of the S.E.C. are not generally
published. The agency does have a file of its decisions, and a card
index to those decisions, both of which are reportedly available for
use by private attorneys, though in fact little used by them.

THE BOARD OF INDUSTRIES

The Board of Industries was created in 1961 to administer the
Basic Industries Act. That Act was designed to encourage the estab-
ishment of industries through the grant of exemptions from import
taxes and customs duties on machinery, spare parts and equipment.

163 C.A. No. 83, § 35 (1936), as amended, R.A. No. 635, § 4 (1951), PHIL. ANN.
LAWS tit. 67, § 36 (1958) ; PHIL. R. CT. 43.
164 Japanese War Notes Claimants Ass'n v. SEC, 54 Off. Gaz. 637, L-8987 (May 23,
1957) ; La Orden de P.P. Benedictinos v. Stiver, 49 Off. Gaz. 2823, L-4568 (June 16,
1953) ; Tan Tiong Gong v. SEC, 68 Phil. 744 (1939).
166 E.g., Rio Grande Rubber Estate Co. v. Board of Liquidators, L-11321 (Nov. 28,
167 Yabyabin, The Advisory Function of the Securities and Exchange Commission,
11 COMMENTATOR 19 (1950).
169 The exemption now is from 100% of such taxes through 1965, from 75% of
such taxes through 1968, and from 50% of such taxes through 1970. R.A. No. 4095,
For the greater part of 1963, the Board had only 25 regular employees, and it also experienced other budgetary difficulties. By the end of that year the Board had managed to process and grant tax exemption certificates on only seventeen of the 604 applications which had then been filed. However, the Board processes have since speeded up, and by September of 1964 it had granted fifty tax exemption certificates covering machinery, equipment and parts valued in excess of 40 million dollars. The Board has published its Rules and Regulations, Procedures, and various resolutions in mimeographed form. A somewhat comparable program is administered by the Director of Mines, under the supervision of the Secretary of Agriculture and Natural Resources with respect to new mines, or old mines which resume operations, under legislation adopted in 1963.

COMMENTS UPON SPECIFIC DOCTRINES AND PROBLEMS

Only a few observations will be made with respect to specific doctrines and principles of Philippine administrative law. As is the case in the United States, each could well be the subject of a complete article; fortunately for the American lawyer there is such a similarity between Philippine and American administrative law that the nature of the problem is not too difficult to understand. The purpose of these comments is to give some measure of the established and of the uncertain of Philippine law.

EXCESSIVE RELIANCE UPON COMMON LAW WRITS

Like the administrative law of many states without administrative procedure acts, administrative law in the Philippines suffers from an excessive reliance upon common law extraordinary writs for judicial review. In some instances the statute creating the agency and stating its powers will prescribe the method of review. In other cases, however, resort must be had to extraordinary remedies available under the Rules of Court. These include certiorari, prohibition, and manda-


171 R.A. No. 3823 (June 22, 1963).
mus,\textsuperscript{172} as well as petitions for declaratory relief,\textsuperscript{178} and complaints for preliminary injunctions.\textsuperscript{174} The Rules of Court do contain a provision that they are to be liberally construed in order to obtain just, speedy, and inexpensive determination of every action,\textsuperscript{176} and the court has frequently refused to make the decision of the case turn upon the technicality of form on which review was sought.\textsuperscript{176} But all too frequently the court has rested its determination upon the procedural ground that another remedy or method of review was available or that the wrong writ had been selected to obtain review.\textsuperscript{177}

\textbf{Restrictive Use of Declaratory Judgment Procedures}

Rule 64 of the Rules of Court makes provision for declaratory judgments in language which leaves little doubt that its origins are similar to, if not found in, the Uniform Declaratory Judgments Act.\textsuperscript{178} It would permit any person "... affected by a statute, executive order or regulation, or ordinance... before breach or violation thereof, [to] bring an action to determine any question of construction or validity ... and for a declaration of his rights or duties thereunder." (Emphasis added.) The italicized portion of the rule was almost certainly inserted to ensure that such cases would not be dismissed for lack of a justiciable issue.\textsuperscript{179} Unfortunately, it has been utilized to deny use of the declaratory judgment procedure in cases in which it appears that a violation of the statute or regulation involved may already have occurred.\textsuperscript{180} The Philippine Court has further limited the availability of declaratory judgment proceedings by holding that such a proceeding will not ordinarily be entertained where another adequate or appropriate remedy is available.\textsuperscript{181} And, as mentioned above,\textsuperscript{182}

\begin{footnotes}
\item[172] \textit{Phil. R. Ct.} 65.
\item[173] \textit{Phil. R. Ct.} 64.
\item[174] \textit{Phil. R. Ct.} 58.
\item[175] \textit{Phil. R. Ct.} 1, \S 2.
\item[176] \textit{E.g.}, Elks Club v. Rovira, 80 \textit{Phil.} 272 (1948); Collector v. Aznar, L-10570 (Jan. 31, 1958).
\item[178] \textit{E.g.}, \textit{Borchard, Declaratory Judgments} 133, n. 23 (2d ed. 1941).
\item[179] \textit{Id.} at 26-28, 195-201, 218-21.
\item[182] See cases cited note 42 \textit{supra}.
\end{footnotes}
along with a tightening of the requirements for naturalization, the Supreme Court has established a line of cases holding that declaratory judgment proceedings may not be used to obtain declarations of citizenship.

Exhaustion of Administrative Remedies

The doctrine of exhaustion of administrative remedies is well established in the Philippines. As mentioned above, the doctrine is sometimes applied to require administrative appeals to the President of the Philippines, thus accentuating the centralization of power which burdens the administrative process. Without adequate distinction, the Court has upon occasion excused parties from carrying an administrative appeal to the President, explaining that a lower ranking officer should be viewed as the alter ego of the President. The proper distinction would seem to be that such an appeal should be required only where a statute or regulation expressly requires it, and not where it is merely permissive. Requiring appeal to the President as a condition for obtaining judicial review of administrative action creates a potential problem of maintaining an appropriate separation of powers. It has caused considerable difficulty in the United States, but does not seem to have been considered a serious problem in the Philippines.

Although the doctrine of exhaustion of administrative remedies is well established, it is subject to more exceptions than one finds at the federal level in the United States. As indicated in a decision in which the Court cited and relied upon Corpus Juris Secundum, the Philippine rule is subject to many of the exceptions found in the administrative law of various states. Thus, exhaustion has not been required where the matter in dispute is a purely legal one. Nor

185 Dinaisip v. Court of Appeals, L-13000 (Sept. 25, 1959); Chinese Flour Importers Ass'n v. Price Stabilization Bd., 89 Phil. 439 (1951).
190 See generally 3 Davis, Administrative Law § 20.09 (1958).
will exhaustion of administrative remedies be required if the court concludes that resort to the administrative remedy would result in a nullification of the plaintiff's claim. Likewise, exhaustion will not be required if the administrative action is considered patently illegal, arbitrary, oppressive, or taken in violation of the concepts of due process. Another exception has been found where the additional steps in the administrative process are considered matters of form, the administrative process as a matter of judgment being completed.

Failure to exhaust an administrative remedy has been said not to affect the jurisdiction of the court, but merely to go to the validity of the cause of action. One case indicates that proceedings upon a motion to set aside an order previously entered will be considered an administrative remedy, but there appears to be no square holding as to the necessity, in the absence of statutory provisions, of filing a motion for reconsideration in order to exhaust administrative remedies. Two other cases indicate that the time during which a motion for reconsideration is pending before an administrative agency will not be considered in determining whether a party has taken a timely appeal from an administrative decision, because such a procedure conforms to the principle of requiring exhaustion of administrative remedies. However, an earlier case demonstrates the dangers in the area by its holding that an appeal to the courts could be taken only as provided by a statute, which contained no provision for motions for reconsideration.

FAIR HEARINGS

The Philippine Constitution, like the American, contains a provision that "No person shall be deprived of life, liberty or property without due process of law..." As might be expected, there is a substantial correspondence between Philippine and American cases with respect to when due process requires a hearing before administrative action becomes final. Philippine authors cite American authorities

---

198 Secretary of Agriculture v. Judge & Hora, L-7752 (May 27, 1955).  
199 PHIL. CONST. art. III, § 1 (1).
without qualification as to the meaning of the Philippine constitutional provision.\textsuperscript{200} The leading Philippine case on the requisites of a fair hearing\textsuperscript{201} makes similar use of American authorities. As of the present time, however, there appear to be no cases adopting the idea evolving in the United States that it is immaterial whether the interest involved is characterized as a right or privilege to entitle it, if sufficiently important, to protection from patently arbitrary or discriminatory action.\textsuperscript{202} Accordingly, one may expect the Philippine courts to be guided by the distinction between rule-making and adjudication\textsuperscript{203} or the right—privilege distinction in determining whether there is a constitutional requirement of a hearing.\textsuperscript{204} Other limitations upon the right to a hearing may be found in an estoppel based upon the invocation of benefits of an administrative system,\textsuperscript{205} or the absence of factual issues for determination in a hearing.\textsuperscript{206}

In a decision\textsuperscript{207} relying upon \textit{Morgan v. United States},\textsuperscript{208} the Supreme Court of the Philippines summarized the “cardinal primary rights” which due process establishes in administrative proceedings even though technical rules of procedure and evidence may be relaxed. They are as follows: (1) The right to a hearing includes the right of a party to present his case and submit evidence in support thereof. (2) The tribunal must consider the evidence. (3) There must be evidence to support the decision. (4) The evidence supporting the decision must be substantial. (5) The decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected. (6) The deciding authority

\textsuperscript{200} \textit{SINCO, PHILIPPINE POLITICAL LAW} 564-77 (11th ed. 1962); \textit{CORTES, PHILIPPINE ADMINISTRATIVE LAW (CASES AND MATERIALS)} 193-94 (1963); \textit{GONZALES, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND ELECTION LAW} 57-64 (1961). A similar correspondence existed between the Jones Law and the American Constitution before adoption of the Philippine Constitution. See, \textit{e.g.}, \textit{City of Manila v. Posadas}, 48 Phil. 309, 332 (1925); \textit{Lopez v. Director of Lands}, 47 Phil. 23, 32 (1924); \textit{Cornejo v. Gabriel}, 41 Phil. 188, 194 (1920).

\textsuperscript{201} \textit{Ang Tibay v. Court of Industrial Relations}, 69 Phil. 635 (1940). See also \textit{Sicat v. Reyes}, L-11023 (Dec. 12, 1955).


\textsuperscript{207} \textit{Ang Tibay v. Court of Industrial Relations}, 69 Phil. 635 (1940).

\textsuperscript{208} 304 U.S. 1 (1938).
must act on its own independent consideration of the law and the facts and may not simply accept the views of a subordinate in arriving at the decision. (7) The decision should be rendered in such a manner that the parties to the proceeding can know the various issues involved and the reasons for the decision.

In a number of subsequently decided cases, the Supreme Court has found the procedure followed defective for lack of notice of the hearing to affected parties.\(^{209}\) However, without considering the practicality of other means of giving notice, the Court has also found general notices published in a newspaper to be adequate for a proceeding in which additional transportation service was authorized by the Public Service Commission.\(^{210}\) In another case involving the investigation of an employee of the Central Bank, the Court agreed that the charges could have been more specific and detailed, but put the burden upon the employee to request examination of evidence supporting the charges and thereby clarify the issues.\(^{211}\)

Some of the Philippine decisions would seem defective on Constitutional grounds by American standards in their denial of the opportunity of confrontation or cross examination in ex parte reception of evidence by administrative agencies.\(^{212}\) On the other hand, the Court has recently found procedure to be defective because of the lack of opportunity to cross examine the persons who prepared a report upon which the Public Service Commission relied in setting rates for the utility.\(^{213}\) And upon other occasions it has shown a willingness to intervene and give protection against what it concludes is prejudged or arbitrary and capricious administrative action.\(^{214}\)

**SOVEREIGN IMMUNITY**

One of the legacies of the American occupation of the Philippines is the doctrine of sovereign immunity.\(^{215}\) By statute the immunity

---


\(^{215}\) SINCQ, op. cit. supra note 200, at 31-32.
has been waived on suits against the government for money claims on a contract.\textsuperscript{216} And the Civil Code establishes a narrow and limited waiver of immunity applicable to some suits arising for torts.\textsuperscript{217} Special statutory provisions have also been made for the recovery of internal revenue taxes\textsuperscript{218} and customs duties.\textsuperscript{219} In general, however, the doctrine of sovereign immunity exists with intricacies and indefensible technicalities of the sort with which American lawyers are familiar. Thus, a suit to compel officials to release for certain purposes an amount from funds set aside for those purposes is not considered a suit against the government.\textsuperscript{220} But a suit for back pay by an employee who claimed to have been improperly separated from the civil service was considered a suit against the sovereign which could not be maintained.\textsuperscript{221} A distinction is drawn between a suit to recover property and a suit to recover funds, the former not being barred by the doctrine of sovereign immunity.\textsuperscript{222} The situation is further complicated by recognition of an immunity from liability for damages on the part of officers who perform official acts improperly though in good faith.\textsuperscript{223} Other complications exist, as they do in American law. Unfortunately, the spirit for reform of this subject does not seem as strong in the Philippines as in the United States.\textsuperscript{224}

**Miscellaneous Problems**

The absence of an administrative procedure act creates a number of gaps, and problem areas in Philippine administrative law. Thus, as mentioned in connection with the Securities and Exchange Commission, one may find an undesirable combination of functions performed by a hearing officer. There is also some uncertainty concerning the administrative power to issue subpoenas and the proper methods

\textsuperscript{216} P.A. No. 3083 (1923), PHIL. ANN. LAWS tit. 36, §§ 331-38 (1956).
\textsuperscript{217} Article 2180. The provision is applicable only to damage caused by the fault or negligent acts of special agents. Special agents are persons empowered by order or special commission to perform some act separate and distinct from the duties of a regular government officer.
\textsuperscript{218} INT. REV. CODE § 306, PHIL. ANN. LAWS tit. 72, § 306 (1957).
\textsuperscript{219} TARIFF & CUSTOMS CODE § 3402, PHIL. ANN. LAWS tit. 71, § 3402 (1958).
\textsuperscript{220} Moreno v. Macadaeg, L-17908 (April 23, 1963), 20 DEC. L.J. (Phil.) 31 (1964).
\textsuperscript{224} For a summary of recent developments in the United States, see 3 DAVIS, ADMINISTRATIVE LAW, ch. 25 & 26 (1958, Supp. 1963).
for enforcement of administrative subpoenas.\textsuperscript{225} The quality of adjudication would undoubtedly be improved if wider use were made of recommended, proposed, or tentative decisions to which affected parties could file objections prior to issuance of the final agency decision. Rule-making proceedings could also be improved if there were wider use of the practice of giving public notice of proposed rule-making and offering opportunity for public participation. The list could extend to almost the full length of items covered by the U.S. administrative procedure act.

**Conclusion**

Hopefully these comments have provided an orientation to administrative law and the administrative process in the Philippines. Specific problems will, of course, require more specific investigation. The American lawyer who becomes involved in a transaction involving Philippine administrative law will, despite his reading of this article, still be troubled in making his assessment of the risks posed by nationalism. Some firmly fixed policies may seem wrong to him and he will certainly be frustrated by the lack of current published rules, regulations, court decisions, and workable digests and indices.

For those interested in the broader and long-run view, the important consideration is that in the Philippines there seems to be a substantial dedication to the proposition that disputes be settled upon general principles, rather than personal, particular, or arbitrary considerations. There is a similar dedication to the proposition that the proceedings in which those general principles are applied in particular cases should be conducted in accordance with what Americans consider the fundamental concepts of fairness. Undoubtedly things could be better than they are. It may be well to remember, however, that for a long time it has been possible to say the same about administrative law and the administrative process in the United States.

\textsuperscript{225} See the limited number of Philippine authorities in the discussion of the subject found in GONZALES, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND ELECTION LAW 74-76 (1961).