THE ADMINISTRATIVE CODE OF THE PHILIPPINE ISLANDS, ENACTED AS ACT 2657, EFFECTIVE JULY 1,. 1916

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A generation ago, a specially skilled advocate of the merits of the civil law and code system, appeared before the American Bar Association and delivered an address, remarkable for its learning, on the topic "Codification, the Natural Result of the Evolution of the Law (*Vide* Annual Report for 1886.) His name was Semmes. Reference is made here to the address not merely that the interest of students may be awakened in the subject there judiciously argued on behalf of the civilians as opposed to those of us who are of the common law, but especially on account of the concluding words which Mr. Semmes uses, which are, I think, quite as true today as then:

> "The history of codification teaches that the task of preparing a code of laws is difficult, that its proper execution is a work of years, to be entrusted, not to a deciduous committee of fugitive legislators, but to a permanent commission of the most enlightened and cultivated jurists, whose project, prior to adoption, should be subjected to rigid and universal criticism."

This peroration, from a master mind, to the most learned body of men in the United States—at any rate the most learned so far as this subject of the Corpus Juris is concerned—lays upon every one of us a duty to study and examine any new work of this kind, to fairly admeasure the difficulties which opposed themselves to these constructive jurists, and in that state of fair open-mindedness to recognize such good qualities as appear and to comment fearlessly on such defects as the finished product exhibits.

A few words of outline, to limn the subject, may be pertinent in a paper which is intended for the use of students; but the outline will be necessarily brief and can accomplish no more than to present a concept for those unacquainted, as unfortunately many are, with the function and purpose of codes. A code, in the true and modern sense, refers to a body of law which is designed to regulate *completely*, so far as a single statute may, the whole subject to which it relates. The merits of this idea over the system admitted by both sides to be its antithesis has probably occasioned more earnest and extended discussion than any topic which falls under the whole domain of law. The system outside of, or opposed, if you will, to the code plan may be said to be a body of law, partly written and partly unwritten, "finding its beginning in customs gradually ripening into customary law; seeking later expression in statutes and passing through a period

of judicial interpretation and modification by being fitted as it were, into successive cases, with sufficiently varying facts to produce that flexibility which is needed for final crystallization into a body of rules and principles sufficiently well settled as to have attained the dignity of a well ordered system." The Roman law is unquestionably the greatest example of the one; as the English common law is the unrivalled illustration of the other. In the United States we have had the great advantage of seeing each system in operation and of profiting thereby. Not only did we have the Spanish system in many of our Pacific states, when they became American territory, but we had the flower of the French civil law and codes in Louisiana, and of course, the English system in our original thirteen eastern states. By reason of the inter-independence of our component states, these systems developed side by side. The greatest American state and a "common law" jurisdiction (i. e., one where the English system obtained) became the pioneer code state. (New York—1848). But to this day its greatest and nearest neighbors, Pennsylvania and New Jersey (also Delaware, Maine, New Hampshire, Rhode Island, the two Virginias, and the District of Columbia—the home of the Federal Government) have no codes and have retained the "common law" procedure. The great near-by states of Massachusetts and connecticut, have what in effect or substantially may be called codes. Great blessings, as anticipated, and great mischiefs, undreamed of, have flowed from the New York code system, and accordingly no amount of discussion, has been able, thus far, to change the old system in the near-by states. If the digression will be pardoned, some of these mischiefs—this is of course a more or less personal view—have been: (1) A substitute of an *elective* for an *appointive* judiciary. (2) A merger of the equity and common law procedures, intended to simplify judicial procedures, which has evolved a new type of lawyer, who could not possibly sketch the essential distinctions between a proceeding for injunction or foreclosure, or to reform an instrument, upon the one hand, and one for the collection of a book account, or for damages for an injury to person or property, etc., upon the other. The code has led this bizarre individual to the belief that the old distinctions were groundless. In process of time such individuals become the elected judges. Bench and bar thereupon indulge in endless controversy as to the correct forms of simple pleadings and upon procedural questions generally. The simplicity that was aimed at often results in endless tangles which they have not had proper professional training to solve. What was a science becomes a mystery. The code system in theory is not to blame; nevertheless the half trained fledglings which the system incubates in shoals are a fact. Many of them would be otherwise performing useful service to mankind in other fields and within their capabilities. (3) A "perfect code" is worthy of a remark often heard formerly of the Southern Confederacy: "All it needs is to be let alone." But legislators will not leave them alone. A shrewd lawyer, having a client in a difficulty for which the code affords no remedy will cause a section to be inserted to cover his case. All mankind must suffer

thereafter to memorize and follow a provision of law to cover a thing that just happened once since the creation. It is in theory not unlike the communistic idea to make an equal distribution among the human family of all human wealth. The scheme, if accomplished, would require re-distribution every twenty-four hours in order to keep it equal, as the cunning would always accumulate, as before, more than their share. (4) A code is prone to particularize, in its laudable desire to entirely surround its subject. This presents, however, a practical difficulty. The more you attempt specification the more you will have to specify. General principles therefore are all that a statute should contain. Adjudication and legal industry will do justice as the specific instances arise. When the phenomena of these recurring instances crystallizes in the resulting decisions the general principle in the statute can then be sparingly amplified or narrowed accordingly. Executive officials will discover the administrative difficulties, judicial bodies will crystallize and suggest the constitutional or allowable remedies, and the legislative department will enact the remedy. This is the ideal conception of our governmental system and the one by which those three departments co-ordinate, rather than a witless plan by which the legislature attempts to do the whole thing. This is why Mr. Semmes' idea of a code was correct.

The code idea historically has given us three successive conceptions of a code. As with most things produced by the force of evolution, only the third or last is of practical use or value at the present day, and any true code or real codification must be appraised thereby. This classification was worked out by Judge Clark, a judicious writer on this subject, in a paper found in Rept. Ga. St. Bar Ass'n, 1890.

> 1. The classification of existing statutes, arranged according to subject matter without amendment, alteration or interpolation, save to correct errors of expression, repetitions, superfluities and contradictions, with a general plan of compression or condensation, leaving the letter and spirit of the laws just as they were.
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> 2. The same as above, in form, but making such amendments as are deemed necessary to harmonize and perfect the existing system.
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> 3. To take yet greater latitude, and without changing the existing *system*, to add new laws and repeal old ones, both in harmony with that system, with a view to meet *present* exigencies, and so far as possible provide for the future; and, adds the author significantly, "this is *real* codification."

It will be at once observed that this is essentially different from mere revision, because it involves a transposition from a chronological to a scientific arrangement. Many difficulties at once present themselves, but for illustration two will be mentioned: *First*, Amendments for the purpose of harmonizing inconsistencies which arrangement brings to notice, and supplying defects; and

Second, The introduction into the system of all other rules which are recognized as the unwritten or common law of the state. Every civilized society probably has such unwritten usages, call them what you will. These necessary changes must be introduced into the new systematic enactment so that it shall be thenceforth regarded as the law of the land. This last mentioned matter is what is usually comprehended when lawyers speak of codification, as a distinctive term.

The writer would now engraft upon Judge Clarke's classification a further requirement. Real codification involves the most intimate and exhaustive knowledge, not only of the statute law to be included but also of the judicial interpretation and construction of it, and in practice, instantly a code is adopted, it begins to be the subject of a new series of decisions which are required to interpret, modify and explain it, particularly to adapt it to new conditions as they arise and to new cases of first impression. In view of this a real and serviceable code should bristle with citations, under the appropriate sections, to those decisions which have resolved doubts and given authoritative meanings to the earlier statutes from which, as will be true in most cases, the letter of the code sections has been derived.

The real necessity for this requirement may not be perceived without a further statement. Judicial labors consequent upon promulgation of a new code furnish an almost infinite necessity and opportunity for judicial legislation, and with the multiplicity of courts, the difficulties of preserving a *system founded on reason* are far greater everywhere today than ever before. This very consideration is often strongly urged in favor of a code system. On the other hand, when it is recalled that the law of master and servant was evolved from such relations as the coachman and the blacksmith's helper, and with little friction was adapted to the railroad and the factory; and that the law of carriers as applied to the post road and the van was as wonderfully extended to such activities as the telegraph, the telephone, and governs today the "wireless" wonders which are appearing as possible successors of those things, such transformations buttress an argument that no code can be framed for the constantly changing conditions of modern life.* Some branches of law are admirably adapted to complete codification, some others are not yet, and still others by their nature never can or will be.

Of course, as with all statutory law, the greatest and most fundamental difficulty of the code-maker is the matter of statutory expression. Possibly no species of composition demands more care or precision. The draftsman is always confronted with a twofold difficulty. He must not only make the language intelligible, but it must be also incapable of misconstruction, for once it becomes a law *his* intent is of no consequence. The intent of the words he has used alone governs; and, as our profession well knows, that ascertainment is exposed to the crucial batteries of opposed advocacy, each striving to win the construction most favorable

*(This idea was used by the Lord Chief Justice of England in an address before the American Bar Association (Report 1896) in disapproval of a proposition to codify international law.)

to its cause. The old fashioned (and now discarded) method of the Anglo-American constructive statesman to avoid this Nemesis was the use of accumulating synonyms and what may be called enumeration of particulars in statutes. The true safeguard, of which the Revised Statutes of New York and Massachusetts are admirable specimens, lies rather in concise and complete statement of the *principle*, in the fewest words possible. Also an elimination of paraphrase and description by a separate statement of necessary definitions; and the New York Revisers especially were keen for the rule to confine each section to a single proposition.*

With these general observations, the student may now examine the new Administrative Code for the Philippines, and in some measure determine for himself the degree to whicl these principles have been observed by the Code Committee. The observations of the writer, which are necessarily tentative in great measure, since the law is less than a month old, dating from its effective commencement, and which have been kindly invited by the LAW JOURNAL, are given herewith, and may, so far as found to be sound, serve those who, in common with himself, wish the country to have the most approved code which its present, and reasonably forecasted future needs, may require.

While it is the main purpose of this paper to call attention to what are believed to be inaccuracies, or respects in which the code may be improved, the writer is not insensible to the attendant difficulties which had to be met and the equipment and assistance available to surmount them. Certainly in any one of the United States, as in England or probably in any of the other Western countries, a large corps of jurists would have furnished voluntarily, and as a duty which would be regarded as a privilege, most valuable assistance to the codifier in a work of this kind. We are not yet able to do this in the Philippines, nor have we any right to expect it. Where a strong bar exists, with scores of trained specialists in all the larger cities, and not infrequently with big men in the smaller places as well, with numerous professional journals, periodicals, treatises and reports and all known helpful machanical agencies as well, a committee of revisers has its work largely "surrounded" when it begins its labors. It expects to draw largely at once upon these sources. Our situation is different and it will be assumed that all appreciate this, and other difficulties and will make proper allowances. Structurally the code is skillfully planned, and will no doubt familiarize the profession and the public with a *system* which has been here in its entirety practically since 1900, but which is now concisely and scientifically presented for the first time. In that aspect the code is a great work, and appears opportunely. It is highly creditable that the legislature has so readily and completely approved the work of the Committee and given it to the country. Let us begin then to submit it to more technical examination, in furtherance of its high purpose, and with the pledge that our differences with the Committee will be constructive rather than destructive.

*Brightly's Purdon's Digest, Penna. reprints "Coode's Treatise on Legislative Expression" London, 1845, and there is a larger work, Geal on Legal Composition, London, 1840, which may be consulted by those pursuing this interesting subject.

I.

Available Material for Codification When the Code Committee was Constituted (Act 1941) in 1909

In May, 1907, the Commission passed a resolution appointing nine persons to compile and codify the laws up to June, 1907. On September 30, 1907—a little over four months later—that Committee presented a report of their labors which we know as the "Compilation." On October 2, 1907, the report was accepted by the Commission and the Compilation Committee was discharged with thanks. By a small and final proviso in that Resolution it was declared that the printed Compilation "shall not have the effect of varying the meaning" of the laws so codified. The reason assigned was that the first Legislature would shortly convene and there was not time for the Commission to examine and adopt the Compilation as a statute. In the judgment of the writer this was very unfortunate. The work of the Compilation Committee and those who aided them was remarkably well done. It was a prompt, loyal, lawyer-like, patriotic and most valuable public service performed gratuitously. Every man whose name was connected with it was, and many of them still remain and are, valuable servants of this Government. Without their work nobody, practically speaking, could know the body of our statute law, and the Compilation has been, and for some years hence may probably be an indispensable tool of the profession. It necessarily contained a few unimportant errors, but it is the key to our public laws down to Act 1800; and when the skill of its plan and the dilligence with which that plan was pursued and executed is borne in mind, it remains a unique monument to its builders. The Code Committee at its inception in 1909 had as a guide this invaluable work by which to pursue its similar labors. It is appreciated that a revision is not a code, but the Compilation, like the Revised Statutes of Massachusetts or Connecticut is substantially a code. It is a scientific arrangement, by subjects, of the statutes, properly revised, with valuable citations, marginal references, and an index far above the average for this country. The Compilation splendidly blazed a trial for the codifier.

(To be continued.)