COMMENTS ON THE PROPOSED CORPORATION CODE

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The proposed Corporation Code which took the Code Commission, according to its report, 18 months to draft, consists of 517 articles, pieced together from miscellaneous sources, to wit: the present Corporation Law, Act No. 1459, as amended; the General Banking Act, Rep. Act No. 337; the Securities Act, Com. Act. No. 83, as amended; the Corporation Code of California; the statutes of New York, New Jersey, and Louisiana; American jurisprudence; American law writers like Ballantine and Fletcher; decisions of the Philippine Supre Court; and original proposals of the individual members of the Code Commission.

This method of drafting a Code, or any law for that matter (by picking one provision from one jurisdiction and connecting it with others similarly picked from other jurisdictions, and patching them together with some slight modifications to make up the whole, inevitably results in diffuse provisions, lack of integration, self-contradictions, not to say, incongruities. A careful examination of the entire draft shows that eighteen months are inadequate to produce a new Code that will justify the complete replacement of the present Corporation Law which, except for a few provisions, can still stand the test of time. Not only does the proposed draft suffer from the abovenamed defects, but capricious and inconsequential changes have been introduced. An example of this capricious and inconsequential amendment is the reduction of the present minimum number of incorporators from 5 to 3 and the number of directors from 5 to 3. Such changes in mere numbers are not absolutely essential and only bring confusion and nullity to the acquired legal knowledge of lawyers and law students, and undermines without compelling reason the stability of the law. Capricious changes in the law should, as much as possible, be avoided. Merely because that is the statute in California or in New Jersey does not necessarily follow that it should also be so in the Philippines. We have been used to requiring at least five incorporators in the formation of a corporation and at least five directors in the board of directors, and three have been no complaints or objections about this matter.

But the most serious defects of the proposed Code are not the inconsequential changes introduced, but its *self-contradicting* provisions pieced together from different sources. The following two

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articles of the Proposed Code need no further explanation to prove self-contradiction:

> "ART. 33. *Adoption and Filing of By-Laws.* — Every corporation formed under this Code must within one month after the issuance of the certificate of incorporation by the Securties and Exchange Commission, adopt a set of *by-laws* for its government not inconsistent with this Code. For the adoption of any by-law or by-laws by the corporation the vote of the majority of the voting power of the corporatin whether paid or unpaid, or of a majority of the members if there be no capital stock, shall be necessary. The *by-laws* shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours, and a copy thereof, duly certified by a majority of the directors and countersigned by the Secretary of the corporation, shall be filed with the Securities and Exchange Commissioner, who shall attach the same to the original articles of incorporation and collect and receive a fee of *two pesos for the filing.*"[1]
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> "ART. 497. *Filing Fees.* — The Securities and Exchange Commission shall collect and receive fees for the following:
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> ... (c) For examining and filing the *by-laws* of a corporation — *Five pesos;* and the same fee shall be charged for the examination and filing of an amendment to the by-laws."[2]

It should also be noted that the above Article 33 is a general provision applicable to *all* kinds of corporations, including non-profit corporations, when it provides "or of a majority of the members if there be no capital stock." And yet, under the topic "Nonprofit Corporations" of the proposed Code, another provision quotes the following:

> "ART. 280. *Adoption of By-Laws.* — Within thirty days after the registration of a nonprofit corporation, it shall adopt its by-laws by the affirmative vote or written assent of the majority of the members *entitled to vote.*"[3]

Whereas, under Article 33 every corporation, including a nonprofit corporation, must adopt a set of by-laws within one month after the issuance of the certificate of incorporation, under Article 280 a nonprofit corporation must do so within thirty days after its *registration.* Evidently, the proposed Code suffers from lack of coordination and sufficient integration. Also, whereas, under Article 33, for the approval of the by-laws of a non-stock corporation, a majority of *all* the members shall be necessary (whether voting or non-voting), yet under Article 280 a majority of the members *entitled to vote* is required.

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1 Taken from the Philippine Corporation Law, Act No. 1459.
2 Taken from Rep. Act No. 944, § 1.
3 § 9400, California Corporation Code.

The following provisions, extracted from different jurisdictions, suffer from overlapping ideas:

> "ART. 31. *Prohibiied Acquisitions of Stock of Other Corporations.* — No corporation engaged in trade, commerce or industry shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation also engaged in trade, commerce, or industry, where the effect of such acquisition may be substantially to lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such trade, commerce or industry in any section or community, or *tend to create a monopoly* of any line of trade, commerce, or industry.
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> No corportion shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in trade, commerce or industry where the effect of such acquisition, or the use of such stock by voting or granting of proxies or otherwise may be substantially to lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain trade, commerce or industry in any section of community, or tend to create a monopoly of any line of trade, commerce, or industry."[4]
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> "ART. 38. *Corporate Powers.* — Every corporation has the power: ...*Provided,* That such power shall not be exercised for the purpose of placing two or more corporations which by reason of their corporate purposes cannot be organized in accordance with this Code, under the control or management of the same directors, or for the purpose of *lessening competition or creating a monopoly of any line of commerce* or directly or indirectly violate the provisions of the Public Land Law."[5]

The Code Commission should have exerted some real painstaking efforts in coordinating and integrating the above two provisions, or should have improved the text of one and eliminated the other.

An example of unnecessary or superfluous insertion of a borrowed provision is that which was taken from the New York Statutes, to wit:

> "ART. 44. *Visitorial Power Over Corporation Not Affected.* — The provisions of the two preceding articles shall not impair any visitorial power over a corporation vested by statute in any government office or any public officer."

The above provision would not have created any difference or void in the proposed draft, because Article 192 of the same had already copied Sections 54 and 55 of our Corporation Law regarding the visitorial power of the President of the Philippines over all corporations.

The following are other evidences of overlapping provisions in which the proposed Code abounds:

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[4] Taken from New Jersey Statutes, Title 14, Ch. 3, § 108(a).
[5] Taken from §§ 13 and 36(a), Act No. 1459.

"ART. 185. *Inspection of Books and Records.* — ...He may, therefore, inspect the books, records, contracts, instruments and all other papers of the corporation at reasonable hours, for some lawful purpose."

The above provision was copied from American Jurisprudence, Volume 13, page 432. But the Code Commission must have overlooked the fact that it had already copied in its proposed Code Section 51 of our Corporation Law, to wit:

"ART. 183. *Keeping of Books and Records; Open to Inspection.* — ... The record of all business transactions of the corporation and minutes of any meeting shall be open to the inspection of any director, member of stockholder of the corporation at reasonable hours."

Whereas, Article 185 of the Proposed Code gives the right of inspection to stockholders "for some lawful purpose", Article 183 of the same gives the right without any limitation other than that the inspection must be "at reasonable hours". The Code is not only guilty of overlapping ideas but also of inconsistency.

The following two articles of the proposed draft should have been properly coordinated and combined into one provision:

"ART. 25. *Required Amount Subscribed and Paid.* — The Securities and Exchange Commissioner shall not allow the filing of the articles of incorporation of any stock corporation unless accompanied by a sworn statement of the treasurer elected by the subscribers, showing that at least 20% of the entire number of authorized shares of capital stock has been subscribed, and that at least 25% of the subscription has been either paid to him in *actual cash* for the benefit and to the credit of the corporation, or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to 25% of the subscription: Provided,..."[6]

"ART. 87. *Modes of Payment for Stock.* — No corporation shall issue stock or bonds except in exchange for any or all of the following:

(a) Actual *cash* paid to the corporation.

(b) Labor done.

(c) Services actually rendered.

(d) Debts or securities cancelled.

(e) Tangible or intangible *property* actually received by it at a fair valuation equal to the par or issued value of the stock or bonds issued, and in case of disagreement as to their value, the same shall be presumed to be the assessed value or the value appearing in invoices or other commercial documents as the case may be; and the burden of proof that the real present value of the property is greater than the assessed value or value appearing in invoices or other commercial documents as the case may be, shall be upon the corporation.

(f) Profits earned by it but not distributed among its stockholders or members upon the issue of shares or bonds as a dividend, etc."[7]

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[6] Taken from § 9, Act No. 1459.

[7] Taken from § 16a, Act No. 1459; §§ 1109a and 1112a, California Corporations Code.

Again, the following two articles of the Proposed Code, had been extracted from two different sources, evidently without sufficient integration:

> "ART. 21. *When Preferences, etc. Shall Be Stated.* — If the shares are to be classified, or if any class of shares is to have two or more series, the *articles shall state the preferences*, privileges, and restrictions granted to or imposed upon the respective classes or series of share constituting each series."[8]
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> "ART. 80. *Power to Classify Shares.* — The shares of any corporation formed under this Code may be divided into classes with such rights, voting powers, *preferences, and restrictions as may be provided for in the articles of incorporation.* Any or all of the shares,..."[9]

In other words, the Proposed Corporation Code colorfully abounds in "patches" but there seems to be no harmony in their colors. There is great need of proper coordination, integration, and harmonization in all its borrowed provisions, and to pass it in its present form would give rise to unnecessary discussions and useless interpretations. Diffused and vague provisions may still be susceptible of reasonable interpretation, but where the provisions are self-contradicting, interpretation is impossible.

The Proposed Corporation Code is guilty not only of self-contradictions, lack of proper coordination and integration, but also of superfluity and grave omissions. The greatest omission of all is the failure of the Code to clarify the status of existing corporations already organized under the present Corporation Law, Act No. 1459.

The proposed Corporation Code expressly repealed the present Corporation Law.[10] Hence, inasmuch as corporations are merely creatures of the law, all existing corporations, by such express repeal, are thereby automatically dissolved. A great confusion among duly organized existing corporations would arise, unless a special provision is inserted in the Proposed Code to clarify the status of duly organized corporations existing and lawfully doing business at the time of the effectivity of the Proposed Corporation Code. Must existing corporations reincorporate themselves, or do they have a right to continue doing business as such corporations, as a vested or accrued right? To avoid any legal controversy on this point, it is suggested that a special provision, similar to a provision in the California Corporations Code, be added to the Proposed Corporations Code, to wit:

> "ART. 2-A. *Existing Corporations.* — The legal existence of corporations heretofore formed or organized shall not be affected by the enactment of this Code nor by any change in the requirements for the formation

[8] Taken from § 5a, Act No. 1459.
[9] Taken from § 1101, California Corporations Code.
[10] See Art. 516, Proposed Corporation Code.

of corporations, nor by the amendment or repeal of the laws under which they were formed or created."

The above general saving clause regarding the legal personality of existing corporations lawfully organized is very essential. Otherwise, all existing corporations will be automatically dissolved, and great expense and inconvenience would ensue in filing reincorporation papers under the provisions of the new Code, as well as affect the continuity of their business transactions.

Even the general classification of the TITLES of the Proposed Code is unscientific and disorderly. It organizes its CONTENTS into Title I — *Corporations in General;* Title II — *Nonprofit Corporations; Title III — Corporation for Specific Purposes,* etc.

It is evident that NONPROFIT CORPORATIONS are also CORPORATIONS FOR SPECIFIC PURPOSES, and therefore, nonprofit corporations should have been made only a subtopic of "Corporations for Specific Purposes." And one of the chapters under CORPORATIONS FOR SPECIFIC PURPOSES is entitled "SECURITIES & EXCHANGE", which is misleading, for no one will dispute the fact that securities are not corporations at all. Neither are the topics on brokers, dealers, and salesmen which are discussed thereunder.

The general classification and arrangement of topics in the present Corporation Law (Act No. 14959) is more logical and should have been followed, with some changes. The present Corporation Law divides the whole corporation law into two parts: GENERAL PROVISIONS and SPECIAL PROVSIONS, the first referring to all corporations in general, and the second, to particular corporations for specific purposes. And if a third title is added to wit: PENAL PROVISIONS, then the general classification would have been complete and more satisfactory.

The Code Commission calls its proposed draft a CORPORATION CODE. Therefore, it should have been all-embracing and all-inclusive, a complete system of laws on the subject of corporations, as a Code should be. Yet, an examination of the proposed Code reveals that it makes no provisions on insurance corporations, rural banks, cooperative business associations, and public service corporations. All of these special kinds of corporations should have been provided for in the proposed draft in order that it may deserve to be called a code.

The proposed CORPORATION CODE gives the following table of contents:

TITLE I. — CORPORATIONS IN GENERAL

Chapter 1. *General Provisions*
Chapter 2. *Formation and By-Laws*

Section 3. *Brokers, Dealers, and Salesmen*
Section 4. *Registration of Exchanges*
Section 5. *Miscellaneous Provisions*

TITLE IV. — FEES

TITLE V. — PENAL PROVISIONS
REPEALING CLAUSE
EFFECTIVE DATE

The above organization of topics is not quite satisfactory. As stated above, the whole law should have been divided into: *General Provisions,* and *Special Provisions.* All provisions applicable to all kinds of corporations should be placed under "General Provisions." Particular classes of corporations, like banks (savings, commercial, rural, etc.) insurance companies, building and loan associations, trust corporations, colleges and institutions of learning, and other non-profit corporations should be provided for under "Special Provisions." The chapter on Securities and Exchange may be placed under "General Provisions," or a separate title may be assigned to it and may even include the provisions governing the Securities and Exchange Commission itself. The provisions on FEES may very well be placed also under General Provisions.

A rearrangement and re-classification of the general topics (without specific indication of details or sub-topics) is hereby suggested, to wit:

TITLE I. — GENERAL PROVISIONS
Chapter 1. . . .

TITLE II. —SPECIAL PROVISIONS
Chapter 1. *Nonprofit Corporations*
Chapter 2. *Banks*
Section 1. *General Provisions*
Section 2. *Commercial Banks*
Section 3. *Savings and Mortgage Banks*
Section 4. *Rural Banks*
Chapter 3. *Building and Loan Associations*
Chapter 4. *Trust Organizations*
Chapter 5. *Insurance Corporations*
Chapter 6. *Railroad Corporations*
Chapter 7. *Other Public Service Corporations*
Chapter 8. *College and Institution of Learning*

TITLE III. — PENAL PROVISIONS

Under GENERAL PROVISIONS, there should be provided in logical order such topics about incorporation, organization, financing, powers, and dissolution of corporations. Special chapters on directors, stockholders, remedies against the corporation, merger, consolidation, and reincorporation should be provided for in the order

stated. In other words the arrangement of topics should, as much as possible, follow the life-cycle of a corporation from "birth," through "life," until its "death," and all the necessary incidents in connection therewith.

A special chapter on the social functions or responsibilities of private corporations to society may be added. Private corporations, like private individuals, have duties not only to themselves but also to the community in which they transact business. The concept that private stock corporations are created purely for the benefit of the stockholders must give way to the more enlightened idea that private corporations owe also certain social obligations to the state under whose authority they are created. For instance, provisions in the Proposed Code may be inserted prohibiting corporations organized as colleges and institutions of learning to declare dividends in excess of 10% of their net surplus profits. It is also suggested that all stock corporations with net profits in excess of ₱500,000 should be obliged to contribute 1% of the excess to public charitable institutions of their own choice, and other provisions of similar nature. If provisions like these are inserted in our Corporation Code, perhaps, our law shall have the distinction of being the first in recognizing the social functions of private corporations.

The title on SPECIAL PROVISIONS should consolidate and coordinate all the existing special laws on banks, etc., and should include all kinds of corporations like insurance and public service corporations, with such amendment as may be deemed necessary.

The Code Commission should not have created an entirely new Code with strange provisions, but should have merely codified all the existing laws on private corporation, with some changes. The present Corporation Law should have been followed in general details, up-dating some of its obsolete provisions and inserting new ones in places appropriate for current social needs, and consolidating and adding thereto all the other existing special laws, like the General Banking Act, the Public Service Law, the Rural Banks' Act, etc. But what the Code Commission did was to pick some provisions from New Jersey, some from New York, some from Louisiana, some from California, and patched them up with some provisions of the Philippine Corporation Law and special laws. Such a method destroys the symmetry, philosophy, and general policy of a given statute and adulterates our own. Perhaps, it would have been a better procedure if the Code Commission had taken the best Corporation Law of a single State or country and merely improved upon it, taking into account the Philippine corporation law and practice and the general

principles of law. In this way, overlapping or duplications and self-contradictions would have been safely avoided.

Or, even following the method used by the Code Commission in borrowing provisions from different jurisdictions, a satisfactory result would have been obtained had the Commission exerted painstaking efforts in coordinating and integrating the various provisions examined, so as to effect satisfactory "mergers" and "consolidations" of these divergent provisions. Otherwise, if such foreign laws were merely to be copied and transplanted, without proper coordination and integration, into some of the provisions of our present Corporation Law, a statute with "dangling" provisions will be the inevitable result.

These comments do not touch upon the wisdom and justness of the particular provisions of the proposed Code. These are comments in general on the general make-up and character of the proposed draft. In subsequent articles, this writer will attempt to make a critical analysis of the different articles of the proposed Code. For the present, a cursory reading of its articles shows that the Code has not really been carefully drafted.

It is the writer's opinion that the proposed Corporation Code should not be passed in its present form. To merely amend some of its articles would not cure its diffused and "dangling" state. It should be referred back to the Code Commission for further study and re-satisfactory coordination and integration. In plain language, the entire Proposed Code needs to be redrafted.