



The Spanish Legal System and its Connection with Philippine Law Past, Present and future

A lecture in honor of Prof. Rubén Balante

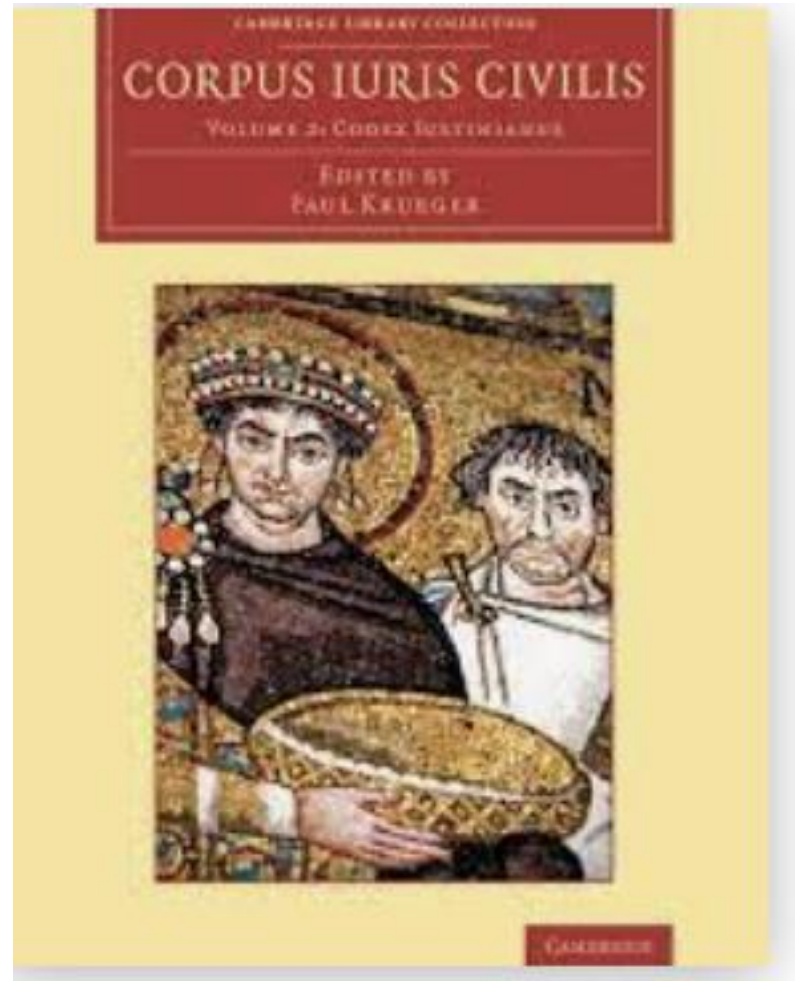


José Manuel de Torres Perea, Peping

1.- A HISTORICAL NOTE

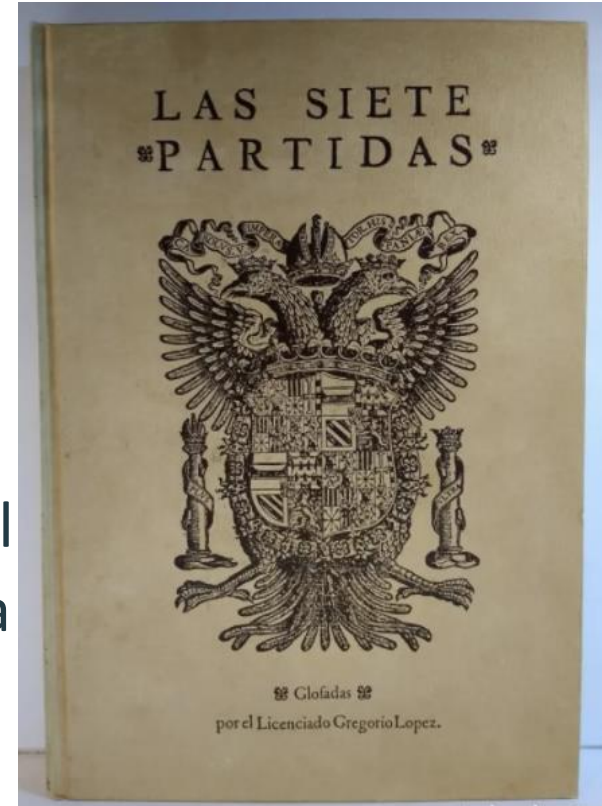
1.1. Roman period

- *Corpus Iuris civilis*
- *Tria iuris praecepta*



1.1. Middle Age period

- ❖ Struggle between Islam and Christianity
 - Process of miscegenation
 - Toledo School of Translators
- ❖ *Siete Partidas*
- ❖ Training for the 16th century cultural encounter between Europe, America and the Philippines



1.1. Modern Age Period

- Philosophical and moral debate
- Romanisation of the "New World"?
- Opening of universities in the New World
- Respect for indigenous languages in the Philippines



1.1. XIX Century

→ Spanish Constitution of March 19, 1812, approved in Cádiz

- ◆ Triumph of liberalism
- ◆ Equality of Spaniards of both hemispheres
- ◆ Parents of the Constitution: 3 Philippine delegates: Ventura de los Reyes, Jose Manuel Couto, and Pedro Perez de Tagle

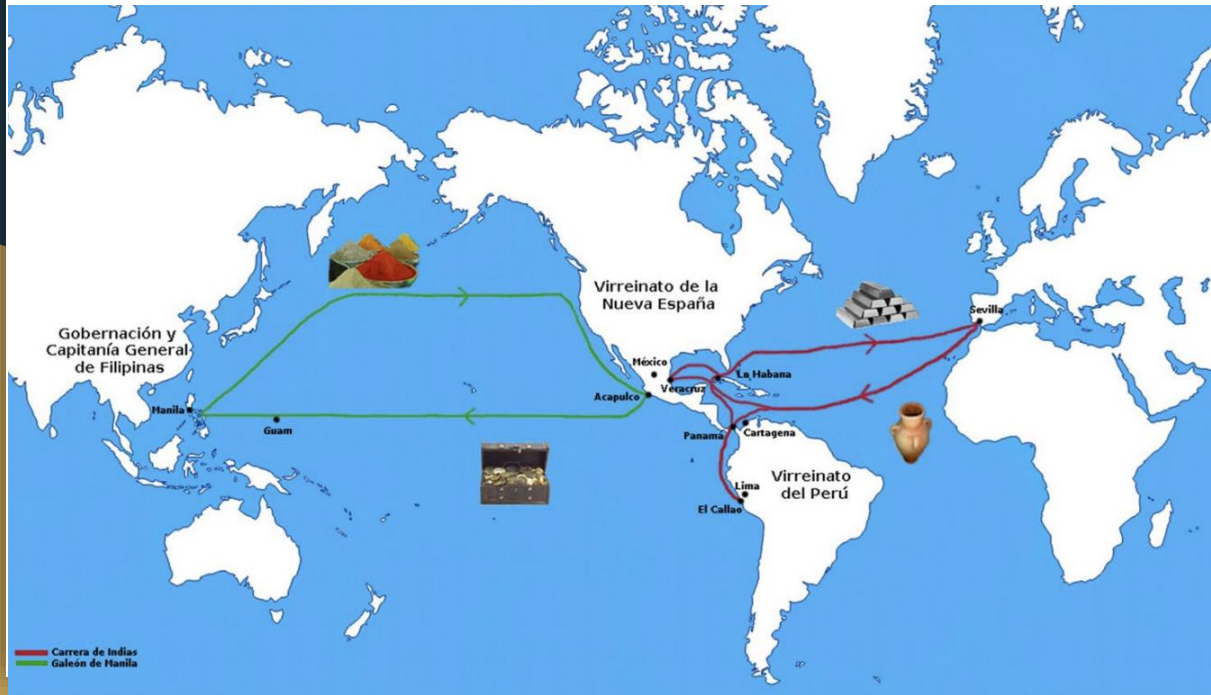


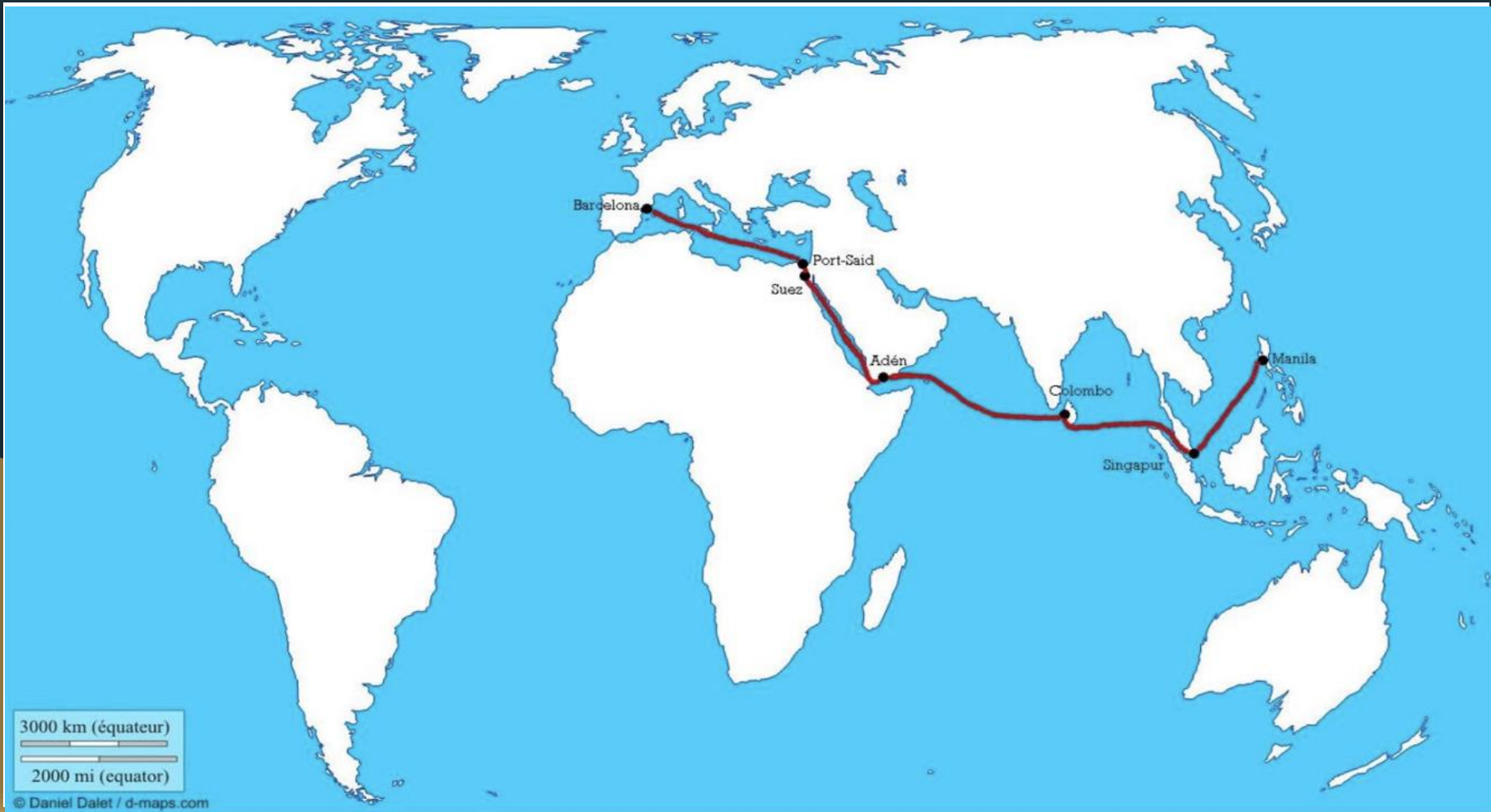


Spanish Nation map according to the Constitution of 1812.



→ Independence of México: Was it truly possible to coexist productively in the Philippines?





1.1. Freedom breezes

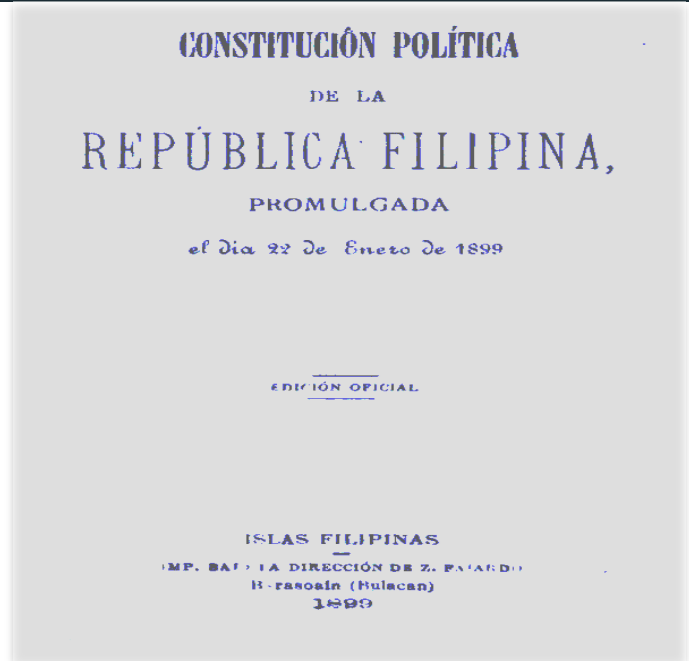
- ❖ Revolution of "las tres gloriosas"
- ❖ Parliamentary monarchy
establishing a democratic regime
- ❖ Repercussion in the Philippines:
 - **Carlos María de la Torre y Navacerrada** was named Governor General
 - Application of the rights and liberties contemplated in the new Spanish Constitution
 - Support for the Philippines to be considered another province of Spain



→ When the conservative party returned and began to repeal the provisions approved frustration began to spread among the Filipinos

◆ It determine the path to Philippine independence

→ During this period an important investment effort revealing a program of modernization and progress was made in the Philippines, adoption of Criminal, Commerce and Civil Codes



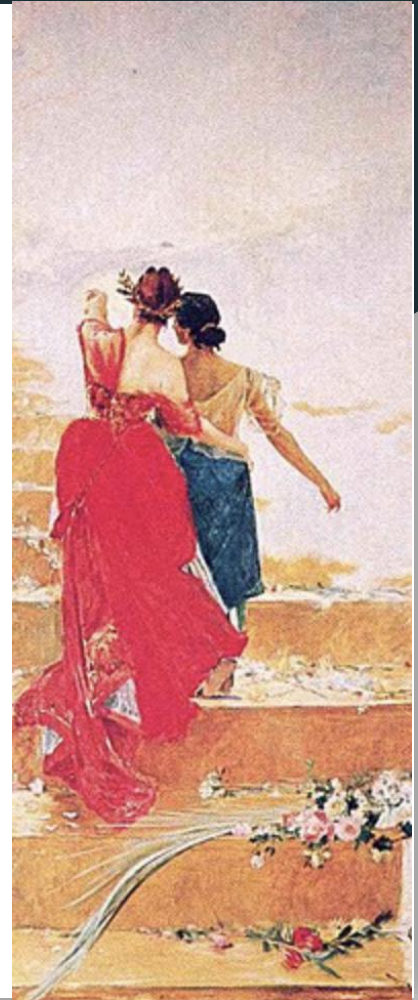
Reflections on this historical background

The liberals were as persecuted in Spain as in
the Philippines

Prior to this convulsive period, there were
almost 300 years of coexistence in which the
Spanish and Filipino identities were forged in
parallel, connected cultural DNA

Ruben Balane knew it, and his dream was to
give visibility to this reality. Fate wanted to put
us together just at the right time

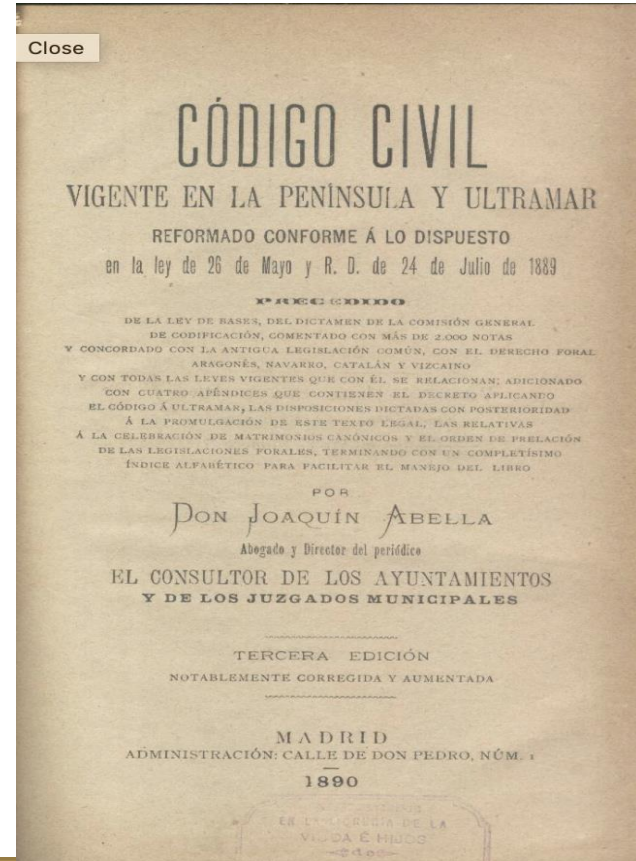
Now is the time to look to the future, let's walk then!



1. CURRENT SPANISH LEGAL SYSTEM

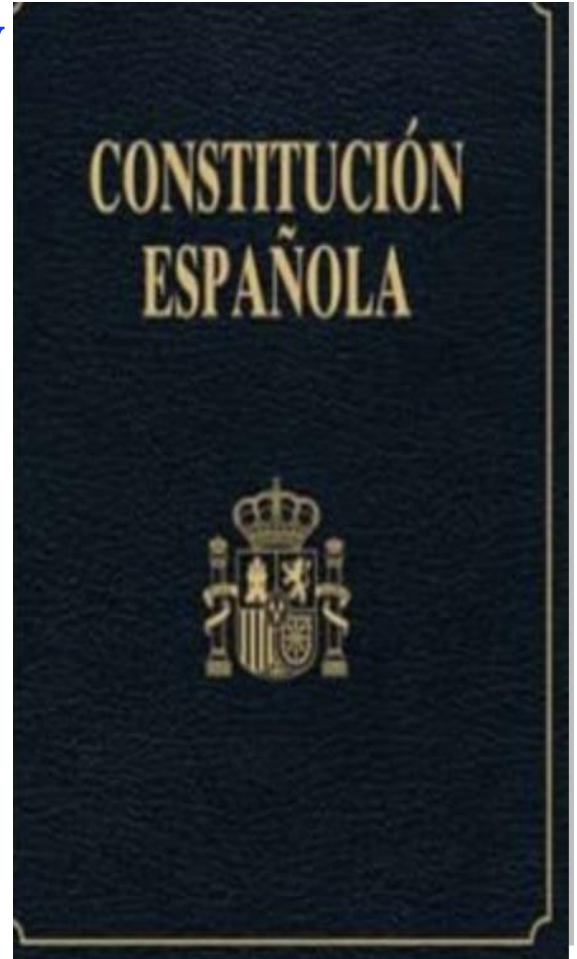
1.1. General characterization

- Part of the civilist or Roman-canonical tradition, "Romanistic" or "Napoleonic" variant
- Continental model, primacy of written law. Sources: law, custom and the general principles of law; Jurisprudence complements
- Transcendental changes:
 - Economic development
 - Democratic recovery
 - European integration



2.2. Constitutional material supremacy

- The supreme rule of Spanish law is the Spanish Constitution of 1978
- Spain is constituted as a Social and Democratic State
- Highest values of its legal system:
 - Rule of law, freedom, justice, equality and political pluralism



1.1. Structure of the Constitution

- a.- Preliminary part of the constitution refer the following basic premises
 - 1.- Sovereignty
 - 2.- Unity of the Nation and the right to autonomy
 - Castilian and the other co-official languages
 - Madrid, capital
 - Trade unions and employers associations are pillars of the state
 - Main principles

b.- Part I refers to fundamental rights and duties

Article 10:

Human dignity, the inviolable and inherent rights, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.

Art. 14:

Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

Guarantee of Fundamental Rights and Liberties is provided by article 53: recurso de amparo») to the Constitutional Court

List of fundamental rights:

Right to life, Ideological and religious freedom, Right to personal freedom, Right to intimacy. Inviolability of the home, Freedom of residency and movement Freedom of expression, Right to meet Right of association, Right to participate, Legal protection of your rights, Every person has the right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests, Principle of penal legality, Prohibition of the Courts of Honour, Freedom to teach, Right to education, University autonomy, Everyone has the right to freely join a trade union, Right to strike Right to petition.

c.- Part II the Crown

- The King is the Head of State
- He arbitrates and moderates the regular functioning of the institutions
- assumes the highest representation of the Spanish State
- Sanction and promulgation of laws



d.- Part III. The Cortes Generales

- **Function:** legislative authority and control of the government.
- **Main chamber:** The Congress of Deputies. 350 deputies representing 52 constituencies or provinces
 - D'Hondt law, proportional calculation system
- **Senate** is the House of territorial representation
- **Laws:** Organic/Ordinary laws, Legislative delegation, Decree-Law, Legislative-Decree,



e.- Part IV Government and Administration

- The Government exercises executive and statutory authority
- The President (= Prime Ministry) directs Government action
- The public Administration serves the general interest
- Strict liability of the Administration



GOBIERNO
DE ESPAÑA

f.- Part VI. Judicial Power

- **Justice emanates from the people** and is administered on behalf of the King by Judges and Magistrates
 - They are independent, irremovable
- **Principle of jurisdictional unity**
- **The Supreme Court**, with jurisdiction over the whole of Spain, is the highest judicial body in all branches of justice, except with regard to the provisions concerning Constitutional guarantees
- **Role of the Office of the Public Prosecutor** (*Fiscal*)



g.- Part VII. Economy and Finance

The entire wealth of the country,
irrespective of its ownership, is
subordinate to the general interest



h.- Part VIII. Territorial Organisation of the State

- The State is organised territorially into municipalities, provinces and Autonomous Communities
 - Principle of solidarity and economic balance between the different areas of Spanish territory
 - List of matters over which the State holds exclusive competence (art. 149 SC)
 - The Autonomous Communities may assume competences over the resting matters
 - The institutional Autonomous organisation shall be based on a Legislative Assembly elected by universal suffrage



i.- Part IX. Constitutional Court

- Twelve members appointed by the King. Of these, four shall be nominated by Congress, four shall be nominated by the Senate, two shall be nominated by the Government, and two by the General Council of the Judiciary
- Competent to hear:
 - a) Appeals against the alleged unconstitutionality of laws and regulations having the force of law
 - b) Individual appeals for protection («recurso de amparo») against violation of fundamental rights and liberties
 - c) Conflicts of jurisdiction between the State and the Autonomous Communities
 - d) Other matters



j.- Part X. Constitutional Amendment

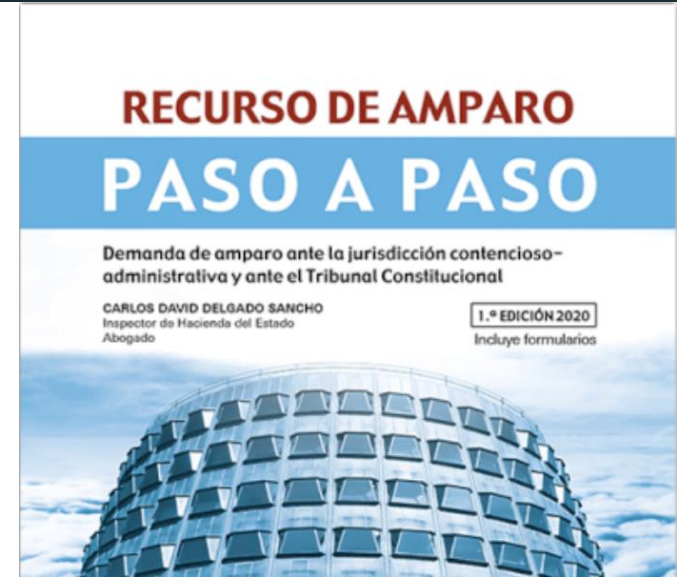
- Bills on Constitutional amendment must be approved by a majority of three-fifths of the members of each House:
 - If approval is not obtained by means of the procedure outlined in the foregoing clause, and provided that the text has been passed by an absolute majority of the members of the Senate, Congress may pass the amendment by a two-thirds vote in favour.

k.- Additional Provisions

- The Constitution protects and respects the historic rights of the territories with «fueros» (local civil laws).
 - The general updating of the «fuero» system shall be carried out, when appropriate, within the framework of the Constitution and of the Statutes of Autonomy

2.4. Control of constitutionality

- Kelsenian (or Austrian) model:
 - Constitutional jurisdiction has two basic operations:
 - Right of verification of constitutionality
 - Competence of normative rejection



2.5.- Organization of Public and Private Law

a.- The sources of law

in Spanish law:

- -The law in a broad sense.
- - Custom.
- - The general principles of law.
 - -Jurisprudence is a secondary source



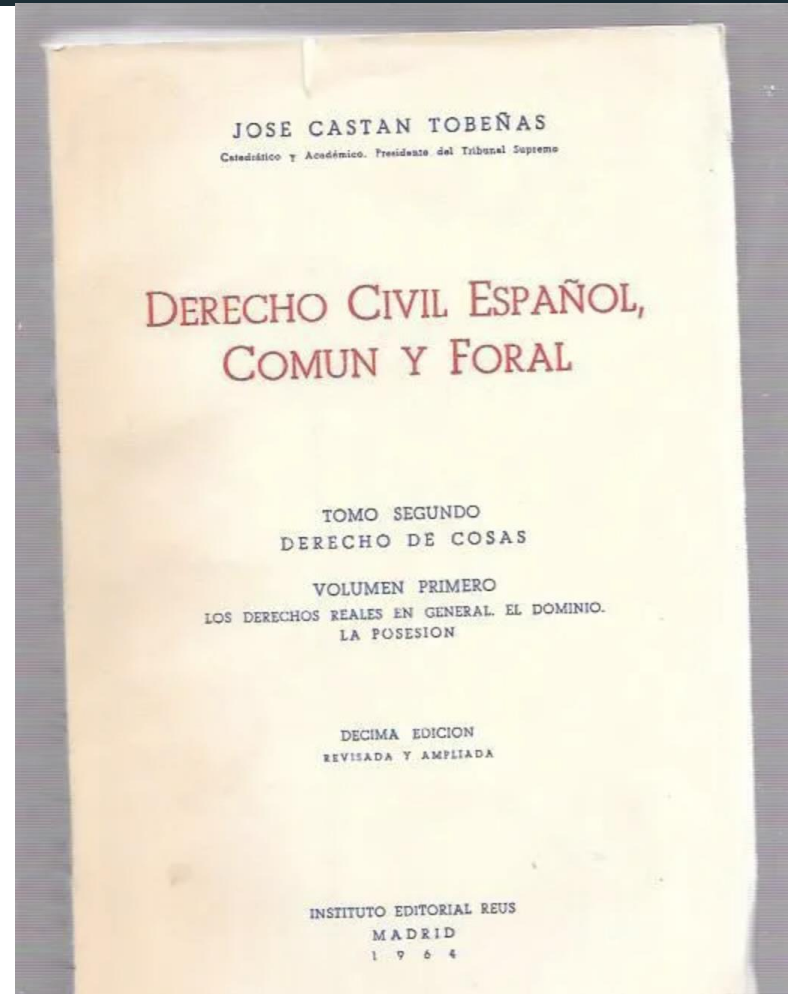
b.- Organization of public law in Spain

- Constitutional law
- Administrative law
- Procedural law
- Financial and tax law
- Public international law



c.- Organization of private law in Spain

- Civil law
- Commercial law
- Labor law
- Private international law



d.- Priority of norms

- Principles of hierarchy of norms and competence between some norms and others
- According to the Constitution, the priority of norms in Spanish law is as follows:
 - 1. The Constitution.
 - 2. European Union law
 - 3. The law in a broad sense
 - 4. Norms emanating from the executive branch with the hierarchy derived from the organ that promulgates them
- In addition, the Constitution establishes the competence of the autonomous communities in the regulation of certain matters, and their capacity to enact laws through their own parliaments

e.- European Union law and its relationship with Spanish law

- **EU Law takes precedence** over national rules by virtue of the priority of sources, which places the treaty on a higher level than the law.
- European law, on the other hand, is divided into **original** and **derived**, the original being the treaties ratified by Spain
- **European directives and regulations:** The difference lies in the fact that the former need to be applied by the Member State through the enactment of laws, while the latter are directly applicable.



What about the future?

- The need to update the Civil Code in Spain and the Philippines
- Desirability of updating the Penal Code in the Philippines, the Spanish CP could be a reference.
- Need to update other branches of law
- Presentation of the ongoing results of the CALESA Project
- Presentation of the International Scientific Convention on the Updating of Law to be held on 10-11 June 2022 in UP Law in honour of Prof. Ruben Balane.

