SUGGESTED REFORMS OF CIVIL CODE PROVISIONS ON INTESTATE SUCCESSION BASED ON FILIPINO CUSTOMS

(Continued)

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15. *Pangasinan.*—In order to understand very well how property descends to heirs after a person dies among the Pangasinanes an account is necessary of the creation of the family up to the time the heads thereof, i. e., the husband or the wife, die.

When a marriage takes place all the property brought in by either party becomes common property of both, with the husband as administrator, but generally the wife does not bring any property of her own. The prevailing custom in Pangasinan is that when a man marries he must please the wife by giving her property in the form of land, jewels, animals, money and clothing. This is what they call the "pauasel" or dowry, and is the property that the wife brings into the marriage. This property does not become the exclusive property of the wife for, once the couple are married, all properties brought in become the property of the couple as one person. The husband is the manager of all the common property and may dispose of it in the way he wants. He may, therefore, sell, alienate or encumber the same without the consent of the wife.

Time comes to the family when the male children thereof get married. As these children get married they are given their own property from the bulk of the common property in the form of a "gift" or donation. Usually, the oldest son gets the lion's share of the property, while the daughters do not get anything at all but merely leave their luck with those who should chance to marry them. So that upon the death of either of the parents, if all the children have settled down, no more property is left except such portion only as has been expressly left to maintain them during their old age. This property is left in the hands of the surviving spouse for his or her support during his or her lifetime and after his or her death it becomes the common property of all the members of the family to be administered by the oldest son for their benefit.

However, if at the death of either parent all the children of the family have not yet settled down and therefore not yet been given their share of the property, and no will was made, the surviving spouse becomes the owner and the administrator of the property left which is distributed thereafter, in the manner the

same may think best, to the children as they leave the parental home to get married. The surviving spouse's authority in distributing the property in this case is supreme and is never questioned.

It sometimes happens that after the death of both parents a daughter is left in the parental home unmarried. In this case the property which has been left by the parents for their support during their old age is left to her for her support, until she dies or gets married, when the same becomes the common property of all.

There are very few cases when the daughters are given a share of the property, because, in accordance with custom, when they get married they will be given dowries by their husbands.

The order of succession among the Pangasinanes is the following:

1. The surviving spouse.
2. The descending line.
3. Ascending line.
4. Brothers and sisters (altho generally the sisters do not get anything).
5. The nearest relatives.

The fact that the surviving spouse comes first in the order of succession is explained by the fact that when a party gets married as stated before the property brought in as well as those earned during the continuance of the marriage relation becomes common property of both parties as one, and whoever is left becomes its sole owner. It explains also the unequal distribution of the property among the children, the law among the Pangasinanes is that the children do not succeed in their own right to the property until both parents die. What is given the male children when they marry is a gift and not their share of the property. Hence the first to marry usually gets the lion's share of the property.

There is not such thing as usufruct among the Pangasinanes because when one of the parties to a marriage dies all the property descends to the surviving spouse who thereupon may dispose of the same in the way he or she wants.

An illegitimate child is seldom recognized by his father in Pangasinan and in those cases when he is recognized he usually does not acquire any rights to anything belonging to his acknowledging father except the previleges of ostentating the surname. He does not even get support from him as by custom the father of an illegitimate child is not obliged to support the

latter altho he has been acknowledged by the former. (Atty. E. M. Villasis.)

16. *Tarlac.*—Intestate heirs do not usually go to court to litigate their cases upon the death of either the father or the mother with the request f.. the distribution of the property left by the deceased.

If any property is left by the deceased the same is administered by the surviving spouse who meanwhile exercises parental authority over his children. The administrator is charged with the duty of paying the debts and obligations of the deceased and to hand over the residue of the hereditary estate, if there is any, to the heirs of the deceased who inherit the same pro rata. Generally, however, the surviving spouse shares in the partition of the estate receiving as much as each of the children of the deceased receives. But, if the estate left after all the debts and obligations of the deceased have been paid, is of such amount that it needs no accounting, or in other words, too little, out of respect for the parent, it usually goes to the surviving spouse. This is more so if the said surviving spouse has under his or her care children dependent upon him or her for support. So long as the children of the deceased live with the surviving spouse, the latter has the full disposition and management of the property of the deceased. If in the course of time, however, the children get married, they are given their respective shares and the surviving spouse and the children usually agree as to the manner of distributing the same property.

In case of disagreement, the surviving spouse usually has the final say. This is because the parents are revered by the members of the family over whom they exercise parental authority. In the partition of the estate left by the deceased after all the debts and obligations have been paid, there are no rules to be followed. An heir may sometimes be disinherited simply because of the fact that she is a female. The reasons why the female does not inherit sometimes are that she is supposed to live always with her parents and that if she ever gets married, it is the husband who will bring property to the conjugal partnership. Out of sympathy for the weak, the youngest heir (especially a minor) inherits more than any of the other co-heirs inherit. This is due to the fact that he is less able to fight the battles of life. In the majority of cases, however, the heirs of the deceased inherit pro rata.

Customs vary in this locality. In the majority of cases, a natural child is not an heir at all to the natural parent. He is

looked upon with contempt by the lawful heirs and is considered a stranger in the family. He is not allowed to associate with the members of the family. However, among the well-to-do families sometimes out of pity, a natural child is given a share in the property of the deceased.

In all cases wherein the surviving spouse inherits, he or she becomes the absolute owner there of that part which is his or her share in the partitic of the estate. He or she is not a mere usufructuary but an absolute owner thereof. (Atty. M. C., Camiling, Tarlac.)

17. *Zambales.*—The legitimate children of the deceased, together with the surviving spouse divide the estate share and share alike to the exclusion of the whole world. The natural children are not given any share at all. If there are no legitimate children, generally the widow or widower inherits the little property left by the deceased. In the event that the deceased is not survived by any child or spouse, then his or her parents succeed to all that which was left behind—real and personal property—share and share alike. The brothers and nephews are entitled to inherit only when there are no direct-line heirs or surviving spouse. These collateral heirs, irrespective of degree or representation, receive equal shares. In the absence of all the aforementioned successors of the deceased, his or her surviving relatives succeed to his or her property also in equal portions. Adopted children inherit like legitimate. (Atty. R. M. H. Candelaria, Zambales.)

Concluding remarks.—Before closing this part of the discussion, the writer reluctantly wishes to express his belief that the old writers above quoted may either have been mistaken or misinformed when they described our old succession and inheritance customs as almost identical to the provisions of the Spanish legislation on the matter. This statement is based upon the claim to the effect that the surviving consort practically took nothing from the descendants, except her share of the community property, when almost every Filipino who knows anything about our inheritance customs, will bear the writer out on the statement that the wife has always occupied in the Filipino family a very important position, and in the matter of inheritance, her position may be regarded with certainty as that portrayed in the above remarks on present inheritance customs. The question, therefore, that necessarily arises, in the writer's strong desire to give due credit to the old writers, is, Have inheritance customs in these Islands, changed so radically as to

place the surviving spouse in the position he or she now occupies in these matters?

A RECAPITULATION.—The place has now been reached where all that has been so far discussed may be brought to bear upon the final development of the subject of this thesis, the suggested reforms on our legislation regulating intestate succession based upon our inheritance customs.

In the beginning there was no such thing as testate or intestate succession, because the very nature of ownership as it was then understood precluded that idea completely. There was no such thing as individual ownership, since the ownership of all kinds of property resided in the family, the administrator of which was the head of the same, so that the death of the latter called for no succession at all in so far at least as the family property was concerned. All that was needed was a successor to the head, the owners of the property being more or less immortal since the death of one or several members of the family was nothing but the fall of one portion of the entity owning it. But this condition could not last indefinitely in view of the fact that the family grew as the different members married and multiplied, a natural consequence of which was the gradual disintegration of the family by the separation therefrom of married members to form homes of their own who were given part of the family property for a start in life. Now, the support of a separate family called for greater efforts and activities on the part of those responsible for the bringing up of its members. This led to the acquisition of property by those who worked for it and eventually led to the differentiation between the character of property brought to the new home for a start in life, on the one hand, and the property thus acquired independently after the establishment of the new family, on the other, and then the problem was soon at hand as to what disposition was to be made of either upon the death of the one who obtained it. The logic of the times called for the reversion of the property received from the old family to its original sources. This therefore left only the acquired property subject to the will of the head of the new family and led to its distribution among his forebears upon his death. We have thus the beginning of intestate succession. The general distribution of property among the members composing a society called for the regulation of such rights.

Such distribution of property by reason of the death of the one who held or acquired it gave way to the creation of two systems known as the Roman and Germanic system, the former being a distribution among those within the nearest degree of

relationship, not necessarily by blood but rather because of the beneficiaries' connection with the family of the deceased, and the latter being a distribution among the relations of the deceased in the ascending line including the descendants of the ascendants in the particular line which system was known as the Germanic "troncalidad" or the rule of *paterna paternis, materna maternis.* The different countries therefore eventually chose from these systems the one that best suited their condition. Spain under the *Fuero Juzgo,* the *Fuero Real,* and other older legislations chose at the beginning the germanic system, but the *Partidas* subsequently introduced the Roman element so that from that time on the Roman system has established a strong foothold on her legislation which afterwards served as the basis of South American as well as her other colonial legislative plans.

But no matter what system might have been chosen by the different countries, some modifications were always introduced by the country adopting it. Every nation, therefore, shaped its intestate legislation to suit its own conditions, needs, and idiosyncracies; hence, a highly varied system of distribution appeared not only in the different foreign countries of the world, but even in the different provinces or regions composing the Spanish Kingdom. Thus, while the preparation of the Spanish Civil Code was in progress, protests from the representatives of its different provinces and regions were voiced and this resulted in the almost total suspension of the enforcement of the Code in such places, with the exception of the provisions having a public character under the Preliminary Title and Book IV of the Code which refers to Obligations and Contracts. The local legislations or customs on family or, particularly, on succession matters of the said provinces and regions have been retained up to these times. But the Philippine Islands like Cuba and Porto Rico, not having any representatives nor voice in the making of the Spanish Civil Code, had no opportunity to protest against the provisions of the Code on said matter; and its promulgation here since July 31, 1889, has brought the present legislation on this subject to these Islands, in spite of the fact that, due to their distance from the Kingdom and the character of their people, the Filipinos have their own customs and practices in connection with inheritance and succession matters, as found by the early Spanish writers and as manifested by present practices.

Bases of the Suggested Reforms.—A statement of the tendencies and prevailing features of the legislations on intestate succession of the different countries of the world, including

Spain, and a recapitulation of the Philippine inheritance customs will, it is hoped, be helpful in the determination of the reforms suggested here.

1. *Foreign Legislation.* The legislation on intestate succession of the different foreign countries shows the following salient tendencies:

(1) A universal recognition of the rights of legitimate descendants to inherit in the first place, subject to the rights, either usufructuary or proprietary, of the surviving spouse over the same, in concurrence with the ascendants;

(2) A general recognition of the surviving spouse's right to succeed in the second or at least nearly as prominent, place under proprietary, or sometimes usufructuary, rights, in the inheritance of the deceased spouse;

(3) A somewhat general recognition of the ascendant's right to inherit in the third, or in some cases second, place, in full ownership, either exclusively (sometimes subject to the usufructuary right of the spouse) or in concurrence with the surviving spouse, the brothers of the deceased person and the children of the former or both;

(4) A tendency in several instances of giving the natural children a good share in the inheritance property, usually one-half that corresponding to legitimate descendants, on the one hand, and a tendency in some instances of completely forgetting them giving them at most a certain right of support on the other hand;

(5) A tendency to lowering the degree of relationship within which collaterals, other than brothers and sisters, and the children of the same, may be called to inherit under intestate succession, and;

(6) An almost unanimous recognition of the right of the State to inherit, with but a few and rather unimportant differences in the particular disposition that should be made of the inherited property after it has been secured to the State.

2. *Spanish Legislation.*—Under the Spanish Civil Code the order of intestate succession is as follows:

(1) Descendants; (2) Ascendants; (3) Recognized natural children; (4) Brothers of the whole and half-blood together with nephews who are the children of the same; (5) The surviving spouse; (6) Collaterals up to the sixth degree, regardless of line or proximity of relationship; and (7) The State, particularly its municipal, provincial, or national institutions of beneficence and public instruction. This system as already

stated has never been in force in several regions and provinces within the Spanish Kingdom, but has however been in full force and effect in the Philippine Islands, since the promulgation here of the Spanish Civil Code on July 31, 1889.

3. *Philippine Inheritance Customs.*—The following are the prevailing inheritance customs in the Philippine Islands;

(1) *The legitimate children and descendants* occupy the first place in concurrence with the surviving spouse who keeps the family property more as the owner thereof than as a mere administrator, until he or she marries a second time, whether legally or not, when the children as well as the property in the acquisition of which he or she did not intervene pass to the care of the nearest and most respectable and responsible relatives of the deceased spouse, the same being usually the ascendants of the latter.

(2) *The surviving spouse* besides remaining more as an owner, rather than as administrator of the property, left by the deceased spouse, until he or she re-marries, takes a share at least equal to that which corresponds to each of the legitimate children and all the property that has been produced or acquired thru his or her cooperation with the deceased spouse, with the frequent exception only of the family house, implements or homestead, that is, the particular piece of land or property wherefrom the means for the subsistence of the family were drawn; he or she never takes anything in usufruct.

(3) *The ascendants* are very much respected and children think very highly of them, but usually they neither care for, nor take any share in the property left by the deceased child so that they generally let it go to the brothers of the deceased, in the absence of legitimate children and descendants and where the surviving spouse has not remarried they leave it all to her to the exclusion of the brothers of the deceased. But this merely refers to the property in the acquisition of which the surviving spouse had nothing to do whatever. At most when too indigent they take in usufruct some piece of the property forming a part of the inheritance or are given some ready cash periodically by those who take the property for their support.

(4) *Brothers and sisters* and nephews, the children of the same are, in the absence of descendants or the surviving spouse, given preference over the ascendants, not out of any actual preferential right existing in their favor but more out of affection of the parents towards their children; such brothers, etc., how-

ever, reserving in their turn for the parents the necessary property for their subsistence.

(5) *Collaterals* other than (1) uncles, who are the brothers of parents, or (2) first cousins of the latter, (3) cousins, and (4) second cousins are seldom if ever given any consideration in Philippine inheritance customs for, beyond brothers, nephews who are the children of the latter and first cousins, all other relatives are not usually distinguished from one another, and but for the existing Civil Code provisions in their favor they would hardly bother themselves about the distant relative's property, because such an attitude is not only against the prevailing customs but they would even be ashamed of themselves to do it.

(6) *The State* is not given any consideration under the inheritance customs prevailing in the Philippine Islands.

(7) *The Natural children* are recognized or given no inheritance rights, being considered as mere outcasts and they themselves consider themselves as such and do not dare to approach the legitimate family on a demand for a share from the inheritance. At most they are given some means for support and this only and usually when the deceased parent has ordered at his deathbed, thereby more or less virtually recognizing them as natural children. *Adulterous or other illegitimate children* are even given a lower consideration than natural children.

THE NEED FOR THE REFORMS.—A perusal of the foregoing bases thru a careful comparison of the foreign legislation on intestate succession, together with the present provisions of the Spanish Civil Code on the matter which are the laws at present governing the subject in these Islands, and the inheritance customs now prevailing here on the same, will at once suggest that a more or less radical reform in our legislation on the matter is very necessary.

It is only too well known how difficult it is to make a valid will, and as a matter of fact unless the same is prepared by an attorney it seldom, if it ever does, comes to be legalized. Following existing provisions of law, it is clear that the surviving spouse would not inherit from the deceased consort unless the latter has executed a will before his death, or unless the deceased consort leaves neither children, ascendants, brothers or nephews. But these cases are either difficult of fulfillment or rare, and it may safely be stated that they do not obtain at least ninety per cent of the actual instances among the inhabitants of the Islands. The situation is however fortunately mitigated by certain circumstances, to wit:

(1) The high reverence in which parents are generally held by their children, prevents a partition of the property in accordance with the rigid provisions of the Civil Code;

(2) Poverty on the part of a great number of would-be-litigants prevents them from facing the expenses of a costly suit in court to enforce their rights thru judicial channels; and

(3) The reduced or small amount of the average fortune of Filipino families renders it hardly worthwhile to subject the estate of a deceased parent to the expensive ordeal necessarily entailed by a lawsuit. But, should the existence of such circumstances mitigating the anomalous condition at present existing in inheritance customs in these Islands, deter a legalization of conditions that must necessarily exist and take place in such matters, thus making possible the continuation of the present imposed legislation in cases of intestacy? The writer earnestly believes that is about high time that some sort of a more or less sweeping reform in our legislation in intestate succession should be worked out for the benefit and happiness of hundreds of thousands of Filipino families and homes.

THE SUGGESTED REFORMS.—A perusal of the discussions made in all the foregoing pages will suggest the urgent call for the settlement of the seven following propositions, viz:

(1) Legitimate children and descendants should preserve their present place in the order of intestate succession, but should include legitimated and adopted children and their descendants.

(2) The position of the surviving spouse should be changed in the sense that she should be given a share in full ownership equivalent to that corresponding to each descendant from the property left by the deceased spouse, the said property being understood as that in the acquisition of which she had no direct and active part; all usufructuary rights accruing in her favor under the code to be completely taken away. In default of legitimate children, the surviving spouse should be given all the property left by the deceased spouse subject only to the usufructuary rights of the parents or ascendants of the deceased spouse to one-half of the whole property in so far as the same may be taken from the property in the acquisition whereof the spouse did not take any active and direct part.

(3) The position of ascendants will be next that of the surviving spouse; that they should take nothing whenever legitimate children survive the deceased child; and only the usufructuary portion in case there is a surviving spouse. But in the

absence of the said children and spouse they should take the inheritance to the exclusion of all other relatives.

(4) Brothers and sisters and the children of the same in the proper cases should follow in the order of succession, the former taking per capita and the latter by right of representation.

(5) The inheritance by collaterals should be limited to those within the fourth degree of relationship, granting to the children of brothers and sisters nothing unless the right of representation. All other collaterals shall be excluded.

(6) The position of the State should be preserved, where it is now but the funds accruing from the property thus inherited will be devoted exclusively to public schools within the municipality and to hospitals and institutions of beneficence within the province wherein the deceased was a bona fide resident for the greater part of his life.

(7) Natural children when duly acknowledged should be given only a right of support which under no circumstances should be chargeable against the share of the surviving spouse, it being thus chargeable against the inheritance accruing to the legitimate children or against the usufructuary right accruing to ascendants of the deceased person.

DISCUSSION OF THE PROPOSITIONS.—Before discussing the above propositions, reference is made to the fact that the real reason for intestate succession resides in the interpretation of the deceased person's will by the law which orders or regulates the distribution of his property upon his death when he has failed to expressly make manifest legally his wishes during his life-time, in which distribution the law seeks or should seek the manner of disposing of his property in accordance with his conscience, sentiments, and will had he been called upon to do it if he were living. In the discussion of the propositions here presented, this feature of intestate succession has been followed as strictly as possible, having constantly in mind the inheritance customs prevailing in these Islands as set forth in this thesis.

A discussion therefore of the said propositions will be given in the following order: 1. Legitimate children and descendants; 2. The surviving spouse; 3. Parents and ascendants; 4. Brothers, sisters and nephews; 5. Collaterals; 6. The State; and 7. Natural children.

1. DESCENDANTS. — Legitimate children and descendants should preserve their present place in the

order of intestate succession but adopted children and their descendants should be clearly expressed.

The French Minister of State, Freilhard, said: "The wordly benefit that the children derive from their parents constitutes for them a sacred title to the possession of his property." That the children and descendants occupy the first place in the cares and affections of their parents is a truth that is not belied by all the peoples on earth, from the most civilized to those in the lowest state of civilization, the barbarians and savages. Thus we have not only all the national legislations of the different countries in the world but even those of the less important regions and provinces of nations, invariably giving them the most preferential place in their respective orders of succession.

But the unanimity in the preference of descendants in such matters is at least apparently limited to those who are legitimate, evidently both because of reasons involving social and public policies. All other kinds of children and descendants are either omitted or relegated to an unimportant place; among those may be counted legitimated and adopted children. The former are those who were not born in lawful wedlock but subsequently acquired the status of legitimate children either thru the subsequent marriage of their parents or, under the Spanish law, by Royal concession. It is these two kinds of children that should be made to inherit concurrently with legitimate children and descendants in the first place. While the Spanish Civil Code seems to include legitimated children under the provisions of Article 931 in connection with Article 127, 3, it behooves that this fact be stated clearly in the law.

As to adopted children, Article 177 of the Civil Code provides:

> "177. The adopter acquires no right to inherit from the adopted. Neither does the adopted acquire any right to inherit from the adopter, unless by will excepting when the adopter in the deed of adoption has obliged himself to institute him as an heir. This obligation shall produce no effect when the adopted dies before the adopter. The adopted retains all the rights belonging to him in his original (natural) family excepting refering to the parental power."

While our Code of Civil Procedure provides in Section 768 that an adopted child is "to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to

the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock" it likewise behooves that this should be inserted expressly in the Civil Code for the sake of a clear expression of the child's right in the substantive law, instead of the same remaining a mere provision of the procedural law obtaining in the Islands.

> 2. THE SURVIVING SPOUSE.—The position of the surviving spouse should be changed in the sense that she should be given share in full ownership equivalent to that corresponding to each descendant from the property left by the deceased spouse, the said property being understood as that wherein in its acquisition she had no direct and active part, all usufructuary rights accruing in her favor under the Code to be completely taken away. In default of legitimate children, the surviving spouse should be given all the property left by the deceased spouse subject only to the usufructuary rights of the parents or ascendants of the deceased spouse to one half of the whole property in so far as the same may be taken from the property in the acquisition whereof the spouse did not take any active and direct part.

It will be remembered that the Partidas assigned to the surviving spouse an indeed remote place, putting her after all the collaterals in the "dezeno grado." This apparent oblivion and discourtesy was somewhat bettered later on by the Law of May 16, 1835, which placed the spouse next after the collaterals in the fourth degree. The Civil Code seeking to be more liberal has placed the same next after the nephews who belong to the third degree. This is under the system of exclusion and elimination obtaining in intestate succession and it therefore refers to the spouse's share in full ownership and not to the usufructuary rights that the spouse has under the Code. Now, is this enough for the Filipino widow or widower, having in view the circumstances of the times and the customs prevailing in the Islands? Before answering this question it will be necessary to dwell briefly in the arguments of those who refuse to give the surviving spouse a more important position in the intestate succession.

One of the arguments used in relegating the surviving spouse to his present place is the principle on succession of the Roman Law that, "Inheritance descends, then it ascends, and then it expands," meaning thereby that the property of a deceased

person must first go to the descendants next to the ascendants, and last'y to collateral relatives, among whom the spouse is not counted. The gist of the principle therefore is, first, that the surviving spouse is not even a collateral and, second, is that even if the same were a collateral relative, she should still occupy the place at the last. That the spouse is a relative may perhaps admit of a certain doubt, but that the same is more than a relative is a proposition that cannot be effectively gainsaid at least from a moral, social and legal stand-point. When a man and a woman are united as husband and wife according to Philippine ideas and conceptions, at least, they become one and the same socially, morally, and psychologically and thus take each other "for better and for worse." They begin to be considered by society as a social unit; hence the qualifications of a wife as "the better half" of the husband. The begin to live and work, each depending upon the other and each having in mind in his or her efforts, the betterment and promotion of the interests and happiness of the home and the family. In the formation and consideration of that family the community knows that they are one and the same and so it takes them. Such being the case, although the surviving spouse may not be taken as a relative of the deceased in the strict sense of the word, the former still retains his or her nature as the part (say, the half or even the continuation) of that "one and the same" entity that serves as a guide, mentor, and provider of the family left by the latter. Therefore, this conclusion being established the Roman principle that "Inheritance descends, then it ascends, and then it expands" is still applicable to the surviving spouse's case as the same is left as a continuation of the moral and psychological personality of the deceased spouse. And if this argument were to be carried to its extreme, the property constituting the inheritance of the deceased spouse, should not even be distributed, as the surviving spouse is entitled to it both because he or she is the continuation of the psychological and social personality of the deceased spouse, and because the surviving spouse is one primarily bound to bring up the family left by the decedent and indeed expected to do so by nature, society, and the law itself.

But viewing the case from a Philippine angle, a statement of the position of the spouse in the Filipino family is not only interesting but necessary for the substantiation of the second proposition herein advanced. The position of the spouse in the Filipino family is entirely different from that of his or her equal in other families. Spouses here are almost absolutely interdependent upon each other. As a general rule, the wife

is absolutely dependent upon the work of her husband for her living, and the husband depends absolutely upon his wife for the care of his house and children. Family ties are so strong in the Islands that all the few divorce causes that from time to time are litigated before the courts of justice only serve to strengthen this assertion both because of their reduced number and because of the always strong reluctance on the part of the offended party to bring the other party to court for his punishment even if their cohabitation under the same roof would mean torture to the other party. This is especially true with the wife.

The Filipino wife is not only strongly tied to her home cares, but is as a general rule even willing to lose everything just to preserve the sanctity and integrity of the home. So, if it were only for the benefit of the wife a provision such as the one herein proposed should be made. That such should be the case may further be supported by the fact that generally in the Philippines, it is the wife that survives the husband. When such condition takes place, the wife is left in a very miserable condition because she then finds herself plunged into a situation wherein she must necessarily depend only upon the usufruct of a meager portion of an already small inheritance. Her situation becomes more pitiful when it is considered that she is forced by custom and natural affection to preserve her home intact after the death of her husband and that means that she generally keeps with her all her children to educate and to support them. But more than that, even after the children have grown up unless they find a consort rich enough to support them or a good job to give them a fairly descent living, they still cling to their household and remain with their widowed mother; many times even after they are married they are still supported by her together with the new member thus brought to the family,—such is the great dependence of children upon their homes.

That the wife should receive all these considerations can better be met by the answer to a question as to what a wife means in a Filipino home. She is the full-pledged housekeeper; the attentive and painstaking mother to a usually large family; the pleasant, amiable, and consoling companion in times of adversity; the treasurer of the household, many times even the manager of the property, and what not. Besides, it should be taken into account that in the average life of a man who takes a wife to himself, it is usual that he lives longer with his wife than with his parents and if he does not, it is usually because he died too early, but the children that have been brought to this world by him are still a liability and burden to his wife. Under

such circumstances, it is but just that she should be properly provided for from the property of her deceased husband, rather than the latter's brothers and sisters who neither from his childhood nor up to his maturity were they bound to serve or actually help the deceased brother. These arguments are probably true to every Filipino. Now, as to why in the distribution of the deceased's estate the wife should be preferred to his parents an answer may be found ¬ the burdens just stated that a widow will have to bear in bringing up the children left by her husband, but a better answer will be given in the discussion of the next proposition.

These may not be understood by a foreigner especially those coming from ultra-modern nations who have arrived at a social stage where marriage has become but a mere contract usually commercialized for the benefit of both parties and only existing so long as the one needs the other. But so far as the customs and conditions of the Islands are concerned, it is a clear fact that marriage is still an indisoluble union wherein that saying still holds good which runs thus:—"Those whom God hath united let no man put asunder."

There is however a provision that should be added to whatever liberality may be taken in favor of the surviving spouse, and that is that the property thus inherited by him or her should be reserved upon his or her death for the benefit of the children first, and then for the collaterals of the deceased spouse. The reason for this is that the liberal provisions must be exclusively for the surviving spouse and by no means for his or her relations.

As to the usufructuary portion assigned by the Code to the surviving spouse the proposition herein advanced is to the effect that the same should be completely abolished. There are two main reasons for this: first, because there is no such thing found either in a direct or an indirect manner in the customs obtaining in these Islands and, second, because it is nothing but a constant source of friction between the surviving spouse holding the usufructuary right and the heirs given the plenary ownership right. As to the first, the most that may be taken as a usufructuary right is what indigent parents or ascendants and relatives obtain from richer children or relations by way of more or less periodical help in their subsistence thru lack of the necessary energy to earn it, due to old age or to some other cause of inability. As to the friction that a usufructuary right may create between the surviving spouse and other heirs, the

proverbial lack of harmony between parents-in-law and children-in-law may be cited. While the Filipino spouse is usually a congenial one, cases are many times found where he or she does not get along smoothly with parents in-law, either because of the exacting attitude of the former or because of a desire for an independent family life. Now this usufructuary right usually furnishes a point of disagreeable contact between them. The same may be said with reference to the brothers or nephews-in-law, from all whom the surviving spouse especially when she is the wife, may receive certain advances by way of exploitations in her rights, usually leading to the reduction to nothing of her usufructuary right. But the most serious situation is created when the surviving spouse concurs with the children. In this case, the good and kindly feeling that generally exists is embittered by this friction, when the children begin to understand their rights, thus destroying that harmony in the family circle that could otherwise have been preserved by the elimination of this source of friction. In justice to Filipino parents again, it is gratifying to state that in more or less well-to-do families this usufructuary right assigned by law to the surviving spouse is usually renounced.

Before closing this proposition on the surviving spouse, it would not be amiss to quote the following passage from Mucius Scaevola:

> Fuente del parentesco el matrimonio, origin de la familia legítima, ha constituido una aberación en la historia del derecho positivo, el no incluir al cónyuge viudo en la sucesión intestada o colocarle en el punto mas lejano de ella. Si es presunción racional la del afecto del padre por su hijos y demás descendientes, y vice versa, no le es menos, y acaso sea mayor, la de dos personas en vida común, moral y social, afecto de indole distinto del filial y del parentesco, no es de menos fuerza é intensidad que estos, dentro del orden de los sentimientos humanos. (XVI Scaavola, p. 123.)

3. ASCENDANTS.

Third Proposition.—The position of ascendants will be next that of the surviving spouse, that is, they should take nothing whenever legitimate children survive the deceased child; and only the usufructuary portion in case there is a surviving spouse. But in the absence of the said children and spouse they should take the inheritance to the exclusion of all other relatives.

In fixing the position that ascendants should take in the order of intestate succession, strict account should be taken that this is adopted not precisely to lower the place that they hold in the affections and interests of their children but more to produce the practical and most expedient results that may be obtained therefrom, giving due consideration to general circumstances attendant to their case, on the one hand and the more peremptory and natural expectations and needs of those who during the lifetime of the deceased child have not only shared with the same the cares and worries of a common life, but likewise have come to learn and depend upon the said child, due greatly to a desire on the part of such beings to be more useful to the deceased child and to give him a more comfortable sojourn in this "Vale of Tears."

That ascendants, especially parents occupy a fondest place in the heart of the average, not to say the very great majority, of Filipinos is a statement that, it is hoped, cannot be consistently contradicted by many. The sufferings privations and hundreds of sleepless nights spent by parents in their care for their children constitute a debt, if such it may be called, that no human efforts and means can ever fully repay. Therefore, if the matter were taken from this angle, there is no question but that a child's property cannot consistently and properly take another course than a total delivery to his parents. But, as already indicated, this is not the most adequate and expedient course.

A Filipino child, upon attaining majority or, generally, even before attaining that age, takes a wife to himself and thus forms a family. From this moment his services, his efforts, and even his whole being, in a way cease to have the care and well being of his parents as his primary mission. He takes upon himself new duties and responsibilities, the care and bringing up of his family. Now, under these circumstances, can it be expected that such child would, if living, dispose of his property in favor of his parents rather than his spouse? To answer this in the affirmative would be suicidal to the very existence and nature of the Filipino family. There may be a few cases that would, under other environment, give that answer; but it may be assured that they constitute but the exception of the rule that hundreds of thousands and millions of Filipinos will not even dare to offer their doubts about the case. Such is the constitution of the Filipino family.

But social and sentimental reasons are not the only ones taken in the consideration of this proposition. Practical reasons may be found in the inheritance customs existing in the Islands. As it will be remembered, Filipino parents will undergo all sorts of hardship merely to see that their forbears are properly provided; so that they never expect their children to give their preference even as against their family to whom they know the children have devoted their care and their mishaps during their lifetime. At most, when too indigent, parents ask from their children, even when living, something, just what is usually enough for their subsistence. But neither do they care for anything more nor can they do much with it if given any, that is, in their old age, because to talk about their mid-age would be out of place, as it would be going against their self-respect to be asking or expecting anything from children. These actual cases are merely to the effect that upon the death of a child leaving a spouse they do not interfere with the latter, especially as the property acquired thru the combined efforts of the spouses, and this they do out of self-respect because there is nothing more condemnable from a Philippine moral and social point of view than an attitude on the part of parents particularly to put down and exploit a companion and protector, bringing with it all sorts of troubles and worries to the bereaved family.

4. BROTHERS, SISTERS AND NEPHEWS.—

> *Fourth Proposition.*—Brothers and sisters and the children would follow in the order of succession, the former taking per capita and the latter by the right of representation.

The troubles that come to a surviving spouse, especially a widow, in connection with the property left as inheritance by the deceased spouse, usually come from brothers, sisters or nephews, and the strangest thing about it is that these troubles take place when children survive the deceased. Just so soon as the brother has breathed his last or sometimes just so soon as the burial ceremonies are ended, some seemingly unnatural brothers begin to take interest in the property of the deceased. This is particularly true among the needy class. The only reason that may be attributed to this phenomenon, if such it may be called, which is very seldom, if ever, detected from the parents of the deceased, is that the brothers, sisters, etc., are usually either young and therefore, full of the aggressive spirit and devoid of a deep sense of responsibility, or because they have more or less large families, the worries and cares incident to the support of which

are to be allayed to a large extent only by money, or property. This way serve as one reason why this source of trouble to the unfortunate family of the deceased should be settled once and for all by placing a brother, sister, or nephew in the scale next to the parent or ascendant. In that case, if he or she is going to start trouble at all, let it be with the old folks who are in a better position morally, socially, and what not, to use the proper checks, and not with the poor, helpless and unfortunate widow.

5. THE COLLATERALS.

> *Fifth Proposition.*—The inheritance by collaterals should be limited to those within the fourth degree of relationship, granting to the children of uncles the right of representation. All other collaterals shall be excluded.

Those who have had some social contact with our American neighbors have probably heard inquisitive remarks on our fondness and apparent attachment to our "parientes," because to them this apparently strong attachment is both exaggerated and unbecoming, they themselves (it is understood, and their family laws seem to show it) not caring for any other relatives than parents and sometimes, tho not always, brothers and sisters. The situation is purely social and greatly a question of environment. It will be remembered how fifteen, twenty, or more years ago such a close attachment for relatives, no matter how remote, was universal among the Filipinos. But the Americans came and with them came new ideas and entirely different points of view. The system of education and other institutions established by them have wrought radical changes not only in things national and political, but likewise in the moral, social and family relations and attachments of our people, sometimes for the worse but many times for the better. To enumerate and describe such changes, it would take a good-sized volume and it would certainly be entirely foreign to the subject of this article. But one change wrought by the new régime is the rapid effacement of our relationship attachments among one another, so that, whereas, before, the remotest "pariente" and the "compadre" was considered as a member of one's family, now more or less close relatives seem to be in some way much farther apart than they used to be. Now all these facts show the tendency of Philippine family customs as to collaterals. Such being the case, it would seem that something should be done to harmonize the existing laws with the new situation thus created, which is still rapidly developing to a climax that it would be very difficult to foretell just when and where it will ever stop.

On the other hand, civilization, with its burdensome and costly baggages in the shape of good roads, railroads, attractive ports, and, above all, numerous schools and comfortable hospitals, has come to stay. To meet the requirements of all these improvements and now already imperative necessaries to the Filipinos, those in charge of the direction of governmental affairs have been straining their minds and personal resources to provide means for covering the same. A good source of revenue would in a certain way be created by the reduction of the possibility for remote collaterals to inherit from distant relatives. Hence this proposition that should reduce the degree within which collaterals may inherit, from the sixth to the fourth.

But these are not all the reasons for the limitation proposed for collaterals. As a matter of actual observation, remote collaterals are not only not very faithful to each other but they even set themselves into different factions in their locality, always antagonistic to each other, each one trying to put down the other. While this is a situation that may be compared to multiple similar instances in history, such as the War of the Roses, the Great War itself wherein monarchs who were related to each other fought against each other, it may be stated that such a situation was not so general and known in the candid communities of our towns, until the advent of political campaigns that came as a necessary baggage to the introduction in these Islands of democratic institutions, which naturally carried with them their attendant paraphernalia of good and evil. Now with such spirit holding away usually among collaterals and not frequently, even among brothers, would a deceased person leaving a good amount of property prefer an enemy relative to the Government wherefrom during his lifetime were derived his multiple comforts in the shape of good roads, almost complete personal safety, a matter-of-course enjoyment of his earthly belongings, etc., etc.? Why not put instead a good friend, or a loyal partyman? The remark may sound humorous, but we are coming very fast to the situation.

6. THE STATE.

Sixth Proposition. — The position of the State should be preserved where it is now but the funds accruing from the property thus inherited will be devoted exclusively to public schools within the municipality and the hospitals and the institutions of beneficence within the province, wherein the deceased was a bonafide resident the greater part of his life.

In the discussion of the preceeding proposition on the inheritance of collaterals a point that is equally applicab e to this Sixth Proposition has been touched and that is the limitation of the inheritance by collaterals to the fourth degree so that the State may be benefited by a better chance to inherit in its turn from its citizens. That there is a tendency to this effect, it has already been shown in the case of the late Parish Priest, Father Crisostomo of Nueva Ecija who bequethed almost all the property that he had accumulated during his lifetime to the State, which action was very highly commended from all quarters. Of course that was done by a will but that does not imply that it is not an existing tendency which should be encouraged. Not many people can take, as a matter of course, the initiative of drafting a will, either because such is human nature that shuns all idea of death, or because if ever discovered by sharky relatives, the testator may be prevailed upon to retract his action, or some trick may be framed in order to evade the effects of such will. A good medium of meeting both contingencies is to provide for its possibilities by mere operation of law, and thus will be a means for the State to eventually get hold of the property of old maids, fanatic church-mongers who either thru ignorance or fanaticism are led to give their property, either actually or fictitiously, to the religious denomination to which they belong. As our legislation on the matter now is, with collaterals up to the sixth degree being allowed to take the inheritance there are very slim chances for the State to receive any property thru inheritance. The limitation to the fourth degree will no doubt work wonders.

That there are reasons abundant that the State should receive property in this way is a statement that admits of no contradiction. The State is in theory the source of all property within its territorial limits, some even making it extensive to the property of its citizens residing abroad. But there is no question that the individual succeeds in accumulating his wealth and in storing up his riches without almost any fear from losing them thru violence from his equals thru the indirect help of the State. He enjoys all the comforts of life and civilization thru the protection of the State and if he has children he sends them to the public schools at practically no expense to him; if he gets sick he has the hospitals to take care of him when he does not have the painstaking relatives to do it for him, under certain circumstances, if he wishes. There is where the change suggested comes, and it is to the effect that all property derived from this source should be devoted to public institutions and to

the hospitals existing within the jurisdiction of the municipality or province, as the case may be, wherein the deceased was a bonafide resident the greater part of his life, real property however to go to the municipality wherein it is located for the same indicated purposes.

The proposition of the limitation of inheritance by collaterals to the fourth degree may be criticised as ultraradical as an equal provision in the Civil Code of Guatemala was qualified as oblivious and discourteous to the relatives of the deceased. But a few more consideration will show that it will actually be beneficial not only to the State but also to the individuals themselves concerned, society, and the community.

It may perhaps be admitted that inherited property is never anything acquired thru the real physical or mental efforts of the beneficiary. It is therefore some property in a way not rightly acquired, if by right acquisition we mean such as would call for the exertion of the best efforts of the individual. Now, as a matter of general knowledge, property so easily acquired especially when in great quantities is property about as easily spent. For a man who gets very much more than what he actually needs usually spends the surplus in some questionable way or another. There are of course many exceptions to this rule.

7. NATURAL CHILDREN.

> *Seventh Proposition.*—Natural children when duly acknowledged should be given only a right of support which under no circumstances should be chargeable against the share of the surviving spouse; this being chargeable against the inheritance accruing to the legitimate children or against the usufructuary right accruing to ascendants of the deceased person.

This is one of the phases of intestate succession where no two countries, regions and provinces seem to be able to agree, a few seeking to give them a most unimportant part amounting more or less to a complete omission, some seeking to keep the mid-way situation, and the most, which seem in a way to be in harmony with the political progress of the times, seeking to give them ultimately a position equal to that of legitimate children, the most radical having gone as far as giving them better standing than legitimate children.

Altho it may be an ackward and rather embarassing position, the writer has chosen to join the ranks of the few, not necessarily because he is not moved by the upholders of the liberal theories, but simply because, it is believed to be the most prac-

tical, expedient, and true theory applicable to Philippine conditions, environment, and idiosyncracies, and when given a choice between a humanitarian and ultra modernistic theory and highly conservative, perhaps retrogressive but moral and very practical theory, there seems to be no other course but to choose the latter. The writer is therefore fully aware of the embarrasing, disadvantageous, and dangerous position or stand that he has taken in sustaining the viev expressed in the Seventh Proposition above stated.

The arguments advanced by the supporters of a more liberal theory in favor of the natural children are chiefly based on a humanitarian purpose in the sense that such child comes to the world without any fault on his part whatever and therefore the parent who has brought him to the world should in some way pay for his sin by providing for the child's future and his living, some even going as far as to signify that this is thus some sort of a punishment to the sinner.

A better idea of the arguments adduced in favor of the position given to natural children in intestate succession under the Spanish and other countries' civil codes, may be obtained from the following passages taken from the different authors. Minister Alonso Martinez in replying to a question as to the expediency of depriving a natural child of the position given to him in the Code said:

> "Seria inutil: no se disminuiria en mucho ni en poco el número de las uniones ilícitas; porque la suerte prospera a adversa de los seres que eventualmente puedan nacer de ellas, no es freno suficiente para la lujuria y la conscupiscencia humanas."

Cambaceres reporting before the French Convention on the 12th Brymarion, Year II, in 1793, said:

> "En Estado basado sobre el régimen de la libertad, los individuos no pueden ser víctimas de las faltas de su padre. La desheredación es la pena de los grandes crimenes. El hijo que nace, que delito ha cometido? Y si el matrimonio es una institución preciosa, su imperio no puede extenderse hasta la destrucción de los derechos del hombre y del ciudadano."

Mucius Scaevola in justifying the provisions of the Spanish Civil Code on this topic, enthusiastically gives for a finishing paragraph the following:

> "Es tal la desorientación y obscuridad del espiritu, que a la postre habremos de convenir en que lo hecho por el legislador español, siguiente ejemplos de otros Códigos extranjeros, es un progreso recomendable, digno de elogio. Y es lo mas peregrino que uniendo nuestra voz al coro general y salvando nuestras intimas convicciones, que, como ya es trasluce, miran a la sociedad del porvenir, debemos también gritar: "Puesto que la tiranía ha muerto, viva el oportunismo."

With such eloquent passages from the most prominent Spanish authorities on the Civil Law, insistence on the proposition advanced here on natural children would, to say the least, appear to be an absolute uphill struggle.

But let us see a few from authors who while not necessarily sustaining our theory have however expressed the opposite view on the matter. Starcke in "La familia daus les diferentes societies" writing on the above quoted remarks of Cambaceres before the French Consion in 1793, says:

> "El derecho de sucesión reposa sobre la presunsión de que sus bienes recaigan a su muerte sobre sus hijos. Se tiene presente el interés no puede consistir que se conceda al bastardo el derecho de sucesión, porque esto equivale a introducirle en la familia del padre al lado de los hijos legítimos . . . El sentimiento de piedad que juzga irritante privar al hijo natural del derecho de sucesión, es una expresión instintiva de la simpatía universal por los debiles y por sus sufrimientos, pero reposa sobre una idea falsa del derecho de su intragisantes. No es un sentimiento práctico, sino el anhelo vago y abstracto de una justicia distributiva que ponga fin a la desigualidad entre ricos y pobres."

D'Aguanno in his "Genesis y evolución del Derecho Civil" writes the following:

> ". . .los hijos naturales son, biologicamente considerados, tan hijos como los demás, pero, por otro lado, no tienen derecho a formar parte de la familia legítima de uno de sus padres contra la voluntad del conyuge de este, y no por indignidad, sino porque su presencia podría perturbar el orden de las familias."

To the above reasons by Starcke and D'Aguanna it may be added that if the child was born thru no fault of his, the family

and especially the other spouse who is not his parent, has neither any. If the parent who brought him to the world should in some way be burdened or punished for his sin, let it not be his innocent family, as from the moment of his death, whatever punishment was deserving to him, it had ipso facto been extinguished. Such being the case, why impose upon them the presence or concurrence of a person who is not one of their own kin and who may cause them a great deal of inconvenience both socially and morally? Should they pay the child, society and even humanity for the fault of one who is no more and who really never intended evidently to create them this inconvenience if he were to live and allowed to speak on the matter? The word evidently was used, because if the surviving father had really intended that such should have been the case he would have surely saved them this inconvenience. To suppose otherwise is to doubt a person's good faith in his actions and tantamount to presuming malice against everybody which is contrary to our laws. This is not the age of martyrs where somebody may be expected to pay or suffer for the shortcomings of another.

There is one more point that logically follows from the provisions of the civil code that call to the succession the "*recognized natural child.*" A natural child according to Art. 119 of the Civil Code in one "born out of marriage of parents who, at the date of the conception of the child, could have married." It is perhaps unnecessary to state that this is very limited in its scope as it excludes from the start all of the children who do not have this character, such as incestous, spurious, etc., etc., children. The limitation will be greater if we narrow down to those who are really benefitted by the Code provisions as "recognized natural children." Are not the same reasons alleged in favor of recognized natural children just as good for all the illegitimate children. It is unpretendingly believed that the answer to this question will necessarily shatter to pieces the position taken by the fanatics of humanitarianism and modernism. This is therefore a question that has gone half-way in an attempt to solve a very delicate question. It is what may be termed in common parlance a service to the angel and the devil at the same time, with the result that neither has been properly served and the situation has turned from bad to worse.

Of course almost all of the above arguments are more or less academical from a Philippine point of view. A more practical argument may be advanced, based upon the inheritance and social customs in the Filipino family community: he is, before the eyes of everybody, an outcast. He is usually the child of

some unknown and unfortunate woman who has brought him up in the midst of utter indigence and great privations completely relegated to oblivion. In most cases his existence is not even known, not only to the family of the sinner but even to the local community in which the family lives. He is thus not only unfamiliar with the fault but also an entire stranger to the legitimate family of the natural parent. Now, let us picture such a creature appearing in the house shortly after the funeral ceremonies of the deceased natural parent to claim his share of the inheritance and, if unsuccessful, bring his case to court, just because he happens to be under cover of the law. Well, this and many other cases that may be multiplied are just the practical Philippine reasons that support the view advanced here. But these are not all.

Some mention has already been made of the sacredness of the Philippine family institutions. This acquires a magnified importance when in the family there are daughters of marriageable age. Now, going back to our example of the child claiming his share. Under what predicament would the family, particularly the daughters, be placed, should it be discovered upon the death of their parent that after all he has not been so moral and clean as he was suspected to be during his lifetime? It is doubtless that it would be difficult to conceive a more humiliating and ignominious stain upon the family; and all of this would naturally happen thru no fault whatever of the members composing it, but the fault of a law imposed upon their most intimate affairs which is a nature of their customs as it is absolutely cruel to their situation.

CONCLUSION: From all the foregoing considerations it would appear that all the seven propositions advanced in the body of this thesis have been fully established and therefore the provisions of the Spanish Civil Code in force in these Islands on Intestate Succession should be amended in the sense that,—

I. Legitimate children and descendants should preserve their present place in the order of intestate succession but the concurrence with them of legitimated and adopted children and their descendants should be clearly expressed.

II. The position of the surviving spouse should be changed in the sense that she should be given a share in full ownership equivalent to that corresponding to each descendant from the property left by the deceased spouse, the said property being understood as that wherein in its acquisition she had no direct and active part, all usufructuary rights accruing in her favor

under the Code to be completely taken away. In default of legitimate children the surviving spouse should be given all the property left by the deceased spouse subject only to the deceased spouse to one half of the whole property in so far as the same may be taken from the property in the acquisition whereof the spouse did not take any active and direct part.

III. The position of ascendants will be next that of the surviving spouse, that is, they should take nothing whenever legitimate children survive the deceased child; and only the usufructuary portion in case there is a surviving spouse. But in the absence of said children and spouse they should take the inheritance to the exclusion of all other relatives.

IV. Brothers and sisters and the children of the same, in the proper cases, should follow in the order of the succession, the former taking per capita and the latter by the right of representation.

V. The inheritance by collaterals should be limited to those within the fourth degree of relationship, granting to the children of uncles the right of representation. All other collaterals shall be excluded.

VI. The position of the State should be preserved where it is now but the fund accruing from the property thus inherited will be devoted exclusively to public schools within the municipality and to hospitals and institutions of beneficence within the province, wherein the deceased was a bona fide resident the greater part of his life.

VII. Natural children when duly acknowledged should be given only a right of support which under no circumstances should be chargeable against the share of the surviving spouse: this being chargeable against the inheritance accruing to the legitimate children or against the usufructuary right accruing to ascendants of the deceased person.