



The Spanish Legal System and its Connection with Philippine Law

Past, Present, and Future

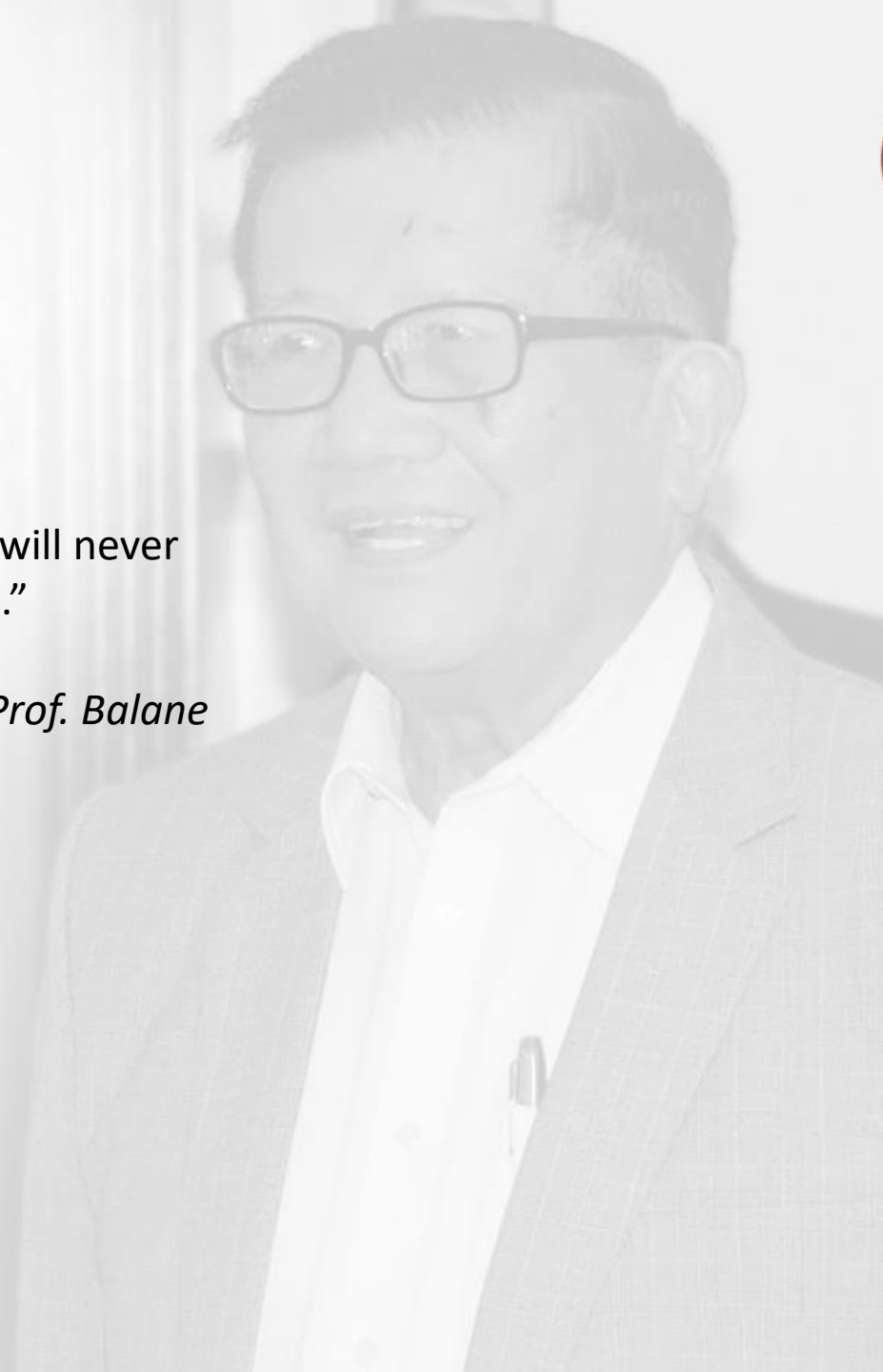


*A lecture in honor of
Prof. Ruben Balane*



“I plant trees knowing I will never
sit in its shade.”

Prof. Balane





The Theory of Happiness of the Philippines & Spain

Past, Present, and Future



They are one and the same.

Theory of the Happiness =
Theory of Morality =
Theory of the Rule of Law =
Theory of the Common Good.

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1978 Constitution

Preliminary Part, Section 1

1. Spain is hereby established as a **social and democratic State**, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.





1978 Constitution

Preliminary Part, Section 33

1. The **right to private property** and inheritance is recognized.
2. The **social function of these rights shall determine the limits of their content** in accordance with the law.
3. No one may be deprived of his or her property and rights, except on justified grounds of **public utility or social interest** and with a proper compensation in accordance with the law.





Theory of happiness

Social welfare state.





Theory of morality



It is moral to take from the rich and give to the poor.



Theory of the Rule of Law

Rule of Law Spectrum (Tamanaha)

Rule by law	Government must act in accordance with law
Formal legality	Laws must be general, clear, and prospective
Democracy	Laws must be promulgated democratically
Individual rights	Government must protect individual rights
Dignity	Government must help people have a meaningful existence
Social welfare	Government must redistribute wealth





Theory of the common good

The common good is the individual good.



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Treaty of the European Union

Part One

3. The Union shall **establish** an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a **highly competitive social market economy**, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall **promote social justice** and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.





John Locke
1632-1704

“To understand political power correctly and derive it from its proper source, **we must consider what state all men are naturally in. In this state men are perfectly free to order their actions, and dispose of their possessions and themselves, in any way they like, without asking anyone’s permission** —subject only to limits set by the law of nature. x . . . x . . . x

But though men who enter into society give up the equality, liberty, and executive power they had in the state of nature . . . each of them does this only with the intention of better preserving himself, his liberty and property (for no rational creature can be thought to change his condition intending to make it worse). **So the power of the society or legislature that they create can never be supposed to extend further than the common good.** It is obliged to secure everyone’s property by providing against the three defects mentioned above, the ones that made the state of nature so unsafe and uneasy.





John Locke
1632-1704

Theory of happiness

Protection of individual rights.



John Locke
1632-1704

Theory of morality



" I'M ROBIN HOOD. I TAKE FROM THE RICH AND I GIVE TO THE POOR, THE I.R.S., AND MY TWO EX-WIVES. "

It is immoral to take from rich and give to the poor.



John Locke
1632-1704

Theory of the Rule of Law

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John Locke
1632-1704

Theory of the common good

The individual good is the common good.





Decree of 6 August 1811

Cortez de Cadiz

The **dictates of vassal and vassalage** and their obligations, whether Royal or personal, that originate from jurisdictional title, except those that come from a free contract in the **use of the sacred right of property**, are **abolished**.





Cadiz Constitution of 1812

"Pepa"

Article 172 (Tenth). **The King may not take the property** of any individual or corporation, nor disturb him in the possession, use and exploitation thereof, and if in case it is necessary to do so for a known **common good**, it may not be done without at the same time indemnifying him of the reasonable value thereof.



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Spanish Constitutions

1812 (Peña)

1837

1845

1856

1869

1876



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Declaration of Independence

1776

We hold these truths to be **self-evident**, that all men are **created equal**, that they are endowed by their Creator with certain **unalienable Rights**, that among these are **Life, Liberty and the pursuit of Happiness**. That to **secure these rights, Governments are instituted** among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.





Downes v. Bidwell

US Supreme Court, 1901

Whatever maybe finally decided by the American people as to the status of these islands and their inhabitants-whether they shall be introduced into the sisterhood of States or be permitted to form independent governments – it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. **Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property.**





1935 Constitution

Article II

SECTION 5. The **promotion of social justice** to insure the well-being and economic security of all the people **should be the concern of the State.**



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Antanamok v. Court of Industrial Relations

Supreme Court, 1940

By and large, these provisions in our Constitution all evince and express the need of **shifting emphasis to community interest** with a view to affirmative enhancement of human conformity with the constitutional objective and cognizant of the historical fact that industrial and agricultural disputes had given rise to disquietude, bloodshed and revolution in our country.”





Antanamok v. Court of Industrial Relations

Supreme Court, 1940

Embodying the spirit of the present epoch, general provisions were inserted in the Constitution which are intended to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as the *justitia communis* advocated by **Grotius** and **Leibnits** many years ago to be secured through the counterbalancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*.





Grotius

De Jure Ac Pacis

Interest, that Spring of Just and Right, if we speak accurately, is not true; for the Mother of Natural Law is **human Nature** itself, which, though even the Necessity of our Circumstances should not require it, would of itself create in us a **mutual Desire of Society**: . . .

This Sociability, which we have now described in general, or this Care of maintaining Society in a Manner conformable to the Light of human Understanding, **is the Fountain of Right** . . .

And to this belongs a prudent Management in the gratuitous Distribution of Things that properly belong to each particular Person or Society, so as to **prefer sometimes one of greater before one of less Merit, a Relation before a Stranger, a poor Man before one that is rich** . . .





1973 Constitution

Article II

SECTION 6. The State shall promote **social justice** to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall **regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.**





Alfanta v. Noe

Supreme Court, 1973

Thus, under the new Constitution, property ownership has been impressed with a social function. This implies that the owner has the obligation to use his property not only to benefit himself but society as well. Hence, it provides under section 6 of Article II thereof, that in the promotion of social justice, the State “shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitable diffuse property ownership and profits.” The Constitution also ensures that the worker shall have a just and living wage which should assure for himself and his family an existence worthy of human dignity and give him opportunities for a better life.





1987 Constitution

Article XII

Section 6. **The use of property bears a social function,** and all economic agents shall contribute to the **common good**. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice





Theory of happiness

“The social welfare state?”





Theory of morality



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Theory of the common good

The common good is the individual good.





3rd world



1st world

Convergence, divergence, and re-convergence



Unity within diversity





1987 Philippine Constitution

Preamble

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, **promote the common good**, conserve and develop our patrimony, and secure to ourselves and our posterity, the **blessings of independence and democracy** under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.



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Thank you!