# Classifying the Legal System of the Philippines: A Preliminary Analysis with Reference to Labor Law[*]

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Abstract

In some recent international literature on comparative law and economics, the Philippines has been misclassified as a civil law family country. This paper provides a corrective to this view by tracing the foreign influences on the Philippine legal system as a whole, and on the development of labor law specifically, to demonstrate that American common law influence has far outweighed that of the Spanish civil law heritage. However, this is only part of the story, as in the post-colonial era, the law of the Philippines has progressively reflected local political and economic conditions and in many instances has developed without any direct reference to external models. Hence, this paper

[*] The authors thank Richard Mitchell and the anonymous reviewer for their comments on earlier drafts of this paper. Any remaining errors of fact or analysis are the responsibility of the authors.

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argues that the Philippines is more rightly classified as a hybrid legal system dominated by common law traditions, but that such a classification will still not adequately describe the nature of the current system.

*There is in the Philippine Islands a unique legal system, in which the two great streams of the law – the civil, the legacy of Rome to Spain, coming from the west, and the common, the inheritance of the United States from Great Britain, amplified by American written law, coming from the east –have met and blended -*
*(Justice George A. Malcolm, cited in Gamboa, 1946, pp. 97-98).*

## Introduction

In recent years there has been increased interest among scholars of comparative law and economics in the classification of legal systems. In particular, the 'Legal Origins' theory, first proposed by La Porta et al. (1997, 1998, 2008), was based on the division often made in comparative law scholarship between civil law and common law system families. La Porta et al. argued that countries tend to be locked into a particular style of business regulation according to which legal family they belonged to, and that this resulted in different economic development outcomes. Specifically they argued that common law countries tended to have stronger investor protection and more effective financial systems than civil law countries. The original "Legal Origins" scholarship was concerned with corporation law and the strength of shareholder protection, but the theory has since been extended to consideration of other areas of business regulation, including labor law and the protections extended to workers (e.g. Botero, 2004; Deakin et al., 2007; Mitchell et al., 2010; Anderson et al., 2011; Cooney et al., 2011).

The "Legal Origins" theory has been influential and has underpinned some of the recent law and development policies of international institutions.[1] It has also, however, been very controversial and has come under critique from a number of different angles. One of the major critiques of the theory is that it overlooks the existence of hybrid or mixed legal systems; that is, systems which substantially combine elements of both civil and common law models. According to Kim (2009), the complexities presented by this group of countries

was perhaps purposefully ignored in order to make them fit neatly into the rigid common law and civil law division favored by the Legal Origins theorists. Determining just which countries should be included in the "hybrid" or "mixed" category is, of course, a matter of debate, particularly given that most systems have adopted some elements of law associated with other legal families at some point in time. Many of the jurisdictions often classified as hybrids in the wider comparative law literature were earlier occupied by a civil law country followed later by the British or Americans. These include South Africa, Israel, Sri Lanka and the territories of Scotland, Quebec and Louisiana.

The Philippines, too, is usually categorized as having a hybrid legal system. Although there are relatively few detailed studies of Philippine legal history, the dual Spanish civil law and American common law influences on the development of its laws and institutions is well accepted in the existing literature (Gamboa 1939, ch. 8; Agabin, 2011, 2012). However, as was the case with many other mixed jurisdictions, in the work of La Porta et al. (1997) on corporation law and in the related study by Botero et al. (2004) on labor law, the Philippines was classified as having French civil law origins (due to the Spanish Codes having been based on the French Napoleonic Codes). Even the work of Berkowitz et al. (2003, p. 178), which highlights the importance of understanding the "transplant effect" in relation to the Legal Origins theorists' claims and thus pays closer attention to the non-Western world, contains the following short explanation for coding the Philippines as a civil law country:

> Spanish law is the main source. Spanish colony since 1565. Codifications in the late 1900s are based on Spanish codes of 1829. Amendments and introduction of new procedural rules when sovereignty over the Philippines is transferred to the US in 1898, *but character of legal system remains unchanged* [our emphasis].

As we will show in this paper, these studies are clearly incorrect in their classification of the Philippines in the civil law family. There were not only procedural rules introduced by the United States (US) following its takeover of the Philippines, but a whole host of public and commercial laws together with general common law system traditions. Consequently, we argue, the Philippines is not best characterized as

a civil law country, but rather as a hybrid legal system dominated by common law influence.

In hybrid legal systems, different areas of law display varying degrees of civil versus common law influence, and it has been noted that such countries often display significant borrowing of Anglo-American commercial laws (Palmer, 2012, pp. 91-92). In this article, we first describe the development of the Philippine legal and political system as a whole. We then focus on the sources and development of labor legislation, and subsequently analyze three additional factors that have been involved in the evolution of labor regulation in the Philippines; judge-made law, Department of Labor and Employment issuances, and the role of the International Labor Organization (ILO). With respect to labor regulation in the Philippines, we find, in this preliminary analysis, that the ongoing influence of vestigial Spanish laws has been minimal, and that the labor law system owes the vast majority of its formative laws and style of regulation to the American common law model. We also demonstrate that the external influences on the historical development of labor law have mostly reflected the influences on the development of the legal system as a whole, but with some differences at particular points in time.

However, a classification as to the dominant legal origin family is still unlikely to capture adequately the nature of Philippine legal system as a whole or its labor regulation system more specifically. Legal origins theory has little to say about the possibility of law developing endogenously subsequent to the introduction of Western legal models. That is, it assumes path dependence and that the original transplanted law and style of regulation will continue to exert its dominance through time. By way of contrast, in a recent paper, Cooney et al. (2014) have demonstrated in the case of India, Indonesia and China that transplanted Western models of labor law appear to have had limited influence through time on the development of the labor regulation systems in those countries. Similarly, as we will explain here, as time has passed, the tendency to follow US models has decreased, and the current Philippine labor law system owes as much to domestic developments triggered by the local political and economic context as it does to its US foundations. The evidence provided in this paper also supports Harding's (2002) view that the classification of Southeast Asian legal systems according to Eurocentric legal family categories provides only a very general understanding of legal style and method.

## The Philippine Legal System and its "Hybridity"

The Philippines has a unique colonial history in the Southeast Asian context: it was colonized first by Spain up until 1898 and then (following a brief period of Philippine revolutionary government) by the US. It gained full independence in 1946 following liberation from the Japanese occupation. Since then, the Philippines has undergone a number of radical political regime changes which have also had profound effects on law-making and the sources of models for new laws. Unfortunately, there are few long-run legislative histories of the Philippines that trace the links between politics and law, particularly in the post-Independence era. This may be due to the fact that the idea of law as a concrete manifestation of policy-making tends to be weak in transitional states, especially those with strong patrimonial features like the Philippines (Hutchcroft, 1998, pp. 17-18). This probably explains why the academic literature on the Philippines is much more focused on political development rather than on legal evolution. Thus, this section provides a necessarily brief and broad-brush history of the different periods in the history of the Philippines and outlines their legacies for the development of its political and legal system. The subsequent section will specifically focus on the development of labor law.

Spain was the colonizing power in the Philippines from the mid-16th century through to 1898. Spain, during the 19th century, experienced a law codification movement which resulted in a series of codes which were then extended almost wholesale to the Philippines. These included the Spanish Code of Commerce of 1885, the Spanish Civil Code of 1889, and the Penal Code of 1886 along with Codes of Civil and Criminal Procedure and a number of other more minor legislation. Spanish jurisprudence and legal commentaries were also imported to the Philippines, and these were persuasive on the interpretation of the law. There was also a body of Canon law introduced by the Catholic Church which was closely identified with the colonial state. While it is true that Article 6 of the Spanish Civil Code explicitly recognized that the "customs of the place shall be observed," it is generally accepted that indigenous regulation was largely displaced by the Spanish regime, and only vestiges of it remained in rural areas (Feliciano et al., 2001; Lynch, 1983).[2] The main exception was the continued existence of Islamic law in the southern islands, as these areas were never fully subjugated by the Spanish. One of the most important legacies of the Spanish era was

its system of concentrated agricultural land ownership which was to become the power base for Philippine political and economic elites long after the Spanish departed (Anderson, 1988).

Following the Spanish-American war, in 1898 Spain ceded the Philippines to the US. The Treaty of Paris that transferred sovereignty over the archipelago guaranteed the protection of existing property rights. During the early American era when the Philippine Commission was in full command (1901–1916), the US, motivated by an uneasy combination of colonial zeal and the desire to exploit economic opportunities in the new colony, American democratic ideology, and a determination to civilize the Filipino people, aimed to reconstitute the legal system (Castañeda, 2009). Although the Americans were initially interested in rediscovering Philippine indigenous law, this was quickly abandoned, and they set about grafting US common law concepts and norms onto the existing Spanish civil law system (Lynch 1983, p. 460). The various Spanish Codes suffered different fates during this era. The Civil Code was slightly amended while the Code of Civil Procedure was completely replaced. The Spanish Penal Code was radically amended, and the Code of Commerce was reduced to a skeleton by the enactment of various new commercial laws. Indeed, it was in the area of commercial law that the American attempt to recreate the Philippines in its own image was most evident (Agabin 2011, p. 213).

Further, all public law was completely replaced by laws written by American lawyers trained in common law who largely drew on American models (Gilmore, 1931, p. 471). The court system was reorganized and adversarial procedures largely replaced the earlier inquisitorial system, although one outstanding difference was the omission of the right to trial by jury. The Supreme Court of the Philippines began to use common law concepts to assert colonial authority including the concept of *stare decisis* or binding precedent (Agabin, 2011, p. 19). While the judicial decisions of Spanish courts were no longer considered binding, they were still referred to for interpretation of the remaining codes. Hence, a Philippine jurisprudence resulting from both civil law and common law sources resulted, but as Gilmore noted in 1931, the features of the common law [would] greatly predominate" ( p. 477). Indeed, the Supreme Court has continued to perform a law-making role largely within the tradition of the common law.

Throughout the gradual process of relinquishing American power to the Filipinos up to the creation of the self-governing Commonwealth government in 1935, American influence on legislation continued to be paramount (Gilmore, 1931, p. 471). The Constitution of 1935 was also based on ideas of American constitutionalism and included a Bill of Rights similar to, but not an exact copy of, that of the US (Smith, 1945). During the transitional Commonwealth period which lasted from 1935 to 1941, local Filipino politicians had greater political power than ever before but there was still limited franchise. Ironically, the decolonization process created a system where the executive, President Quezon, exercised uncontested political power. Quezon was able to enact his policies into law without undue opposition from any quarter, and he relied chiefly on the American model as a basis for his "Social Justice" policies (Hutchcroft & Rocamora, 2003; Gopinath, 1987). As will be discussed in the section below, the introduction of compulsory arbitration of labor disputes occurred under Quezon's leadership.

The Japanese occupation of 1941 to 1945 left no lasting legal legacy in the Philippines. Thus, at the time of full Independence in 1946, the Philippines had a legal system that combined remnants of Spanish influence with the much more pervasive overlay of American law and practice, especially in the areas of public and commercial law. As with many other post-colonial nations, the Philippines soon embarked on efforts to make the system accord with nationalist ideals reflecting indigenous culture within the content of the law. A Code Commission consisting of a small group of law academics was appointed in 1947 to revise the existing codes. Although the Commission intended to rework all the codes, its main achievement was the Civil Code of 1950. According to its principal drafter, this Code was 57% old and 43% new (Rivera, 1978, p. 34). Based on the structure and content of the Spanish Civil Code of 1889, the new provisions were adapted from the laws of a range of jurisdictions including France, Argentina, Mexico and Louisiana, as well as from Philippine custom and doctrines laid down by the Philippine Supreme Court. The new Civil Code also confirmed the common law principle of stare decisis (Art. 8). Anglo-American principles of equity and tort law and rules on sales and partnerships were also adopted into the new Code. As will be discussed below, the major labor regulation development of the 1950s, the *Industrial Peace Act* of 1953 and its introduction of a collective bargaining system, was

much more overtly influenced by American models than the more eclectic approach taken in the revised Civil Code.

Throughout the subsequent decades (the pre-martial law era), the role of President was somewhat weaker, and there was a two-party political system, but there were few ideological differences between the two parties. There was increasing franchise of Philippine citizens, but new forms of patronage and elitism emerged (Hutchcroft & Rocamora, 2003, pp. 271-2). One constant, however, was that the US still exercised neocolonial power in the Philippines, as economic and military aid was exchanged for priority access of US investment (Shalom, 1981). All the Presidents prior to Corazon Aquino, who took power in 1986, had the support of the US; that is, no candidate for President opposed by the US ever won (Hidalgo, 2002, p. 269). One example of this influence is that US advisors helped to draft the (ultimately ineffective) land reform legislation of the mid-1950s and were involved again in the Land Reform Code of 1963 (Shalom, 1981, p. 119). Writing in 1960, Perfecto Fernandez, one of the Philippines' leading law academics of the time, noted that there had been a steady and unabated accretion of American rules into the Philippine legal system, both of a substantive and procedural nature. This was especially true, he wrote, of laws on labor relations, social insurance, taxation, banking and currency. Fernandez also noted that Philippine courts exhibited the same patterns of behavior as their American counterparts, and treated American case law as though it were binding in the Philippines.

In 1972, President Marcos declared martial law in order to bypass the limit of two Presidential terms, and then through dominance of the military essentially set himself up as dictator. The idea of "martial law" itself was an American import into the Philippine system – the Jones Organic Act of 1916 gave the Governor General the power to declare martial law (Muego, 1988, p. 28). What Marcos did with his martial law powers, however, was done in "Filipino style" (Agabin, 2011, p. 249). He put aside the American-style public law system and the doctrine of separation of powers. Marcos undermined the "rule of law" and threatened his opponents that their property could be removed at the stroke of a pen (Anderson, 1988, p. 214). He retained a "fig leaf of legality" (Agabin, 2011, p. 252) by creating a new Constitution and installing a rubber stamp parliamentary body (*Batasang Pambansa*), which was packed with his own allies. Supported by a team of academics and technocrats from the University of the Philippines, Marcos promulgated thousands of Presidential Decrees

(PDs) aimed primarily at attracting foreign investment and supporting his regime.[3] He continued to use Presidential Decrees throughout his Presidential term despite the existence of the legislative body (De Dios 1999, p. 133). These Decrees included the formal adoption of the Code of Muslim Personal Laws in 1977, the Civil Service Decree in 1975 and, as we will discuss below, the Labor Code of 1974. A series of PDs on banking reform were drafted by an IMF-Central Bank of the Philippines Committee. Not all the laws of the era were PDs; the Corporation Code, for instance, was enacted by the *Batasang Pambansa* in 1980.

Despite some initial economic success following the declaration of martial law, by the early 1980s, the Philippine economy, which was riddled with patronage ties and corruption, was in a slump and had become known as the "sick man of Asia." Marcos accepted structural adjustment loans from the World Bank and IMF and in return was forced to make a number of legal changes related to tariffs, import/export licensing, duties and taxes, government expenditure and international financial investments. The changes were made quickly without consultation and were generally unsuccessful in their aims due to domestic political conditions and the onset of the world recession (Edwards, 2007; Bello, 2005, p. 13). The worsening economic situation, followed by the "People Power" uprising, led to Marcos' downfall and replacement by Corazon Aquino in 1986.

In the post-martial law era, the Philippines has returned to constitutionalism and the doctrine of separation of powers, although patronage politics re-emerged in both old and new patterns and again the political system has been characterized by unstable parties and coalitions without clear ideological positions. The new Constitution of 1987 essentially remodeled the 1935 Constitution by providing for greater executive accountability and limiting the power to declare martial law. The Philippine Supreme Court was given wider judicial review powers. The Constitution also provided that "generally accepted principles of international law shall form part of the law of the land" (Article II [2]). This provision has since been a mechanism for the frequent invocation of principles of international law in Philippine courts (Desierto, 2009). The general consensus among commentators is that the 1987 Constitution can no longer be characterized as just being an American transplant but rather is a reflection of more recent Philippine political history (Villanueva, 1990, p. 56; Feliciano, 1990).

The Aquino government (1986–1992) began with a strong popular mandate for social reform. It passed legislation facilitating

work among urban poor, giving rights to indigenous people and women, and promoting local governance. However, implementation of these was largely frustrated by political realities. Social reform was arguably sacrificed to reassure domestic and foreign investors and further dissipated in the confusion of frequent coup attempts (Rocamora, 2012; De Dios & Hutchcroft, 2003; Hill, 2013). The Aquino government was controversially forced by the World Bank and IMF to honor all Marcos-era debts, even those that had involved fraud. It did introduce a comprehensive agrarian reform package in 1988, but there were many loopholes and political difficulties with implementation. It also made some modest trade liberalization reforms by dismantling import control and monopolies in agriculture (De Dios & Hutchcroft, 2003).

Fidel Ramos was elected as President in 1992. The Ramos government (1992–1998) is generally regarded as having been an economic reformist administration. Shaped within the doctrine of the Washington Consensus and embedded in successive IMF and World Bank adjustment loans, the Ramos government's polices sought to continue with trade liberalization and to achieve macroeconomic stability. In the face of business opposition, it dismantled monopolies, especially in telecommunications, and deregulated and privatized industries such as oil, transport and water (Bernardo & Tang, 2008). Many of the policy implementers during this period were bureaucrats, and academic economists also played important policy-making roles (Hill, 2013).

During the following three years under President Joseph Estrada (1998–2001), liberalization measures continued under international influence. For example, the USAID-funded AGILE project of the late 1990s and early 2000s "help[ed] to produce a lot of legislation" to implement a wide-ranging economic reform agenda, including bank liberalization, trade liberalization, bankruptcy and securities regulations (USAID, 2000, p. 2). Estrada was extra-constitutionally removed by a public uprising in the middle of impeachment proceedings, and his Vice-President Gloria Macapagal Arroyo saw out the rest of his term before being elected in her own right. The comparatively long-lived Arroyo administration (2001–2010) faced the difficult task of normalizing political and economic conditions after the excesses and inadequacies of the previous administration. However, it was crisis-prone and endured various uprisings, impeachment attempts and bribery scandals, and there

was an increase in politics-related incidents and killings, leading commentators to conclude that Philippine democratic structures were weak and lacking legitimacy (Hutchcroft, 2008).

The current President, Benigno Aquino III (2010–present), was pushed to run for President following the death of his mother, Corazon Aquino. He was able to transform the nation's grief for her into support for change and his campaign win was reminiscent of earlier "people power" movements. The twin-pillars of his government are anti-corruption and anti-poverty and a broad range of political and economic reforms are being undertaken (Rocamora, 2012, p. 204). It is likely, however, that his term will also be remembered as the period during which the Philippine Supreme Court declared as unconstitutional and therefore illegal, the Priority Development Assistance Fund (PDAF) or "Pork Barrel" system in Congress,[4] and as partly unconstitutional and illegal, the Disbursement Acceleration Program (DAP) and related issuances of the Executive.[5]

The Philippines, thus, has a legal system founded on Spanish civil law, which still contributes to the form and content of the Civil Code and to some other features of the system. However, American influence has been pervasive in the Philippines, particularly in public and commercial law and in court procedures and principles. In more recent decades, local Philippine political developments have led to greater self-confidence and use of original legislation to pursue political goals. American influence is now not so direct, but globalization pressures have had particularly noticeable effects in economic legal reforms. Despite this greater self-confidence, unstable democratic processes and elite-dominated patronage politics have continued to characterize the legislative process in the Philippines. Having described the development of the Philippines legal system as a whole, in the following section, we give an account of the development of one specific area of law – labor law.

## Overview of the Development and Sources of Labor Legislation in the Philippines

Much of the history of the development of Philippine labor law, and the outcomes of these laws, has been described in more detail elsewhere than will be included here.[6] What we are interested in identifying here are the major external and domestic influences on the

form and content of Philippine labor law over time, in order to illustrate the relationship between this area of law and the classification of the Philippine legal system more generally. To that end, we briefly describe here the major developments in Philippine labor law during the Spanish, American and post-colonial eras. This material should, of course, be understood within the larger context of the development of the legal and political system of the Philippines as outlined in the previous section of this article.

There were no specific industrial relations policies during the Spanish era in the Philippines (Jimenez, 1993). The Spanish Civil Code provided only the basic foundations of contracting, and the provisions of the employment contract were left entirely up to the parties. The Spanish Commercial Code required one month notice for termination of an employment contract by either party or a *mesada* payment equivalent to one month salary in lieu of notice. Industrial action was effectively banned under the Penal Code. Unlike in many of the other colonies in the region which passed specific laws to ensure labor supply and discipline for colonial enterprises, particularly for plantations,[7] the Spanish colonial regime in the Philippines did not pass any labor specific legislation. Instead, the Spanish used a semi-feudal system of production (the Hacienda/Encomienda system) where labor control on plantations (sugar, tobacco, coconut) was secured through the paternalistic power of planters, who were often part of the newly created indigenous elite (McCoy, 1994). There were also sharecropping systems in place where labor was contracted on a share-tenancy basis or cash advances were used to secure the services of laborers in areas with labor shortages (Aguilar, 1994). In the Spanish era there was only a small amount of industrialization in the Manila area (mainly cigar and cigarette factories and sugar processing), and the wage system had hardly begun to exist (Carroll, 1968). Thus, the direct legacy of the Spanish era on labor legislation was minimal. It should also be noted that in Spain itself, the idea that the state should take an interventionist role in labor regulation did not develop until the early decades of the 20th century, that is, after it lost sovereignty over the Philippines (Domenech, 2011).

Under the American administration, the Spanish *laissez-faire* approach was slowly replaced with legislative attempts both to control and protect workers. Initially there was great concern over the issue of slavery, due to American ideological discomfit with its colonial role and own rejection of slavery at home, and a series of laws were passed

to prohibit it (Salmon, 2001). Then, as American economic policies encouraged the proliferation of factories in Manila which produced commodities dependent on American markets, the rising cost of living and job insecurity soon resulted in factory strikes. The American administration responded by using Spanish conspiracy laws against strikers. The Bureau of Labor, established in 1908, was tasked with the administration of certain labor laws, directly copied from American labor legislation (Villegas, 1988, p. 72). These included an injury compensation law in 1908, a law on fraudulent use of wage advances in 1912, and a law in 1916 prohibiting truck (the payment of wages in goods). A 1923 law introduced restrictions on employing children and women at night, and introduced maternity leave provisions. Maternity leave was subsequently challenged by capital owners in the Supreme Court which chose to annul the provision following the lead of US court decisions which gave primacy to the freedom of contract.[8] Act 4055, enacted in 1933, provided for voluntary mediation of disputes between landlords and tenants and between employers and employees.

Dramatic change to labor policy in the Philippines occurred during the Commonwealth era in response to widespread labor unrest in the early 1930s. Under President Quezon's "Social Justice" policy, compulsory arbitration was introduced through the establishment of the Court of Industrial Relations (CIR) in 1936. The CIR, modelled on the Kansas Industrial Court Act of 1920, bore a resemblance to the US National Labor Relations Board of the 1935 Wagner Act and had the power to fix minimum wages for workers and compulsorily arbitrate disputes in firms employing more than 30 workers. This was a conscious choice made in preference to the US Federal New Deal system of collective bargaining as compulsory arbitration gave Quezon and his supporters a weapon against the political Left (Woodiwiss, 1998, p. 128). Other laws which were developed during this era included the gradual introduction of minimum wages and an 8-hour working day law which by 1939 was applied to the private and public sectors. The 8-hour day law was modelled on the law of the US (Villegas, 1988, p. 32).

The pattern during the Commonwealth era was for the domestic context to trigger legal change, but the actual laws passed looked to US formats. An exception to this trend was that, in response to the land and production systems inherited from the Spanish era, and due to the intertwining of these related issues in Quezon's social justice program, tenancy laws tended to be passed in concert with

labor laws. The CIR additionally had the power to fix maximum rents for tenants and to arbitrate disputes with landlords.

Following independence, work regulations concerning house-helpers were introduced in the Philippine Civil Code of 1950. The Code Commission reported: "The domestic servants in the Philippines have not as a general rule been fairly treated. Social justice is to be measured by the manner in which the humblest servant is dealt with, for no social system can rise above its lowliest class any more than a chain is stronger than its weakest link." Under the Civil Code, house-helpers were not required to work more than 10 hours per day, and were allowed four days' vacation each month with pay (Art. 1695). It appears that these provisions were locally driven rather than based on any outside model.

With the passing of the Industrial Peace Act of 1953, compulsory arbitration was replaced with an American style collective bargaining system. It was passed under strong US influence triggered by its fear of communist power among Philippine trade unions and the need to protect American investments (Villegas, 1988, p. 72). The Industrial Peace Act borrowed many of its provisions, some almost word for word, from the US Wagner and Taft-Hartley Acts (Wurfel, 1959, p. 583), and indeed it appears that it was directly drafted by US advisors. One notable difference between the Industrial Peace Act and the US equivalents was that the Philippines version referred to "legitimate labor organizations" while the US legislation was concerned only with "labor organizations". This was deliberately aimed at excluding company unions and those under communist influence (Woodiwiss, 1998, p. 131). The 1950s also saw the enactment of the Blue Sunday Law (1953), which prohibited all businesses from operating on Sundays, and the Social Security Law (1954), which was an initial, but ultimately unsuccessful, attempt at establishing an employee social security scheme (Hartendorp, 1958, p. 508)

The next major development was the Labor Code of 1974 (Presidential Decree no. 442), passed two years after Martial Law was declared. Essentially the Code brought together some 25 existing pieces of disparate labor legislation – hence most of the earlier American-influenced laws as they pertained to individual labor relations lived on in a new form. With regards to collective labor relations, however, it was intended that the Code would "energize a new climate of development" and export-oriented industrialization, and hence it banned strikes in "vital industries." Although this ban

was modified slightly in subsequent years, essentially it remained in place throughout the Marcos era. There was also a revival of certain powers of compulsory arbitration, and large groups of workers were excluded from joining unions and collective bargaining. Under the cover of tripartism there was strong state control of minimum wages (Bacungan & Ofreneo, 2002, p. 102).

In the martial law era there was a clear departure from looking to external labor law models to follow, and law was matched more closely with local policy objectives (even when in the view of outsiders this resulted in injustice for workers). However, a question about a continuing adherence to a "civil law style of regulation" can also be asked about the Labor Code itself. The civil law tradition prefers coherence, structure and inclusion of all laws on one subject matter in one piece of legislation. The Philippines Labor Code gathered together existing American influenced legislation into one locus and was certainly an effort to codify into a single piece of legislation all the rules on a single topic. It is difficult, however, to draw a direct link to civil law system thinking in relation to the Labor Code given the passage of time since the Spanish era, and so we leave this as an open question for the time being.

There have since been many amendments made to the Labor Code, the most significant of which occurred in the context of the restoration of democracy in 1986 and the ratification of the present Constitution in 1987. The Constitution itself expressed the policy of preference for voluntary modes in settling labor disputes, including conciliation. Then, among the amendatory laws to the Labor Code were Republic Act 6715 of 1989 (also known as the Herrera-Veloso Law) which, among other matters, strengthened rights to self-organization and collective bargaining and gave voluntary arbitrators, upon agreement of the parties, jurisdiction to hear and decide all other labor disputes. In the same year, Republic Act 6727 of 1989 or the Wage Rationalization Act, expanded the jurisdiction of voluntary arbitrators to include unresolved wage distortion disputes (Labor Code, Art. 124). This amendment also decentralized and regionalized minimum wage fixing. Another major amendatory law was Republic Act 9481 of 2007. Among its major features are the relaxation of requirements on charter registration of union locals or chapters, the eligibility of rank and file workers and supervisors in an establishment to join the same national union or federation, and contraction of grounds for union deregistration. Recent amendments have included the Republic

Act 10396 of 2013 which subjected all issues arising from labor and employment to mandatory conciliation-mediation, thus undermining the previous US-based system of collective bargaining.

A prime example of the trend towards local innovation in labor regulation in the Philippines was the expansion of protection to Overseas Filipino Workers (OFWs). There is a long history of international labor migration among Filipinos. Abuse of migrant workers had been a growing concern, but came to a head in 1995 during the Ramos administration. Republic Act (RA) 8042 or the Migrant Workers Act of 1995 was triggered by the case of Flor Contemplacion, a Filipina domestic worker hanged in Singapore in 1995. She was hanged for the murder of a fellow Filipina domestic worker and the child she cared for. Protests swelled to global proportions as Filipino migrants and their advocates took to the streets of Manila and in their countries of employment outside Philippine and Singaporean embassies. Many believed that Contemplacion had been sentenced to death for a crime she did not commit, and that she should have at least received more Philippine consular support. Protesters demanded that the Philippine state intervene to prevent the hanging, and they demanded that the Singaporean state reopen the case. The protests threatened to undermine the labor export of Filipinos. Two months after the Contemplacion case, the government passed RA 8042 (Rodriguez, 2005). The Act protects the "dignity and fundamental human rights" of OFWs, and at the same time sought to ensure the continued participation of recruitment agencies and encouragement of labor migration. This law was very clearly drafted in response to public demand while also protecting an important source of national income and was unique in its scope and aims.[9]

Returning here to the issue of Spanish influence, there is no remaining black letter labor law in the Philippines that can be attributed to the Spanish, however, it is still possible to trace the vestiges of a style of labor regulation back to the Spanish era. In particular, the concept of "management function" or "management prerogative" remains in the Philippines (as in many other jurisdictions) as the vestigial power of business owners that has not (yet) been affected by labor legislation. The *laissez-faire* approach to labor regulation characterized the Spanish era, that is, business owners had the power to contract freely with workers and to solely manage their business as they saw fit without interference. This right was tied to the institution of property rights (Disini, 1992, p. 57). Over time, particularly under

the American and Commonwealth administrations, the *laissez-faire* doctrine was progressively diminished as various pieces of legislation (many of which had common law assumptions embedded within them) encroached on management rights in the name of "social justice" (Sale, 2011a; 2011b). Management rights have not, however, been completely undermined, and also find constitutional protection under the right of free-enterprise (Bacungan & Ofreneo, 2002, p. 116). Hence, the link between Spanish concepts of property (which are still part of the rewritten Civil Code) and vestigial management prerogatives remains to the present day.

Based on the foregoing account, while there are some vestiges of civil law influence in labor regulation in the Philippines, these are relatively minor. Most of the original American laws (relating to individual protections) have remained in the law albeit in new forms. Collective labor regulation has been much more subject to change, and it is there where we most clearly see domestic priorities driving legal change without clear recourse to foreign models. We have also demonstrated that there have been novel legal responses in the Philippines to issues such as the protection of domestic workers and the protection of OFWs and regulation of their work conditions. The influences on the development of labor regulation in the Philippines has largely mirrored that of the influences on the legal system as a whole, with just the occasional divergence such as the early 1950s era when the Civil Code revisions drew on an eclectic mix of foreign models while the Industrial Peace Act was clearly American-influenced.

## Other Sources of Philippine Labor Regulation

We turn now to brief consideration of three other sources of influence on the development of labor regulation in the Philippines; courts and case law, issuances by the Department of Labor and Employment and the influence of the International Labor Organization (ILO).

**Role of the courts and case law.** One of the major distinctions often drawn between civil and common law legal systems is the emphasis placed on the role of judges in the evolution of the law, with civil law systems said to prefer statutory law over judge-made law while common law systems allow judges to make law through the

doctrine of *stare decisis* or precedent.[10] In the Philippines, courts have occasionally played a significant law-making function in the development of labor regulation. To take two major examples from different eras, the Supreme Court was pivotal in the transition from the *laissez-faire* approach (which it affirmed in *People v. Pomar* (1924)),[11] through to recognition of the state's right to legislate with the aim of ensuring "social justice" (see *The International Hardwood and Veneer Company v. The Pañgil Federation of Labor* (1940),[12] *Calalang v. Williams* (1940),[13] and *Leyte Land Transportation Co. v. Leyte Farmers' and Laborers' Union* (1948)).[14] These later decisions relied on US case law but were also based on interpretations of local rules and conditions.

During the last decade, the role of judge-made law can again be clearly seen in jurisprudence on the termination of employment. A series of cases, beginning with *Serrano v. NLRC and Isetann Department Store* (2000)[15] which reexamined the previous *Wenphil* doctrine,[16] have gradually developed the law regarding dismissal procedures and the consequences for failing to follow due process.[17] The Court made reference to the Spanish Code of Commerce in *Serrano.* On the other hand, the Court referred to US case law in *Agabon* and *Perez.* But the decisions also relied on local rules and jurisprudence on management rights/prerogatives and workers' right to security of tenure. The existence of pivotal case law is another piece of evidence for the strong common law stylistic influence on the labor regulation in the Philippines, but at the same time it is also evidence of endogenous law-making as judges have not necessarily and exclusively looked to outside models for the basis of their decisions.

**Administrative rule-making by the Department of Labor and Employment.** Technically, the Department of Labor and Employment (DoLE) can only issue administrative rules within the limits established by the Labor Code. Nonetheless, the volume and frequency of administrative rule-making about labor and employment have been quite high in the last decade or so, and DoLE rules have sometimes been just as important sources of legal change as the legislation itself. For instance, a series of DoLE Departmental Orders (DO) have pertained to the issue of labor-only contracting and subcontracting.[18] They have introduced novel processes regarding trade union mergers or consolidations, multi-employer bargaining,

collective bargaining agreement deregistration and interpleader/ intervention.[19]

In other cases DoLE rules have arguably failed to fully implement legislative changes. For instance, pursuant to Republic Act 9481 Articles 234 and 245 of the Labor Code have been amended. The effects of these amendments are the relaxation of the requirements on charter registration by national unions or labor federations of local unions or chapters, because now national unions or labor federations acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of their certificate of registration based on requirements in Article 234, and the eligibility of the unions of rank and file employees and supervisors in an establishment to join one and the same national union or federation. The amended rule, DO No. 40-F-03, Series of 2008, does not address these important changes.

DoLE rule-making regarding labor enforcement mechanisms have also been very influential. In 2004, the Labor Standards Enforcement Framework (LSEF)[20] was established by DoLE. This was a self-enforcement mechanism based on cooperation among employers and their employees. Self-assessment was undertaken by employers of establishments employing at least 200 workers and unionized establishments with certified collective bargaining agreements. Inspection was done in workplaces with 10 to 199 workers. Advisory services were offered to workplaces with less than 10 workers and to those registered as Barangay Micro-Business Enterprises. In July 2013, the LSEF was replaced by the Labor Laws Compliance System (LLCS) under DoLE DO 131-13, Series of 2013. Now, the modes of implementation under the LLCS are Joint Assessment (for all private establishments except those with valid Tripartite Certificate of Compliance with Labor Standards), Compliance Visits (for those subject of a referral or a complaint) and Occupational Safety and Health Standards (OSHS), and Inspection (for those with imminent danger, dangerous occurrences, accidents resulting in disabling injury, or OSHS violations in plain view).

These examples of DoLE actions demonstrate two main points: firstly, many regulatory developments in labor law have been occurring outside the formal legislative process in the Philippines, and, secondly, these developments have been largely matters of domestic policy without any clear reference to any one particular foreign model.

**ILO influence.** The ILO is another major source of "Western" influence on the labor laws of countries around the world, however, the case of the Philippines demonstrates ILO ideals are often selectively applied in accordance with domestic priorities. The influence of the ILO on Philippine labor law can be seen as early as 1923, with the introduction of Act No. 3071 on Regulating the Employment of Women and Children which reproduced the content of the series of ILO Conventions of 1919 on employing women at night, children in hazardous conditions, and providing maternity leave (although, as noted above, the right to maternity leave was cancelled by the Supreme Court in *People v. Pomar* in 1924). The Philippines became a member of the ILO in 1948 and it has since ratified more than 30 ILO Conventions, including the eight fundamental conventions. The substance of the Conventions is also reflected in the 1987 Philippine Constitution and the Labor Code as amended. But ILO influence on Philippine labor law may be seen as selective and contradictory at times. For instance, according to Bacungan (1993), there was contributory influence of ILO Conventions 87 and 98 on the *Industrial Peace Act* of 1953, and indeed these conventions were both ratified by the Philippines in 1953. However, it was also the case that the *Industrial Peace Act* was largely created by the US to prevent the spread of communist influence in the Philippines. The collective labour rights contained in ILO Conventions 87 and 98 were also later suspended during the martial law period.

Two recent laws mainly affecting women workers further highlight the Philippines' sometimes contradictory relationship with ILO Conventions. In 2011, Republic Act 10151 repealed the night work prohibition for women which had been part of the law since 1923. The law ostensibly catches up with ILO Convention developments on overturning earlier restrictions on night work for women, but parliamentary records show that the amendment was just as much driven by the burgeoning call center and Business Processing Outsourcing (BPO) industry in the Philippines and its need for night shift workers. In 2013, the Philippines passed Republic Act 10361 or the Domestic Workers Act (*Batas Kasambahay*), which gave effect to ILO Convention no. 189 of 2011 on decent work for domestic labor. In this case, the Philippines had played a key leadership role in the development of the Convention, and had chaired the relevant ILO Committee, and thus it was not just a passive recipient of this new international instrument.

## Conclusion

This article was inspired by the misclassification of the Philippines as a French civil law system in the "Legal Origins" literature. With respect to both the wider legal system, and to labor regulation more specifically, the article has demonstrated that the Philippines is rightly grouped with hybrid civil law-common law origin systems. This taxonomy, however, must come with the proviso that it is recognized that American legal influence has far outweighed that of the Spanish in commercial regulation generally, and in labor regulation specifically, in the Philippines. It is also clear that subsequent to the introduction of Western models, the law has since evolved endogenously in many ways; as a response to local political change and popular protest over particular issues and cases, via judge-made law, administrative rule-making and occasionally the selective application of ILO Conventions. This article on the Philippines thus provides support for Harding's (2002, p. 49) assertion that the classification of Southeast Asian countries into Eurocentric legal family categories provides little advantage towards understanding such systems. It also contributes to the growing academic literature that demonstrates that a reliance on broad classifications of legal systems for theory building, particularly where legal hybridity exists, is likely to be misleading.

## Endnotes

[1] See, in particular, the World Bank's Doing Business country rankings, available at http://www.doingbusiness.org/

[2] This may be sharply contrasted with the situation in the Netherlands Indies (present day Indonesia) where customary law (adat) was expressly preserved within the Dutch colonial legal system.

[3] For a list of PDs and other Presidential issuances by topic passed during the early 1970s, see Feliciano (1975).

[4] Belgica et al. v. Honorable Executive Secretary et al., G.R. No. 208566, Alcantara v. Drilon et al., G.R. No. 208493, Nepomuceno v. Aquino III et al., G.R. No. 209251, November 19, 2013.

[5] Araullo et al. v. Aquino III et al., G.R. No. 209287, Syjuco, Jr. v. Abad et al., G.R. No. 209135, Luna v. Abad et al., G.R. No. 209136, Villegas v. Ochoa, Jr. et al., G.R. No. 209155, PHILCONSA v. DBM, G.R. No. 209164, Integrated Bar of the Philippines v. Abad et al. G.R. No. 209260, Belgica et al. v. Aquino III et al., G.R. No. 209442, COURAGE et al. v. Aquino III et al., G.R. No. 209517, VACC v. Ochoa et al., G.R. No. 209569, July 1, 2014.

[6] See, for example, Bacungan & Ofreneo (2002), Calderon (1956); Estacio (1998), Jimenez (1993), Jimenez (2002); Quintos (2003); Villegas (1988) and Woodiwiss (1998).
[7] For discussion of labor regulation in plantations in the Dutch East Indies see Houben & Lindblad (1999) and for discussion of British Malaya see Parmer (1960).
[8] People v. Pomar, 46 Phil. 440 (1924).
[9] Note that RA 8042 has since been amended by RA 9422 (2006) and RA 10022 (2009).
[10] Although note that some commentators have questioned whether the existence of judge-made law has been exaggerated as a point of difference between civil and common law countries. See, for example, the discussion in Garoupa and Morriss (2012) and in Deakin (2009, p. 41).
[11] People v. Pomar, 46 Phil 440 (1924).
[12] G.R. No. l-47178, November 25, 1940.
[13] 70 Phil. 726.
[14] 80 Phil. 842.
[15] G.R. No. 117040, January 27, 2000.
[16] Wenphil Corp. v. National Labor Relations Commission and Mallare, G.R. No. 80587, February 8, 1989.
[17] Agabon, et al. v. National Labor Relations Commission, et al., G.R. No. 158693, November 17, 2004; King of Kings Transport, Inc., et al. v. Mamac, G.R. No. 166208, June 29, 2007; Perez v. Philippine Telegraph and Telephone Company, G.R. No. 152048, April 7, 2009 and Esguerra v. Valle Verde Country Club, Inc. and Villaluna, G.R. No. 173012, June 13, 2012.
[18] Department Order no. 10 series of 1997; DO no 3 series of 2001; DO no. 18-02 series of 2002; DO 18-A series of 2011.
[19] DoLE DO No. 40-03, Series of 2003. DO No. 40-03 has been amended by DO No. 40-C-05, DO No. 40-E-05 and DO No. 40-F-03, among others.
[20] See Department of Labor and Employment, Manual on Labor Standards 2004, issued pursuant to DoLE Administrative Order No. 296, series of 2003 and Department Order No. 57 – 2004.

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