REFLECTIONS ON THE REFORM OF HEREDITARY SUCCESSION*

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It seemed apposite to discuss in this lecture some aspects of the Civil Code of the Philippines[1] in a belated commemoration of its Silver Jubilee, the twenty-fifth anniversary of the Code's coming into effect on August 30, 1950, one year after its enactment and publication in the Official Gazette. Formulated under a program for "immediate revision of all existing substantive laws of the Philippines and of codifying them in comformity with the customs, traditions and idiosyncrasies of the Filipino people and with modern trends in legislation and the progressive principles of law",[2] the Civil Code of the Philippines was a concomitant of the quest for national identity that upsurged in our mental processes in the years following the proclamation of our independence.

The Code Commission organized on March 20, 1947, rushed the draft to completion in barely a year, submitting the printed draft to the legislature in 1948. The project was approved by 1949, with minimal changes, and was enacted into law on June 18 of the same year, apparently with intent to attract the public attention at the ensuing national elections of November, 1949. The rapidity of its drafting was not reassuring, and in fact, attentive students and law professors found quickly enough that the Code Commission had not substantially altered the defective organizational structure of the Spanish Civil Code of 1889, but merely grafted or superimposed thereon the amendments that it saw fit to introduce. The result is that the present Civil Code appears deficient in systematic planning. Its skeleton is substantially that of its Spanish predecessor, already sharply criticized by D. Felipe Sanchez Roman and the writers that followed him.

While our present Code introduced distinct improvements into the Spanish model, specially in its stress on the observance of ethical standards, good faith and social justice, strengthening the family as an institution and improving the position of the wife within the marriage, many of the reforms introduced have been done haphazardly. Nowhere is this evident as in the chapter on Human Relations[3] where side by side with the rules

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1 Rep. Act No. 386 (1949).

2 Executive Order No. 48, s. 1947, 43 O.G. 792 (March, 1947).

3 Chapter 2 of the Preliminary Title.

on Unjust Enrichment,[4] for the protection of the weak[5] and the responsibility for intentional torts,[6] there are found principles regulating the civil liabilities arising from intentional torts and criminal acts that should logically be set in Book IV, Title I, as a development of the obligations arising *ex delicto*.

Furthermore, many of the articles reproduced from the old Civil Code, and even some of the reforms introduced by the Commission have been left behind by the rapid social and economic developments of recent years. The women's demand for equalization of rights, the protection of youth, the emancipation of the tillers of rural lands, the insistent demand for improving and dignifying the conditions of labor, and the qualifications and limitations to the formerly absolutist concept of ownership, have once more brought to the fore the need of reexamining the provisions of the Code with a view to determining their responsiveness to the actual needs of society. The present trend of establishing institutional Codes, of Labor, Agrarian Reform, Insurance, Youth Welfare, Corporation, etc. besides evidencing the increasing thrust of public law into the private sphere of action poses a danger of disunity in our law, of conflicting basic principles that the Civil Code was intended to harmonize and unify. Hence the crying need of revising the Civil Code as the systematic restatement of the guiding principles of private law.

It would be impossible to cover within the limitations of this lecture to discuss, or even to suggest, all the changes that our Civil Code requires. I have not the time, nor you the patience, to adequately cover the subject. For that reason I am compelled to confine myself to an exposition of the basic reforms that, in my opinion, may and should be considered with respect to the portion of the Code dealing with successions *mortis causa*.

Every person in life is at the confluence of a certain number of legal relations, wherein he is either an active or passive subject, that is, a creditor or a debtor. That person's disappearance, by reason of his death, actual or presumptive, raises the question of the fate of these relations with other persons and things that were connected with the deceased by reason thereof. Undoubtedly, some are so linked with his existence and capacity that they cannot operate without the deceased, such as the rights inherent to his own personality, his family, his political rights and obligations, and some patrimonial relationships, like usufruct, agency, partnerships, life annuities, and in general all rights and obligations *intuitu personae*, are intransmissible and are extinguished upon his death. The legal

[4] Arts. 21 to 23.
[5] Arts. 24, 27 & 34.
[6] Arts. 26, 28 & 32.

rules that determine what is to happen to those that are not so extinguished constitute what is known as the Law of Succession *mortis causa* or Hereditary Succession. In Anglo American Law it is termed the Law of Descent and Distribution.

The primary task of the Law of Hereditary Succession is to determine who should take the place of the decedent, and the process by which the selection is to take place. Basically, as pointed out by Enrico Cimbali (in his *Nuova Fase del Diritto Civile*) the law must take into account the satisfaction of three main interests: those of the State, those of the family to which the decedent belonged and those of the decedent himself. For these three are the principal factors that have contributed to the lifetime formation and accumulation of the transmissible estate: the decedent, through his initiative, activity and foresight; the family, particularly the children and surviving spouse, by their help, assistance and encouragement; and the State by maintaining peace, order and justice. As a result, the rules of hereditary succession polarize around inheritance taxes and escheats, that constitute the share of the State and the community; legitimes and intestate succession in the interest of the family, and the disposition of property by the last will and testament of the decedent.

It is generally adverted that our rules of succession *mortis causa* proceed from an imperfect blending of three systems with contrasting philosophies: (1) The Germanic concept of the universal heir who, upon the death of the predecessor, directly and immediately steps into his shoes and at one single occasion (*uno ictu*), without any formalities whatsoever, acquires *en bloc* the universality of all his surviving or transmissible rights and obligations, in an automatic subjective novation therein, unless the heir should repudiate and reject the inheritance; (2) the Franco Spanish system, where like in the German, there is an acquisition of the estate by universal title but *only upon acceptance* by the heir, who may do so when he chooses, (with retroactive effect) unless required to decide earlier by the creditors or the Court; and (3) the Anglo American (Common Law) system that upon the death of the predecessor, the estate must first be liquidated, the assets marshalled and the debts paid or settled under judicial supervision, by an intervening trustee or personal representative (administrator or executor) before the net residue is taken over by the successor. The second seems to be the system of the Civil Code, and under it, the universality of property rights, and obligations of the decedent are transmitted to the heirs *en bloc*, as an entire mass, from the moment of death.[7] As interpreted by the Supreme Court the hereditary rights of the successors become automatically vested in them from and after the

[7] CIVIL CODE, arts. 774 & 777.

death of their predecessor[8] even before judicial recognition of their heirship.[9]

Upon the other hand, following the Common Law system, the Rules of Court[10] provide that —

> "An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration".

with the right to dispose of so much of the estate as may be necessary to satisfy creditors.

Furthermore, by Section 3, of Rule 87, an action for recovery of title to or possession of *lands* in the hands of an executor or administrator may not be maintained by an heir or devisee until there is an order of the Court assigning such lands to such heir or devisee; while under Rule 90, Section 1, it is only when the debts and expenses of administration and the inheritance taxes have been paid that the Court, after due hearing, shall assign the residue of the estate to the persons entitled to the same, naming them and the portion to which each is entitled, and only then may such persons demand and recover their respective shares from the executor or administrator or any other person having the same in his possession.

We are thus faced with divergent, if not contradictory, principles. Do the successors acquire the whole of the transmissible assets and liabilities of the decedent by and upon his death, or do they only acquire the *residuum* remaining after payment of the debts, as implied by the Rules of Court? Or do they acquire only the naked title at the death of the predecessor, but with possession or enjoyment vested in the administrator or personal representative until after the settlement of the claims against the estate? Article 774 of the Civil Code specifies, and our Supreme Court so confirms, that by virtue of succession the property, rights and obligations, to the extent of the value of the inheritance of a person, are transmitted *by and at the moment of his death,* implying a transfer at that instant of the totality or universality of assets and liabilities; but this rule is beclouded by Article 1057 which provides that "within 30 days *after the Court has issued an order for the distribution of the estate* in accordance with the Rules of Court, the heirs, devisees and legatees shall signify to the Court having jurisdiction whether they *accept* or *repudiate* the inheritance. As already shown, the order of distribution under the Rules of Court is only issued after the debts, taxes and administration expenses have been paid; hence it is arguable that the acceptance can no longer refer to assets already disposed of by the administrator, but must

[8] Baun v. Heirs of Baun, 53 Phil. 654 (1929).
[9] Morales v. Yañez, 98 Phil. 677 (1956); Marabilles v. Quito, 100 Phil. 64 (1956).
[10] Rule 84, sec. 2.

be limited to the net residue. Not only this, but if title vests in the heir as of the death of the decedent then the acceptance of the former becomes entirely superflous, and the law should limit itself to regulating the effects of a repudiation by an heir or legatee, and its retroactive effect. The revision of the Code should aim at clarifying such inconsistencies, and above all, unifying the rules of transmission of the decedents's estate.

A successor *mortis causa* is ordinarily designated (or instituted) by testament or by law (in legitimes and intestacy). But in addition he may also be determined by contract *inter vivos*. The contractual succession is grudgingly accepted by the Civil Code only as an exception to the prohibition of contracts upon future inheritance expressed by Article 1347, par. 2, in the two cases expressly authorized by law: first where a person makes a partition of his estate among his heirs by act *inter vivos* under Article 1080; and again under Article 130, when a future spouse agrees in the marriage settlements to give to the other some future property, but only in the event of the death of the promisor.

The paucity of rules in the Civil Code on the effect and revocability of such contracts leaves this matter, as so many others, in an unsatisfactory condition. We may note that a respectable sector of modern jurists, like Cástan, Roca Sastre, Duarte and Herreros, and the Italians Cimbali and Vismara, pronounce themselves in favor of the elimination of the prohibition of contracts on future inheritance outside of the legitime, contending that the Codal veto is based on outmoded prejudices and fears that a party to a successional contract may be induced to procure the death of the other party; and that such fears have been set at rest by the experience with life insurance and contracts of life annuity, which have not produced to any appreciable extent, any attempts against the lives of the insured or the annuitants by the prospective beneficiaries. They therefore advocate the admission in the Codes of the succession by contract, whether it be positive (as in the promise, upon proper consideration or causa, to make a legacy or to leave all or part of the free portion to one contracting party) or abdicative (waiver of participation in the inheritance by a prospective heir.) Successional contracts are regulated in the German and the Swiss Civil Codes, where adequate formalities and publicity are prescribed, and the causes of revocation (such as the future unworthiness of the contractual heir or the existence of a *laesio enormis*) are distinctly specified. in addition to the annulment on account of vices of consent, applicable to all contracts.

The European experience with contractual succession reveals that it contributes to the stabilization of the small farms, limiting their continual division as a result of the legitimes of each generation of heirs, the so-called "atomisation" of the small rural property; permits the future management and improvement thereof by the member of the family best

qualified to raise the land to maximum productivity, and stimulates its improvement by the contractual heir, while providing the others not interested in that kind of labor, capital wherewith to devote their energies to more congenial pursuits. This feature of contractual succession interlocks with our proposed transfer of title to tenants under the Land Reform Code.

The effect of the successional contract is to give the heir greater assurance of becoming the future owner of the farmland, since his institution as heir by a revocable testament is not sufficiently reliable. On the other hand, the present owner only loses the privilege of instituting another heir, but retains the enjoyment of the property until his death. Donations of the land of course are equally barred, and sales thereof must be with consent of the contractual heir.

When the person who would normally be called upon to succeed or inherit from the decedent fails to do so, who should take his place? Our Civil Code provides three distinct processes for the designation of the replacement, to wit: *substitution, accretion* and *representation.* Analysis will show that these methods can be reduced to only two: One is Substitution[11] which is the appointment by a testator of another person to receive the inheritance in default of the heir originally instituted, or designated; it can only take place in testamentary succession, and solely as to the portion of free disposal, since it can not burden the legitime[12] by express provision of law, nor can it exist, for obvious reasons, in the event of intestacy. The other is Representation, that is in fact but a substitution ordained by law, and occurs in the legitime[13] and in intestacy.[14]

Although our Civil Code, following the Spanish, considers Accretion as a third independent process that takes place in testamentary succession whenever two or more persons are called to share *pro indiviso* the same inheritance, or the same portion thereof, in reality, accretion is nothing but a tacit reciprocal substitution that the law infers from the fact of several heirs being jointly designated to take the same property without identifiable shares therein.[15] The basic identity of substitution and accretion is revealed by the fact that both occur in the same cases, to wit, whenever one of the heirs dies before the testator, or renounces the inheritance or is incapacitated to receive it, as readily appears from a comparison of Articles 859 and 1016 of the Civil Code. Likewise, Article 1019, to the effect that the heirs to whom the portion goes by right of accretion take it in the *same proportion* that they inherit, merely repeats the rule

[11] Arts. 857-864.
[12] Art. 904.
[13] Arts. 923, 970 & 1035.
[14] Art. 970.
[15] Art. 1016.

of Article 861 that substitutes shall have the same shares in the substitution as in the institution; while Article 1020, prescribing that the heirs to whom the inheritance accrues shall succeed to all the rights and obligations which the replaced heir would have had, substantially reiterates the rule of Article 862, that the substitute shall be subject to the same changes and conditions imposed on the instituted heir. Finally, there is neither substitution nor accretion in the legitime.[16]

It can be argued that accretion differs from substitution in that accretion, unlike substitution, can also occur in intestate or legal succession, because Article 1018 provides that in legal (intestate) succession the share of the person who repudiates the inheritance shall always accrue to his co-heirs. But it is a distinction without a difference. Where else would the share of the repudiating heir go, except to his co-heirs, considering that such share can not pass by representation to the descendants of the one who repudiates, by express provision of Article 977? Hence, the suppression of this Article would not alter the result one whit and the other articles dealing with the right of accretion could just as well be included in the section on substitution,[17] thereby simplifying the legal structure. On the contrary, the fideicommissary substitution, which is *not* a true substitution, since both the fiduciary and the fideicommissary heirs inherit simultaneously from the decedent[18] should logically be included among the express trusts, being a mere testamentary variant thereof.

What a testator can do by substitution in the portion of free disposal of his estate, the law does by the process termed representation in those hereditary shares exclusively governed by statute, to wit, the legitime and the inheritance in succession *ab intestato*.

The word "representation" is now admitted to be a misnomer and misleading. Hereditary Subrogation would be preferable. The one called upon by law to inherit from the decedent, in lieu of another, represents no one: he succeeds in his own right and does not act for and in behalf of the one he replaces, as expressly recognized and declared by Article 971 of the Code. The process is the same as in "vulgar" substitution; and whatever differences exist between the two methods are the result of substitution happening in voluntary succession, where the intended heir is barred by predecease, incapacity or repudiation, of the heir originally intended, while representation occurs in intestacy by reason of predecease or incapacity of the nearer descendant, and in the legitime by a vacancy due to predecease, incapacity or disinheritance of the compulsory heir that is being replaced. In intestacy, disinheritance can not give rise to substi-

[16] Arts. 904 & 1021.
[17] Book III, Title IV, Chapter 2, sec. 3.
[18] CIVIL CODE, arts. 863 & 866.

tution nor to representation: Substitution can not be applied because there is no disinheritance in the free part; neither can there be representation since the deprivation of the legitime must be carried out by an express disposition that specifies a lawful ground therefor,[19] and that requirement excludes intestate succession.

Representation is said to be a corrective to the unjust effects of a rigid application of the principle that in succession the nearer relatives exclude those more distant. In intestacy if there should be several heirs, and one of them fails to succeed, his share, except for representation, would go to enrich the other heirs of the same rank, to the prejudice of the descendants of the one who did not inherit, and who already had the misfortune of losing a parent or ascendant. The rule of successional representation, that replaces a disqualified heir with his own descendants, even if remoter in degree, was originally provided in the Roman Law only in case of the predecease of an intended heir, in order to partly assuage the double lose of a parent and of his prospective hereditary share. Subsequently, the French and Spanish laws extended the remedy to cases of unworthiness and disinheritance as well, on the rationalization that the *de cujus* (decedent) would have so intended had he envisaged the possible disqualification of the instituted heir, or of the person originally named.

The erroneous concept of successional representation adopted by the Spanish Civil Code of 1889, as a privilege held by the relatives of a person *to succeed him* in his rights had the latter survived or been able to inherit, was properly corrected by our Civil Code of the Philippines in its Article 971, stating that the representative does *not* succeed the one represented. But our Code in turn falls into the mistaken view that the right of representation is a *fiction of law* whereby the representing relative is *raised* to the degree of the one represented. This is untrue. The law has ample authority to predetermine who are to be called to inherit; it needs no resort to fictions, but to merely make use of its power to designate those who are to take the inheritance, for the sake of greater family solidarity and social cohesion.

The basic rules of successional representation remain the same in our Civil Code, as in that of Spain:

1) In the direct line, the descendant next in degree succeeds in the place of a nearer one who has died ahead of the decedent or who is unworthy to succeed or has been validly disinherited;

2) In the collateral line, representation is confered by law upon nephews and nieces only;

3) There is no representation in the case of repudiation;

[19] Art. 910.

4) There is no representation in the ascending line; and

5) Representation occurs only in the legitime or in case of intestate (legal) succession, never in the free portion.

That successional representation should be limited to nephews and nieces in the collateral line is understandable: the right to inherit in the absence of testament is a correlative of the obligation to support, that stops at brothers and sisters.[20] Furthermore, under modern social conditions, the family ties become progressively weaker in the collateral line with the increasing distance between the decedent and his remoter collaterals, who are not usually members of the group sharing the family hearth. So much so that as far back as 1928, the Spanish Civil Code had been amended to stop intestate succession a: the fourth degree in the collateral line, thereby in effect reviving the Royal Cedula of Charles the First of Spain, inserted in the *Novisima Recopilacion* that preceded the Civil Code of 1889. Ours, with wonted timidity, stops at the *fifth* degree in the collateral line.

Modern Civilist doctrine, however, finds rules 3, 4 and 5 unjustified. The Code has already departed from the old Roman Law rule that a living person can not be represented (*viventis non datur representatio*) and permitted representation to operate in the cases where the nearest living relative has been disinherited or has been declared unworthy to succeed. What reason then exists to exclude representation in the event that the nearest living relative in the same line merely refuses to inherit? Inheritance being deferred by law, why should the repugnance or prejudices of the nearer successor deprive his own descendants from receiving a share in the inheritance of the ascendant? As a matter of fact, if an only child repudiates, his own children are allowed by the Code to succeed in his place,[21] exactly as would happen if representation were applicable. To maintain the dogma of non representation in repudiation Article 969 declares that the heirs next in degree shall inherit *in their own right;* but so does every heir succeeding by representation, since he is called to the succession by law, and not by the person represented.[22] It would be more consistent with reality to admit representation whenever those nearer can not inherit, regardless of the cause.

The rigid exclusion of the right of representation in the direct ascending line, as a result of which the nearest ascendant excludes those farther away from the decedent, regardless of lines, appears to be universal rule in all European legislations. Nevertheless, its adequate justification is difficult to find: the metaphor of Laurent that affection, like flowing water

[20] Arts. 291 & 294.
[21] Art. 969.
[22] Art. 971.

descends but never ascends, does not appeal to a logical mind, and the fact adverted to by the Spanish commentator Mucius Scaevola[23] that the favored heir must proceed or descend from the one whose place he takes is hardly an improvement, for it opens a further question as to why it must be so; and Scaevola's explanation is no more than a paraphrase of the legal precept. Perhaps the relative rarity of instances where the grandparent survives his grandson or great grandson induced legislators to consider that application of the rule of representation in the ascending line, was not worth the trouble. But that is hardly adequate justification, considering that the remoter and older ascendants if surviving are more likely to need a share in their descendant's assets to provide for their adequate support.

The rejection by the Code of the right of representation in the free portion *i.e.,* legacies and devises, is difficult to explain where the one favored in the will is a child or direct descendant of the decedent. Surely the testator in making a legacy or devise to a child would have wished to favor also the descendants of the legatee or devisee, had he contemplated the possibility that the child first designated might not inherit after all. The bonds of natural family affection and solidarity would induce him to do so, and thus they favor the admission of representation, unless the testament showed that the testator intended otherwise, or the right bequeathed is by nature strictly personal (usufruct, support). I submit that the right of representation should be ordained by law whenever the originally intended or instituted legatee or devisee is a child or descendant or brother or sister of the testator, and in favor of descendants, as is done by Articles 467 and 468 of the Italian Civil Code of 1943, and Article 2069 of the German. It is no argument that the testator can always recourse to ordaining a vulgar substitution, for testators are rarely aware of that method of replacement.

In the Spanish Civil Code of 1889 the right of representation was admitted only within the legitimate family; so much so that Article 943 of that Code prescribed that an illegitimate child can *not* inherit *ab intestato* from the legitimate children and relatives of his father or mother. The Civil Code of the Philippines apparently adhered to this principle since it reproduced Article 943 of the Spanish Code in its own Article 992; but with fine inconsistency, in subsequent articles[24] our Code allows the hereditary portion of the illegitimate child to pass to his own descendants, whether *legitimate* or *illegitimate.* So that while Article 992 prevents the illegitimate issue of a legitimate child from representing him in the intestate succession of the grandparent, the illegitimates of an illegitimate

[23] 16 CODIGO CIVIL, 298 (4th ed., 1945).
[24] Arts. 990, 995 & 998.

child can now do so. This difference being indefensible and unwarranted, in the future revision of the Civil Code we shall have to make a choice and decide either that the illegitimate issue enjoys in all cases the right of representation, in which case Article 992 must be suppressed; or contrariwise, maintain said article and modify Articles 995 and 998. The first solution would be more in accord with an enligthened attitude *vis-a-vis* illegitimate children.

The law, by its sovereign power, occasionally overrides the express or implied desires of a decedent, and establishes a compulsory succession limiting a decedent's power of distribution in the interest of the family, through the establishment of that minimal portion of his estate known as the legitime. A controversial issue that still divides juridical opinion is whether the legitime is merely a limitation to the decedant's autonomy in disposing or distributing his estate or whether it is an attribution to the compulsory heirs of a portion of his property. Is the legitime a *pars honorum,* a share in the actual property left behind by the decedent, or a *pars valoris,* a share in the value of the estate as a whole? Our Civil Code defines the legitime as "that *part* of the testator's *property* . . . reserved for . . . compulsory heirs"[25] implying that the legitime must be a portion of the testator's assets; and this view is reinforced by the exceptional character of the power of the testator under Article 1080, to assign any agricultural, industrial or manufacturing (not a commercial) enterprise to one heir, and order that the legitime of the others compulsory heirs be paid *in cash.* The Germanic Codes on the other hand, consider the legitime of the compulsory heirs as only *pars valoris,* so that its satisfaction in cash or securities is normal. Our system, as noted by Troplong, has the disadvantage of compelling a progressive atomisation of inherited properties by prescribing their division into smaller fractions with each succeeding generation, thereby diminishing the stability of families with little property.

Of the reforms introduced by the present Civil Code in the field of compulsory succession, that is to say in the system of legitimes, three are particularly praiseworthy:

1. The conversion of the legitime of the surviving spouse, from a lifetime usufruct provided by the Spanish Code of 1889, into a portion in full ownership, thereby simplifying to a considerable extent the computation and distribution of the legitimes.[26]

2. The elimination of the *mejora* that had never taken root in our juridical traditions and practice, and dispensing with the multiple controversies to which it has given rise; and

[25] Art. 886.
[26] Art. 892.

3. The establishment of a legitime for illegitimate children that are not acknowledged natural children, whenever their filiation is duly established. The Spanish Code of 1889 assigned to these children only a right to support. Their new legitime is conferred as an act of simple justice, consonant with the protection of children against discrimination resulting from acts of their parents for which they were in no way responsible.

Unfortunately, the Code framers could not fully rid themselves of ancient prejudices and they insisted in differentiating the share of these illegitimates not natural issue from that of the acknowledged natural children, favoring the latter over the former in the proportion of 5 to 4, by fixing the legitime of a spurious child at 4/5 of that of an acknowledged natural child. This discrimination between the two classes of illegitimates is difficult to justify, for the reason that the difference in the parents' ability to marry each other can not be blamed upon their illegitimate issue. In this regard, I submit that the Code failed to render complete justice to illegitimate children that are not natural. If the defense of the legitimate family imposed a differentiation in the hereditary rights of legitimate children *vis-a-vis* the illegitimate issue, the same does not excuse a further distinction between the various classes of illegitimates.

Neither do we find adequate support for the varieties introduced in the legitime of the spouse when surviving alone. That spouse is normally awarded one half of the deceased's estate; but if married in *articulo mortis* and death of the other consort supervenes within three months thereafter, the survivor's compulsory share varies according to the length of the extra-marital cohabitation: from one third (1/3) if it lasted 5 years or less, to one half (1/2) if the common life lasted more than 5 years.[27] This is arbitrary casuistry, and worse, one that is totally ignored in the sharing in intestate succession. Under the legal precept embodied in Article 900, the making of a will by a consort married in *articulo mortis* and deceased without issue or ascendants, becomes nigh impossible, since the legitime of the survivor spouse, and therefore the extent of the part of free disposal, depends not only on the duration of their cohabitation prior to the marriage but upon the testator's unpredictable dying within or after three months from the date of the marriage. Apparently, the Code is bent on convincing people married in *articulo mortis* that they had better die intestate

The succession of parents and descendants under the Code becomes one of extreme complication due to the unfortunate revival by Congress of the *reserva troncal*. It had been originally suppressed by the Code Commission (together with the *reserva viudal*) for diverse reasons: because the *reserva* created uncertainty in the ownership of the reservable

[27] Art. 900.

property, which is besides temporarily withdrawn from circulation; because the *reserva* tended to perpetuate property in certain families, and because its operation was traditionally limited to the legitimate family, so that the illegitimate parent inheriting from a child that died without issue escaped the limitations of the *reserva troncal.* At the same time, it can not be denied that this *reserva* involved a matter of equity. Without it, property that originally belonged to one line of ascendants risked being absorbed by the other line to which the inheriting parent or ascendant pertained, on account of the rule that the nearest ascendant inherited to the exclusion of remoter ascendants belonging to the other line. Had this rule been discarded, and had the Code maintained an equal division of the inheritance between both lines of ascendants despite differences in degree, as under the German Civil Code, the *reserva troncal* with all its complications and inconveniences would have become unnecessary, and the rules of succession kept greatly simplified. After all, the principle that a relative who is nearer in degree must exclude one further removed from the decedent, applies only to relatives belonging to the same line or *stirpes.* Even in the primary descending line, a decendent's child does not exclude the issue of another child, who does not inherit, in view of the right of representation. Why then should a father exclude a maternal grandparent from sharing in the estate of the common descendant?

After descendants and ascendants, the succession *ab intestato* is deferred to the collateral blood relatives within the family. But how far should the right to succeed go? We must take into account that the legitime and the right to succeed *ab intestato,* like the reciprocal duty to support, are predicated upon the natural affection and solidarity that binds together the members of the same family, who, sharing the same hearth and home, develop common interests, material and moral. Cosack, followed by Castán, Aramburo and Lezón, propounded the restriction of the technico-legal concept of the family to the second degree in the collateral line, on the basis that only those who are obligated by law to support a person should be entitled to receive his estate *ex lege.* Undoubtedly, economic development and industrial progress have relaxed the ancient family ties, that were originally recognized up to the *tenth* degree of consanguinity in the collateral line by the Spanish Law of 16 May 1835. The Civil Code of 1889 reduced it to the sixth collateral degree, and our own Code cut it to the fifth degree, while the influence of industrial and factory labor forecasts a more radical pruning as advocated by the authors previously mentioned. I recall that in the discussions on the subject by the First Code (Avanceña) Committee, the late Justice Bocobo contended that, in the Philippines, relationship was traditionally recognized up to the tenth collateral degree; but former Justice Jose P. Laurel, Sr. tartly

rejoined that such was the case only during election times, but not on other occasions.

Be that as it may, there is one reform, I think, that will be easily agreed to; and that is the priority right of a surviving spouse to succeed *ab intestato* ahead of the collaterals (brothers, sisters, nephews and nieces, etc.). The justice of the preference is indisputable. The spouse who has lived with and cared for the decedent from youth to old age, shared his successes and defeats, constantly and loyally stayed by his side "in sickness and in health, for richer and for poorer," and helped to raise their children, is morally entitled to preferential succession over even brothers and sisters, who usually have established or been drawn into other family units that carried on a life of their own and even the concurrence of the spouse with the brothers and sisters of the deceased, as provided by the Civil Code, leaves us with a sense of injustice.

The succession of the adopted child who is normally treated as a legitimate child of the adopter, has become unduly involved due to Section 39 of the Child and Youth Welfare Code, Presidential Decree No. 603.[28] Under the Civil Code of the Philippines, Article 343, if the adopting parent dies without descendants but is survived by legitimate parents or ascendants, the adopted child shall have only the successional rights of an acknowledged natural child; that is to say, that the one adopted *concurs* with the legitimate parents or ascendants of the adopter, taking only one half of the adopter's net estate, the other half going to the legitimate parents or ascendants of the adopter.[29] The Child and Youth Welfare Code reiterated that rule of the Civil Code, but adds "that any property received gratuitously by the adopted from the adopter shall *revert* to the adopter should the former predecease the latter without legitimate issue unless the adopted has, during his lifetime, alienated such property". Let us examine the implications of this provision:

1. This reversion is a return to the pre-Codal legislation,[30] that established it to compensate for the fact that the one adopted inherited from the adopter to the exclusion of parents and ascendants of the latter. It was abandoned when the present Civil Code allowed such parents and ascendants to share the estate of the adopter equally with the adopted child.

2. Evidently it contemplates the reversion of the very property donated by the adopter, but not of the price thereof when alienated by the adopted, unlike the old *reversion legal* of Article 812 of the Spanish

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[28] Promulgated December 10, 1974 and took effect 6 months after approval. Text found in 70 O.G. 10774 (Dec. 30, 1974).

[29] CIVIL CODE, art. 991.

[30] Act No. 3977 (1932).

Civil Code of 1889, that provided for the return of the price or other received equivalent of the alienated property.

3. The reversion is only in favor of the adopter. But if the adopting parent predeceased the one adopted, then upon the latter's subsequent death without issue, should not the property donated by the adopting parent, if not validly alienated, revert back to the children or to the parents and ascendants of the adopter? If the reason was to prevent the adopter's property from passing to the parents or to the brothers by nature of the adopted, the reversion should operate in favor of the legitimate relatives of the adopter, as was prescribed by the pre-Commonwealth Act No. 3977 of December 3, 1932. But the Child and Youth Welfare Code only mentions the adopter and no one else.

4. What about the half of the estate inherited by the adopted from the adopter? Should it not likewise revert to the legitimate relatives of the adopting parent? The same reasons underlying the reversion of donated property exist in this case, and in fact Section 39 of the Child and Youth Welfare Code speaks of property received gratuitously by the adopted, and acquisition by inheritance is as gratuitous as a grant by donation. Why then should donated property revert and inherited property escape reversion?

Let us proceed further. The Child and Youth Welfare Code adds that "should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue *or* a spouse, such illegitimate issue collectively or the spouse shall receive one fourth of such property; if the adopted is survived by illegitimate issue *and* a spouse, then the former collectively shall receive one fourth and the latter also one fourth, the rest in any case reverting to the adopter, observing in the case of illegitimate issue the proportion provided for in Article 895 of the Civil Code".

It is understandable that where the one adopted has no other property at his death than that received from the adopter, the reversion to the latter should not operate to the extent of depriving the spouse and the legitimate issue of the one adopted of their means of support. Article 895 referred to fixes the previously criticized ratio of 5 to 4 between acknowledged natural children and other illegitimates not natural.

Finally, the Child and Youth Welfare Code provides: "The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him, except that if the latter are both dead, the adopting parent or parents take the place of the natural parents in the line of succession whether testate or intestate".

Why should the adopting parents intrude into the rights of the natural family of the adopted? Their intrusion reduces the shares of the surviving spouse or of the illegitimate children of the one adopted, or of his

brothers and sisters, since they are excluded by ascendants. And if the adopted in turn should die leaving an adopted child of his own, the latter's rights would be cut in half by the intrusion of the adopter as heir, when the former would inherit alone in the absence of natural parents of the adopter. Even more, the Child and Youth Welfare Code unduly deprives the spouse of an adopted person who is illegitimate by birth of her right to succeed alone in absence of illegitimate parents.[31] The last paragraph of Section 39 of the Child and Youth Welfare Code is entirely unwarranted, since succession by the adopting parents is totally unrelated to the welfare of the adopted person, since the heirs already died.

In resumé, the following reforms are proposed in our law of Hereditary Succession:

a) That the family cohesion be strengthened by correlating the right to inherit with the duty to support, and limiting intestate succession in the collateral line to brothers and sisters, nephews and nieces only, excluding other collaterals;

b) To give the surviving spouse priority in the succession over collateral relatives, in the absence of descendants and ascendants, with precedence over even brothers and sisters of the deceased;

c) To eliminate the *reserva troncal* in the succession of ascendants, either unconditionally or by maintaining the division of the estate of a decedent, who dies without descendants, between the maternal and paternal lines, regardless of proximity of degree;

d) To merge the right of accretion with the vulgar substitution; considering accretion as an implicit reciprocal substitution;

e) To extend the right of representation to all cases of predecease, incapacity, disinheritance and repudiation of the heir first designated;

f) To admit the right of representation in the free portion, whenever the intended heir is a descendant or brother or sister of the decedent, in favor of the heir's children and descendants, unless the contrary intent is clearly apparent, or the thing or right bequeathed is intransmissible by nature.

g) To eliminate the variants in the legitime of the surviving spouse married in *articulo mortis* introduced by the second paragraph of Article 900;

h) To remove the distinction between the legitimes of acknowledged natural children and those of illegitimates not natural;

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[31] CIVIL CODE, art. 994.

i) To equalize the rights of representation of illegitimate children of legitimate issue of the decedent and those of legitimate children of illegitimates, by either suppressing Article 992 or modifying Articles 995, 998 and 999, by omitting the expression "their descendants, legitimate or illegitimate", and restricting the succession to legitimate descendants of illegitimate children.

j) To eliminate Section 39 of the Child and Youth Welfare Code.