

**Chief Justice Panganiban Professorial Chairs on Liberty and Prosperity
Public Lecture**

by
Dean Gemy Lito L. Festin

Polytechnic University of the Philippines
Bulwagang Bonifacio, 4th floor, NALLRC, PUP A. Mabini Campus, Anonas St. Sta. Mesa, Manila
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Reaction:

Atty. Arnold C. Bayobay

Graft Prosecutor, Office of the Ombudsman

- In our Constitution and in our experience, economic rights are still in the realm of policy which is very subject to vagaries of politicians, and it is best manifested through the sharing of pork barrel fund, the internal revenue of the Local Government Units which is subject to the whims of the LGUs. Why is it that the Supreme Court is very reluctant to categorically rule on economic rights? Example, the *Oposa vs Factoran* case, which gives life to Section 16 of Article 2, the Right to a balance ecology. The decision is couched more on the right to life and not to the economic aspect of real balance ecology or environment.
- We are confined with the principle of separation of powers. When we say economic rights, there are two terms there, economy and rights. When we say economy, there must be resources and resources must be identified for the need. Who allocates resources? It is not the Supreme Court. The Executive identifies resources, Congress allocates resources. Now, how can the Supreme Court realize a demand for economic right?
- If the person is given the right to demand housing, can the Supreme Court grant that demand? Not yet. Why? There must be an allocation of resources. It is only the other branches under our constitution which is capable of doing.
- I was also thinking about the reaction of Judge Villarosa regarding the form of government in Colombia. Is their form of government founded on a very strong wall of separation of powers? Based on the case cited by the Dean where the Colombian court reallocated the resources, where you reallocate resources, there are already resources identified. The court there did not demand the National Government to produce resources but to reallocate. So to me, there is no strong separation of power there unlike in the Philippine setting. Going back to the role of the Judiciary, section 1, Article 8. The problem here is that in the Philippines, as defined in the judicial power, the demand of the protection of a right and enforcement of a right is adversarial; there must be a complainant and there must be a defendant, because section 1 says there must be an actual controversy.
- Economic right is founded on the basic inherent instinct of survival. There should not be an actual controversy on that where either I have to look for a defendant (somebody to claim from) so that I can enforce my right of survival. But that is not the case because the constitution exemplifies how I can demand my right which is to have an actual controversy first.
- Is the demand of right in Colombia adversarial or is it based on individual need? The problem here in the Philippines if you claim an individual need, you cannot go to court because you are not a proper

party. Why? Because a proper party in the Philippines is one whose right has been violated. Can you violate your own right?

- These are the principles which prevent the Supreme Court, based on our present Constitution, to promulgate Tutelary Rules. So if we reach a complete overhaul of the principles like separation on how we demand rights because as I said it is adversarial, and from which maybe we can come up with a new Constitution and revolutionize some principles that govern our suit and action in Court, maybe that is the time that rules of tutelary system may exist.