The Philippine Judiciary: Problems and Prospects

By Dean Jose Manuel I. Diokno, *Esq.*

Thirty-one years ago, the late Jose W. *"Ka Pepe"* Diokno wrote a paper entitled "A Filipino Concept of Justice."[1] Unlike other legal documents, it cited no statutes, cases, or other legal authorities; but it broke new ground by seeking to answer two questions that had not received serious attention at the time:

Is justice an imported Western concept?

Do we have our own concept of justice native to us Filipinos?

Ka Pepe looked for the answers to these questions not in law books or treatises but in our language and history. If we have our own Filipino concept of justice, he reasoned, it will show in our language; and it will be reflected in our history as well.

Tagalogs, Cebuanos, Ilonggos and Pampangos, he observed, have a common word for justice: *katarungan.* The root word of *katarungan* is *tarong*, a Visayan word which means straight, upright, appropriate or correct.[2]

For Filipinos, therefore, justice is rectitude, doing the morally right act, being upright, or doing what is appropriate. And since justice includes doing what is appropriate or what is right, it includes the concept of equity, for which we have no native word. In this respect, our language is different from the English language which distinguishes between justice and equity.[3]

We also have a common word for right: *karapatan*. The root word of *karapatan*—*dapat*—has a meaning very close to *tarong* -- fitting, correct, appropriate. Our language,

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[1] The paper was presented to the Seminar on the Administration of Justice in the Philippines: Focus on the Poor, sponsored by the Management Education Council, College of Law, and Law Center of the University of the Philippines, August 7-8, 1981. It was published as a chapter in the book A NATION FOR OUR CHILDREN: SELECTED WRITINGS OF JOSE W. DIOKNO, Quezon City: Claretian Publications, 1987.

[2] Ka Pepe based his discussion on language on two works: Jose Villa Panganiban's *English-Pilipino Dictionary, 1938-1966,* mimeoscript by Limbagang Pilipino; and the Random House Dictionary of the English Language, Unabridged Edition, Jess Stein and Laurence Urdang, Random House, New York.

[3] JOSE W. DIOKNO, A NATION FOR OUR CHILDREN, at p. 18 (1987).

therefore, tells us that for us Filipinos the concepts of justice and right are intimately related.[4]

But what word do we use for "law"? We use *batas,* which means command—very different in meaning and origin from *katarungan*.

Our language, then, makes a clear distinction between justice and law; and recognizes that what is legal may not always be just.[5]

The English language is similar. They have the same word root word for justice and right: the latin *ius. Katarungan*, however, is native to us. And it is broader than its English counterpart, since it embraces the concept of equity."[6]

How about the word *right*? The Spanish, Italian, French, and German languages use *right* to signify both the word "right" and the word "law." The ambiguity in the use of this word could mean that (1) the law must respect right; (2) what is law is right; or that (3) law and right should be inseparable. This ambiguity, however, is absent from our language.[7]

On the other hand, when we speak of power and authority, we use the word *kapangyarihan,* which could mean that (1) power confers authority; (2) authority confers power; or that (3) power should be divorced from authority.[8]

Lately, however, we tend to use *poder* or *lakas* for naked power, and *kapangyarihan* for authority. A sign, pershaps, that as a people we are beginning to see the difference between naked power and legitimate authority.

What about "right" and "privilege"? We use a native word—*karapatan*— for right; but for privilege we use a Spanish derivative, *pribelehiyo*. From this, as *Ka Pepe* pointed out, we can conclude that "the fundamental element in the Filipino concept of justice is fairness;" and that "privilege and naked power – two of the worst enemies of fairness – are alien to the Filipino mind."[9]

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[4] Id. at p. 18.
[5] Id.
[6] Id. at p. 19.
[7] Id.
[8] Id.
[9] Id.

A final point. The Tagalog word *tuwid* is almost the same as the Visayan *tarong.* Yet the Tagalogs choose *tarong* over *tuwid* for "justice." Why?

Perhaps the answer can be found in how we use these words. We use *tuwid* or *katuwiran* to mean straightness, not rectitude. Sometimes we even use *katuwiran* to mean argument with overtones of self-justification or excuse, as in *mangatwiran* and *magmatuwid.* So our language indicates that we Filipinos know that not every justification is just.[10]

In summary, *Ka Pepe* concluded that"

> [O]ur language establishes that there is a Filipino concept of justice; that it is a highly moral concept, intimately related to the concept of right; that it is similar to, but broader than, Western concepts of justice, for it embraces the concept of equity; that it is a discriminating concept, which distinguishes between justice and right, on the one hand, and law and argument, on the other; that its fundamental element is fairness; and that it eschews privilege and naked power.[11]

Ka Pepe likened our language to the "bones" of the concept of justice. Our history, he said, constitutes its "flesh:"

> To discern the Filipino vision of the universe that puts flesh on the bones of the concept of justice our language expresses we need to turn to the history of our people. That history may be described as a continuous and continuing struggle to create a just society.[12]

Our history chronicles the sacrifices and sufferings of our people under despotic governments, both foreign and domestic. Despite the overwhelming odds, we battled the Spanish, American, and Japanese invading forces. In more recent times we fought hard to dismantle the Marcos dictatorship, to restore democracy, and remove U.S. military bases from our territory. Indeed, our history is a testament to our unbending and unwavering intent to regain our dignity and mold a just society.

> Tell me, for I have never come across it: at what period in our history did our people stop fighting oppression? Armed with little more than an enduring

[10] Id.
[11] Id. at pp. 19-20.
[12] Id. at p. 20.

heart, an ear for music, and a longing for justice without which there could never be harmony, they have for centuries pursued a dream that will not die: the dream of a noble society. They have been—they still are—deceived and deprived, defeated and defamed. Yet they struggle on, however humbling, mistaken or misguided their efforts may at times seem to us.[13]

Our history also reflects how highly we value the dignity of the human being:

> Ang kamahalan ng tao'y wala sa pagkahari, wala sa tangos ng ilong at puti na mukha, wala sa pagkapari-paring kahalili ng Diyos, wala sa mataas na kalagayan sa balat ng lupa; wagas at tunay na mahal ang tao, kahit laking-gubat at walang nababatid kundi ang sariling wika, yaong may magandang asal, may isang pangungusap, may dangal at puri; yaong di napapaapi at di nakikiapi; yaong marunong magdamdam at marunong lumingap sa baying tinubuan.[14]

Which brings me to the next question that *Ka Pepe* raised: By what standards should we judge the content of laws, policies and institutions that seek justice in the Philippines?

> The first standard is that every law, policy, and institution must respect, if it cannot promote, both the individual rights of man and the collective rights of the people.[15]
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> [Our] [l]aws, policies, and institutions…[must]…also consciously strive, by effective means:
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> One, to eradicate poverty, at first in its most degrading forms and later in all its forms;
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> Two, to select a means of developing and using our natural resources, industries and commerce to achieve a self-directed, self-generated, and self-sustaining economy….

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[13] Id. at p. 76.
[14] Id. at p. 21, citing Emilio Jacinto, "Ang Mga Aral ng Katipunan," in Jose P. Santos, Buhay at mga Sinulat ni Emilio Jacinto, n.p.: 1935, pp. 61-63.
[15] Id. at p. 27.

> Three, to change those relations and structures of relations between individuals, groups, and communities that cause or perpetuate inequality, unless that inequality is needed to improve the lot of the least favored and its burden is borne by those who heretofore have been most favored.[16]

Summarizing his vision, Ka Pepe said:

> Social justice, for us Filipinos, means a coherent, intelligible system of law, made known to us, enacted by a legitimate government freely chosen by us, and enforced fairly and equitably by a courageous, honest, impartial, and competent police force, legal profession and judiciary, that first, respects our rights and our freedoms both as individuals and as a people; second, seeks to repair the injustices that society has inflicted on the poor…; third, develops a self-directed and self-sustaining economy that distributes its benefits to meet, at first, the basic material needs of all, then to provide an improving standard of living for all…; fourth, changes our institutions and structures, our ways of doing things and relating to each other, so that whatever inequalities remain are not caused by those institutions or structures, unless inequality is needed temporarily to favor the least favored among us and its cost is borne by the most favored; and fifth, adopts means and processes that are capable of attaining these objectives.[17]

What does our justice system look like today? Does it reflect the Filipino concept of justice?

A Brief (and Alternative) History of the Philippine Judiciary

To understand where the judiciary is today, we must look to where it came from.

Before Ferdinand Marcos declared martial law in 1972, the members of the judiciary were appointed by the President with the consent of the Commission on Appointments.[18]

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[16] Id. at p. 29.
[17] Id. at pp. 30-31.
[18] 1935 PHIL. CONST. Art. VIII, sec. 5.

In 1972, upon the declaration of martial Law, Ferdinand Marcos ordered all judges and justices to submit letters of resignation, which he could accept at any time.[19]

This was the first assault on the independence of the Philippine judiciary.

In 1973, Marcos enacted a "new" Constitution which provided that all incumbent members of the judiciary would "continue in office until they reach the age of 70 years unless sooner replaced" by law or presidential decree.[20]

This was the second assault on the independence of the Philippine judiciary.

In 1981, the Marcos regime's Batasang Pambansa passed B.P. 129 or the Judiciary Reorganization Act of 1980. The law allowed Marcos to remove judges whom he perceived to be against his regime.

This was Marcos' third assault on the judiciary's independence.

The EDSA Revolt

By the time the dictatorship collapsed in 1986, the judicial system had already been co-opted by the Marcoses and their cronies. The situation led President Corazon C. Aquino to order a purge of the judiciary, which resulted in the removal of many judges identified with Marcos. It also led the framers of the 1987 Constitution to restore the independence of the judiciary and to create a "Judicial and Bar Council" to insulate the process of judicial appointments from partisan politics.

The JBC, unfortunately, has not lived up to its intended purpose. Judges who had been purged by President Corazon Aquino, managed to find their way back into the judiciary during the administrations of the presidents who succeeded her. Those familiar with the inner workings of the JBC—including the judges themselves who applied for promotion—often spoke of the need for political "backers" to make it to the JBC shortlist.

In addition to the highly politicized process of appointing judges, our judiciary faced two other major challenges after Marcos: transparency and accountability. Unfortunately, we have not fared that well in either respect.

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[19] On September 29, 1972, Marcos issued Letter of Instruction No. 11 directing "all officers of the National Government whose appointments are vested in the President" to "submit their resignation from office not later than October 15, 1972."

[20] 1973 CONST. art. XVII (Transitory Provisions), sections 9 and 10.

Transparency and Access to the Justices' SALN's

Two laws govern the filing of Statements of Assets, Liabilities, and Net Worth ("SALN's) by government officials: R.A. 3019, the Anti-Graft and Corrupt Practices Act, enacted in 1960, and R.A. 6713, the Code of Conduct of Public Officers and Employees, enacted in 1989.

Both R.A. 3019 and R.A. 6713 are laws of general application that cover all civil servants from all government departments, including the judiciary. R.A. 6713, in particular, requires not only the filing of SALNs but their disclosure to, and access by, the general public.

RA 6713 contains the rules for disclosure and access to SALN's by the public. Section 8(c) of this law imposes only minimal conditions for access to SALN's. It provides that all SALN's ***shall*** be made available to the public—

> (1) For inspection, during reasonable office hours;
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> (2) For copying or reproduction, after ten (10) working days from the time they were filed with that office, and upon payment of a reasonable fee to cover costs of copying, mailing, and certification;
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> (3) For a period of ten (10) years from the time they are filed.

For the last 20 years, however, the Supreme Court has made it very difficult to obtain the SALN's of justices and judges by imposing additional conditions for access not found in the SALN laws. And it has rebuffed attempts by citizens to obtain the SALNs of the members of the Court.

The first resolution of the Court restricting access to the SALN's of justices and judges was issued in 1989, the same year that R.A. 6713 took effect. It involved a request for the SALN's of several Supreme Court justices by a lawyer, which the Court unanimously rejected due to a "*plainly discernible improper motive*" – to expose the justices "*to revenge for adverse decisions*."[21] But the Court went even further and declared:

[21] In re: Request of Atty Jose M. Alejandrino, Resolution dated May 2, 1989.

> Requests for SALNs must be made under circumstances that must not endanger, diminish or destroy the independence and objectivity of the members of the Judiciary in the performance of their judicial functions, or expose them to revenge for adverse decisions, kidnapping, extortion, blackmail or other untoward incidents.[22]

Three years later, the Court denied a request from the Office of the Ombudsman because (1) its purpose was "to fish for information against certain members of the Judiciary" and (2) it was not personally signed by the Ombudsman himself.[23]

A year after that, the Court denied another request from the Ombudsman, this time for the SALN of a former judge, on the ground that restrictions on access apply to retired members of the judiciary.[24]

Recent attempts have met the same fate. Since 2006, all requests from the Philippine Center for Investigative Journalism (PCIJ) have been denied. I understand that requests of San Beda law students under former Senator Rene Saguisag, co-author of R.A. 6713, have also been denied.

The impeachment trial of former Chief Justice Renato Corona shed some light on the SALN issue. For the first time, the SALN's of a justice—a Chief Justice at that—were exposed to the public eye. Corona, in fact, was found guilty of failing to disclose certain assets (bank accounts) in his SALN.

After the trial, expectations ran high that restrictions on access to the justices' SALN's would be lifted. These were dashed, however, when the Court, on June 13, 2012, issued its latest SALN resolution.[25]

A.M. No. 09-8-6-SC resolved a series of requests dating back to 2008 for the SALN's and personal data sheets of the justices of the Supreme Court. Like its predecessors, the resolution provided that the authority to disclose the SALN's of justices rests on the

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[22] Id.
[23] A.M. No. 92-9-851-RTC, September 22, 1992.
[24] Re: Request for Certified True Copies of the Sworn Statements of Assets, Liabilities and Net Worth (Judge Luis D. Dictado), A.M. No. 92-9-851-RTC, November 11, 1993.
[25] A.M. No. 09-8-6-SC.

Supreme Court *en banc*. Like its predecessors, it imposed additional requirements not found in the SALN laws, including:

1. That the requesting party must state the specific purpose and individual interests sought to be served by the request.
2. That the requesting party commit in writing that the SALN will only be used for the stated purpose.
3. That the "interests" of requesting individuals other than members of the media "*should go beyond pure or mere curiosity*."
4. That the requesting party must have "*no derogatory record of having previously misused requested information*."
5. And for members of the media, that their requests must be supported by:
    a. Written proof, under oath, of their media affiliation; and
    b. A similar certification of the accreditation of their organization as a legitimate media practitioners.

A.M. No. 09-8-6-SC adds conditions to access that are not found in or authorized by the SALN laws. These additional conditions serve as obstacles to securing the SALN's of members of the judiciary. They make it practically impossible to obtain their SALNs of justices unless the justices themselves agree to it. And they have made access to their SALN's discretionary when it should be a ministerial duty on the part of the SALN custodian.

Accountability of Justices and Judges; the Maceda vs. Vasquez Ruling

The accountability of members, officers and employees of the judiciary suffered a big blow when the Supreme Court, in 1993, decided Maceda v. Vasquez,[26] and held that the Ombudsman cannot criminally prosecute members of the judiciary until after the Court has resolved their administrative complaints with finality. Whenever a criminal complaint against a judge or court employee arises from his or her administrative duties, the Court declared, "the Ombudsman must defer action on said complaint and refer… it to the Court for determination whether said Judge or court employee had acted within the scope of their administrative duties."

Maceda was followed, 13 years later, by A.M. No. 06-10-18-SC, a Supreme Court circular that dispensed with the need for Ombudsman clearances by retiring justices of the

[26] G.R. No. 102781, April 22, 1993.

Supreme Court, Court of Appeals, and Court of Tax Appeals. This has further insulated the members of the judiciary from the reach of the Office of the Ombudsman.

Flip-flopping

The last few years of Renato Corona's tenure as chief justice also saw the Court disturb a basic, time-honored principle – the immutability of final judgments. The phenomenon began with the "Sixteen Cities" case–a case that involved the constitutionality of a series of statutes creating 16 cities.[27] It soon spread to other cases.[28]

But the demolition of the immutability of final judgments doctrine did not end there. It was institutionalized by the Internal Rules of the Supreme Court, promulgated on May 4, 2010. Section 3 of Rule 15 provides:

> **Section 3.** *Second motion for reconsideration.* – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc.*

This is the complete opposite of Section 2, Rule 52 of the Rules of Court, which that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."

2012 was also the year that the Court upheld the last minute appointment of Renato Corona as chief justice of the Supreme Court. In a widely criticized decision, a divided Court declared that President Arroyo's appointment of Corona during the election ban on appointments was constitutional.

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[27] League of Cities of the Philippines v. Commission on Elections, G.R. Nos. 176951, 177499, and 178056.
[28] See discussion in dissenting opinion of Mr. Justice Arturo D. Brion in Navarro v. Executive Secretary, G.R. No. 180050, April 12, 2011.

The conviction of Chief Justice Corona on May 29, 2012 paved the way for President Benigno Simeon Aquino III to appoint Associate Justice Maria Lourdes Sereno as chief justice of the Supreme Court—the first woman, and the youngest in the modern era, to occupy the position.

Problems of the Judiciary

The problems of the Philippine judiciary can be summarized as follows:

1. Lack of transparency. The SALN rules adopted by the Supreme Court in 2012 are too restrictive. They impose conditions not found in or contemplated by R.A. 6713. They also changed a ministerial act (the release of SALN to the public) into a discretionary act in violation of the clear intent of R.A. 6713.

2. Lack of accountability. The Maceda ruling is a big setback for public accountability. Coupled with the 2006 SC circular dispensing with the need for retiring judges to secure Ombudsman clearance, they have effectively insulated the judiciary from investigation, prosecution, and punishment by the Ombudsman.

3. Congestion and delay in the litigation of cases. We are all too familiar with the problem of congestion and delay in our courts. What is not often mentioned is the fact that 26% of our courts –or more than 1 out of every 4 courts—have no judges. We will never be able to truly resolve the problem of congestion and delay until we fill these vacancies.

The problem is compounded by our cumbersome court procedures which we took from the United States and which were designed for a jury system when we have no juries here. For more than a hundred years we have been using these rules even if we have no juries. Isn't it about time that we develop court rules that are consistent with the Filipino concept of justice?

4. Syndicated justice. The last problem that plagues the Philippine judiciary is a vestige of the Marcos regime—what is known euphemistically as "chambers practice."

This type of practice became prevalent during the Marcos dictatorship, when court victories depended more on one's connections than the merits of the case. While many judges identified with Marcos were purged during President Corazon Aquino's time, the lawyers who figured prominently in the Marcos regime were never charged or held accountable, and continued with their ways after the regime collapsed.

Prospects

1. Transparency. The outlook on judicial transparency is unclear. The door, so to speak, is slightly ajar, but the room is still dark. How much light will actually get through remains to be seen.

The Court is at a crossroads here. Under the leadership of Chief Justice Sereno it may continue its restrictive stance on access to SALN's or embark on a more open path.

For the last 20 years, the Court has chosen the restrictive approach. Perhaps it is time to try something different, something that will strengthen the people's faith in the legal system rather than make them suspicious of our men and women in robes.

The Court's protective attitude toward the members of the judiciary must yield to the SALN laws.

2. Accountability. The outlook on judicial accountability is also murky, in large part due to the Court's ruling in the Maceda case. That case must go—it should be abandoned at the earliest opportunity.

Cases like Maceda contribute to judicial impunity. Civil society groups, NGO's, and concerned citizens should challenge this stumbling block to accountability and call upon the Ombudsman to use her powers to investigate and prosecute judges regardless of their administratively liability.

The active participation of the Ombudsman in weeding out corrupt and incompetent judges will be crucial here.

3. Congestion and delay. The problem of congestion and delay in our courts can never be adequately addressed until we have enough judges. Our present national vacancy rate of 26% --meaning that 1 out of every 4 trial courts has no judge—is simply too much.

While changes in our rules of court, like the Judicial Affidavit Rule, may alleviate the problem of congestion and delay, they will never solve it. Streamlining court procedures may speed up cases, but they are merely palliative at best. The real solution to the problem of court congestion and delay lies in filling up the vacancies with qualified trial judges.

The outlook on this issue is on the positive side, largely due to increases in the salaries of judges and what appears to be a more determined and conscious effort under Chief Justice Sereno to fill the vacancies with qualified judges. The highly politicized Judicial and Bar Council, however, may pose a serious stumbling block to the appointment of qualified trial judges.

4. Syndicated justice. The Judicial and Bar Council and Integrated Bar of the Philippines urgently need attention. The JBC, to reiterate, needs to be sanitized of the "old boys" network. The fraternities' hold on the Integrated Bar of the Philippines should give way to a truly representational national bar association.

"Chambers practice" can be avoided or deterred if members of the judiciary will be required to disclose their clients and other potential conflicts of interest to the public when they assume office. Litigants will then be able to check if the justices or judges deciding their cases have a conflict of interest. At present, there is no mechanism that allows litigants to find out if the judge or justice trying their case has a conflict of interest.

The outlook on this matter is uncertain.

Conclusion

In 1981, Ka Pepe Diokno submitted an *amicus curiae* memorandum to the Supreme Court in De la Llana v. Alba,[29] the case involving the constitutionality of the Judiciary Reorganization Act of 1981 (B.P. 129). What he said 21 years ago about the judiciary-and who is to blame for its sorry state--still holds true today:

> One last word….[C]ounsel had laid the blame for the sorry state of the Judiciary mainly on the policies of the present regime and partly on some acts of members of the Court. But they are not alone to blame….
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> We…all must bear some share of responsibility…for the present situation. Because by act or omission, at one time or another, we have all contributed to it: most of us by unnecessary delays, some in more

[29] G.R. No. L-57883, March 12, 1982.

> reprehensible ways, and all by not speaking out as often and as forcefully as we could…[30]

That is why I have chosen to focus my attention on this subject.

The problems and prospects of the Philippine Judiciary are actually a challenge not only to my generation but to succeeding generations of Filipino lawyers.

But can we really expect genuine changes to take place in our lifetime? I will leave you as I started, with the words of *Ka Pepe*:

> If you mean meet completely and immediately, they are. But only yesterday in world time, it was thought impossible to land on the moon. And not too long ago, Aristotle – one of the wisest of men – justified slavery as natural and listed torture as a source of evidence. Standards thought too high today may well turn out to be too low tomorrow. But whether they do so or not is not really important. What Nikos Kantzakis said of freedom can be said of justice: the superior virtue is not to receive justice, it is to fight relentlessly for it – to struggle for justice in time, yet under the aspect of eternity.[31]

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[30] Memorandum dated October 15, 1981 filed by Jose W.Diokno as *amicus curiae* in the De la Llana case.
[31] *Supra* note 3, at p. 31.