AN APPRAISAL OF THE PROPOSED CODE OF CRIMES *

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Fellow Members of the Bar,

By Executive Order No. 48, the Code Commission was created for the purpose of "revising all existing substantive laws of the Philippines and of codifying them in conformity with the customs, traditions and idiosyncracies of the Filipino people and with modern trends in legislation and the progressive principles of law." The Code Commission submitted a Civil Code project, which, with slight modifications, was approved by Congress as Republic Act No. 386 known as the Civil Code of the Philippines. The same Code Commission submitted its second project—the proposed Code of Crimes, which is intended to substitute for the Revised Penal Code.

It is not my purpose today to discuss our Civil Code, whose provisions I have attempted to expound and clarify in my work on Civil Law. But I intend, with your indulgence, to discuss with you the merits or demerits of the proposed criminal code. The members of the Code Commission, particularly its Chairman, have earnestly advocated for the prompt passage of this new Code, but no legislative action has been taken thereon up to the present. It is, therefore, proper, that the members of the Bar should interest themselves in appraising this new codification, because

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its enactment into law will vitally affect, favorably or adversely, the peace and order conditions in our country and the apprehension, prosecution and punishment of violators of our penal laws.

Our Revised Penal Code, Act No. 3815 as amended, was revised in 1930 based on the Spanish Penal Code of 1870 and took effect on January 1st, 1932. Our jurisprudence is rich in court decisions applying the provisions of our Revised Penal Code, which seem fully adequate to cope with the various forms of crime and all types of criminals. Dean Roscoe Pound once said: "Law must be stable, but it cannot stand still." We should, therefore, welcome every improvement or advance towards more effective legislation. But any change should be for the *better*, for the Code Commission itself admits that the proposed changes should not be "merely for the sake of innovation" (p. 43 of report). We do not have to stress originality, for the concept of crime, which arises from the evil nature of man, is as old as humanity itself. We need not adopt new "trends and objectives" merely for the sake of being modern, unless they are sound and are in conformity with our own customs and traditions as a people. The Code Commission was entrusted with the duty to *revise* existing laws and codify them, not necessarily to *create* new crimes. At the same time, we should not remain stagnant, for adherence to the static may mean not only a refusal to advance but an actual step backwards.

I invite you, therefore, fellow members of the Bar, to discuss with me the *pros* and *cons* of the proposed Code of Crimes to help crystalize public opinion as to the wisdom of its adoption into, or rejection from, our penal system.

The Shift from the Classical to the Positivist

The first basic departure from the Revised Penal Code is the shift from the classical or juristic theory of penology to the positivist or realistic theory. Following the classical principle in our present Code, criminal responsibility is founded on the actor's knowl-

edge and free will. The positivist school, however, denies or minimizes the exercise of free volition and considers the criminal as a victim of circumstances which predispose him to crime, for the Code Commission states that "criminality depends mostly on social factors, environment, education, economic conditions, and the inborn or hereditary character of the criminal himself" (p. 22 of report). The classical theory stresses the *objective* standard of crime and imposes a proportionate punishment therefor, but the positivist school considers the deed as secondary and the offender as primary, and provides for means of repression to protect society from the actor—to "forestall the social danger and to achieve social defense" (p. 3 of report), because it takes the view that "crime is essentially a social and natural phenomenon" (p. 3 of report). In other words, the classical view imposses responsibility for an act maliciously perpetrated or negligently performed, while positivists view the criminal not so much an object of punishment or retribution but as a patient deserving of social consideration for reformation, to the end that society may be protected. The Code Commission has practically abandoned the classical concept of retributive justice providing for punishment for crime freely executed, and has adopted instead the new theory that repression of crime is "applied for social defense, to forestall social danger, to rehabilitate, cure or educate" the transgressors of criminal law (Art. 34). Should such a shift from the classical to the positivist theory of criminal law be adopted as a sound step forward and as being more in harmony with Filipino customs and traditions? It would be a dangerous theory—to minimize, if not negate, the exercise of free will based on knowledge of the actor that the act committed is a transgression of our penal law. In fact, such a theory would conflict with the stubborn fact of our own experience that a criminal is not a desperate instrument of evil compelled by forces or circumstances beyond his control, but rather that he strays beyond the strict and narrow path of good conduct knowingly and voluntarily. For without knowledge or without free will an actor must be exempt from criminal liability (Art. 12, Revised Penal Code).

Mala in Se or Mala Prohibita

The proposed Code of Crimes contains 951 articles, as compared with the 367 articles of the Revised Penal Code. The increase in size is due to the considerable number of additional offenses. It has included offenses now punishable under special laws. For example, Title VII dealing with "Crimes Against The People's Will" is covered by our Revised Election Code. The new Code has penalized unfair labor practices (Arts. 506-507) which are covered under Republic Act No. 875, otherwise referred to as the Magna Carta of Labor. It has included "Motor Vehicle Crimes" (Arts. 712-718) which fall under the Revised Motor Vehicle Law (Act No. 3992 as amended). The inquiry arises: Should the penal code include in its provisions all reprehensible acts that should be punished or repressed, or rather should they be limited to inherently wrongful acts which are commonly known as *mala per se*, as distinguished from *mala prohibita?*

The penal code is the basic and fundamental law on crimes. It must, therefore, be stable and should not vary with every changing circumstance, because the acts penalized therein should be limited to evil acts which are such by the very nature of man as decreed by Divine Law and reflected to human reason as the Natural Law. Thus, to kill or to steal are *mala per se*—expressly prohibited by the Ten Commandments. They are inherently wrong at all times, in any place, and under every circumstance. No advance of civilization, no vestige of modernity, can ever justify such inherently evil acts. The proposed Code of Crimes, however, considers that an act, criminal when committed, may subsequently lose "its dangerous or criminal character by reason of a change in the criminal law, or the alteration of the social or political situation" (Art. 15). The reason is that the proposed

Code seeks to include offenses subject to special penal laws, for some acts, in themselves colorless, become transgressions of the law because of the peculiar purpose to be attained, dependent on certain prevailing circumstances. Thus, the possession of firearms is regulated by special laws (Sec. 2692, Adm. Code; Com. Act No. 56; Rep. Act No. 4), and penalizes as a crime the illegal possession thereof, to control loose firearms and discourage irresponsible gun-wielders. Similarly, our election law forbids any person to enter a polling precinct with arms, regardless of the intention of the actor—whether or not the arm is intended to be used to coerce or intimidate voters. Likewise, the Motor Vehicle Law penalizes a person who drives without a license. Obviously, however, the act of possessing a firearm, of entering a precinct with arms, or driving a car without a license, as the case maybe, do not render said acts or intrinsically or inherently wrong. They are only prohibited acts, and such prohibitions will continue as long as the law has an objective to achieve, but such purpose or objective may be lost by a change of circumstances. In such case, the prohibited act would cease to be criminal. The Code Commission should not have included in the proposed Code of Crimes—the basic or fundamental law on crimes—violations of special laws, which are not *mala in se* but only *mala prohibita.*

The proposed Code of Crimes has included many misdemeanors, which should be the proper subjects of municipal ordinances. Thus, social gatherings between 2:00 and 5:00 in the morning (Art. 756), dancing or music (Art. 757), or sale of liquor (Art. 900) between said hours, should be covered by municipal ordinances. Even smoking in a first-class theatre (Art. 921) should not be declared a misdemeanor under the penal code.

The proposed Code of Crimes also penalizes violations of Civil Law provisions which should remain within the realm of Civil Law. In seeking greater protection for family solidarity, it would penalize alienation of affection between the husband and the wife (Art. 616), the disturbance of family relations by any

intrigue (Art. 617), collusion for legal separation or annulment of marriage (Art. 619), deprivation of the legitime of compulsory heirs (Art. 626), or refusal to discuss compromise of a civil litigation among members of a family (Art. 635). But not every act which involves a violation or infringement of a civil right should give rise to criminal prosecution, since liability for civil damages would be adequate relief. Art. 642 penalizes a lessor who fails to cancel a lease of his house or building after knowing that the building is being used for prostitution. Art. 852 punishes a lessor who wilfully violates the terms of a lease by refusing or failing to furnish a service or facility agreed upon. Likewise, a lessee who wilfully abandons the premises without first having settled his rental indebtedness to the lessor commits a misdemeanor under Art. 853 which would amount to sanctioning imprisonment for debt. These are purely civil matters which affect the private rights of the contracting parties. Neither the violation by the lessor nor by the lessee should give rise to a criminal offense, unless such violation would constitute a specific crime by itself.

Similar Provisions

There are some provisions which are presented as new, but are essentially a reiteration of the prevailing rule. Thus, when a criminal act is perpetrated by a legal entity which, as a juridical person, cannot commit a crime, the persons responsible therefor are the president, manager or director, either as principals or for criminal negligence (Art. 30). Article 42 imposes fines fixed in terms of daily earnings. This is the same rule provided in Art. 66 of the Revised Penal Code, where the "wealth or means of the culprit" must be considered in the imposition of fines (People vs. Ching Kuan, 74 Phil. 23). Article 178 imposes special subsidiary liability upon employers engaged in any kind of business or industry for the payment of the fine imposed on their employees. This is similar to the subsidiary liability now provided in Art. 103 of the Revised Penal Code. Article 180 imposes solidary lia-

bility on principals and accomplices. The same rule is prescribed in Article 110 of the Revised Penal Code. The proposed Code considers accessoryship as a separate crime (p.13 of report), but the legal effect is the same because the accessory receives a penalty two degrees lower than the principal in a consummated offense. The proposed Code has abolished the concept of quasi-offense, or a crime committed thru negligence. The abolition, however, is more apparent than real, because the same concept remains and is called culpable or without criminal intent, when the injurious or dangerous result takes place in consequence of negligence, recklessness or lack of skill (Art. 14). Moreover, crime thru negligence is repressed lower by one or two categories prescribed for the intentional crime (p.28 of report).

Good Innovations

There are, however, some new provisions in the proposed Code which deserve favorable study and adoption.

Art. 372 provides for command responsibility, which holds the chief or commanding officer of a police force or unit of the Constabulary or of the Armed Forces under his command for his failure to maintain strict discipline, based on his negligence. This is a good provision to avoid the tendency of shifting responsibility.

Art. 445 is a provision against dishonest accumulation of wealth, so that property grossly in excess of the normal and probable earnings of a public official will be forfeited to, and declared property of, the State. This will be an effective deterrent against so much graft and corruption in government and its subsidiary corporations, where public service and the general welfare have been sacrificed for personal material advantages. Art. 823 penalizes nepotism and Art. 824 the evasion of the law against nepotism, which are good provisions in view of the prevalent custom of our officialdom.

Art. 446 limits the provision against self-incrimination and demands the testimony or production of books and papers in an investigation and trial. The same rule is provided in Art. 342 where a person, duly summoned to testify before any court or congressional committee, shall not be excused from testifying or producing documents, although he shall not be prosecuted for any statement or admission he might make or because of such document.

Art. 194 subjects a person who attempts to commit suicide to curative security measures, including detention in a hospital for treatment. This is a reform to Art. 253 of the Revised Penal Code, which penalizes a person who assists another to commit suicide but does not prescribe a penalty for the person so attempting.

In view of the difficulty in prosecuting arson suspects, Art. 609 raises a *prima facie* presumption of guilt in some prosecutions for arson. This good provision is not in violation of the presumption of innocence because the Revised Penal Code itself contains *prima facie* presumptions of guilt.

Art. 667 provides for special or additional aggravating circumstances in theft. This is much more satisfactory than the present provision on qualified theft, which limits the enumeration of property to "motor vehicle, mail matter, large cattle, coconuts taken from a plantation or fish taken from a fishpond" (Art. 310, Revised Penal Code).

Innovations Subject to Criticism

There are, however, many new provisions in the proposed Code of Crimes, or changes advocated, which deserve careful study and scrutiny.

(*a*) *Attempted vs. Frustrated*

The new Code proposes to abolish the distinction between attempted and frustrated crimes (Art. 6, Revised Penal Code). On the other hand, it imposes repression upon the principal of an attempted crime, or upon the conspirators, or upon the proponent of a

crime (Art. 62). Under the Revised Penal Code conspiracy and proposal to commit a felony are not punishable, except in specific cases where the law specially provides a penalty (Art. 8, R.P.C.). There seems to be no valid reason for the elimination of the different stages of execution, for the differences between consummated, frustrated and attempted (Art. 6, R.P.C.) are clear and real. It is true that in crimes like bribery, which is consummated by mere agreement, there is no frustrated stage; and in crimes like abduction, adultery or arson, the distinction between frustrated and attempted is rather difficult. But such difficulty which obtains only in few particular felonies would not justify total abolition, for, certainly, an offender who merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution should not be held to the same degree of responsibility as the offender who performs all the acts of execution which should produce the felony as a consequence (Art. 6, R.P.C.). Moreover, why should conspiracy and proposal be made punishable when the offenders or offender have not translated their intention into positive acts falling within the purview of the penal law? While the moral law does not wait for external acts and seeks to control man's innermost thoughts as violative of the moral code, the same standard can not be applied to felonies falling under our penal laws. Again, we cannot rely on the subjective standard but must apply the objective test. Even the present law on impossible crime (Art. 4, par. 2, R.P.C.) is limited to the performance of an act which would be an offense against persons or property.

(*b*) *Socially Dangerous without Committing Specific Crime*

Article 561 of the proposed Code is a strange provision. For although a person may not have committed any specific crime, he could be declared socially dangerous and be subject to *curative* security measures and may therefore be confined or hospitalized until such time as he is no longer dangerous to society (Art. 562). Article 108 likewise provides that a person, even if he has not been prosecuted for a specific crime, may be subjected to *detentive* security measures (Art. 114), when he shows any symptoms, evidences or manifestations of habitual rowdyism or ruffianism (Art. 209). If the Code Commission recognizes the basic principle of *nulla poena sine lege*, why should a person be deprived of his liberty and subjected to curative or detentive security measures on vague and uncertain manifestations that he may be socially dangerous, if he has not in fact performed an overt act constituting a specific crime?

The proposed Code, following its purpose of repression, which is for social defense, to forestall social danger against possible transgressors of criminal law (Art. 34), considers the "actor's social and family environment, education, previous conduct, habits, economic condition and other personal factors" (Art. 73), and would impose detentive security measures which "shall last until the court has pronounced that the subject is no longer socially dangerous" (Art. 114). Hence, the Code authorizes indefinite detention even for gun-wielders or rowdies (Arts. 108 and 209). And even if a convict has already served the *maximum* of his term of imprisonment, he may not be released if the court should declare that he is still socially dangerous. Too much discretion is given the trial court. In fact, in the imposition of the terms of repression, which should really be terms of imprisonment, the proposed Code does not follow the objective, though mathematical, proportion between the felony and its penalty as aggravated or mitigated by circumstances in the Revised Penal Code, but leaves a greater degree of latitude to judicial discretion. If we must curb or lessen judicial abuse of discretion, we should limit the extent of such discretion. If the standards are not *objective* but more subjective, there can always be an apparent justification for unequal, if not arbitrary, discrimination among accused persons similarly situated.

If an accused, after a first offense, is declared no

longer socially dangerous, we find difficulty in explaining the provision on habitual criminal (Art. 67); and more so, a professional criminal (Art. 68); for, if after his first conviction he is not capable of reformation but continues to be a threat to the State and the public, he should then suffer indefinite confinement. But how can judicial discretion determine whether a person has been reformed and is no longer a danger to society, or that he still constitutes a menace to the public, if he remains under confinement?

(c) Neither Hero nor Criminal

Art. 804 penalizes as a misdemeanor against the public administration the refusal of any person to aid an officer of the law in the arrest of any lawbreaker, or in the maintenance of peace and order. To the same effect is Art. 810, No. 1, which punishes a person who fails to render assistance in case of a calamity or misfortune, like earthquake, fire or inundation. It is praiseworthy to inculcate in our people higher concepts of civic-mindedness. We extol to the heights of heroism a person who, in disregard of his own self, serves the community specially in times of stress. But the vast majority of the people cannot be expected to be heroes. And if an ordinary mortal, with feet of clay, cannot rise to the extraordinary demands of community service, such as in the arrest of a lawbreaker or in putting out a fire, why should his failure to act, his indifference, or if you wish, his cowardice, be branded as a criminal offense? That was the same error committed by some Filipinos in the United States who were beyond the clutches of the Japanese oppressor, when, after liberation, as self-proclaimed heroes, they accused their brothers in occupied Philippines, particularly the occupation leaders, of treason just because the latter did not defy the Japanese invaders by sacrificing their lives, but rather pretended to cooperate for national survival. One per cent of the population may have been heroic; another percent may have been inclined to treason by bartering their birthrights for selfish advantages; but ninety-eight per cent

were neither heroes nor traitors. They were just plain mortals subject to human weaknesses and frailties. Certainly, a man who cannot rise as a hero should not be condemned as a criminal.

(d) Criticism of the State or Civil Institution

Art. 324 penalizes under sedition any priest or minister who shall utter or write words derogatory to the authority of the State, or shall attack civil marriage, the public school, or any similar civil institution established by the State. Art. 423 penalizes any priest or minister who, in any manner, violates the principle of separation between Church and State. Any school professor or teacher who shall refuse to use textbooks or other books prescribed by the Government (Art. 933) commits a misdemeanor against good customs. These provisions would make of the State and its officials *infallible*, beyond the scope of free speech and constructive criticism. This would be a step backwards glorifying the erroneous assumption that the "king can do no wrong" and reviving the obnoxious crime then known as "*lese majeste.*" It would be contrary to the accepted principle that the State must promote the general welfare, and if it should fail or falter in that sacred trust, it becomes not only the right but the duty of a citizen to protect his inalienable rights, which *antedate* the State. Likewise, the Church is dedicated to the salvation of human souls and, within the exercise of religious freedom, it can advocate its religious doctrines and principles, even if they contravene some policies of the State. Thus, if the public schools become godless institutions, as, when contrary to the constitutional provision guaranteeing optional religious instruction, the holding of religious classes is prevented or discouraged, the priests and ministers would be perfectly justified in their sermons and writings to advocate a change in the conduct of such civil institutions. There must be liberty under the law, and the scope of the exercise of such liberties of speech or of the press *cannot exclude* the State and its political

institutions. And such free exercise of the rights of free men should not fall under the penal sanction.

(e) *Misfeasance by Judicial Officers; Appeal by State in Criminal Cases*

Similar to the provisions on malfeasance and misfeasance in office by judges and prosecutors (Arts. 204-208, R.P.C.), the proposed Code penalizes a judge who fails, within the time prescribed by law or regulations, to try, hear, or dispose of a case or proceeding (Art. 374); or who shall require a manifestly excessive bail for the temporary release of the accused (Art. 402); a judicial officer who, with abuse of discretion, impairs or denies the rights of the accused (Art. 413); any judge who shall maliciously render an unjust judgment, order or resolution (Art. 454). These provisions are praiseworthy, because they are designed to protect an accused person from the arbitrary exercise of judicial power, but like the provisions of the present Penal Code (Arts. 204-208), they are dormant and inert provisions, because it is very hard to prove malice on the part of the judge who renders an unjust judgment or interlocutory order. While members of the Bar should not countenance the continuance in office of a judicial officer who, contrary to his oath, does not render decisions in accordance with the law and the evidence, without fear or favor, still that sad situation exists. And it is more so in criminal cases, where no appeal lies against a judgment of acquittal or dismissal, even on the ground that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Once the prosecuting fiscal moves for dismissal after the accused has pleaded, and without the latter's consent, or a judgment of acquittal is rendered by the court after judicial proceedings, the State, including the offended party, is rendered powerless to have a review of such judgment, because the judicial interpretation of the double jeopardy clause in the Constitution has rendered such a review by way of appeal impossible. That ruling was based on the majority decision in the case of Kepner vs. U. S., 195 U. S. 100;

11 Phil. 669. Decisions previous to that 5 to 4 decision in the Kepner case had unanimously adhered to the sound view that the provision against double jeopardy (see Art. 414) does not preclude an appeal by the Government from a judgment of acquittal, for while jeopardy may have attached, it has not terminated—the appeal is but a continuation of the same prosecution. An appeal is not a new or separate proceeding. The greatest restraint against arbitrary power by inferior courts is the exposure of their errors on appeal. To give finality to an order of dismissal or acquittal by a trial court is to stamp it with some semblance of infallibility. If the trial had been infected with error adverse to the accused, he has a right to purge the vicious taint. Why should not a reciprocal privilege be granted the State so that the discretion of the trial judge may neither be arbitrary nor oppressive?

(f) *Stricter Rules of Morality*

The new Code "advocates more strict rules of morality" and proposes "more severe and more rigid standards of morality and good conduct" (p. 44 of report). It seeks to establish "the single standard of morality" (p. 46) among spouses. Thus, Art. 568 provides for adultery not only by a married woman having intercourse with a man not her husband, but also by a married man who has one sexual intercourse with a woman not his wife. Likewise, the three modes of committing concubinage (Art. 334, R.P.C.) are made applicable to a wife (Art. 569, No. 2). A single standard of morality between husband and wife may be desirable in the moral order, but these new provisions are hardly in accord with human experience or human nature. One act of infidelity on the part of the husband cannot cause as much havoc as an act of infidelity on the part of the wife.

Art. 572 of the proposed Code considers as a crime the act of any unmarried man and woman of living together under the same roof, regardless of scandal. The birth, therefore, of a natural child would be con-

clusive proof of the commission of this offense. *A fortiori*, the birth of an illegitimate child would be convincing evidence that his father, as a married man, committed several acts of adultery. And yet, the same Code Commission inserted in the new Civil Code the substantial change of granting illegitimate children successional rights as compulsory heirs.

Art. 871 penalizes a person who marries without obtaining a certificate from the health authorities that he is not suffering from any of the diseases therein mentioned, including tuberculosis, cholera, or dysentery. This article makes marriage not only difficult but also as constituting an offense. The previous article (Art. 572) makes cohabitation without marriage likewise an offense. Although eugenics may justify the postponement of marriage when one of the parties is not physically fit, a marriage ceremony should never be made a penal offense, because marriage is not only a social institution but a Divine sacrament, which the State may perhaps regulate but cannot control, much less penalize.

(g) *Death by Spouse under Exceptional Circumstances*

Art. 247 of the Revised Penal Code is practically an exempting circumstance for any spouse who surprises the other in the act of committing sexual intercourse with another. Art. 185 of the proposed Code would change the principle and provide for a repression with imprisonment, on the ground that "only God, and in extreme cases the State, may dispose of human life" (p. 59 of report). Verily, no man but only God has the right over life and death, but when an offender commits a grievous act of aggression, such as an attack on one's life or against family honor, the killing of the aggressor is justified, because the offender has thus forfeited his right to his own life. Otherwise, we would have no basis for the justifying circumstances of self-defense, defense of relatives and of stranger (Art. 11, pars. 1, 2 and 3, R.P.C.). The new Code wants to give greater protection to family solidarity

and yet it would deprive the spouse of his or her right, under exceptional circumstances, to kill the very intruder who has assaulted and undermined the sacred foundation of family solidarity.

The sacred respect for human life which the proposed Code professes is not found in Art. 193 on mercy killing, which practically allows a person to cause the death of another at the latter's request through mercy or pity. Neither is human life or personality upheld under Art. 203, which allows abortion of the foetus to save the life of the mother.

The proposed Code has made the penal law so strict that it has risen to the level of a *moral* code. And yet, some of its provisions have relaxed the present rules. Thus, malversation (Art. 217, R.P.C.) includes under the concept of *public funds* Red Cross, Anti-Tuberculosis and Boy Scout funds, and such funds are extended to property attached, seized or deposited by public authority even if such property belongs to a private individual (Art. 222, R.P.C.). Art. 444 of the proposed Code, however, provides that money or property collected or raised by public voluntary contribution for any civic, charitable, religious, educational, political, or recreational purpose is not deemed or included as public funds or property. Why the change? Likewise, the law on treason (Art. 114, R.P.C.) requires evidence based on the testimony of at least two witnesses to the same overt act. The new Code proposes to relax the rule by inserting the phrase "or different overt acts", and the reason given is that the present rules makes it difficult for the prosecution to secure a conviction for treason (p. 65 of report). This proposed change would run counter to the many decisions of our courts which have followed the basic principle justifying the "severely restrictive rule", for prosecutions for treason are usually virulent and the framers of the Constitution expressly made the conviction for treason difficult.

Art. 435, which prohibits any public officer from accepting the construction of any monument in his honor or the naming of any public street or building,

would render many of our political leaders subject to confinement.

Resume

I have invited attention to some meritorious provisions of the proposed Code of Crimes which could be adopted under special laws or by way of amendatory acts to the present Revised Penal Code. I have likewise invited attention to many provisions which may be unsatisfactory, if not totally objectionable. The good features may be adopted without enacting the proposed Code into statute, but its deleterious provisions can hardly be avoided without positive action to reject its enactment into law.

The enactment of Republic Act No. 386 as the New Civil Code of the Philippines has *not* met with the universal approbation of the Bench and the Bar. In fact, it has met with some serious criticisms. If the proposed Code of Crimes be recommended for enactment into law greater criticisms will ensue, for it constitutes a drastic departure from the basic philosophy of our penal law and its new trends and objectives are hardly in consonance with the customs and traditions of the Filipino people.

Recommendations

This appraisal of the proposed Code of Crimes would remain academic if no suggestions or recommendations are advanced. Hence, I have taken the liberty of submitting the following suggestions:

1. The Code Commission should now be abolished, for no person or group of persons can claim such mastery of all branches of substantive law as to constitute a *permanent* body to codify various laws, such as civil, penal, commercial, labor, taxation, and other branches of the law. Congress may always avail itself of the help and services of *tried* men in their respective fields. Thus, if a tax code be recommended, experts on taxation should form the commission to draft such legislation. If a labor code is advisable,

another group of labor experts coming from management and labor, and other economic factors, should be considered in the composition of such committee.

2. Remedial measures should be studied to allow the State, including the offended party, to appeal from a judgment of acquittal or dismissal in a criminal case, for such appellate review in meritorious cases would constitute the most effective restraint against erroneous or arbitrary actuations of inferior courts, and such appeal would not strictly violate the constitutional provision against double jeopardy.

3. Some good provisions in the proposed Code of Crimes should be adopted under special laws or as amendments to the Revised Penal Code.

4. The new codification would not be a decisive step forward towards a more stable and satisfactory Penal Code, and accordingly Congress should *not* be persuaded to enact into law this project of the Code of Crimes as our new Penal Code.

Thank you.