

GLOBALIZATION AND THE WELFARE STATE: CURRENT CONSTITUTIONAL DEBATES IN EUROPE AND ASIA. A PRESENTATION*

*Globalización y Estado del bienestar:
debates actuales en Europa y Asia. Una presentación*

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doi: [http://dx.doi.org/10.18543/ed-66\(1\)-2018pp15-20](http://dx.doi.org/10.18543/ed-66(1)-2018pp15-20)

Recibido: 20.06.2018

Aceptado: 25.06.2018

Jean Monnet, one of the founding fathers of the European Union, once said that “Nothing is possible without men, but nothing lasts without institutions”. This is also true for academic initiatives. After more than sixty years of a generalized mutual indifference (although with some notable exceptions) between legal academics from The Philippines and Spain, new links were re-established in the early years of the present decade. The re-flourishing was the result of the passionate efforts of two remarkable scholars from both countries, namely professor José Manuel Torres Perea, a promising lecturer of Civil Law at the University of Málaga (UMA), Spain, and the renowned and highly praised *maestro* of several generations of Filipino jurists, professor Ruben Balane.

* Cómo citar / Citation ‘Chicago-Deusto’ (Autor-fecha / Author-date / Lista de referencias / Reference list entries): Rodríguez, Ángel. 2018. “Globalization and the welfare state: current constitutional debates in Europe and Asia. A presentation”. *Estudios de Deusto* 66, n.º 1: 15-20. doi: [http://dx.doi.org/10.18543/ed-66\(1\)-2018pp15-20](http://dx.doi.org/10.18543/ed-66(1)-2018pp15-20).

The story of how Torres Perea and Balane got in contact also deserves a brief explanation: in his pursuit of materials for teaching Spanish Civil Law in English, Torres Perea was astonished to learn that the Spanish Civil Code was mirrored some twelve thousand kilometers to the East by the Filipino Civil Code. When he phoned the Education *attaché* at our Embassy in Manila to ask him who was the most prominent civil law professor of The Philippines, our Malaga professor was directed to Professor Balane. By then, Balane had been for years the most significant defender of the need to study the law of Spain in order to interpret correctly the private law of The Philippines. In his view, Spanish law could not only be taken as the old common root of both legal orders, but was also the right place to search into the proper meaning to be given to legal institutions that still lasted in Filipino private law and that could not be rightly understood exclusively in the light of the common law tradition imported to The Philippines by the American domination. It must be remembered that Spanish civil law doctrine and jurisprudence were widely studied and commented on in The Philippines until a few decades ago, and that Spanish was still the language in which the Supreme Court of the Philippines deliberated and rendered their decisions (before translating it into English) until the 1950s. It is noteworthy that the last doctoral dissertation on the law of the Philippines submitted and defended in the University of Madrid by a Filipino scholar, was written in 1960 in Spanish.¹

However, by the beginning of the 21st century, the Spanish law approach to the study of the law of The Philippines had been reduced to a minimum. Not surprisingly, when Professor Balane received the first e-mail from Torres Perea, he thought that a new opportunity to fill the gap could now be re-opened. And they both decided no to miss out on it.

Needless to say, numerous things have changed in both countries since Spain left The Philippines. The language, to start with. For better or worse, Spanish is no longer the vehicular language of the Filipino intellectual élite. In just one generation, English took the place of Spanish. But, at the same time, English has become the new *lingua franca* within the European Union (replacing this time French), and an increasing number of Spanish lawyers or who work in the legal field as academics are now fluent in it. Nowadays, English, not Spanish, is the language in which we Filipino and Spanish legal scholars interact with each other. Moreover, our dialogue is now enriched,

¹ The thesis, entitled «El derecho civil y las fuentes del derecho en el sistema jurídico filipino. Estudio analítico y comparativo» was authored by César TIROL Y TAYENGCO and supervised by Professor Antonio HERNÁNDEZ GIL. It has been uploaded to the Spanish and Philippine Law Archive website at the UMA, at <<https://www.uma.es/spanish-philippine-law-archive/info/112805/legal-research/>>

since Filipinos and Spaniards not only shared a legal tradition in the past, but also face similar legal challenges in the future, those posed by the regional processes of integration both in Europe and in Southeast Asia, led respectively by the European Union (EU) and the Association of Southeast Asian Nations (ASEAN).

It was in this context that professors Balane and Torres Perea managed to find their way to, step by step, giving a new impulse to the strong academic relationship that once-upon a-time existed between Spain and The Philippines. Thanks to the Internet (another example of how the new scenario has nothing to do with the old one), a couple of on-line meetings between legal scholars of both countries, plus others coming from the Latin-American region, were organized. In those virtual conferences, around fifty specialists, mainly in civil law, gathered in the cloud to debate on relevant topics of mutual interest.

By that time, what had started thanks to an individual act was ready to become institutionalized. And institutionalization appeared. But, here again, the attitude of individuals leading the institutions was deemed to be crucial. Two law school deans came on the scene: Dean Juan José Hinojosa, from the Law Faculty of the University of Málaga, and Dean Sedfrey Candelaria, from the Ateneo de Manila Law School. Both Law Schools, under their direction, did their best to support the Torres Perea – Balane idea, so that it progressed and reached consolidation. The First Scientific Congress on the Private Law on The Philippines and Spain was held at the University of Málaga Faculty of Law in the spring of 2015. Fifteen professors and Deans from a handful of Filipino universities came to our Málaga Campus at Teatinos to meet a similar number of Spanish colleagues (it was then that Torres Perea and Balane met for the first time). One year later, in June 2016, the Ateneo de Manila School of Law organized the Second Congress at their Rockwell premises at Makati city, Manila. And the following year, once again, it was Malaga's turn to host the Third Congress of the series.

In the meantime, new initiatives have taken place. Among them, an *Erasmus Plus* Action, sponsored by the European Union, has been launched with the purpose of supporting academic links between Spanish and Filipino Schools and Faculties of Law. New Universities, starting with the University of Philippines (UP) and the University of Deusto in Spain, have joined the original Ateneo and UMA team. Up to June 2018, while the Fourth Congress was taking place once again at Ateneo, six undergraduate students from University of Malaga Faculty of Law had received grants to spend one semester at Ateneo de Manila Law School and three from Ateneo were ready to do the same at the UMA; two graduate students from UP and Ateneo had been granted their enrolment in the doctoral program in Law at Málaga University, one of them with a view to obtaining a double degree under a *cotutelle*

scheme UP-UMA, and the exchange of teaching staff was also under way. Moreover, a Fifth Congress was scheduled for 2019 at the University of Deusto School of Law.

It is on the behalf of the academic committee of the Third congress, which I had the honor to co-chair with my colleague and friend Dean Sedfrey Candelaria, that I am writing this presentation. Jean Monnet was right when he underlined that nothing is possible without individuals and nothing can continue without institutions. But, from an academic point of view, one could speak of another phrase to complete his *dictum*: in the academy, nothing can survive without a publication. Until now, all three Congresses held on the Law of The Philippines and Spain have been published, and hopefully the same will happen with the forthcoming Fourth and Fifth.

The proceedings of the First Congress were published in a book edited by the UMA.² The Second Congress was published in volume III of the *Philippine Journal of Legal Education* (2016). And now the contributions to the Third Congress are published here thanks to the generosity of *Estudios de Deusto*, one of the leading Spanish periodicals in the field, and the kindness of the director, Professor Luis Gordillo, who attended the Congress as an invited speaker.

The Third Congress, held at the University of Málaga School of Law on the 10th and 11th of May 2017, was, very much in the same as of the First and the Second, a clear academic success. The theme of the Congress was “Globalization and the Welfare State: current constitutional debates in Europe and Asia”, which clearly shows that the original idea of a series of congresses on the “private” law of both countries has been exceeded by the topics and professors involved, who as a matter of fact cultivate a wide range of disciplines. Eight contributions to the Congress are published in this volume.

Contributions from The Philippines have been written by Ruben Balane, Professor of Civil Law at the University of The Philippines and Ateneo de Manila, and four other brilliant professors from Ateneo de Manila School of Law, namely Ngina Teresa V. Chan-Gonzaga, Professor of Constitutional Law and Civil Law; Sedfrey M. Candelaria, Dean and Professor of Constitutional Law, Political Law and Public International Law and Head of the Research, Publications and Linkages Office of The Philippine Judicial Academy – Supreme Court of the Philippines; Alvin P. Ang, professor of the Department of Economics of Ateneo Loyola Schools and Director of the Ateneo Center for Economic Research and Development; and Tanya Karina A. Lat, Professor of Legal Profession, Ethics, Logic Philosophy and Theology.

² José Manuel TORRES PEREA (editor) *Studies on Spanish –Philippine Private Law*, Málaga, Eumednet, 2015. An on line version of the book can be found at <www.eumednet.net.net>

The Spanish contributors that appear on this volume are Miguel Revenga Sánchez, Full Professor of Constitutional Law at the University of Cádiz, Miguel Agudo Zamora, Full Professor of Constitutional Law at the University of Córdoba and Rafael Rubio, Associate Professor of Constitutional Law at the Universidad Complutense de Madrid and Subdirector of the Centro de Estudios Políticos Constitucionales.

The first panel of the Congress, dedicated to the common legal heritage of both countries, was opened by a masterpiece by Professor Balane on the Spanish Roots of Philippine Law, and followed by a clarifying study by Professor Revenga on the similarities and differences between the first Constitution of Spain, that is, the Constitution of Cádiz (1812), and the first Constitution of The Philippines, the Constitution of Malolos (1899). The second panel of the Congress was dedicated to the status of social rights and the social challenges of globalization. Professors Agudo, Chan-Gonzaga and Candelaria review the constitutional status of social rights in both countries and the role played therein by International Covenants, while Professor Ang scrutinizes, from an economic point of view, the impact of globalization and the ASEAN on the Welfare State in The Philippines. Finally, a third panel studied different aspects of the crisis of democratic participation in both countries. In this respect, Professor Rubio addresses the question of the extent to which a new social contract is needed in the ‘new politics’ scenario in Spain, and Professor Lat at the discontent in the present time Filipino democracy.

In addition, also published as research notes were a selection of twelve of the approximately thirty communications received by the Congress, authored by Spanish professors and researchers and covering different disciplines, from Civil Law to Criminal Law, from Constitutional Law to Public International Law.

I would also like to express our gratitude to all the institutions that made a contribution to funding the Congress, especially the *Instituto de Derecho Público* of the Universidad Rey Juan Carlos of Madrid and the General Foundation of the UMA. And, last but not least, to mention the extraordinary work of the working committee of the Congress, under the coordination of Pablo Sánchez-Molina, efficiently assisted by seven undergraduate students of University of Málaga School of Law who volunteered for the Congress. Some of them were eventually selected to spend their semester at Ateneo de Manila. Their names are as follows: Bárbara González Mira, Ana Carmen Florido Fernández de Cordona, Hermindia Muriel Jiménez, Julia Martínez Guzmán, Samanta Gil Madsen, Maïna Vergonjanne and Daniel Martín Vegas.

As can be seen, the volume I have the honor to introduce is bilingual: contributions both in Spanish and in English were presented to the Congress and they have been published in the same language they were submitted in. But

do not be mistaken. Bilingual as it may be, the volume speaks just one language: the language of the Rule of Law, the best raw material to build on the new and a much needed bridge to foster relations between the Filipino and the Spanish academic communities.

Let me finish with a poem. Unsurprisingly, it is an excerpt from *Mi ultimo adiós*, the last piece written by José Rizal, the Filipino national hero, just a few hours before he was executed by order of the Spanish Governor at *Intramuros*, the old Manila Village, in 1896. In the poem, the author illustrates his dreams about the future of his Motherland. Rizal wrote it himself in Spanish, so I will quote it from the original:

*"Mis sueños cuando apenas muchacho adolescente,
Mis sueños cuando joven ya lleno de vigor,
Fueron el verde un día, joya del mar de oriente,
Secos los negros ojos, alta la tersa frente,
Sin ceño, sin arrugas, sin manchas de rubor"*

It can be safely assumed that José Rizal would also share our dream of today. The dream of a renewed, brotherly, robust and durable academic relationship between legal academics and practitioners of Spain and The Philippines.

To all of them who are contributing to this dream, *Salamat!*

Málaga and Manila, June 2018