

The Origins of Philippine Judicial Review, 1900–1935

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Judicial review is the power of the courts to determine the validity of the acts of the Executive and Legislative branches of the government. As such, courts have the power to invalidate unconstitutional acts. This Article traces the origins and history of judicial review of the Philippines from the Spanish colonial period and American occupation to the beginnings of the Philippine Commonwealth.

During the Spanish period, there was a confluence of judicial, executive, and legislative functions in the position of the Governor-General. Because of this non-separation of powers, courts were described by the Author as the “mouthpiece” of the law. Nevertheless, there was some semblance of departmental separation as the administration of the Philippine Islands was transferred to the Americans via the Treaty of Paris, brought about by changes in Spain.

When the United States took over, the colonial project of transplanting the American model to the Philippine Islands began. The project eventually failed to reach the prominence of American courts because of cultural prejudices and practical differences. Regardless of the good intentions, courts remained deferent to Executive and Legislative policies, earning the moniker as the “least dangerous branch.”

Nevertheless, as independence and “Filipinization” gained ground leading up to the establishment of the Commonwealth, the power of judicial review was formalized in the 1935 Constitution. However, the Author points out that the President enjoyed great power during those times, marginalizing the authority of the Supreme Court.

While judicial review was a product of American jurisprudential and political developments, attempts to transplant it in the Philippines failed because of institutional inadequacies and a strong presidency. This configuration would have far-reaching consequences — facilitating the constitutional dictatorships of Pres. Manuel L. Quezon and Pres. Ferdinand E. Marcos.