

THE PHILOSOPHY OF SOME REFORMS INTRODUCED BY THE NEW CIVIL CODE *

BY JORGE BOCOBO

I feel highly honored by this opportunity to speak on "The Philosophy of some Reforms introduced by the new Civil Code." I can discuss only a few of the innovations, for lack of time. Far be it from me to claim that the new Code is flawless. I wish merely to explain the reasons which moved the Code Commission in effecting the changes. Such reasons may or may not be cogent, in the opinion of some who study this new body of laws, but I am desirous that you should know what was in the mind of the Commission in proposing these reforms.

While it is true that every legislation should conform to the social conditions of the country and the character and culture of the people, it is no less true that new laws which may seem too advanced or may seem inadaptable to the present-day situations have an educational value. For example, when the Roman legions extended the sway of the Roman Empire all over Europe, and as the then unprogressive peoples of Europe accepted Roman culture, they at the same time received Roman law as part of that culture, and thereby after the lapse of centuries, enhanced and improved their way of life. It was in this way that Roman law influenced the civil law countries, such as France, Portugal, Spain, Italy, Belgium and Holland. Even the so-called common law of England is of Roman law origin, with the exception of the feudal tenure of land, according to Bryce in his "Lectures on Jurisprudence."

Therefore, some of the innovations in the Philippine Civil Code, if they seem strange to many members of the legal profession, should not be judged severely. Those adopted from abroad are a part of the legacy of civilization, and although they may be apparently too advanced, they are intended to influence the thinking of our people, with a view to social betterment and reform. Whether one follows the juristic school of natural law, led by Grotius, which has done so much for freedom, or is inclined toward the historic school which under Savigny and Puchta has strengthened the influence of the Roman law on modern legislation, it would be unwise to disregard the educational and regenerative function of law. As Prof. Ludwig Ennecerus of the University of Marburg has said: the supreme goal of law "is the unfolding of our entire culture, the perfection of the life of men in society and mankind. For such purpose, there is need of a fixed arrangement which would make it possible and would set in motion a useful, moral and economic development of all the people which would educate them to fulfill their duties." (Ennecerus, Civil Law, vol. I, p. 85)

Let me assure you that the Code Commission has intended to effect reforms moderately and gradually, avoiding as much as possible

radical changes. Again: as to property relations during marriage, two opposite radical changes. For instance, on the subject of abatement of public or private nuisance: in the United States and England, extrajudicial abatement of nuisance can be carried out without intervention of the authorities, but in the Philippine Civil Code there must be previous approval by the district health officer and the abatement must be executed with the assistance of the local police. (Arts. 704 and 706)

radical changes offered themselves as standard systems: the absolute separation of property as in the United States, and the absolute community, as in Portugal and Holland. The first reform seemed to have been urged by the modern education of the Filipino woman and her ancient significant role in the family, while the second change appeared to have been called for by the established custom among most Filipino families that the properties brought into or acquired during marriage are in actual practice merged. But the Commission chose the middle ground by continuing the old conjugal partnership but so modified as to protect the rights of the wife. Thus: the husband can no longer alienate or encumber the real property of the conjugal partnership without the wife's

THERE MUST BE REESTABLISHED THE GOLDEN BALANCE BETWEEN IDEALISM AND MATERIALISM*

BY VICE-PRESIDENT CARLOS P. GARCIA

It is with a feeling of pride and cheerfulness that upon invitation of my admired friend and comrade in the Senate, Sen. Vicente J. Francisco, I have come to join you in the rejoicing of your graduation



VICE PRESIDENT CARLOS P. GARCIA

and congratulate you for work well done and to wish you success in the practical life. These congratulations and best wishes, I want to extend to your beloved Alma Mater, the Francisco College, which in a brief span of a few years has risen to be one of the outstanding law colleges of the nation. No doubt, the quality of the instruction, the prestige of its founder as one of the legal luminaries of the Philippines, and the accomplishments of the products of this school in the field of practice, constitute the vital factors of the spectacular growth of your Alma Mater.

And now, my friends, as I see before me a handsome group of young men and young women trained and primed for the legal

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consent (art. 166), and in case of abuse of powers of administration of the conjugal partnership by the husband, the courts, on petition of the wife, may provide for a receivership, or administration by the wife, or separation of property (art. 167). Moreover, the wife may, during the marriage, and within 10 years from the transaction, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is necessary, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership. (art. 173). With these safeguards, the Commission believed that the conjugal partnership system was the best, for the present at least. Of course, by agreement in the marriage settlements, the future spouses may adopt either the absolute separation or the absolute community of property.

A third example of the policy of moderate reforms refers to the sale with *pacto de retro*. In view of the grave abuse of this contract, which had become an instrument of greed, oppression and exploitation, our first impulse was to abolish *pacto de retro* entirely. However, we feared that the lender would demand an absolute conveyance of the land by the borrower, who would, out of compelling financial necessity, have to yield. Therefore, the Code Commission also adopted a middle ground, by the repeal of the automatic consolidation of ownership in the vendee and by giving the vendor ample opportunity to repurchase the property (arts. 1606 and 1607).

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However, whenever the Commission saw the wisdom of introducing a radical change, this was done. In such cases, we felt no qualms because our nation, which is civilized and progressive, should share the precious heritage of culture of the world. Besides, even when there were no precedents elsewhere, but the Commission originally saw the rightfulness of a reform, that body did not hesitate to introduce the changes. As the Commission in its report said: "Law should not be static but vital and ever-growing. While there ought to be stability of the laws, they ought not to be so inflexible as to destroy their very essence, which is the supremacy of right. When there is delay of justice, it is truly said that justice is denied, a grave situation indeed, but graver still is the perpetuation of injustice by the law itself, for then the courts can do nothing but apply the law. How often the courts have deplored their melancholy task of applying a legal provision which they knew ran counter to reason and equity! The commission does not, of course, presume to claim that every reform suggested is unerringly the just rule or norm, but each proposed change is an expression of the Commission's best judgment as to what is right and fair."

III

Permit me now to set forth the reasons for some of the sweeping and radical changes. The provisions fall under five categories: (1) damages in case of intentional injury when the act, though not against positive law, is contrary to morals, good customs or public policy; (2) independent civil actions; (3) strengthening of democracy; (4) implementation of social justice; and (5) supremacy of equity and justice as against technicality and legalism.

On the first subject, art. 21 of the new Civil Code provides:

"Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

It will be noted that no positive law has been violated. But there are three requisites: (1) damage; (2) the act must have been willful; and (3) that it must be contrary to good morals, good customs or public policy."

This reform has been adopted, with certain modifications, from art. 826 of the German Civil Code. If no law of the State has been broken, why should the defendant be liable for damages? This innovation is justified by the Code Commission thus:

"In the last analysis, every good law draws its breath of life from morals, from those principles which are written with words of fire in the conscience of man. If this premise is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by

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and business professions, as I see so many pairs of bright eyes sparkling with hope, and burning with enthusiasm, and I see by the mental eye so many thousands of the youth and flower of the land graduated in hundreds of schools and colleges throughout the country, I cannot help but be uplifted by the feeling that with such a great army of intellectuals, trained and specialized in different activities of human life, the march of the Philippines to new heights of achievements, to vaster fields of development, and to new depths of strength and power must be irresistible and irrepressible.

That is why hope has again flowered in my heart and in the midst of youth, its strange and magical alchemy restored to me at least momentarily the dreams, the visions, the idyllic hours of my youth. Thru contact with you, I hear the returning vagrant faith in youth knock at my heart. With you I seem to imbibe a new Elixir of life abounding in faith and hope and vision of a greater Philippines. With so many college graduates, with so many educated hands and hearts, we should be able to make the Philippine Republic the most enlightened, the most prosperous, the most progressive and the happiest democracy in the Far East. Indeed, we have a right to claim the honor to be the cultural metropolis of Southeast Asia.

My young friends, before you start in the thrilling adventure of life, as you sail farther and farther from the shores of theory into the oceanic vastness of practical life, as you more and more have to depend upon yourselves and draw from your own mental and spiritual reservoir to wrestle with the problems and difficulties of life, a few words of reminder may not be amiss. While your hope for success may be rosy, while your determination is aflame with the will to succeed and your enthusiasm ebullient with vitality and you feel invincible, yet you cannot indulge in the illusion that your diplomas will open to you with the least effort all the gateways leading to success. I would rather advise you to look at life realistically without in any way betraying your ideals. While you should hitch your wagon to the stars, never forget that you are walking on solid earth. While you should polarize your thoughts, your dreams, your emotions and your efforts to your idealism, you should never forget that you are dealing with hard earth-bound realities. You should be realistic enough to recognize that in the sea of life, there are currents and cross-currents. You should philosophically accept the fact that in this grand adventure of life you sometimes have to pass through the Sargasso Sea of doubt and hesitation. You have to navigate over malestroms of adversity. You have to face storms and tempests, and now and then you will sojourn on Calipso island where life is easy and soft to make you forget and to lull you into vicious inactivity or inertia.

But these warnings are not intended to paint a somber picture of the life ahead to discourage the young travelers of life. Rather, they are intended to spur you to action because these things, these hazards and these problems, are simply the tests and trials designed by Divine Providence to be overcome and to be surmounted before the reward of success is attained. It is one way of telling you that nobody can win success as a gift handed to him on a silver platter. You have to work for real success; you have to sow in energy and effort in thought and vision if you want to reap success in life. You should by now realize that you shall not win where you did not sow. Those of you who indulge in the illusion that you can win your battle in life by relying on your wealth, inherited or acquired, those of you who indulge in the illusion that such qualities as honor, integrity, courage, honesty, intellectual brilliance or moral strength can be purchased with money should start reexamining such ideas in the light of the rediscovery by science of the eternal, inalterable, inescapable and exact cosmic law of Cause and Effect.

This law, if I may superficially state it, commands that nothing exists in life, nothing happens in life without a cause. Nothing can intervene to prevent cause to produce its effect. There is nothing that man can make to avoid the consequences of his act. That is what Jesus Christ meant when he said in the parable of the Sower: "Thou shalt reap that which thou sowest." Thus, under this infallible and inexorable law of Cause and Ef-

one, all wrongs which cause damage. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one can not but feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes."

The origin of this principle is the doctrine advocated by some German jurists, such as Adickes, Bullow, Menger, Erlich, Wurzel, and Kantsrowicz. These legal philosophers give the judge the widest freedom to follow his reason and conscience, so long as he does not act contrary to positive law. According to Adickes, the value of positive law is only as a limit beyond which the judge can not go in arriving at his decision, which is the fruit of his own reason applied to the relations of life, provided it is not opposed to positive law.

The reform effected in said art. 21 of the new Civil Code is not at all strange if we bear in mind these words of Prof. Clemente De Diego: "La idea de la justicia es el brote de todas las manifestaciones del Derecho, como la belleza lo es de todas las artisticas, la verdad de todas las cientificas y el bien de todas las eticas." (Fuentes del Derecho Civil Español, p. 155)

Art. 21 may also be justified by these words of Eugen Huber, author of the Swiss Civil Code of 1907: "Moral law has in law such a penetrating and valuable significance that we can not speak of positive law without referring to moral law. The moral law and the law of the State have the same object and purpose, and together they govern human aims and conduct, which constitute human society itself. x x x Human community is the field in which morality and law act as imminent ideas in our rational conscience x x x. It is equally possible to consider morality as included in law and to consider law as included in morality." (Law and Its Realization, Vol. I, pp. 41-42). Later on he says that the essence of modern culture "is the coincidence of the law with the moral law." (p. 79).

The effect of the innovation in art. 21 is to give relief for every intentional wrong which causes damage, even if no statute has been violated. The Code Commission in its Report gives this example to illustrate art. 21: "A" seduces a 19-year old daughter of "X". A promise of marriage either has not been made or can not be proved. The girl becomes pregnant. But there is no crime, as the girl is above 18 years of age. Neither can any civil action for breach of promise of marriage be filed. However, under the new Civil Code, she and her parents may bring a civil action for damages.

As for public policy, this is not found in the source, art. 826 of the German Civil Code. But public policy was added in Art. 21 of the Philippine Civil Code because it is of supreme concern in any country. If a man in defiance of a declared policy of the State causes loss or damage to another, he (the former) should pay indemnity, though his act is not contrary to a statute. Let us take the public policy of social justice, which is consecrated in the Constitution. If a rich man, by means of a legal technicality discovered by his lawyer, exploits a poor man without violating the law, the victim, according to art. 21, may demand damages.

IV.

The second reform, which creates independent civil actions, departs from well-established ideas in the Philippines. Some of these civil actions are similar to the Anglo-American institution called "tort." Others are of a different character, which will be explained later. This civil action is separate and independent from any criminal action. Here are some cases similar to "tort."

(1) Art. 23, authorizing an independent civil action for defamation, fraud or physical injuries. These actions correspond, respectively, to the Anglo-American torts called libel or slander, deceit and assault and battery.

(2) Art. 32, which creates a civil action, separate and distinct from the criminal action, in case of violation of individual liberties, guaranteed by the Constitution, such as freedom of religion, speech, and of the press, freedom from illegal detention, freedom from unreasonable searches, freedom of suffrage, etc.

(3) Art. 26, which establishes a separate civil action to protect one's privacy and private life, etc.

(4) Art. 27, which gives a right of independent civil action

for every wrong, nobody can do wrong without getting ultimately the retribution for his wrong act. Nobody who does what is right, what is just and what is kind will ever fail to receive the reward for such good acts. In the light of this law, he who in his laziness, weakness, frivolity, or thoughtlessness does nothing will receive nothing. Each will harvest the kind, the quality and the quantity of that which he sows. Seen with the eye of the spirit, you will find that this law is a complete manifestation of the Infinite Justice and love and wisdom of Divine Providence. Obedience to this law is the secret of all successful and truly great men in all times and climes, and disobedience thereto is the explanation of all failures.

So, the key to your success lies in yourself because deep in every man's conscience, whether he is educated or not, God placed the knowledge and the conscientiousness of that which is good and that which is bad, of that which is right and that which is wrong. He placed in every man's conscience; in other words, the consciousness of the law of Cause and Effect. Divine Providence has also endowed every man with freedom of will. This freedom man can exercise to do either that which his conscience tells him is good or to do that which his conscience tells him is bad. Man being a free agent in the exercise of his freedom of will must therefore, be held responsible for his choice. So, man is the master of his own destiny under this Divine Law of Cause and Effect, and this is the wonderful thing that you have. You are masters of your own destiny.

Some people try to blame others for any misfortune, bad luck or failure that befall upon them. Some men who lack faith in the infinite justice of God come to the hasty decision that if he can make a million by committing one or two acts of dishonesty or injustice, it is worth it. Some men become cynical and say "what is the use of honor and integrity and honesty and for that matter all the virtues exalted by the moral code if after all you starve and languish in misery and penury. Make me a millionaire and I do not care what the world thinks of me."

This is an evidence of man's blindness and ignorance of the law. This kind of thinking has made the world grossly materialistic. This kind of thinking made the world forget the idealism in whose infinite womb were created the wondrous things of beauty, the worthy dwelling of truth. This materialistic philosophy of life of putting money above everything perhaps has multiplied the material riches of the world. It may have built great and massive buildings and palaces, great industrial plants, irrigation systems, gigantic transportation companies, etc., but it has not, in my humble view, increased the happiness of humanity. This sordid materialism has produced more greed and concupiscence. It has corrupted governments and administrations, prostituted the administration of justice, and swelled criminality. It has caused moral disintegration in almost all countries. It resulted in devastating wars among rich and powerful nations; it has destroyed great and magnificent monuments of art and culture for the mad desire for wealth and power. It has thrown the world into chaos, conflicts, and turmoils for the mad desire of the rich and powerful men and nations to monopolize the trade, the natural resources and the markets and the power potentials of the earth. In short, this materialistic philosophy in its mad desire to amass the happiness of the world has only succeeded to create and multiply the unhappiness of humanity.

My message to the graduates of the Francisco College, therefore, is that the time has come for a change. The time has come to restore idealism to its proper place in the scheme of life. I call upon all graduates, nay, upon all institutions of learning to spearhead our fight back to idealism. There must be reestablished the golden balance between idealism and materialism. The happiness of humanity lies in the golden mean between materialism and idealism. You cannot overemphasize the one at the expense of the other without upsetting the natural order of things. The reality of life, in my humble opinion, is an algebraic equation, in which consist the materialistic and the idealistic sides must be balanced.

Yes, money can buy you bread and meat for the body, but it cannot buy the spiritual stream of thoughts and emotions that flow in the human soul. Money may build great and proud buildings and

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against a public servant or employee who refuses or neglects, without just cause, to perform his official duty.

(5) Lastly, art. 34 which creates a civil suit against a policeman who refuses or fails to render aid to any person in case of danger to life or property.

In all the five foregoing cases, the act is intentional and therefore a criminal prosecution might be instituted under certain circumstances. But a civil action may be brought independently, even after the accused has in the criminal case been acquitted. The new Civil Code thus upsets the doctrine of our Supreme Court in the leading case of *Almeida v. Abarao*, 8 Phil. 178 decided in 1907, which held that acquittal in a criminal case bars every civil action for damages.

There are powerful reasons why an independent civil action should be allowed in the five instances mentioned. Here are some:

First, conviction in a criminal case requires proof beyond reasonable doubt, while in a civil case, preponderance of evidence is enough on which to base judgment for the plaintiff. There have been countless cases where the accused in a criminal case has been acquitted, because of reasonable doubt, although a preponderance of evidence showed that the act had been committed by the accused. In such cases, there has been a gross miscarriage of justice, because under the old law the aggrieved party was precluded from subsequently suing for damages in a civil case.

Secondly, not infrequently, the Fiscal under political pressure or other undue influence, would not start criminal proceedings. Or he might have been too busy with other cases. So the new Code assures the injured person an opportunity to prove his case by a preponderance of evidence in a civil case, and thus obtain relief.

Thirdly, our people have been habituated to rely on the public prosecutor to obtain justice. This has smothered civic spirit, self-reliance and individual initiative. One of the sources of strength of democracy in England and America is that the citizens have been accustomed to resort to civil actions for tort, such as assault and battery, false imprisonment, slander, deceit, and other intentional wrongs. Similarly we should educate our people to vindicate their rights in a civil rather than in a criminal action, and thus assert their individual rights, so they do not have to depend on the Fiscal.

Thus far we have discussed civil actions where the defendant acted intentionally. But there is another independent civil action, called quasi-delict in the new Civil Code, based on defendant's negligence. It is the Anglo-American tort for negligence. It is also the old civil action for fault or negligence under arts. 1902 and 1903 of the former Civil Code. The new Code in art. 2177 incorporates the doctrine laid down by the Philippine Supreme Court in *Barredo v. Garcia and Almario*, 73 Phil. 607, decided in 1942. Said art. 2177 provides:

"Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant."

This Philippine decision cited *Maura* and other jurists, as well as the Sentence of the Supreme Tribunal of Spain of October 21, 1910, where the court held the defendant liable for damages under arts. 1902 and 1903 of the Spanish Civil Code, for the death of *Izquierdo*, due to defendant's negligence, although there had been a previous acquittal in a criminal prosecution. It will be seen that on this question the Spanish Supreme Tribunal was ahead of our highest court by at least 32 years. Other Spanish decisions that might be added are the Sentences of Nov. 13, 1934, and Feb. 4, 1943.

The Code Commission, in embodying in the new Civil Code the principle enunciated in *Barredo v. Garcia and Almario*, was moved by the same reasons already set forth concerning intentional wrongs.

Next, I wish to discuss two civil actions created by the new Civil Code. They are found in arts. 29 and 35.

Art. 29 provides:

"Art. 29. When the accused in a criminal prosecution is

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magnificent palaces, but it cannot furnish the genius of the architects nor supply the rhythm and the symmetry of beauty. These are things of the soul. Money can build the Vatican, the White House or the palace of Versailles, but it cannot furnish the brains, the talent and the vision of the great popes and presidents that guided the destiny of nations. These again are things of the spirit. Money can buy the machinery, the equipments and the gadgets for gigantic industrial or commercial organizations but it cannot give the executive ability, the leadership and the dynamism of the men that run them. These are things of the soul. Money, considered by the materialists as omnipotent, has not the power to produce a single petal of the lily that blooms in your garden; it cannot create a single streak of the symphony of colors of a magnificent sunset or a gorgeous sunrise. It cannot create the inspiration of a Shakespeare, the supreme sacrifices of a Rizal or the great thoughts of a Mabini. Money can build magnificent galleries and great museums but it is impotent to produce the "touch of Eternity" of DaVinci, Michael Angelo, Luna or Amorsolo. Money is impotent to produce the genius of Einstein, Edison and Marconi. These are things of the spirit, consigned by the all-wise Creator to the sacred vaults of the ideal realm.

Thus, such ideal things as honor, truths, justice, honesty, integrity, love, faith and hope are the stuff of which idealism is made. Their dynamism is infinite, their vitality is eternal. They are the qualities of character which should be our constant endeavor to acquire as part of ourselves. These are the things that really contribute to man's happiness even greatness. These are the enduring things that no thief or robber can steal or rob from you. These are the things that will last long after millionaires shall have been forgotten, long after industrial and commercial empires shall have crumbled into "the tongueless silence of the dreamless dust," long after mighty men shall have returned to common clay.

As a parting thought, young friends of the graduating classes, let me return to our country. I have expressed a fervent hope in the beginning of my remarks that by the power of your education, you can make the Philippines the most enlightened, the most prosperous and the happiest democracy in the Far East. Your success is the success of our nation; your happiness is the happiness of our native land. You have, therefore, a stake in our Republic in the same way that our country has a stake in you. The prestige of your Alma Mater, the pride of your school, is involved in every act of yours as professionals. You would want, therefore, to build a character where idealism and materialism are established in a golden balance upon which you will build your mansion of success. You will not forget that talent without character is like the beauty of a woman without virtue, one element more for prostitution. You will not forget that the most precious gift that you can give to your country and the best legacy that you can leave to the generations and generations of Filipinos yet sleeping in the womb of Time is a good character. The strongest rampart of freedom, the impregnable bulwark of justice and the fountainhead of invincible nationalism is the strong noble character of the people. I thank you.

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