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THE NEED OF A NEW CIVIL CODE *

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Having taught in the College of Law, University of the Philippines, since its foundation 25 years ago, it would be improper and unseemly on my part to speak of whatever achievements it may have attained. I will leave that task to the generosity of others. Suffice it for me to say that I join you, with all my heart, in the observance of this event.

I wish to speak briefly on "The Need of a New Civil Code of the Philippines." I submit four reasons why a new Civil Code is of imperative necessity; namely, (1) because the Constitution of the Philippines has fundamentally changed our social order; (2) because Filipino customs on the family and successions should take the place of many of the present exotic provisions; (3) because the present Civil Code should be improved and adapted to modern conditions; and (4) because the Philippines should contribute its share to the great body of modern Roman Law in the civilized world.

As to the first point, I wish to cite some provisions of our Constitution, which have deflected our social orientation:

Art. II, Sec. 5 provides: "The promotion of *social justice* to insure the well-being and economic security of all the people should be the concern of the State."

Art. XII, Sec. 3 reads: "The National Assembly may determine by law the *size of private agricultural land* which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law."

Art. XIII, Sec. 6 says: "The State shall afford protection to labor, especially to working women and minors, and shall reg-

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ulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

These three precepts embody a new tendency in American and European legal systems. That tendency is called "socialization of law," initiated by Ihering. Dean Pound describes this trend as the putting of emphasis on social interests, rather than individual claims. Among the manifestations of this new principle are the growing limitations on ownership of property and on the freedom of contract. Prof. Valverde of the University of Valladolid, indorsing this modern theory, says that the Civil Law of the future "should *not be socialistic but socialized.*"

This is precisely what the Filipino people, who ratified the new Constitution, want the National Assembly to do: to socialize our civil law. "Social justice" is the sacred mandate of our people in the fundamental law. In obedience to that mandate, the Civil Code should be thoroughly revised. A more equitable relationship between capital and labor, and a more humane concept of private property should therefore now be transferred from party platforms to the Civil Code. If this is done, then we will know that Bryce was right when he predicted that in the development of law, the effort to give effect to social aspirations will count for more in the future.

The second reason I present for the drafting of a new Civil Code is that the present law on the Family and Successions, both in the Civil Code and in the Code of Civil Procedure, is not, in many respects, in accordance with Filipino customs. A few examples will illustrate my thought:

1. The compulsory dowry is a Spanish, not a Filipino institution.
2. The conjugal partnership of gains is also Spanish. Filipino customs lean more toward the complete merger of ownership and fruits of the property of both husband and wife. The new Civil Code should be revised with this idea in mind. But—
3. If this is considered too radical, then at least the wife's consent to alienation by the husband, of conjugal property, should be made a prerequisite. This, I believe, is nearer to Filipino life than the present rule that the wife's consent is not necessary.

4. The family council should be revived, but in keeping with native customs, not the family council under the Spanish Civil Code.

5. The administration of the child's property by the father as such, should also be restored.

6. The legitime of the surviving spouse in a testamentary succession should consist of ownership, and not mere usufruct.

7. In the order of intestate succession, the surviving spouse should come before the brothers and nephews of the deceased.

To disregard custom in the legislation on the family is family injustice. Honand says that customs are "the unwritten but well-known opinions of the community as to *social right and wrong*." Therefore, the application of foreign and strange laws to the family outrages the sense of justice of the people. We have struggled for years against political subjection, yet we have never attempted to remove subjection of family relations to alien laws. In the law of contracts and property, nations can afford to adopt, and have adopted, principles from other countries, but every codifier has tried to interpret native life in family and successional law. In fact every code has native elements. For example, the Code Napoleon the model of many civil codes, is made up of written Roman Law and French customary law. We should have a Civil Code consisting of Spanish and American laws and Filipino customs.

The third reason why we should have a new Civil Code is that our present Civil Code is extremely backward. Sanchez Roman believes it is 50 years behind the times. For instance, its concept of ownership is too individualistic. In this and in many other respects we might study the German Civil Code, which is thought to be more in harmony with modern conditions. Thus, the German Civil Code in Art. 905 provides that the owner of a piece of land "cannot prohibit interferences which take place at such height or depth that he has no interest in their exclusion," and the Roman *jus abutendi* is restrained in Art. 226 thus: "The exercise of a right is not permissible if it can have no other object than to cause damage to another."

Moreover, our Civil Code should be enriched with some of the treasures of Anglo-American Law, such as the law of Torts

and Damages; and it would be wise to study the advisability of adopting the Uniform Sales Act proposed in the United States.

Lastly, a new Civil Code of the Philippines should be prepared and approved because the Philippine nation should contribute something of its native genius to the great body of modern Roman Law throughout the civilized world. The countries in Continental Europe and in Latin America have already done so. The foundations of Anglo-American Law are also Roman, but England and America have built on these broad bases an enduring superstructure of law. Similarly, a Philippine Civil Code, drawing the breath of life from Filipino customs as well as Spanish and American precedents, should constitute a precious and lasting contribution to world culture.

I present these thoughts to your consideration. The sponsorship of this idea of a new Civil Code of the Philippines is my humble offering to the celebration of the twenty-fifth anniversary of the College of Law, University of the Philippines.