

philippine studies

Ateneo de Manila University • Loyola Heights, Quezon City • 1108 Philippines

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Philippine Studies vol. 41, no. 3 (1993): 287–304

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Fri June 27 13:30:20 2008

Inside the Courtroom: Judicial Procedures in Nineteenth Century Philippines

Greg Bankoff



Delay was so markedly a feature of the Spanish judicial process in the Philippines that the question of official procrastination in legal procedure as a function of colonial rule has to be examined regardless of the more apparent physical causes that underlaid its existence. An independent judiciary was not a feature of Spanish rule in the Philippines. Judicial office was separate from the executive in theory but not in practice, as the two positions were largely filled by the same men. The governor-general was chief executive, but also president of the high court, the *alcalde mayor* was both provincial governor and judge of the court of first instance, the *gobernadorcillo* was both local mayor and municipal magistrate. Spain made no serious attempt to separate judicial and executive power until well into the second half of the nineteenth century, and even then such measures were either impractical or more often simply disregarded. The unbridled exercise of power was limited by a system of checks and balances that relied more on overlapping authorities than on a division of powers. While more successful as an instrument of governance, such a system had serious procedural consequences on the courts' ability to administer justice. This article will examine criminal and civil procedure during the nineteenth century, the admissibility of evidence in determining cases, and the institutionalization of judicial procrastination. Above all, it was in the courtroom that the world view of the colonizer and the colonized came into direct contact, and it was here that the indigenous person gained first hand experience of the power of the Spanish colonial state over his own life.

Criminal and Civil Procedure

No systematic legal compilation on procedural law existed in the Philippines prior to 1888. Rather, the rules followed with regard to

criminal and civil court procedures relied on scattered references contained in the numerous legal codes of Castile, special laws extended to the colony or various *autos acordados* formulated by the high court or *real audiencia*. In practice, however, a uniform method of procedure in criminal and civil cases was applied during the course of the nineteenth century that was partly derived from tradition and partly based on legal treatises and textbooks studied in the universities.¹

Most courts in Spain had replaced accusatorial by inquisitional modes of trial procedure by the sixteenth century (Weisser 1980, 78). The practice, whereby the court itself became the primary agent in compiling the case against an accused, was standard procedure in all Church courts by the Fourth Lateran Council of 1215 and was subsequently adopted by most secular rulers of Western Europe. However, the rights of the accused under such a system were always subject to abuse. In its most notorious form, the Tribunal of the Holy Inquisition, the accused was interrogated in secret and subject to either the threat or the actuality of torture.² Even in secular courts, the accused seldom saw the evidence prepared against him and was often unaware of the specific charges for which he was tried (Lenman and Parker 1980, 30). As the judicial power of the Crown increased and that of the seigneurial courts decreased, the administration of justice came to rely more and more on royal agents—the *regidor* or local magistrate and his judicial and administrative superior, the *corregidor*. It was the colonial counterparts to these officials who were responsible for instigating legal procedures in the Philippines.

If a criminal offense became subject to Spanish legal process in the Philippines, the case passed through three separate phases: an investigatory process called the *sumario*, the hearing of evidence known as the *plenario*, and the final review and passing of sentence.³ The *sumario* referred to a preliminary inquiry to ascertain whether a crime had really been committed and who were the chief suspects. This investigation was conducted by the *gobernadorcillo* of the town within whose jurisdiction the offense occurred and comprised an initial declaration of the facts accompanied by statements of the parties concerned. On the basis of such evidence, the *gobernadorcillo* could order the immediate detention of the suspects in less serious cases (Foreman 1906, 241). This report, often written in the vernacular, was then referred to the provincial court in the form of an indictment.

In the course of the *plenario* conducted before the *alcalde-mayor*, witnesses were called upon to state what they knew pertaining to the case and their answers transcribed.⁴ The province's public attorney would then present his legal opinion on the matter and on this basis the magistrate would determine what offense had been committed and who was the presumptive culprit. Next, the defense would have an opportunity to present their side of the story, calling such witnesses as they wished in corroboration. The matter would then rest with the *alcalde-mayor* to express his opinion on the guilt or innocence of the accused. As the presiding magistrate often possessed no legal qualifications, especially prior to 1844, he frequently required recourse to proper legal advice from suitably qualified lawyers known as *asesores*. Such persons seldom resided outside major urban centers and the case transcripts often had to be dispatched to Manila, with all the delay imaginable consequent upon bad weather, poor roads and the hazards of distance. *Alcaldes-mayores*, however, were not empowered to either acquit or condemn persons in criminal offenses but, rather, only express an opinion on the innocence or otherwise of the accused.

The whole matter—transcripts of the *sumario* and *plenario*—were then remitted to Manila for judicial review by the high court judges of the real audiencia. These *oidores* solely confined themselves to reviewing each case for errors in law. If any such errors were upheld or if any new facts pertaining to the case were submitted, the entire matter was referred back to the provincial court for reassessment. If no errors were found, nor additional testimony forthcoming, the *oidores* would consider the lower court's legal opinion and pass sentence on the case. The high court, however, retained authority to remit, quash, or otherwise modify this opinion as it considered appropriate. In practice, it seems that the majority of opinions were merely confirmed and sentence passed accordingly. The real audiencia was always the sentencing court in criminal matters, though, technically, an appeal could always be lodged with the supreme court in Spain on questions of error in law but never in fact.

Steps were taken towards the establishment of more uniform practices in procedural law prior to 1888, the most significant being the autos acordados of 31 August and 4 September 1860.⁵ These orders were responsible for the first systematic arrangement of criminal and civil procedure in the Philippines and went far towards clarifying the authority of lower court magistrates in the exercise of their jurisdiction. In particular, limits were placed on the investiga-

tory and custodial powers of *gobernadorcillos* and *alcaldes-mayores*. Henceforth, suspects had to be informed of the reason for their arrests within twenty-four hours (De los Monteros 1897, art. 16, 70). *Alcaldes-mayores* were forbidden to detain anyone for longer than fifteen days nor order that a person be placed *incommunicado* in excess of thirty days (De los Monteros 1897, art. 10, 118). Magistrates were admonished to ensure that all accusations were based on hard evidence and to be scrupulous in the recording of a suspect's past convictions (De los Monteros 1897, art. 7 & 19, 117-19). Other procedures were established for disciplining aberrant magistrates, while formal provision was even made for the temporary replacement of judges who declared a personal interest in particular cases (De los Monteros 1897, art. 4 & 6, 666-68). The subsequent application of the *ley de enjuiciamiento criminal* and the extension of the *ley de enjuiciamiento civil* to the Philippines in January and February 1888 completed the process of providing municipal and provincial courts with a uniform practice of criminal procedure.

Procedural practice in the real audiencia was somewhat affected by the nature and extent of the court's jurisdiction, though it, too, was subject to the major legal reforms of the latter part of the nineteenth century. In a sense, the real audiencia was the only professional court in the colony, if a staff of properly qualified jurists can be accepted as a measure of judicial competency. Regulations dictated most aspects of high court procedure. The audiencia was obliged to sit for a minimum of three hours each day during which session criminal cases were always to be given preference over civil matters. Magistrates were further required to continue sitting as long as possible in criminal cases and not to rise if any case being heard could be concluded within another hour's sitting. Magistrates were admonished to receive all those appearing before them "with courtesy and affability," while secretaries, reporters and scribes were ordered to treat the public with "urbanity and decorum," expeditiously dispatching their business and "not delaying those without the money to pay fees." Judicial officers were reminded to always appear in court dressed in ceremonial clothes. Judges should be punctilious in observing court sittings and not absent themselves without legitimate cause and then only for a maximum of fifteen days. All magistrates required a royal dispensation to leave the area of the court's jurisdiction. These and other procedural requirements were officially sanctioned by a royal decree of 18 February 1868 ("*Estudios Juridicos Filipinos: Audiencias*," *El Comercio*, 11 & 15 September 1886).

Other regulations enforced the order in which cases appeared before the court for consideration. Suits were divided into two categories according to their importance, with those on the first slate always being considered before those on the second. Cases on the first slate included those involving the Treasury or *real hacienda*, which took precedence over all others, with one day of each week being set aside for their adjudication. Two days of each week were assigned to hearing suits between the indigenous population or between them and Spaniards. Other suits given precedence included those involving the poor, infractions of royal law and probate cases. Only after all these cases had been dealt with were suits involving property, commerce and others included on the second slate given consideration. Even then there was an order of priority, with judges being admonished to deal speedily with cases involving the poor (Cunningham 1919, 86-88).

Procedural law with respect to civil suits was dependent on the same juridical codes as criminal ones; any attempt at unifying civil practices had to wait until the reforms of mid-century. In fact, it would appear that many civil plaintiffs preferred to claim the military jurisdiction of the *fuero militar* whenever possible during the first half of the nineteenth century. Manuel Bernaldez Pizarro noted in 1827 how "the tribunal of the War Department has drawn to itself all the civil causes of importance in the islands; and the Audiencia has been reduced to criminal causes, and the minor controversies over land among the Indians" (Pizarro 1973, 51: 221-22). Unfortunately, Pizarro offers no explanation of this phenomenon, but his comments suggest that the length of civil law suits may have been the reason behind this preference. Military tribunals at all levels of the judicial hierarchy offered a relatively swift means of dispute resolution, and the *fuero militar* was available to all members of the armed forces and militias, their families and dependents. It is by no means clear that the reforms of midcentury appreciably altered this situation.⁶ One of the main criticisms levelled against the newly created territorial audiencia of Cebu, during the campaign for that court's demotion in the late 1880's, concerned the small number of civil cases heard by that tribunal. A preference for military tribunals persisted in the Visayas where only one provincial court of ordinary jurisdiction existed among surrounding politico-military *comandancias*.

The frequency with which different classes in society had recourse to the law in the settlement of personal disputes is difficult to determine. Official Spanish statistics only include cases dealt with by

the real audiencia, primarily a court of appeal in the matter of civil suits. Judgments handed down in civil actions did not have to be referred to this court for review, as was the case in criminal prosecutions, and so are not included in the published figures. Consequently, civil cases accounted for less than ten percent of all matters handled by the real audiencia between 1865 and 1885.

Percentage of Civil Cases Before The Real Audiencia 1865-1885

Year	Civil Cases	All Cases	Percentage
1865 ^(a)	354	5,364	7%
1871 ^(b)	304	5,966	5%
1875 ^(c)	432	8,590	5%
1880 ^(d)	331	9,350	4%
1885 ^(d)	238	19,986	1%

*including cases despatched by the *Sala Contenciosa-administrativa* & the *Sala de Guerra y Marina*

Sources: **Estadística General De Los Negocios Terminados y Pendientes De Despacho En La Real Audiencia De Filipinas En Fin Del Año de 1865*, Manila: Establecimiento Tipográfico De Amigos Del País, 1866; ^b*Estadística De Las Causas Criminales, Negocios Civiles y Espedientes De Gobierno Despachados Por La Audiencia De Filipinas Durante El Año 1871*, Manila: Establecimiento Tipográfico <<Ciudad Condal>> De Plana Y C^a. 1872; ^c*Estadística De Las Causas Criminales, Negocios Civiles y Espedientes De Gobierno Despachados Por La Audiencia de Filipinas Durante El Año 1875, 1880 & 1885*, Manila: Imprenta De Ramirez y Giraudier, 1876, 1881 & 1886.

However, other archival sources indicate that these cases represented only a fraction of all civil cases filed in any given year. A provincial report to the governor-general showed that there were 120 civil actions decided by the court of first instance in Camarines Sur alone during 1884.⁷ In effect, this meant that there was one such suit filed for every 1,287 inhabitants in Camarines Sur during that year, while the corresponding criminal figures for the same year revealed a ratio of one criminal case for every 822 inhabitants.⁸

The costs and delays, however, in bringing such actions ensured that civil suits remained primarily the preserve of a racial and commercial elite in the city and of a landowning elite in rural areas. This is borne out by a closer examination of the figures for Camarines Sur. Some thirty-six cases or 30 percent of the 120 civil actions heard

in 1884 were instituted by just three plaintiffs, with one man, Don Nemecio Conejo, responsible for twenty-one cases alone ("Juzgado de Primera instancia de Camarines Sur"). The simple fact was that only someone with ample funds could afford the costs involved in bringing a civil action.

Before a plaintiff could even institute such a suit in a court of first instance, he had first to execute a power of attorney authorizing a solicitor to act on his behalf. This power of attorney had to be acknowledged before a notary public and declared sufficient by an attorney. Any defect in the power of attorney, the certification by the notary public or in the declaration of sufficiency was grounds for dismissal of the action with an appeal to the high court on any of the lower court's ruling in these matters. Moreover, questions concerning the jurisdiction of the lower court or even any irregularity in the use of stamped paper (*papel sellado*) on which evidence and a record of the proceedings had to be kept, were also grounds for appeal. All these matters, including the appeals, were preliminary to any investigation of the merits of a case. Appeals were also possible at all subsequent levels in a proceeding, with the action liable for dismissal at any time on technical grounds ("Legal Procedure" 1901, 81). An investigation into Spanish civil legal procedures by the new U.S. administration damningly concluded that: "The procedure seems skilfully adapted to the promotion of delay, expense, and the denial of justice" ("Legal Procedure" 1901, 82)

Evidence

The weighing of evidence and the question of proof are central to any system of justice, no more so than in one that practises an inquisitional mode of trial procedure. The value assigned by the legal process to forms of evidence was reassessed during the course of the nineteenth century. There was a move away from an emphasis on the sheer number of witnesses to corroborate testimony to an acceptance of the importance of circumstantial evidence. In particular, forensic evidence finally came to the fore during the 1890s with the successful resolution of the centuries old debate as to the sacredness of the human body and vivisection.⁹

The discretionary system of considering evidence predominated in Philippine courts prior to the late nineteenth century. In accordance with procedures that originated with a thirteenth century legal code, the *Siete Partidas*, two or more witnesses were sufficient to secure a

conviction. Conversely, the failure to present witnesses rendered conviction impossible despite the weight of circumstantial evidence (Arellano 1901, 239). An ordinary court's willingness to convict solely on the principle of *juxta allegata et probata* had come in for criticism from early Church fathers, who had pointed to the indigenous population's tendency to commit perjury and their frequent recourse to the Spanish judicial system purely to gratify customary notions of revenge (Phelan 1985, 130). The *indio's* propensity to commit perjury was a major concern of Spanish officials well into the nineteenth century, though steps were taken at least to ensure the attendance and proper identification of witnesses. Judges were empowered to declare a witness failing to answer a summons within thirty days *en rebelde* and therefore subject to the loss of civil rights, while the confusion resulting from the limited number of indigenous surnames was somewhat ameliorated by the widespread adoption of Spanish family names after 1849.¹⁰ However, it was not until the influence of the Spanish Legal Code of 1850 began to be felt that the quality rather than the quantity of evidence became the decisive factor in determining guilt. For the first time in Filipino jurisprudence, circumstantial evidence alone was considered sufficient to secure a conviction (Arellano 1901, 239).

As a legal-medical laboratory capable of conducting proper forensic examinations in support of criminal investigations was not established until 1897, the testimony of witnesses was still crucial in determining the outcome of any trial.¹¹ Of course, such testimony might be expert in nature as in the case of an autopsy, when two medical practitioners were required to perform an examination of the corpse to ascertain cause of death (De los Monteros 1897, art. 27, 120). While various procedural measures were taken in court to ensure that individuals spoke the truth, the inquisitorial nature of the trial itself discouraged verification by means of the cross-examination of witnesses. Before testifying, a witness was obliged to give personal details as to his place of birth, present residence, civil status, age, occupation and racial classification. The court might order that an *informe de conducta*, testifying to the character of a particular witness, be sought from the respective parish priest and local *principalia* or municipal notables. Catholics were then required to swear an oath as to the truth of what they were about to say (De los Monteros 1897, art. 18, 71). The procedure was somewhat different with a Chinese adherent to Buddhism or Confucianism. Such a person would be asked to affirm that he had spoken the truth by cutting

off the head of a white rooster, while the magistrate cautioned the witness in the following terms: "Consider that if you do not confess the truth, the blood of this cock that you see shed will be that of your relatives, and your family will always be among the unfortunate."¹²

Public prosecutors (*promotores fiscales*) and defending attorneys (*procuradores*) were obliged to present their respective list of witnesses within twenty-four hours of an accused being formally charged with a criminal offense. All witnesses were required to attend the court in person if they lived within twenty-nine kilometers (six leagues) of the court house, or if the presiding magistrate considered that their evidence was crucial to proper consideration of the case. Those witnesses living beyond a single day's march could submit their testimony in the form of a written statement. Witnesses were to be examined separately in open court before the public prosecutor and the defense attorney, should there be one. The evidence of those unable to attend was presented in a similar manner. Persons under the age of majority were not permitted to give evidence without the presence of a court-appointed guardian who advised them at all stages of court procedure.¹³

In the normal course of events, the cross-examination of witnesses was limited to questions submitted by the respective attorneys to the presiding magistrate who decided whether or not such matters should be included as evidence ("Estudios Juridicos Filipinos: Causas Criminales," *El Comercio*, 25 Dec. 1886, especially articles 20-24). Magistrates, however, were empowered to order a line-up of suspects (*rueda de presos*) in which a witness had to identify the accused from among five or six other persons (De los Monteros 1897, art. 20, 71). Face to face confrontation between witnesses or among the accused was not a feature of criminal procedure except where a substantial contradiction over fact arose. In such circumstances, a *careo*—as these meetings were known in Spanish legal terminology—was permitted, when both parties were obliged to repeat their evidence in the presence of the other and careful observation was made of the physical reaction of both (De los Monteros 1897, art. 20, 119). Celedonio Labsan and Crispulo Labios, primary suspects in the murder of a Spanish shopkeeper in Intramuros, were made to undergo a *careo* where it was observed that the color of the latter's face turned quite white "despite his being of brown complexion" ("Asesinacion" 1893, PNA Asuntos Criminales, Yntramuros, 1890-93). Only after hearing the witnesses would the prosecution and defense present their cases.

Sentencing

Sentencing in all criminal offenses more serious than misdemeanours was reserved to judges of the real audiencia. While awaiting sentence, defendants charged with less serious offenses had the right to bail (*escarcelación*) so long as they were not persons of no fixed address or vagabonds. Magistrates, however, retained the authority to demand bond money (*fianza de carcel segura*) to ensure compliance with judicial orders and attendance in the courtroom (De los Monteros 1897, art. 16, 119).

Prior to the royal *cedula* of 30 January 1855, there was no need for judgments to rest on a conclusive basis; magistrates exercised absolute power in determining both the circumstances of a crime and the penalty it merited. The situation changed significantly in the wake of this reform: judgments were now required to state concisely the alleged facts in paragraphs commencing with the word *resultando* ("it appearing") and the relevant points of law with the word *considerando* ("considering"). The final sentence was to be delivered with the words *fallo* or *fallamos* ("I or we decide"). With the extension of the *Ley Provisional Para La Aplicacion De Las Disposiciones DelCodigo Penal*, all a magistrate's discretionary powers ceased and future judgments had to be rendered solely "in accordance with all the requisites prescribed by law and limited to circumstances, in such a manner that a judgement, in accordance with law, must contain all the elements of decisive reasoning" (Arellano 1901, 239).

Sentence was handed down by the president of the chamber reviewing the case "in a low voice" with the matter being resolved by vote should other magistrates indicate dissension ("Estudios Juridicos Filipinos: Audiencias," *El Comercio*, 17 September 1886). Decisions were reached by majority vote with a minimum of two votes being required to form a judgment. The concurrence of three judges was necessary in civil suits involving sums in excess of 300,000 maravedis or in cases likely to give rise to extreme prejudice. A tied vote of the full bench might be decided by the *fiscal* in his capacity as representative of the Crown's interests, so long as he was not engaged in prosecuting the case ("Estudios Juridicos Filipinos: Audiencias," *El Comercio*, 11 September 1886, Cunningham 1919, 90).

Sentences were then passed to the *escribano de camara* for publication. Recourse against a sentence was not always possible. In certain instances, the case could be appealed to the supreme tribunal in Spain or a *suplica* asking for clemency might be filed against the

judgement rendered. Other sentences, however, were definitive and carried with them a writ of execution. There was no recourse against such judgements prior to the application of the Penal Code which permitted the filing for a decree of cassation or annulment of sentence to the Supreme Court of Spain (Arellano 1901, 239-40).

Official Procrastination

Virtually all commentators who turned their attention to the administration of justice in the colony during the nineteenth century made some reference to the delays inherent in the judicial process. Resolution of even criminal cases could take years. The oldest cases still pending at the court of first instance in Quiapo during 1896 had been begun more than a decade previously: an attempted theft on 20 February 1885, an assault on 16 January 1886 and a rape on 18 November 1886. In all, thirteen cases begun during the 1880s still awaited a final judgment in 1896 ("Rollos de causas pendientes en el Juzgado de Quiapo 1896, PNA, *Real Audiencia*, unreferenced). As for civil suits, Robert MacMicking, a midcentury British traveller, shrewdly noted the effect of private means on the prolongation of law suits.

In conducting a plieto at Manila, all is done by writing; first, the charge is made out and fixed; then comes an answer to the charge; then a counter-answer is put in, and that again is replied to; and so on they go for any length of time, determined by the weight of the purses of the respective contending parties, till, if no more is to be paid, or if the case is to be decided, the other if he is a rich man can refer the whole affair to Spain, where the same pleadings have to be again gone through, and all the vexation and expense reincurred, besides that the decision of the case may with a little management be protracted for any indefinite length of time (MacMicking 1851, 185).

The situation in the provinces was even worse. Delay was fostered by the dependence of unqualified provincial magistrates on the legal advice of *asesores* residing mainly in Manila. Records of the case would often have to make repeated trips to the capital in order to satisfy the *asesor's* need for sufficient evidence to formulate a legal opinion. In addition to delays inherent in the judicial process itself, the insular nature of the archipelago and the colony's inadequate means of communication were factors tending to increase the length

of court procedures. Legal documents were prone to damage or destruction on their trips to and from the capital, while Manila might be without news of some provinces for months at a time or even years in the case of offshore islands such as the Marianas.¹⁴ As if geography and distance were not sufficient, the nature of the procedure made it susceptible to corruption.

In the other islands, this miserable situation is yet worse: they have seldom but one communication a year with the capital, to which all causes of any magnitude are sent for decision or confirmation; and, as the papers are often (purposely) drawn up with some informality, the cause, after suffering all the first ordeal of chicane and knavery, experiences a year's delay before it is even allowed a chance of being exposed to that which awaits it at Manila. Or should the cause be at length carried to the Audiencia, or Supreme Court, and there, as is sometimes the case, be judged impartially, the delay of the decision renders it useless—the sentence is evaded—or treated with contempt! (Blair and Robertson 1850, 51: 95).

While even a vociferous critic, such as Juan Caro y Mora, admitted that the reforms of the second half of the nineteenth century had ameliorated the worst abuses of the judicial system in the Philippines, he still concluded that as regards the laws of procedure "there still remains much to be done" (Caro y Mora 1897, 133). An official report submitted to the high court on the state of the judiciary in Cagayan province in 1898 painted an all too familiar picture of chronic delays in the administration of justice. Though only classified as a *de entrada* or minor provincial court, Cagayan had an adult population of 111,380 persons and a land area of 14,380 square kilometers, the most extensive in the archipelago. Its agricultural worth exceeded that of most other provinces with the tobacco industry alone accounting for over one million pesos a year. The relative importance of the province belied the small number of cases dealt with by the judicial system: theft and rustling constituted the majority of the 146 criminal cases, and land disputes accounted for the insignificant number of civil suits considered by the courts in 1897.

The report attributed delays in the judicial process to shortage of court personnel and the poor state of internal communications within the province. In particular, the report's author blamed the prolongation of court cases on the inadequate number of clerks able to process judicial matters and the unavailability of constables to secure witnesses. As the salary of many judicial employees depended on a percentage of the fees levied on civil cases, the provincial court could

not raise enough funds to employ more than an inexperienced clerk (*escribiente de plantilla*) and an interpreter. Although there were other people available with sufficient command of Spanish to enable them to work in the court, they preferred to find employment with commercial firms from which they could procure "a modest but regular salary." As presently staffed, the report concluded, the court had sufficient personnel to handle one hundred criminal cases a year in addition to the few civil suits and inquiries of other provincial courts.

Under staffing, however, only compounded the delays resulting from the poor state of internal communications within the province. The transmission of judicial business between the provincial capital or *cabecera* and the municipal tribunals situated in smaller towns was hampered both by distance and terrain. Appari was located some 95 kilometers from the capital, Claveria lay on the far side of two major rivers and numerous estuaries, while the six towns of the Itanes district were almost beyond communication as a result of the absence of roads, bridges and the state of the post. It was not uncommon for a period of three months to elapse between the issuance and receipt by the various courts of arrest warrants, witness citations and other judicial circulars ("*Memoria sobre las causas que dificultan la más acertada y pronta administración de justicia y medidas que conviene adoptar para removerlas*" Cagayan, 3 January 1898, PNA, *Real Audiencia*, unreferenced.) The report portrayed a judicial process exhibiting the same symptoms of procrastination and inefficiency, despite the considerable efforts taken to overhaul the system as described by earlier commentators.

Unfortunately, the reforms of the nineteenth century never managed to bridge the gulf between the theory and practice of the administration of justice in the Philippines. No matter the humanitarian intention of the law, with lethargy such a feature of judicial procedure, courts began to serve other ends than those envisaged by the state. On the one hand, the law represented an attempt by the state to protect the rights of indigenous persons. Speedy resolution of disputes was encouraged and magistrates dealing with indigenous persons were charged to proceed "without delays, molestations and lengthy waits in prison, in a manner so that they might be dispatched with the utmost brevity" (Law 83, Title 15, Book 2 of the *Recopilacion de las Leyes de Indias* as quoted in Caro y Mora 1897, 131-32). Lack of money was no bar to litigation, as theoretically the judicial system was available to even the humblest of subjects. The filing of an *información de pobreza*—a declaration of poverty—enabled

anyone to continue with a prosecution regardless of their ability to pay. On the other hand, the reality of judicial procedure ensured that the justice system mainly served the administrative ends of the state, Spanish bureaucrats and those with wealth. The *Census of the Philippine Islands* concluded that Spanish procedural law, including the new codes, were "characterized by many proceedings and provisions calculated to prolong litigation indefinitely, to add greatly to the expense of lawsuits, to keep prisoners in confinement for long periods, and to prevent the impartial and speedy administration of justice" (*Census of the Philippine Islands* 1905, 1: 407).

The continuance of a judicial system in which procrastination and prevarication had become almost institutionalized had certain distinct advantages for the state. In the first place, the suitor was forever hopeful so long as the wheels of justice continued to revolve, no matter how slowly, and no irreversible decision was reached that might prompt more dramatic action. Second, the court's authority to detain people for long periods pending trial proved useful in a number of ways: it demonstrated the inherent power of the state; it temporarily removed potentially dangerous elements of society from circulation; and it provided a source of public labor. "One frequently hears of cases," wrote Caro y Mora, "in which a person has been ordered imprisoned and proceeded against and after having been in prison for some months, the case is dropped and the person placed at liberty for lack of evidence" (Caro y Mora 1897, 128). Third, the institutionalization of the judicial process functioned as a prime mechanism of colonial rule, elevating law to a position of paramountcy in the application of state policy. The colonial state in the Philippines came to rely on its judicial apparatus as an instrument of governance to the detriment of other considerations such as mediation or dispute resolution (Bankoff, "The Judicial State: A Model of Colonial Rule in the Nineteenth Century Philippines," forthcoming).

The case of Cue-Cungfuy, a Chinese shopkeeper from Cavite, illustrates the manner in which the judicial process was used to satisfy both personal ends and the demands of the state. Cue-Cungfuy was arrested in June 1804 on the charge of failing to meet his monthly repayment on a debt of P400 to a certain Manuel Franco. He was imprisoned, placed in chains, and his assets seized. Despite the fact that the value of the goods in his shop was worth over three times the amount of the debt, Cue-Cungfuy was not released on bail but actually sent to the galleys at the request of the plaintiff, osten-

sibly to work off the balance of the debt. Meanwhile, his shop was robbed and he was left penniless. He was only released pending the hearing of his case in August 1808 at the behest of the fiscal of the real audiencia ("Expediente actuado a sequencia de hacerse pedido por la Real Audiencia testimonio del Expediente que motivo el restablecimiento de la antigua protectoria de los Sangles radicados en esta capital" PNA, *Real Audiencia*, unreferenced.)

Conclusion

Unfortunately, what was envisaged as a measured judicial process became cumbersome in the extreme as the opportunities for abuse and corruption multiplied in the absence of adequate supervision and sufficient salaries. Manuel Bernaldez Pizarro observed in the 1820s that lawsuits lasted from three to six years and often remained unresolved (Pizarro 1973, 51: 221). Merchants preferred to forego suits rather than take a matter to court and submit their claims to the "robbery" of the legal system ("Legal Procedure" 1901, 82). Suitors found it more expedient to have their cases settled at the provincial level without recourse to the high court in Manila. The arbitrariness of provincial magistrates was preferable to the high costs and delays of continuing legal action (Robles 1969, 134). The protracted litigation of lawyers not only stultified the judicial process, but encouraged brigandage as an alternative to the frustration of interminable delay (Robles 1969, 134).

The procedural reforms of the second half of the nineteenth century did little in practice to improve the administration of justice in Philippine courts. The British Consul in Manila as late as 1892 cited the example of a current murder trial unresolved after three years of judicial proceedings (Alexander Golan to Lord Salisbury, Manila, 2 Jan. 1892, as quoted in Cushner 1971, 175). "While the laws were humane and wise on the whole," concludes the passage on justice in the *Census Of The Philippine Islands* compiled in 1904, "and were adapted to the state of society in the Philippines, the codes of procedure and the personnel of the courts could easily be converted into obstacles great enough and permanent enough to make the people believe that the laws as administered by the courts were not for their protection, and it is not improbable that this feeling added some strength to the general opposition toward Spain which finally appeared" (*Census of the Philippine Islands* 1905, 1: 407).

Notes

1. The most influential of such works during the second half of the nineteenth century was the treatise written by Juan Maria Rodriguez (Arellano 1901, 237).

2. The Tribunal of the Holy Inquisition was established on a national basis in 1483 and was responsible for approximately 100,000 prosecutions before its abolition in 1808 (Weisser 1980, 80).

3. This procedure with regard to criminal cases is described in a number of contemporary sources: Arellano (1901, 237); Buzeta (1850, I: 109-10); Foreman (1906, 241-42); Mallat (1983, 230-31).

4. Foreman (1906, 241) refers to the second stage in the criminal process as the *vista*.

5. Previous measures formulated by the *real audiencia* included: the *auto acordado* of 13 October 1837 that called upon magistrates to render an account to the superior court of all cases heard before them; the *auto acordado* of 20 March 1838 that established the precise procedure in which such cases were to be reported on paper; and the *auto acordado* of 16 July 1838 that ordered all magistrates to keep a register of criminal cases tried within their jurisdiction in a special book of 500 pages in length. ("Estudios Juridicos Filipinos: Causas Criminales," *El Comercio*, 23 and 28 September 1886).

6. These reforms included the royal *cedula* of 1855 regulating judicial evidence, the *autos acordados* of 1860 regarding the authority and procedures of courts and the royal decree of 1 February 1869 that attempted to abolish special jurisdictions.

7. "Juzgado de primera instancia de Camarines Sur año de 1884. Estado de los Juicios verbales Civiles celebrados durante dicho año," Nueva Caceres, 31 December 1884, PNA, *Real Audiencia*, unreferenced. Statistical data showing that there were fifty-four civil cases in Binondo also exists for the same year but is possibly incomplete. See: "Estado de los plietos civiles en que el Juzgado del Distrito de Binondo ha entendido el año proximo pasado de 1884 y que existen en dicho juzgado", Binondo, 31 July 1885, PNA, *Real Audiencia*, unreferenced.

8. These ratios for Camarines Sur have been calculated using a population figure of 154,498 inhabitants and 188 as the number of criminal cases prosecuted in 1884. See: *Estadística De Las Causas Criminales, Negocios Civiles Y Expedientes De Gobierno Despachados Por La Audiencia De Filipinas Durante El Año 1884* (Manila: Establecimiento Tipografico De Ramirez Y Giraudier, 1885).

9. Forensic medicine in Spain and other Catholic countries had long been obstructed by restrictions on the dissection of corpses that originated in the belief that the human body, including that of the criminal, was a "sacred vessel." The increasing secularism of the nineteenth century, coupled with the advances in forensic science following the publication of Monsieur Megnin's study on the relationship between time of death and the presence of various insect life in a corpse, led to a reevaluation of the importance of medical evidence. "Forensic doctors have acquired such singular importance nowadays," commented a newspaper editorial of the 1890s "and often play more important parts before the courts than do lawyers." "La Medicina Legal En Nuestros Dias," *El Eco De Panay*, 1 February 1895.

10. "Estudios Juridicos Filipinos: Causas Criminales," *El Comercio*, 20 October 1886. The confusion over identifying individuals had its origins in the limited number of saint names used as surnames by the indigenous population. In a decree dated 11 November 1849, Governor-General Narciso Claveria ordered that a catalogue of Spanish surnames be compiled and distributed among the various towns. Families were

forced to adopt these names wholesale with the result that in many Filipino towns almost all the surnames begin with a single letter of the alphabet (Montero y Vidal 1887-95, 3: 89). Later, an identification card known as a *cédula personal* was introduced in the early 1880s showing a person's name, town and province of residence, year of issue, civil status and class of holder in relation to tax assessment. All residents of the Philippines over the age of eighteen (fourteen for Chinese) irrespective of sex, race or nationality were required to carry such documentation with the exception of consular functionaries of foreign powers not engaged in business, unpacified tribesmen and the colonists and indigenous population of Balabac, Jolo and Palawan. These identification cards had to be produced in all civil and judicial matters. Following the superior government's order of 15 July 1884, *cedulas* were required before a notary could authorize any document, a tribunal accept any submission or a functionary register any contract, loan, mortgage, or transfer of property. See "Estudios Jurídicos Filipinos: Cédulas Personales," *El Comercio*, 22 October 1886.

11. A Legal-Medical Laboratory was established in Manila by royal decree of 25 May 1897 with the purpose of conducting medical-legal analysis. The laboratory's staff consisted of a medical director, a professor of pharmacology and various auxiliary personnel and functioned under the immediate supervision of the president of the *real audiencia*. *Guía Oficial De Las Islas Filipinas Para 1898*, Manila: La Secretaría Del Gobierno General, 1898, p. 304.

12. "Pensad que si no contesias la verdad, la sangre de este gallo que vais a deramar será la de vuestros parientes, y que vuestra familia será para siempre desgraciada." Manuel Buzeta 1850 1: 110. A similar rendition is given in Mallat (1983, 234).

13. Majority under Spanish law in the Philippines was subject to certain inconsistencies: according to article 320 of the Civil Code a person under the age of twenty-three years had no functions or capacity to engage in civil life; but a person over twenty-one years of age could so act under the Commercial Code so long as they were not subject to parental authority. "Las Edades en la Ley," *El Eco De Panay*, 31 March 1894.

14. Contemporary Spanish observers noted the same conditions, see: Sinibaldo de Mas (1: 109-10). Muslim raiding further complicated interisland communications. (See especially: Warren 1985, 149-97).

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