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SUGGESTED REFORMS OF CIVIL CODE

PROVISIONS ON INTESTATE SUCCESSION BASED ON FILIPINO CUSTOMS

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Inheritance Customs in the Philippine Islands—Ancient Customs.—As a premise to the propositions presented in this paper for certain suggested reforms on the intestate succession laws in force here, a more or less detailed account of the inheritance customs obtaining in these Islands, both in the early days and nowadays, has been deemed necessary. For the proper development of the subject, the ancient customs are first given in a detailed manner, for the following reasons: First, because the old customs will serve as a reliable index for the determination of the true customs that exist now in the Philippine Islands in connection with matters relating to succession and inheritance; they stand for the then existing customs when no foreign influence had as yet been exerted upon them in the very early epoch of Spanish domination. Second, because they show that in spite of whatever our foreign contemporary critics and detractors may say, we can with pride claim that before any foreign ruler came to the Philippine shores we already had our own civilization, one of the expressions whereof may be found in the family and inheritance laws that have been handed down to us from generation to generation, this, notwithstanding the fact that there were always the provisions of the Civil Code obstructing their enforcement in the form of a scare-crow that prevented our population from enjoying the beneficent effects of customs that are better suited to our idiosyncracies. Third, because a knowledge of the fact that we had from the beginning our own inheritance customs may serve as a basis for whatever proposed reform in our present legislation may be suggested, because if no particular customs existed which are different from the legislation that has been imposed upon us thru the adoption or thru the application in these Islands of the provisions of the Civil Code, there would hardly be any need for the reform of the existing laws.

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1. *Father Placencia on Philippine Inheritance Customs.*—In Artiga's "La Civilización Filipina," Page 25, we find a good account of the inheritance customs existing in the Islands before the year 1589, as written by Father Placencia, probably the oldest writer on Philippine customs. Mr. Artigas has quoted the passages apparently in *totu* as follows (The headings are taken from a speech delivered by the Filipino jurist, Felipe G. Calderon, at the commencement exercises of the Liceo de Manila in the academic year of 1903-1904.)

"Hijos legítimos.—De las herencias los hermanos legítimos de padre y madre heredaban igualmente, salvo si el padre o madre mejoraba a alguno en algo, poco, como dos taelos o tres de oro o una joya también. Cuando los padres al dotar a algún hijo y por casarlo por alguna persona principal excedía en el dote mas de lo que daba a los otros hijos, aunque fuese por alguna necesidad, como declararen los padres que les daban aquellos fuera de la herencia se contaba al tiempo de partir la herencia, con los otros hijos.

"Hijos de dos mujeres.—Si uno tenía hijos de dos mujeres legítimas, cada uno llevaba la herencia y dote de su madre con el multiplicado que le había, y lo que era del padre se repartía entre todos.

"Hijos legítimos con hijos de esclavas.—Si juntamente con hijos legítimos había algún hijo de esclava suya, no entraba en la herencia ni habiéndole de dar su madre libre y sus hijos alguna casa, si era principal un tael o un esclavo si daba algo más era los que ellos querían.

"Hijos legítimos y de inasaua.—Si con los hijos legítimos había también algún hijo de soltera libre a quien deban dote mas, no le tenían por mujer verdadera, estos todos eran como hijos naturales aunque el hijo de soltera lo hubiera habido siendo casados. Estos todos no heredaban igualmente con los hijos legítimos, sino la tercera parte; que si eran dos, llevaba dos partes el legítimo, y una el de "inasaua."

Legítimos.—Cuando no hay hijos de legítima sino hijos de soltera o de "inasaua," estos heredaban todos, y se había algún hijo de esclava de banle lo que arriba dijimos; sino hay hijos legítimos no natural ni de "inasaua," aunque haya sido de esclava, no heredaba sino el padre o abuelo o hermanos o parientes mas cercanos del difunto y estos daban al hijo de la esclava lo que dijimos arriba.

Hijos de mujer libre y de adulterio.—Si tiene hijos de mujer libre y casada y que le hubo siendo ella casada, si el marido pena al adulterio es como dote y el tal hijo entra en la herencia con los otros hijos, si aquel hereda los hijos o parientes mas cercanos, y aquel hijo igualmente

con ellos, mas si el adulterio no fué penado del marido de aquella de quien tuvo el hijo, no es tenido por hijo ni hereda cosa alguna. Y adviertase como con la pena que se ha al agraviado, ni el queda deshonorado, ni se aparte de la mujer y el hijo legitimado del padre y asi conviene se ponen.

"Hijos adoptivos.—Los hijos adoptivos, que entre estos se usan mucho heredan el doble de lo que dieron cuando los prohiaron. De manera que si dió un tael de oro porque le prohiasen, murto el padre le dan dos taelis; mas si este hijo adoptivo murió antes que el padre que lo aprohijo no heredara esto sus hijos, que alli se acabo el concierto y este ese el peligro a que arriesga su dinero y también por su amparado como hijo, y por eso es licito este tratado de adopción que estos usan."

These paragraphs may also be found in Pardo de Tavera's "Las Costumbres de los Tagalos según el Padre Placencia" and in "Revista Histórica Filipina," Vol. I, No. 10, February, 1906, pages 234-235.

2. *Father Colin on Philippine Inheritance Customs.*—In Father Colin's "Labor Evangelica de los Obreros de la Compañía de Jesus en las Islas Filipinas," annotated by Father Pastells, Volume I, Book I, Chapter XVI, entitled "Descripción Geográfica y Historia de las Islas Filipinas," page 74, paragraph 123, under the heading, "Sucesiones y Herencias," the following paragraphs are found:

"Este es en cuanto a los matrimonios. En cuanto a los hijos, y sus sucesiones, y herencias, si los hijos eran legítimos, heredaban igualmente los bienes de sus padres, y a falta de ellos los parientes mas cercanos. Y si auia hijos no legítimos, como fuesen auidos en muger libre, entrauan de la parte, mas no igualmente con los legítimos, porque estos llenauan dos partes, y el no legitimo una. Pero a falta de legítimos, entrauan estotros enteramente en la herencia. A los hijos de esclava propia, se les daua alguna parte de los bienes muebles, a voluntad de los hijos legítimos. Y demas, desto quedaua la madre libre por el mismo caso que el amo auia tendido hijos en ella.

"Adopción.—Auia también hijos adoptivos, y la forma era, que el prohiado compraua la adopción. Porque el de natural daua cierta cantidad al adoptante, porque le adoptase su hijo, o hija, y con solo esto, sin mas autileza de derecho, ni de patria potestad, quedaua adoptado; solo a fin de que el hijo adoptiuo, alcanzase en dias al que le adoptó heredase la cantidad, que se dió por la adopción con el doblo, de manera que si le dauan diez, auia de heredar veinte. Pero si el padre adoptivo alcanzava en dias al hijo adoptivo, expiraua la adopción, y el derecho de la herencia, que no pasaua a los herederos del adoptado en todo, ni en parte. Pero si al contrario, moria el padre viviendo el hijo ordinario, por via de mejora dexauale,

de mas del doblo de la adopción, alguna presca, o esclaua, gratificándole sus buenos servicios. Como al contrario al hijo ingrato, y que daua mala cuenta de si, lo emancipaua el padre adoptivo, restituyéndole la cantidad que auia dado por su adopción."

3. *Felipe G. Calderon on Dr. Antonio de Morga.*—In "Revista Histórica de Filipinas," Vol. I, No. 10, February, 1906, page 235, from an address delivered by the Filipino jurist Felipe G. Calderon at the commencement exercises of the Liceo de Manila in the academic year of 1903-1904, the following is taken:

Morga ("Sucesos," Cap. VIII, p. 144) hablando sobre el mismo asunto (sucesiones y herencias) nos dice que: "En las herencias, todos los hijos legítimos heredaban por igual a sus padres los bienes por ellos adquiridos, y si habia algunos muebles o raices se hubiesen habido sus padres, no teniendo hijos legítimos de Inasaua, venian a los parientes mas propinquos transversales, de aquel tronco; esto, asi por testamento, como sin él; en el otorgamiento del cual no habia mas solemnidad que dejarlo escrito a dicho a boca delante de personas conocidas.

"Si algún principal era señor de barangay en este sucedia el hijo mayor de *inasaua* y a falta de él, el siguiente, y a falta de hijos varones, las hijas por la misma orden; y a falta de sucesores legítimos, volvía la sucesión al pariente mas cercano, de la linea y parentela del principal, último poseedor."

En los párrafos transcritos (including those transcribed from Father Placencia,) vemos un sistema sucesorio completo: la legítima forzosa para los hijos, en porción distinta según que sean legítimos, naturales o ilegítimos; el derecho de mejorar reservado a los padres; la sucesión según el grado de parentesco y hasta el derecho de troncalidad resucitado por el moderno Código Civil en virtud del cual los bienes hereditarios vuelven al tronco de donde han procedido, como sucede con la jefatura de Barangay.

* * *—y respecto a los bienes, al disolverse la sociedad conyugal le correspondia la mitad de los gananciales según nos dice: "Los bienes que habia ganado juntos (los cónyuges), y si tenia granjerías, de que no supiese ni participase su consorte, las adquiria para si a solas."

4. *Paterno on Dr. Antonio de Morga.*—Paterno's "Synopsis de Historia de las Islas Filipinas," passages from Dr. Antonio de Morga's "Sucesos de las Islas Filipinas," Chapter III, Fol. 144, are quoted as follows:

"Si algún principal, era señor de Barangay en este sucedia el hijo mayor de *lanasaba*, y a falta del, el siguiente, y a falta de hijos varones, las hijas por la misma orden; y a falta de sucesores legítimos, volvía la sucesión al pa-

riente mas cercano, de la linea y parentala del principal último poseedor.”

“Si algún Natural, que tuviese esclavas, se emancipaba con alguna de ellos, y tenia hijos en la tal esclava, eran libres los hijos y la esclava; pero si no habia hijos en ella no le quedava.

“Estos hijos de esclavos, y los habidos en mujer casada, eran tenidos por mal nacidos, no sucedian con los demas herederos en herencia, ni los padres tenian obligación a dejarles cosa alguna, ni aunque fuesen hijos de principales de los padres, ni privilegios de ella, sino que quedavan y se contravan el número y orden de los otros.

“Los hijos no legítimos, como fuesen habidos en mujer libre, dice Colin, encravan a la parte, mas no igualmente con los legítimos; porque estos llevaban dos partes y el legítimo una: Pero a falta de legítimos; en entreven estotros enteramente en la herencia. (Labor, par. 123.)

“El prohijado, dava y entregava lo que tenia de presente, si que le prehijava; y con eso, quedaba en su casa y poder, y con derecho de heredarle, entre los otros hijos.” (Morga, “Sucesos fol. 143, segundo caso.)

Lo mismo dice el R. P. Fr. J. Francisco.

“En cuanto a Herederos, lo eran de toda la hacienda de sus Padres; igualmente todos, los hijos Legítimos, y a falta de ellos, los parientes mas cercanos.

“Si uno tenia dos o mas Hijos, de las Mujeres Legítimas todos, cada uno llevaba lo que pertenecia a su Madre, asi del caudal de su tiempo, como de los Gananciales que lo pudieren aver tocado que la Dote se supone que la percibieron, y la gastron los Abuelos en el tiempo de los Casamientos.” (“Descripción,” par. 506, pag. 171.)

“Cuando se divorciaban,” dice Morga, “Volvia la dote recibida al varon, que llamaban Vigaycaya, si no fuese, que se apartavan por culpa del marido, que entonces, no se le volvia, y quedavan con ella los padres de la mujer.

Los bienes que havian ganado juntos se partían a medias y cada uno disponia de los suyos, y si tenia algunas granjerias, de que no supiese ni participase su consorte, las adquiria para si a solas.” (Morga, fol. 143.)

“El famoso escritor tagalo D. Jose Rizal en sus *“Comentarios a la nueva edición* (Paris, 1890) de los Sucesos de las Islas Filipinas, por el Dr. Don Antonio de Morga (Morga, “Sucesos,” fol. 144, de la edición de Mexico, 1609), observa atinadamente:

“Todos estos distintos matices entre los hijos legítimos que heredaban, los hijos de libres concubinas que no heredaban, pero que recibian algo, los hijos de esclavas que no recibian nada, pero que libertaban y salvaban a sus madres, y los hijos con casadas, aunque fueren principales, que ni siguiera heredaban la condición de sus padres, sino que degeneraban prueban el alto grado de

cultura y la moralidad de los antiguos Filipinos." Morga, pag. 324, de la edición de Paris, 1890, nota 3.)

5. *Loarca on the Ancient Visayans*.—In his work entitled "Relación de Filipinas," Loarca writing on the inheritance customs of the ancient Visayans, puts, (1) children in the first order of succession, (2) brothers and sisters next, (3) their cousins, and (4) lastly, the kinsmen of the deceased, who divided the inheritance share and share alike. Natural children were given no rights whatsoever, their shares depending absolutely on the liberality of their legitimate brothers towards them, which might or might not be exercised. (V. Blair and Robertson, 153.)

6. *Forrest and Garin on the Ancient Moros*.—The order of succession among the Moros in ancient times, according to Forrest, was the following: (1) children and descendants; (2) full-blood brothers and sisters; (3) nephews and nieces of the same character; and (4) lastly came the first cousins. (A Voyage to New Guineo and the Moluccas, p. 277.) Garin, a French writer, writing about the same topic, however, seems to differ quite materially from Forrest, at least insofar as the surviving spouse is concerned, as he places the same next after the children in intestate succession. (Garin, *Memorire Su L'archipel de Jolo*, p. 194.)

7. *Comment*. It would appear that according to Father Placencia, the inheritance customs existing before the year 1589, may be summarized as follows:

(1) Legitimate children inherited share and share alike, except when some one of a number of them were given betterment.

(2) Whenever any property was advanced or dowry given to one of the children, in excess of the portion that should have corresponded to him the same was brought to collation at the time the inheritance was partitioned among the heirs.

(3) Legitimate children begotten from two or more women share not only in their respective mothers' property but they also divided their father's property share and share alike.

(4) The children of slaves shared none of the inheritance nor did their mothers become free, merely by begetting children from a free man; but the said children were given a certain amount which was fixed by the legitimate children.

(5) Children with single or unmarried women were considered as natural children and they inherited one-third of the property.

(6) In default of legitimate children, the natural children inherited, and were in turn bound to give a small portion to brothers the children of a slave, if there were any.

(7) When there were no children either legitimate or natural, the parents, grandparents, brothers or nearest relations took the inheritance, but likewise gave the slave's children their small share, if there were any.

(8) Adulterous children got the penalty imposed by the husband of the adulterous wife upon the latter on account of the adultery; however, they took nothing if no such penalty was imposed, and—

(9) Adopted children got an amount double that which they paid for their adoption.

In these statements Father Placencia is borne out by both Father Colin and Dr. of Morga with but slight differences, such for example as the fact that, according to these two writers, the slave got free if she bore a child with a freeman, whereas Father Placencia says otherwise. Besides, Dr. Morga adds the following points:

(1) That the community property was shared half-and-half by husband and wife but the property that was owned and possessed by one of the spouses without the knowledge of the other became exclusively the latter's. This probably has reference to paraphernal property; and

(2) That if a principal was a Cabeza de Barangay his oldest son inherited—probably his title. In default of this, his son next in seniority, and when there were no sons, the daughters inherited in the order of their seniority.

So far as it has been determined and from a personal knowledge of the writer, the customs must have changed quite a good deal from those related by the above-quoted old writers, because the present general customary system in most localities gives the surviving spouse a preferential share on the deceased consort's property, many times when there are no children, but some times even when there are children. But for the spouse's share in the deceased consort's inheritance, and the consideration of natural children, there seems to be no other material change in the customs obtaining in different parts of the Islands, except probably as to the share that parents and ancestors take from the deceased child's property when the latter leaves no children, legitimate or natural, and surviving spouse. It seems as though parents take the son's property more because of the provisions of the Civil Code than following the existing customs on the matter.

as the brothers or sisters of the deceased seem to preferentially take it. This is due merely to the characteristic tolerance on the part of the Filipino parents towards their children. A perusal of the inheritance customs existing in the different localities and provinces in these Islands hereafter to be discussed will more or less bear these statements.

Present Customs.—In the collection of the data placed under this topic letters were addressed to several friends, mostly attorneys, hailing from different provinces and localities, propounding to them questions that called for answers bearing on the inheritance customs obtaining in their provinces; so that, while complete information on the present customs cannot be claimed here, both because not all the provinces are represented and because the information received by me may not be as accurate as they could otherwise be if actual presence and personal investigation on the field were made in each locality or province concerned, they may however, be very useful at least in determining in a general way the prevailing inheritance customs in these Islands. No direct or personal information being however obtainable as to some localities, particularly those inhabited by non-Christians, resort was had to different writers who are recognized authorities on Philippiniana matters in order to present as complete an account of our inheritance customs as it was practicable under the circumstances. The different provinces investigated are therefore hereunder given in their alphabetical order, the non-Christians however being placed first without regard to such alphabetical order.

1. *The Bontoc Igorrots.*—According to the customs of the Bontoc Igorrots, (1) descendants are called first to the inheritance of a deceased person, then come the (2) parents, in the absence of whom the (3) brothers, sisters, and nephews take the property. When there are none of the said relatives the (4) uncles, aunts and cousins succeed the deceased person. The (5) surviving spouse occupies the fifth place, the only one coming after the same being a friend who took charge of the funeral and other ceremonies incident to the death of the deceased. The foregoing is taken from Jenks' "The Bontoc Igorrot," an interesting passage of which is as follows:

"Since all the property of the husband and wife is individual, except that accumulated by the joint efforts of the two during union, the property of each is divided on death. The survivor of a matrimonial union receives no share of the individual property of the deceased if there are any kin. It goes first to the children or grandchildren. If there are none and a parent survives, it goes to

the parent. If there are neither children, grandchildren, nor parents it goes to brothers and sisters or their children. If there are none of these relatives the property passes to the survivor of the union. If there is no survivor the property goes to that friend who takes up the responsibilities of the funeral and accompanying ceremonies. The law of inheritance then is as follows: (1) lineal descendants; (2) ascendants; (3) lateral descendants; (4) surviving spouse; (5) self-appointed executor who was a personal friend and kin of the deceased.

"Primogeniture is recognized and the oldest living child, whether male or female, inherits slightly more than any of the others. For instance, if there were three, four or five sementeras per child, the eldest would receive one more than the others.

"It is said that division of the property of the deceased occurs during the days of the funeral ceremonies."

2. *The Nabaloi*.—Following the universal practice, the Nabaloi laws give also first place to (1) children in their order of intestate succession. These are followed by the (2) father and mother; then comes the (3) brothers and sisters the amount of whose shares depend upon the sizes of their respective families, those having the greatest number of children taking the largest shares. These are followed by the (4) uncles, aunts, and nephews of the deceased. An interesting feature of the Nabaloi inheritance law lies in the succession to property does not amount to succession in full ownership, because parents, brothers, and sisters are bound to keep the property thru inherited for the benefit of the children of the said brothers and sisters.

While the surviving spouse does not inherit under the Nabaloi laws, she is however allowed to retain one-half of the property acquired by the spouses during wed-lock. (Moss, Nabaloi Law and Ritual, p. 251.)

3. *The Ifugaos*.—Under the laws of the Ifugaos distinction is expressly made as to whether the deceased was married or not. If unmarried the following is the order of succession: (1) brothers and sisters (2) nephews and nieces or their descendants; (3) and cousins, proximity in the degree of relationship being first observed and then primogeniture.

If the deceased was married, the following rules are applied: (1) as to the deceased's share in the conjugal partnership, in the absence of brothers and sisters, and their descendants, the relatives on the father's side divide the property by halves with those on the mother's side; (2) as to the deceased's property brought to the marriage as well as that acquired from his relatives during the same, it is divided among the members of the

family from which he received it; and (3) as to the personal property acquired thru the combined efforts of the spouses, the same remained with the surviving spouse. (Barton, *Ifugao Law*, pp. 50-52.)

4. *The Wild Tribes of Davao.—Bagobos, Bilaans and Kulamans.*—It is interesting to note the prominent position given to the wife by the Bagobos, Bilaans, and Kulamans, in their inheritance customs. They allow her to inherit in concurrence with the children, sharing the property half-and-half with the same. Their tendency to monogamy is likewise interesting. Altho two or more wives are allowed each man, when it comes to dividing inheritance no wife by the first one gets a share in it, she, as already stated, getting one-half of the whole. The other half is divided among the children share and the share alike, and all other wives take nothing. (Cole, *The wild Tribes of Davao District*, *Mind. Field Museum*, XII, 159, 99).

(To be continued)
