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 academicians 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. 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, and as partly unconstitutional and illegal, the Disbursement Acceleration Program (DAP) and related issuances of the Executive.

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 Philippine 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. 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, 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.\textsuperscript{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 househelpers 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 lowest class any more than a chain is stronger than its weakest link.” Under the Civil Code, househelpers 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.  

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. 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)), 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), *Calalang v. Williams* (1940), and *Leyte Land Transportation Co. v. Leyte Farmers’ and Laborers’ Union* (1948)). 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) which reexamined the previous *Wenphil* doctrine, have gradually developed the law regarding dismissal procedures and the consequences for failing to follow due process. 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. They have introduced novel processes regarding trade union mergers or consolidations, multi-employer bargaining,
collective bargaining agreement deregistration and interpleader/intervention.\textsuperscript{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)\textsuperscript{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).

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).

People v. Pomar, 46 Phil. 440 (1924).

Note that RA 8042 has since been amended by RA 9422 (2006) and RA 10022 (2009).

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).

People v. Pomar, 46 Phil 440 (1924).

G.R. No. 1-47178, November 25, 1940.

70 Phil. 726.

80 Phil. 842.


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.

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.


References


How Relevant is the Philippine Labor Code in an Economic Regime Called Globalization?

Bach M. Macaraya*

Introduction

One of the issues confronting labor administration in the Philippines today concerns the relevance of the Labor Code in an economic regime called “supply sidism”—the economic paradigm of “globalization.” The labor administration prescribed by the Labor Code is anchored on “demand sidism.” Demand sidism refers to a system in macroeconomics wherein demands are created in the market by increasing wages of the workers that, in theory, will assure economic growth and development.¹ This will be discussed further below.

Labor administration is a subsystem of the larger economic system. As such, it must be attuned to the prevailing economic system. Prior to the shift in economic regime, the Labor Code, as an economic instrument, served the objectives of demand sidism, which are: a) achieving economic growth by insuring that locally produced goods will have advantage over imported goods in the domestic market; and b) delivering “social justice” or “welfare state” for the benefits of the Filipino working class, which eventually will translate to higher demands in the domestic market. The important instruments of the demand sidism economic development strategy are the protective tariff and other regulatory laws that are used to insure that domestic

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products will be cheaper, and therefore have competitive advantage in the domestic market versus foreign-made good.

Among the important concepts introduced by supply sidism are “privatization” and “deregulation.” Privatization means that government should stop engaging in an unfair competition with the private sector by getting out of business, and should instead focus on its role of governance. Deregulation means that government shall refrain from intervening in the economy, and shall leave the market to regulate and govern itself.

The twin programs of privatization and deregulation were the main instruments used that caused the decline and eventual dismantling of the “social justice” or “welfare state” in Europe. Values that were originally heralded as necessary for economic growth, such as improving the economic life of the working class—the largest sector in the economy of developed countries—through minimum wage fixing to create demands in the domestic market, had been considered under supply sidism as a distortion in the markets and accordingly discouraged. It had been adjudged as causing artificially high wages that correspondingly result in expensive production cost. Trade unions, which were originally pictured as knights in shining armour for their role in protecting the working class and in creating domestic demand through collective bargaining, are now being blamed as the main source of market “distortion” and “rigidities” in production.

The entry of the economic regime called supply sadism—the main strategy of globalization to achieve economic development—has also put into question the relevance today of the concept of social justice or welfare state, as promoted by the Labor Code. Social justice is the conceptual backbone of labor administration in the Philippines.

The issue of how relevant social justice is to the economic development strategy of the Philippines has taken an important dimension, with the provisions of the Labor Code itself being put on issue. The proposal to amend the Code so as to adjust its provisions in accordance with the new economic regime is expected to remove or dismantle many of the long cherished values that, under supply sidism, are adjudged as causing distortion or rigidities in the market.

Recently, Filipino workers have been dependent on foreign employment, because there is no domestic employment available for them. The rising number of broken families and other social ills are some of the unexpected consequences of our dependency on overseas
employment program to resolve our nagging high unemployment rate.

This paper will attempt to address the issue concerning the need to adjust the Labor Code so as to make its provisions compatible with the pursuit of the new economic order called supply sidism, the economic paradigm of globalization. What the amendments to the Code will be, and how economic development could be achieved, are among the important issues raised in this paper.

A Short Historical Backdrop

The Labor Code of the Philippines was enacted on 21 December 1974 by President Ferdinand E. Marcos as part of the reforms introduced by his Martial Law regime. It was a consolidation of various existing labor and social legislations at that time. It was also based on the recommendations of the Comprehensive Employment Strategy Mission of the International Labour Organization, also known as Ranis Report. As then Secretary Blas F. Ople puts it:

The close interconnection between the two documents is not lost to the perceptive citizenry. The Ranis Report documented the principle that the elevation of real wages, income and living standards was a function of employment generation and economic expansion. On the other hand, the Labor Code, as the President (Ferdinand Marcos) pointed out, was designed to promote employment and development as well as social justice.

The Labor Code is not merely a social legislation, but is an instrument for economic development of the country as well. Thus, Secretary Ople puts it:

The project of writing a Labor Code began in 1968, at the initiative of the Secretary of Labor. At that time the Department of Labor entered into a partnership with the Code Commission. But the real task of rewriting the labor laws to make them development-oriented should be reckoned as having started immediately after the proclamation of martial law. In the first Cabinet meeting...
after September 21, 1972, the President of the Philippines directed the Secretary of Labor to accelerate the work of preparing a Labor Code which would simplify the labor laws and **realign them with the demands of employment and development**.\(^9\)

And also:

While the Labor Code is a charter of human rights and obligation, it must also be both responsive and responsible for development, for a nation must develop together or not at all.\(^10\)

**Demand Sidism and Social Justice**

As pointed out above, labor administration in the Philippines is aimed at achieving economic development with social justice, which was expected to improve the standard of living for most Filipinos.

**Instrument of social justice.** Social justice, also referred to as civil justice, pertains to the concept of a society in which justice is achieved in every respect of society, rather than merely the administration of law.\(^11\) Most individuals wish to live in a just society, but the different political ideologies have different conceptions of what a “just society” actually is.

Social justice is often employed by the political left to describe a society with a greater degree of economic egalitarianism, which may be achieved through progressive taxation, income redistribution, or property redistribution.\(^12\) But having a greater degree of economic egalitarianism without economic growth is not enough to achieve social justice. Without economic growth, a nation can only redistribute poverty equally.

The right wing generally believes that a just society is best achieved through the operation of a free market, which they hold provides equal opportunity and promotes philanthropy and charity. Without government intervention, however, human greed will likely deny any redistribution of wealth. In the Philippines, eighty percent of the wealth is controlled by only about 10 percent, or even less, of the population. Worldwide, about 80 percent of the world’s economic wealth is consumed by only about 20 percent of the world’s richest economy.
Philippine concept of social justice. The term “social justice” remains vague and highly contentious.

The original concept of social justice in the Philippines was championed by then President Ramon Magsaysay in his famous saying: “He who has less in life should have more in law.” Essentially, President Ramon Magsaysay believed that a just society could be achieved by providing more rights and privileges in law to those who have less wealth in life.

But the more formal definition of social justice was delivered by Justice Laurel in a seminal case decided by the Philippine Supreme Court:

Social justice is neither communism, nor despotism, nor anarchy but the humanization of laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of the people, the adoption by the government of measures calculated to ensure economic stability of all component elements of society, through the maintenance of proper economic and social equilibrium in the inter relations of the members of the community, constitutionally, through adoption of measures legally justifiable or extra constitutionally, through the exercise of power underlying the existence of all governments on the time honoured principle of ‘salus populi est suprema lex.’

In another case, the Supreme Court clarified that:

Social justice does not champion division of property equally, or equality of economic status; what it and the Constitution do guarantee are equality of opportunity, equality of political rights, equality before the law, equality between values given and received and equitable sharing of the social and material goods on the basis of efforts exerted in their production.

Based on the above, the conceptual definition of social justice in the Philippines connotes equal opportunities in laws and the
economy, equality between values given and received, and the sharing of material goods on the basis of efforts exerted in their production.

The Labor Code, Demand Sidism and Social Justice

The Philippine Labor Code is both an instrument of social justice and of achieving economic development through demand sidism.

The demand sidism economic development strategy has two phases. The first phase involves increasing or enlarging the economic pie, while the second phase is concerned with how such economic growth can be equitably distributed—in other words, the social justice objective. The Labor Code was in harmony with these twin goals. The Code’s objective of enlarging the economic pie by creating demands in the domestic market is the hallmark of the demand sidism economic strategy. The Code also addressed the second activity under the banner of social justice.

During the demand-sidism regime, the thrust was to improve the standard of living of workers so as to provide them purchasing ability. This was then perceived as necessary in order to generate demands in the domestic market, which our industries depended upon for their revenues. To insure that domestic-made products had a competitive advantage in the domestic market against foreign-made goods, tariff regulations were imposed, making foreign-made goods expensive and uncompetitive in the domestic market.

The other important aspect of the demand-sidism regime was that the Labor Code, the instrument that governs the labor administration system, aimed at creating demands in the domestic market. A system of labor administration was also necessary to stabilize employee-employer relations so that our import-substituting industries can move forward.

The labor administration system is a subsystem that must be attuned to the larger economic system. Under the demand-sidism regime, the labor administration system that was prescribed by the Labor Code complemented the objectives of the economic regime. But like any man-made structure, the labor administration we now have is not a perfect system, as in fact it had been flawed from the very beginning.