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THE FATHER OF THE FIRST BROWN RACE CIVIL CODE

Author : Juan F. Rivera

As stated in the Preface of the book, the author's aim — "my aim is to present my theme at one breath, and in, one view," and the theme, in the author's Proem — "My Theme in this volume is that Dr. Jorge Bocobo is the Father of the first Brown Race Civil Code — Ama Ng Pangunahin Lahing Kayumanggi Kodigo Sibil -- in the world." Professor Juan F. Rivera develops this theme by first sketching the portrait of Dr. Jorge C. Bocobo as a scholar, law professor, author, and unequalled master of civil law, a man with the qualification and competence to head the National Code Commission. The author then relates the history of the new Civil Code from its preparation and drafting stage, to the subsequent committee and public hearings, to its passage, and finally, to its approval by Congress. As the book progresses, one is led to a journey to the pre-historic past, where Professor Rivera justifies the title of the volume by explaining the words "Brown Race Civil Code" and sets forth his novel proposal to identify this country and its people with the appropriate name — "Balangayan." As a finale, the author reproduces several Bocobo addresses and lectures, elucidating the philosophy behind the reforms embodied in the new Civil Code.

One of the highlights of the book dwells on the "Reflections of Justice J.B.L. Reyes" on the new Civil Code, which, "if left *ipse dixit*, would somehow weaken (the author's) theme in this volume." During one Sunday mass I was intrigued by the sermon from the pulpit when the priest propounded the question: "What is "normal" in any thought, word and deed; who lays down the rule of what is normal or abnormal, what is just or unjust? A similar question was formed in my thoughts when I read Professor Rivera's presentation of pertinent sentences of Justice J.B.L. Reyes' "Reflections," coupled with reproductions of answers of the Code Commission thereto and the writer's researches. The following is a sample of such a presentation, I quote:

"3. '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 1899....'

“ Let us take note of the fact that, notwithstanding the invitation extended by Dr. Bocobo in his aforesaid article ‘What Are Your Views,’ ‘only the women organizations and women lawyer associations had taken part in proposed approval of the Cope. The law colleges, lawyer associations, and legal luminaries of the country have not taken active part in the last three hearings.’

“ In his first lecture in a series of seminars sponsored by the Philippine Bar Association at the University of the East on November 15, 1950, Dr. Bocobo described the structure of the new Civil Code as follows:

Following the Spanish Civil Code, the new Civil Code is divided into four books, aside from the preliminary title: Book I – *Persons*; Book II – *Property, Ownership and its Modifications*; Book III – *Different Modes of Acquiring Ownership*; Book IV – *Obligations and Contracts*. The only change is that prescription has been transferred from Book IV to Book III because, in its acquisitive aspect, prescription is one of the modes of acquiring ownership. During the discussion of the new Civil Code before the Senate, Senator Ramon Diokno, citing the report of a distinguished Filipino jurist, criticized the division of the new Civil Code. However, it should be noted that there are various ways of dividing a civil code so that it would be venturesome to declare which is the best. *In matters of classification, very much depends on the angle or viewpoint from which the subject-matter is considered.* This happens not only legal science but also in all branches of human knowledge.

The French Civil Code which is followed by many others, such as those of Italy, Louisiana, and Guatemala, is divided into three books: first, *Persons*; second, *Property and Modification of Ownership*; and third, *Modes of Acquiring and Transmitting Ownership*. In the third book of the French Civil Code we find Succession, Donations and Contracts. On the other hand, there are other codes like those of Mexico, Chile and Uruguay, which contain four books with a special one devoted to Successions.

The Swiss Civil Code has an Introduction, and then Four Parts on: I – *Persons*; II – *Family*; III – *Inheritance*; and IV – *things*, and a concluding title. There is a Separate Code of Obligations. Then, there is the German Civil Code which is composed of five books: the first being the general part with seven sections devoted to different subjects, such as the capacity of persons, the validity of juristic acts, the prescription of actions and self-help. The second book is on Obligations in general and certain contracts including donations and obligations derived from illicit acts. The third book refers to things and Real Rights. The fourth book deals with family law. In Book V we find Wills and Succession.

It has been said, in connection with the division of the New Civil Code, that there is need of regulating juristic acts in general in Book

I. However, this is not advisable because it means duplication. For example, the capacity to give consent is treated of in Books I and IV of the German Civil Code. Validity of testamentary disposition is dealt with in Books I and VI. Besides, there can not be common rules for capacity. Thus, there are different types of capacity for marriage, adoption, making wills, and an ordinary contract.”⁴

It is said that the new Civil Code is a fusion of the first legal family known as Romano-Germanic and the second legal family known as Common Law. Moreover, the Code is also colored and imbued with Filipino customs, prompting the author to call said Code “The Brown Race Civil Code.” As Dr. Bocobo aptly stated, “The best law is that which is derived from customs. Like gold that is mined out of the bowels of the earth, such a law is precious and enduring because it proceeds from the depths of the national soul.”⁵ As an illustration of the Code’s elevation of Filipino customs into law, Article 312 of said Code provides that “Grandparents shall be consulted by all members of the family on all important family questions.” This provision thus expresses the people’s deep reverence towards their elders. Anent the new Civil Code provisions embodying some Filipino customs, Professor Rivera proposes change in the designation of this nation from “Philippines” to “Balangayan Arkipelago” and the name “Filipino” to “Balangayan,” as the two identities “Philippines” and “Filipino” are borrowed foreign words. The words “Balangayan Arkipelago” and “Balangayan,” however, are, according to the author, more appropriate and authentic designations of the land and its people – the brown race people. “Balangayan” means boat, and was a means of transportation for the ancient Malay people in emigrating to these Islands. The term also means barrio or a group of community of families. The word “Barangay” is in reality a corruption of the term “Balangay.” Furthermore, Professor Rivera posits the view that the word “Balangayan” identifies the nationality and race of the people; the term has a historical root which conveys cooperation, harmony and unity in the lives of the “Balangayans.”

As the book draws to a close, the author then presents the voice of Dr. Jorge C. Bocobo himself, derived from a number of his addresses and lectures. Here, the salient reforms in the new Civil Code are enumerated, and the philosophy behind them discussed. Among the fundamental reforms in the new Civil Code pointed out by Dr. Bocobo are as follows: (1) The supremacy of justice over legalism; (2) The creation of certain civil actions, similar to American torts, independent from criminal prosecution; (3) The strengthening of democracy as a way of life; (4) The introduction of equity jurisprudence as found in the English and American legal systems; (5) The liberalization of women’s rights; (6) The consolidation of the family; (7) The implementation of social justice; (8) The elevation of Filipino customs into law; and (9) The exaltation of per-

sonality. To illustrate the reasons supporting the creation of independent civil actions, provided in Articles 33, 32, 26, 27 and 34 of the new Civil Code, I quote:

"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."

From the above quotation from one of Dr. Bocobo's lectures, the value of viewing the wisdom and spirit of the new Civil Code provisions is quite evident. The commentaries of Dr. Bocobo unfolds innumerable insights into the Civil Law of the Philippines, and are useful, informative tools of learning both for students and practitioners of law. Professor Rivera's *The Father of the First Brown Race Civil Code* offers a comprehensive treatise on the history of the new Civil Code, an invaluable compilation of the commentaries of the Code Commission and the Jorge Bocobo Papers, coupled with the fruits of the author's own researches. Dean Bocobo used to tell his students "to go to the library and humble themselves" among the Philippine Reports, and books of Manresa, Sanchez Roman, and other authorities. In like manner, I urge law students to enrich their knowledge of Civil Law by humbling themselves before the works of Dr. Jorge Bocobo, as found in the Jorge C. Bocobo Papers as well as in Professor Rivera's book, for Jorge Cleofas Bocobo, mentor and chief author of the Brown Race Civil Code, is indeed what Professor Rivera calls the "precursor of the study of comparative law in the country" — the St. John the Baptizer as he were — paving the way to new horizons of juristic science.

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