

## Advocacy and the Art of Small Steps

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*Never have our people had greater need than today for great lawyers, and for young men and women determined to be great lawyers. Great lawyers—not brilliant lawyers. A scoundrel may be, and often is, brilliant; and the greater the scoundrel, the more brilliant the lawyer. But only a good man can become a great lawyer: For only a man who understands the weaknesses of men because he has conquered them in himself; who has the courage to pursue his ideals though he knows them to be unattainable... only such a man would so command respect that he could persuade and never resort to force.*

— Jose “Ka Pepe” Diokno

For many people, choosing a career path is a quarterlife crisis waiting to happen. In the age of millennials, where choice is virtually unlimited and people are constantly looking to find and dig into their niche—to be “different” and to stand out from the crowd—“what do you want to do?” has become a sensitive topic to be broached with caution. Luckily for me, that was not the case; as early as my junior year in high school, I was fairly set on becoming a lawyer. “An ace attorney,” I would beam with pride as I told my family and my closest friends. While I was spared the conundrum of discovering what I wanted to do in life however, vocational *certainty* did not mean *understanding*. I relished in building my hopes and dreams like towers and yet I had a rather rudimentary grasp of what lawyers did. My high school teachers told me that lawyers were all about fighting for justice. But what is justice? What do lawyers *really* fight for?

Justice is gray area whose contours we can only attempt to define with precision. In broad strokes, justice is the state of fairness under prevailing factual circumstances. Justice, in its most nascent of definitions, means giving to another what is his due. As an ideal and as a virtue, it is something that we have been building towards since the birth of our nation. But what does it demand from us?

Our very own Constitution, in Section 9, Article II, dares to define what justice entails and commands the State to “promote a just and dynamic social order that will *ensure the prosperity and independence of the nation, and free the people from poverty.*” By and large, this constitutional mandate is designed

to put the plight of the underprivileged at center stage of governmental policy and to rally the State's awesome machinery to eliminate inequities in society. Prosperity for all: that is the goal of social justice, as can be seen in the various efforts that have been led by government.

Consider the following state measure.

The *Pantawid Pamilyang Pilipino Program* (4Ps), our version of the World Bank's Conditional Cash Transfer Program, was instituted to break the chain of poverty from one generation to the next by investing in the health and education of children from underserved families. In 2010, 800,000 beneficiary households were enrolled in the 4Ps. By 2015, however, this number would balloon to 4,400,000, with a total budget of P62.7 billion for the subsequent year.<sup>1</sup> In fact, the World Bank and the Asian Development Bank praised the program's success in lessening the burden of those stricken with poverty.

The 4Ps is but one example of measures geared towards the attainment of social justice. Though the cynic would have much to say about our current array of governmental programs, the facts show that our nation has made significant gains towards the reduction of inequalities. While laudable in their purpose, however, it is equally arguable that the programs that government has spearheaded are essentially remedial, rather than comprehensive, solutions. As such, they run the danger of remaining short-term palliatives. For instance, the 4Ps addresses issues on maternal mortality and child mortality, while leaving out other vulnerable sectors, such as poor senior citizens, the chronically sick, and the out-of-school youth. Indeed, the causes of poverty are highly complex and interlocking, and cannot be addressed without *real* engagement of the beneficiaries—that is, an attempt to understand the contexts in which they live.

Many of our socio-economic efforts, albeit a testament to the governmental push for poverty alleviation and prosperity, fail to consider that perhaps inequities, within the Philippine context, are merely symptomatic of an even great problem: the poor have no voice to espouse their own cause. The lack of representation is aggravated by the fact that they cannot even be bothered to do so. When you fall along the margins of society, you have little

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<sup>1</sup> Statistics taken from the Department of Social Welfare and Development, at <http://pantawid.dswd.gov.ph/> (last accessed October 13, 2016).

room for discourse and debate. You are given aid, and you say yes, and then go back to making ends meet. No doubt the poor man on the street may get by, but the inconvenient truth remains: pure beneficence is, more often than not, temporary, and its effects, short-lived at best. Consequently, he remains bound to the cycle of poverty. In many ways, therefore, governmental aid tends to be the balm that soothes the blistering wounds, without breaking the chains that caused them. Indeed, there is no liberty in economic assistance alone—not when it refuses to acknowledge the underlying context of those living on the margins: that they are a disenfranchised lot.

It is not enough that we Filipinos commiserate with the plight of our underprivileged neighbors. Benevolence, without liberation, is bound to be a self-defeating cause. In this regard, our earlier conception of justice thus becomes a little bit clearer: justice is not just about *giving*. Justice must also be *enabling*. In the words of our very own Supreme Court, “Social justice does not champion division of property or equality of economic status; what it and the Constitution do guaranty are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production.”<sup>2</sup> Justice goes beyond mere charity and requires an interplay of prosperity and liberty. One without the other would simply not do. This begs the question: how do we go about attaining liberty? Which avenues must we explore? To me, I believe we do not have to look far to find an answer.

We can begin with hearing out *stories*.

‘Little Prince’ Lander Solano is a 9-year-old boy who sells *kesong puti* to passers-by along Filmore Street, Makati. He negotiates sketchy alleys, flyovers, and underpasses every day—all in the company of thieves—just to make a living. Little Prince’s mother also sells *kesong puti* behind the Cash & Carry along Osmeña Highway, where the family spends the night whenever their goods remain unsold. He is currently out of school, but one day, he said, he will take up engineering and build homes, towers, and dreams.

Krizia Mae is a 15-year old girl living in the uplands of General Nakar, Quezon. She is a member of the Dumagat tribe, displaced from her ancestral

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<sup>2</sup> *Guido v. Rural Progress Administration*, G.R. No. L-2089, October 31, 1949.

home to give way to the construction of Kaliwa Dam in Quezon. She wants to become a teacher someday, but finds that the current facilities in her settlement are largely inadequate. Krizia Mae does not understand why her community had to relocate.

The narratives of Little Prince and Krizia Mae are but two of myriad stories that need to be told to and heard by those in the core of society. Since the persons living on the margins lack the voice to pass on their narratives and to espouse their own cause, however, they require agency. This is where, I believe, the legal profession and advocacy come in. We claim to live under the rule of law, but without the instrumentalities to bridge the gap between established rights and the underserved, the deep-seated inequalities that we have today will endure for generations to come. Thus, a discussion of Article III of the Constitution is a hifalutin, largely academic exercise unless it can be concretized and brought down to the level of the *common tao*. And so I believe this is the lawyer's task: a lawyer must stand at the helm of the law and, through the strength of advocacy and the power of persuasion, turn liberty and prosperity into concrete reality.

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When I was growing up, I developed the notion that a great lawyer is one who can speak his mind freely, compellingly, and defiantly. A lawyer is, first and foremost, an advocate—one who is called to champion another person's cause, when the latter cannot himself do so. I was not a particularly big boy, even when I was an adolescent, and so physical strength was never my *forte*. It comes as no surprise, therefore, that becoming a lawyer spoke to me on many levels. Fiery oratory: it was the weapon of choice that I hoped to brandish skillfully one day.

Childhood dreams are attractive because they tend to be ideal, while conveniently discounting realities. In my first year of law school, it dawned on me that the path of law meant serious and competitive business. Perhaps it was the professors, who relentlessly tried to catch us out of step. Or my classmates who, even in their free time, discussed their own versions of "What happened in this case?" Or maybe it was my Type-A personality which made me feel a constant need to compete with myself. In my first year, I developed the notion

that law school was all about the paper chase—the slow, grueling crawl to get the best grades possible. Law school was a context where it seemed like being statistically best was what mattered most. It was not so fascinating after all.

The ‘bad recits’ came in frequently and academics only got harder as we advanced through the semesters. As I became more immersed in law school, however, my disposition towards learning took a gradual turn. I began to consider the possibility that, while grades are all fair and fine, perhaps they are not everything. After all, memorizing codal provisions and facts-issues-held helped me live to see another day, yet they could only do so much to advance my dreams of becoming a great *advocate*. It was then that I realized I still had not found what I was looking for, and so I decided that greatness probably lied elsewhere.

As a prospective lawyer, I dream to create ripples in the lives around me. Many of us (myself included) want to create a difference in the world—to fight the good fight, so to speak—and yet, few of us ever know where to even begin. And so we end up feeling stuck in a rut, unable to map out our next move in making an impact out of our lives. As a law student, what *concrete* action could I have possibly taken to pull down my dreams from the clouds and turn them into a reality here on the ground?

The answer became apparent when I began my second year of law school. The Ateneo Society of International Law (ASIL), an organization dedicated to moot court, opened its doors to new recruits. To me, it seemed an obvious choice to learn the ropes of advocacy. While I do not regret joining ASIL, it was nevertheless difficult decision to make because active involvement meant balancing sleepless nights of studying, with equally sleepless nights of training, researching, and writing.

I wish I could say that advocacy came naturally and instantly to me, but mine was an uphill, Sisyphic struggle more than anything else. After all the jibber jabber and heartstrings about advocacy, one would reasonably expect that I was proficient at it. I was not.

I will not lie: the results from my first competition were a disappointment at best. Despite all efforts, my team failed to advance to the international round;

in fact, we did not even make it past the quarterfinals during nationals. To put the nail in the coffin, I discovered post-mortem that my individual scores were absolutely dismal. After all those months of rigorous training, I ended up going home with my tail in between my legs. Needless to say, the experience was a huge blow to my self-esteem, and I considered that maybe I did not have what it takes to make it in the real world.

Even as all the cards were stacked against me, however, I willed myself to compete again. For if I decided to pack my bags and go home, then I would have failed not only my dreams and myself. I would have failed Little Prince, who was at Filmore Street with his *kesong puti* wanting nothing else but to meet his quota; I would have failed Krizia Mae who wanted nothing but to fight for her ancestors' lands. If I broke under the pressure of not being good enough, then I would have failed the legal profession.

We all very much would like to be brilliant at what we do, and yet greatness is never a miracle waiting to happen at any given moment. Greatness, I found, is the art of small steps: it is in the daily struggle that we can take courage, and become better, stronger, and wittier. Trials, tribulations, setbacks, and fiascos are really just tests of character in disguise, for the fire that melts butter is the same fire that hardens steel. True enough, the sun was on my side and in my most recent competition, I prevailed as 3<sup>rd</sup> Best Speaker in Asia. I dare say (and at risk of flying my own flag), it was a good way to wrap up my first year of mooting.

As a law student with two years to go, I believe this is my task: to embrace the grind, and to never stop honing my craft. There is still a lot to learn. For instance, I have yet to master the delicate art of weaving together legal principles and facts to form logical, sound, and compelling arguments. I have yet to master composure and measured speech while under fire from judges because, as I learned, hostility never advances one's ability to argue. When I finish law school, I would like to hit the ground running. At the same time, I know that it is only through resilience and relentless pursuit that I can net myself the armaments that I would need to espouse liberty and prosperity when I enter "the real world."

It has been said that the rule of law is the great equalizer and yet, without lawyers, the law is rendered fictional and out of reach, especially for those at the fringes of society. Prosperity and liberty under the rule of law: these are laudable goals but without agency to bridge them to the beneficiaries, a wide chasm will continue to isolate the underserved. And so this is the lawyer's mission: s/he must learn the power of advocacy—learn to harness it, and become the voice that resonates when others go silent.

**The Power and the Limitations of Law in the Pursuit of Liberty and Prosperity**

*Mud* was a movie that was showing on television a few days before my first official day in law school. The movie really didn't have anything to do with law, except that in one scene the young protagonist is sitting by the river, watching agents from the river development authority demolish the house that he and his family had been living in along the riverbanks. His best friend passes by and asks him why they're demolishing his house.

The boy answers plainly: "that's the law."

The best friend replies: "that's bullshit."

I don't know, but this exchange of words between the two boys, and the helplessness with which they watched the demolition continue, has always stayed with me a little. Not that I think that the law is bullshit, only that I understand how it can feel absurd. It's a bunch of words on paper, written by strangers far away, and yet it's powerful enough to take people's homes away from them. It's so powerful that it can affect whether we have a place to go home to everyday, whether we get to eat or go to school, and ultimately whether we feel safe and included in society.

Indeed, the scene above, I think, perfectly illustrates how law can affect both liberty and prosperity – liberty, in the way it can affect our sense of helplessness and impotence, our lack of freedom in directing our own lives; prosperity, in the way it can make real decisions about our basic means of living. Use law in the right way, and it can mean that people are well-fed, have a home, are educated, and feel secure in their civil liberties. Used in the wrong way, and it can make people hungry, vulnerable, impotent, and helpless. In fact, law, in the way it interplays with both liberty and prosperity, can alter drastically the way we feel about our own humanity and dignity.

It's difficult for me to grasp if I really think about it. It's difficult to fully comprehend how something can be so powerful, and how such a powerful tool can be so easily used for both positive and destructive ends.

At the same time, as powerful as the law is, I have also come to realize that it can mean nothing if it doesn't adjust itself to and address the actual realities that people live in. Well-worded laws on civil liberties mean nothing if they exist in a society where people are abused economically, where people don't have a voice in society because they're too hungry to speak. Further, the best laws on access to basic services, jobs, and protection of trade and business would be in vain if they also didn't come with real improvements in the civil and political freedoms of the most marginalized members of society. If the law is to mean anything, it has to be sensitive to the actual realities of the people, and to adjust to what we really need. Only then can law be said to be perpetuating a society that is truly just, where both liberty and prosperity are upheld.

One of the lessons from our first year Philosophy of Law class that I've really drilled into my long-term memory is the idea that the law is not always the same as justice. Robert Kidder's writings on Critical Legal Theory, for instance, expound on the way law can be a device of domination, utilized by the ruling class to establish and maintain their dominance over others.<sup>1</sup> Sen evoked the concept of *nyaya*, a Sanskrit word for justice, which asserts that justice goes beyond the law, and that it manifests itself not only in the law, but more importantly in "the world that actually emerges."<sup>2</sup> In fact a law, no matter how well written, would still constitute injustice if it indeed caused injustice in the real world.<sup>3</sup>

Following Kidder, if the law is not the same as justice, then it is our job to challenge the assumptions behind the law and reveal the conflicts behind it.<sup>4</sup> We must work, not simply to live by and uphold the law, but to see to its improvement – if needed, "to further just arrangements not yet established."<sup>5</sup> Our duty is not to the law, but to justice – including the pursuit of both true liberty and prosperity.

To my mind and little as I know of the actual experience of the legal profession, men and women of the law can play a role in the pursuit of justice, liberty, and prosperity especially in three aspects. The first is in the upholding of the importance of dialogue and deliberation. The second is in our capacity to

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<sup>1</sup> Robert L. Kidder, *The Origins of Law: Conflict, The Critical Perspective*, in *CONNECTING LAW AND SOCIETY* 83, 89 (1983).

<sup>2</sup> AMARTYA SEN, *THE IDEA OF JUSTICE* 20 (2009).

<sup>3</sup> *Id.* at 20-21.

<sup>4</sup> Kidder, *supra* note 1, at 87.

<sup>5</sup> JOHN RAWLS, *A THEORY OF JUSTICE* 99 (2<sup>nd</sup> ed. 1990).

### **My Gateway to Becoming Superman and Bill Gates**

*“Everyone carries a part of society on his shoulders; no one is relieved of his share of responsibility by others. And no one can find a safe way for himself if society is sweeping towards destruction. Therefore everyone, in his own interests, must thrust himself vigorously into the intellectual battle. No one can stand aside with unconcern: the interests of everyone hang on the result. Whether he chooses or not, every man is drawn into the great historical struggle, the decisive battle into which our epoch has plunged us.”*

- Ludwig von Mises, Austrian School economist

I was a kid of the 90's, and a considerable chunk of my growing up was spent watching television series with my mother. Although at the time it might not be appropriate yet at my age, one particular series I used to watch with her is the show *Kapag Nasa Katwiran, Ipaglaban Mo!*, which portrays real-life cases. At the time, what sticks to me are the cases of murder or homicide, and rape, where victims and suspects alike come from the impoverished or the least well-off sectors of the society. The show also instilled in me at a young age the symbol of the scales of justice, which at that age, my mother explained to me to mean that: in law, everyone is on equal footing; supposedly, it does not matter whether you are rich or poor. It did not mean much to me at the time; I don't care why the symbol has to be that way. I was neither conscious of our status in the community, nor was I interested, even at the slightest, to pursue the study of law. I was selfishly content that the stories I watched happened to other people and not to our family. I was least concerned how the law and the scales of justice could affect my life and my freedom as a person to live the life that I believe I deserve. I was not conscious that I would be a Superman and Bill Gates in the making.

### **My personal taste and distaste of liberty and prosperity**

I was lucky enough to be accommodated in a private school from my preparatory to secondary school. I was also blessed to be sent to a university in the metropolitan when I entered college. Living alone, I experienced the teenage freedom of being away from my parents, from being out of the bounds of curfew, of strict home rules, and stringent study times. I also felt a little well-off, being able to study in a prestigious university, along with other really well-off students at that. I developed circle of friends, within which I share and exchange ideas and opinions, and within which, unconsciously, I was able to exercise how I express

my views, and how I justify those views. I felt free and proud – I was living my college life according to my own rules. I was going to study well, finish college, become a Certified Public Accountant – be a good one – and live a successful life down the road.

I came to a crucial realization point in my life when I entered the business world. I thought I was successful for having landed a position in the top accounting firm in the country at the time. But my bubble was popped earlier than expected. There are piles of work to do, stricter rules, bosses that can strip you off your freedom and time, and most unfortunately, there are biases that can hinder one aspect or another of how you conduct your daily business. You face all of these everyday and you get paid a meager amount of money.

### **But there's a bigger picture**

When I got myself exposed to these, the most important lesson I learned is how the concept of freedom of directing your life economically should not be confined with one's self. Liberty and prosperity is best viewed when applied to the whole of society – that is, not to one man alone, but to the whole island instead. Right, there is a bigger picture of liberty and prosperity.

In a free society, liberty is five freedoms for each individual: (1) freedom to come and go, (2) equality and justice before the law, (3) security of property, (4) freedom of speech, and (5) freedom of conscience. There are many other names for these five individual freedoms—freedom of the press, freedom of expression and opinion, freedom of religion, freedom of association, right of habeas corpus, right of assembly, right of jury trial, etc.<sup>1</sup> There is so much freedom in the world, not just the limited concept of freedom I thought I already enjoyed.

Prosperity on another hand is not limited to what I thought was living successfully – or the study-hard-get-a-job-become-rich mindframe. To attain individual success is not restricted with an individual's effort. There are a vast of other factors – the national economy, the risk appetite of investment sectors, the ability of the private sectors to provide job opportunities, the purchasing power of money in light of existing economic conditions – that could make or break what one thought is his or her individual success. Put the other way around, I myself,

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<sup>1</sup> Brown, Wendell, "Defining Liberty: An Analysis of Its Three Elements", July 1 1965, available at <https://fee.org/articles/defining-liberty-an-analysis-of-its-three-elements/> [Last accessed September 23, 2016].

although a sole individual – contributes to the factors of how prosperous other individuals, or how the society as a whole could attain.

### **What has law got to do with these?**

As I progressed with what I believed was my “career”, I realized that it was not as easy as 1, 2, 3. There are fixed constants, which are beyond my control. There are various variables that are not easy to manipulate. What remained with me was one powerful variable: what was in me, myself, which I can improve further?

I was exposed to lawyers who have different degrees of standing in the business world. I heard from news lawyers who gain dissimilar levels of respect from the society. I knew personally lawyers who have different personal goals and advocacies as a lawyer. So I got curious, but unsure. Will study of the law advance any standing I currently have with regard to my personal liberty and prosperity? How about with how I would affect the liberty and prosperity of my community? Of my country?

### **How I stumbled upon the rule of law**

If asked about the top-of-mind importance to me of studying law, my answer would be: it teaches and reminds me everyday that no action of any individual can be done at his most whimsical, opportune way. There has got to be a limit always. I sell, I get taxed. I do not report all my sales, I get penalized. I cross the island barriers of Gil Puyat Avenue, I get charged of jaywalking. One person dies, the family mourns, but pays the tax and divides the properties, anyway. One person get killed, one person get arrested. The person get arrested was killed, the situation gets flipped – his family now seeks justice. Almost at every turn of events, at every man’s action, there would be a law that will narrow how further the events will turn out. And this is how I initially comprehended the rule of law – people’s actions are ruled by laws. Period.

But I had to understand things deeper. I should go further to the core and the spirit of the laws I study. I was fortunate enough to have a professor in the early stage of my study of the law, who impressed in us how we should understand the rule of law. In the process, I learned, although belatedly, that the rule of law, at its core, requires that government officials and citizens are bound by and act

consistent with the law.<sup>2</sup> There is a reliable expectation about surrounding conduct<sup>3</sup> because of the existence of the laws in place, which are supposed to govern people's actions. The presence of the rule of law hinges upon the presence of three elements<sup>4</sup>:

- (1) widely-shared orientation within society (among citizens and government officials) that the law does rule and should rule.
- (2) presence of an institutionalized, independent judiciary.
- (3) existence of a robust legal profession and legal tradition committed to upholding the rule of law.

It goes without saying that the rule of law is not conclusive upon the mere existence of the law. The laws should be put in place, respected and upheld, both by the government that makes, executes, and interprets them; and by the people who are sought to be protected by them. And at the center of these are the sentinels of the law: the lawyers of the bench and the bar – the lawyers who either serve as justices and judges of the judiciary system, and the lawyers who represents the people before the bench.

### **How the rule of law intersects with liberty and prosperity**

It is the core judicial philosophy of retired Chief Justice Artemio V. Panganiban that jurists and lawyers should not only safeguard the liberty of the country's people but must also nurture their prosperity under the rule of law. To him, justice and jobs; freedom and food; ethics and economics; democracy and development; nay, liberty and prosperity must always go together; one is useless without the other. The attainment of this dual goal involves an understanding of the intertwining relationship of law and business; and of regulation and entrepreneurship.<sup>5</sup>

This goes to show that in applying the laws to the conduct of life in general, and of business in particular, of the people, it is indispensable that the liberty and prosperity of people – individually and as a whole – gets altered. And in so altering, the bench and the bar get to have bits of the power to do so. The legal system, with some elbow rooms, gets to shape these freedom and economic advancement of people. The bar and ultimately, the bench, with limited judicial

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<sup>2</sup> Tamanaha, Brian, "A Concise Guide to the Rule of Law", September 2007.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> "Mission and Vission" of Foundation for Liberty and Prosperity, available at <https://libpros.com/> [Last accessed September 24, 2016].

freedom, get to tilt the scales of justice. And I have learned that in each case, how the scales of justice is tilted determines the immediate, if not the lasting fate, of the people involved.

In terms of liberty, history would tell us that in the case of Ferdinand Marcos, the Supreme Court upheld the power of the President to deny his return to the country in light of national security<sup>6</sup>. In terms of economy, while the Disbursement Acceleration Program under the past administration was a program designed to promote economic growth, such was struck down because of violation of the Constitution<sup>7</sup>. There are numerous other instances that can run on the list of how liberty, prosperity, and the rule of law, are so intertwined, that in each case, every surrounding circumstance must be weighed to arrive at the most effective and efficient decisions. It is my inference then that all efforts can be in vain if there is no good justice system to promote the rule of law.

### **How do I place myself in the picture**

I now place upon myself, as a student of law aiming to enter the legal profession, the duty to carry upon my shoulder a share of the burden of the society as Ludwig von Mises had said. I shall do so in light of how events currently turn out. I ask myself these questions: Is there disarray between the government and the citizens? Do the public have doubts in the members of the Congress who are supposed to craft the laws? Do the nation cast doubt upon the supposed impartiality of the judiciary? Do the people impute corruption in the government in general? Do they really see the useless role of some government institutions? Is the country's democracy already fragile? Will there be continuous economic reform?

How do I – a small dot in the whole system – get into the picture?

I shall resolve this question through establishing how important the life of a lawyer is:

“Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain one's good standing in that exclusive and honored fraternity. Good moral character is more than just the absence of bad character. Such character expresses itself in the will to do the

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<sup>6</sup> Marcos vs. Manglapus, G.R. No. 88211, September 15, 1989.

<sup>7</sup> Arullo et. al. vs. Aquino et. al., G.R. No. 209287, July 1, 2014.

unpleasant thing if it is right and the resolve not to do the pleasant thing if it is wrong. This must be so because 'vast interests are committed to his care; he is the recipient of unbounded trust and confidence; he deals with his client's property, reputation, his life, his all.'<sup>8</sup>

So what do I become? I would be a lawyer who will be entrusted with the role of being an officer of the justice system, an officer of the law, and advocate of my government's or my people's powers and rights. By the time I become a lawyer, I am not sure what the status of our country be. But what should remain is the aim to be a barricade of injustice. Little as my contribution would be, I need to seriously take my part of the burden of revamping the justice system – to remove as far as possible every bias, to erase stereotypes, to stand firm against appeal to emotions.

How else will I be better prepared for my role? I need to be strongly and well educated. I need to take advantage of the legal education that is afforded to me by the combination of my salary, my allowance from parents and my scholarship grant. The opportunity to attain legal education is unfortunately not available to all, that I should not waste this. During the course of my legal education, I should prepare myself on how I would weigh between the legal ideals and practical considerations when I finally exercise my profession. I will prepare myself, through whatever little decisions I make now, to be the lawyer who will not abuse the use of the law to my unfair advantage at the expense of those who are less privileged.

I know by now that liberty is so powerful. Liberty is not confined in freedom per se. Liberty is so broad that it can extend to one's autonomy, equally with others in the society, to attain success; that when I become a lawyer, I would not let the words of my oath be in vain. I would put my oath in practice. I would not use the legal profession to rob freedom and prosperity from people.

Hence, I enclose my role for now in a vision: I will be the Superman and Bill Gates in my own right. I do not see myself as the Superman who will be the Champion of the Oppressed using my physical strength; nor do I see myself living a Bill Gates philanthropic kind of life extending billions to people for help. Rather, the vision is to help more people attain autonomy of living a victorious and prosperous life under the rule of law.

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<sup>8</sup> Cordon vs. Balicanta, 439 Phil 95, October 4, 2002.

***Making the ocean less salty: An advocacy for a more civilized public discourse.***

*Kevin Ken S. Gancho*

*I. Discourse as a keystone of democracy.*

Freedom of speech is the “bright and consummate flower of all liberty.”<sup>1</sup> Beyond prose, this phrase is a reminder for all societies that aspire to be *truly* democratic: that without freedom of speech, there is no liberty. A common trait of all democratic governments is the recognition that *sovereignty* resides in the people who directly, or through their duly elected representatives, shape public policy. In these societies, every opinion or dissent — is a drop in an ocean of discourse. Ideally, this whole mass of ideas would condense into the best of solutions, laws and actions that the people can collectively pursue. Admittedly, this is a painstaking process. Nevertheless, we pursue this ideal as a promise to ourselves that whatever action we take as group has passed the proverbial test of fire and is, as far as practicable, fair to everyone.

Since I was a college freshman, I participated in debate tournaments and won my fair share of awards. Initially, it was all about the competition. I had a change in perspective when, in an interview, I was asked a simple but disarming question: “What’s the point of debating? What’s the point of having people talk and clash with one another?” Being relatively unexposed to discourse outside of competitive debate circuits, the answer did not come to me soon enough in order to leave a good impression on my interviewers. Regrettably, the answer came to me when I was already taking up constitutional law in law school. The better answer is that healthy debate is crucial for discourse in this complicated system we call *democracy* because the entire system which includes the laws, policies and even the roster of elected public servants can only be as good as the discourse that put them in place. We are the ones who decide who gets elected, which laws get passed, and which policies are pursued. Before we decide, we always *discuss*.

After that realization, I took on the advocacy of sharing my knowledge of proper argumentation to young people in order to encourage more productive public discussions and to weed out the habits that poison the ocean of discourse early such as cursing, degrading, humiliation and intimidation. These habits do not inspire intelligent discussion that is the foundation of a vibrant democracy. To this end, I’ve retired from competitive debating taught in workshops and seminars here and abroad. I am also a regular judge in local debate tournaments. For me, this is more than just “paying it forward”. It is a personal advocacy borne out of my hope

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<sup>1</sup> Wendell Philips

for change. I hope for a future where the daily social and legal dead ends we encounter because we fail to amicably settle and reach a compromise in petty quarrels and in bigger issues, would no longer be a problem.

My advocacy is to make people understand the responsibility that comes with their opinions and that freedom of speech is not the freedom to be irresponsible and to defame, or a license to smear reputation and ruin credibility.

I understand that my efforts are but tiny drops into a large ocean. Even so, I pursue this ideal because each drop still makes the ocean of discourse less salty. Soon enough, we will be discussing *groundbreaking ideas* and abstain from toxic discussions that suffocate them.

## *II. Liberty and prosperity under the rule of law*

Every day, I have been waking up to a succession of complaints online or otherwise expressing disappointment in the quality of discourse on Philippine politics and laws. I understand that it's frustrating and infuriating. But we should not let disillusionment prevent us from fighting back with facts and reason with a calm disposition. Those who, in their rage and frustration, call for the circumvention of human rights and the rule of law already have safety in numbers. How can we be vigilant in silence?

This overwhelming tide of public outrage, while misguided, has inspired a dangerous contempt for fundamental rights namely: the rights to *life* and *due process*. Generations of suffering under a government which is perceived to be incompetent and corrupt, and under a society plagued by crimes blinded us from seeing the relevance of the rule of law. Why should we be shackled by rules when our enemies, the criminals, the corrupt, and those who threaten our safety are bound by none? This has become a contagious sentiment among those who openly support extra-judicial killings and making the police less accountable for their operations' casualties. The idea horrifies reasonable law students but unsurprisingly, it is appealing to people who endured years of crime and corruption. It is a sad reality that when justice is out of reach, frustrated people would put the law in their own hands.

In simple terms, "rule of law" means that the government is a government of laws and not of men. That everyone in society is bound by the law, including the

government. It is a core feature of democracy. Nineteenth century theorists<sup>2</sup> and modern day organizations such as the World Justice Project<sup>3</sup> point to its four fundamental principles: *First*, the government and its officials and agents are accountable under the law; *Second*, the laws are clear, publicized, stable and fair, and protect fundamental rights, including security of persons and property; *Third*, the process by which laws are enacted, administered and enforced is accessible, fair and efficient; and *Fourth*, access to justice is provided by competent, independent and ethical adjudicators, attorneys or representatives and judicial officers who are of sufficient numbers, have adequate resources, and reflect the make-up of the community they serve.

“Liberty and prosperity” which the rule of law aims to keep in place, for me, is relative. While there is no question on what liberty pertains to, prosperity can be many things. For some, it means economic or financial well-being. For me, prosperity could also mean being able to live in a community with people who guard it against arbitrary restrictions. A prosperous society is where the citizens guard their liberties zealously with the understanding that doing so is the only way they can freely pursue their economic, social and cultural development.<sup>4</sup> Autocrats may promise prosperity and security but only a free society would guarantee that the mentioned promises would redound to the benefit of all and not just a selected few.

In light of the recent developments here and around the world where radical groups coming from disillusioned sectors call for the circumvention of due process to get immediate results,<sup>5</sup> the mentioned list should be expanded to include another

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<sup>2</sup> See for instance the works of Albert Van Dicey and of Friedrich A. Hayek, *The Road to Serfdom* 72 (U Chicago, 1944) and Friedrich A. Hayek, *The Constitution of Liberty* 208 (U Chicago, 1960) cited by Todd J. Zywicki, Associate Professor of Law, George Mason University School of Law in *Rule of Law, Freedom and Prosperity: A Symposium Sponsored By the Law and Economics Center at George Mason University School of Law: The Rule of Law, Freedom and Prosperity*, 10 S. Ct. Econ. Rev. 1 (2002).

<sup>3</sup> The World Justice Project® is an independent, non-profit organization advancing the rule of law worldwide *available at* <http://worldjusticeproject.org/who-we-are> last accessed September 13, 2016.

<sup>4</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 [ICCPR].

<sup>5</sup> See Donald Trump’s Contempt for the Rule of Law *available at* [http://www.nytimes.com/2016/06/07/opinion/the-judicial-system-according-to-donald-trump.html?\\_r=0](http://www.nytimes.com/2016/06/07/opinion/the-judicial-system-according-to-donald-trump.html?_r=0) ; *The EU and the Rise of Extremism and Populism: How*

principle. The fifth principle is that the people *understand* the importance of laws for themselves as individuals and as a group. I fully support the first four principles. However, laws would be meaningless when the people to whom these laws apply, do not understand their importance. This is relevant because even the most stable of structures would collapse against an unrelenting tide of skepticism. Civilizing discourse makes sure that the tide is calm and manageable. In fact, this view is shared by many including Professor Richard H. Fallon, Jr. who believes that there must be an element of understanding: “The first element is the capacity of legal rules, standards, or principles to guide people in the conduct of their affairs. People *must be able to understand the law and comply with it.*”<sup>6</sup>

Disappointment and disdain against the rule of law is not just a product of slow delivery of justice. Most of the time, it is a result of the people not understanding how it works. The consequence is tragic. For example, here, the Commission on Human Rights (CHR) received flak for its strong statements against extra-judicial killings and the rising number of casualties from police operations following the government’s declaration of an all-out war against drugs. Angry people called for its abolition even going as far as calling human rights useless and that they only serve to protect criminals from being delivered to “justice”. They did this without understanding the CHR’s mandate and the fundamental rights that it is tasked to uphold and protect.

The same problem was observed when people openly supported vigilante justice while brushing aside calls for due process and the presumption of innocence for the accused. They called for blood without realizing that the very rights they seek to set aside are the same rights which guarantee *their* protection when they find themselves at the receiving end of persecution in the future.

Even the magistrates of the Supreme Court were not spared from this tide of contempt.<sup>7</sup> Fortunately, the court took the moral high ground by refusing to fight fire with fire and responded instead with a firm *but calm* admonition of the administration’s approach to the drug problem. However, this fiasco has shown us that no one, even the high court, is immune from the effects of a toxic public

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to protect democracy and the rule of law in Europe? *available at* <http://humanistfederation.eu/our-work.php?page=the-european-union-and-the-challenge-of-extremism-and-populism>.

<sup>6</sup> *The ‘Rule of Law’ as a Concept of Constitutional Discourse*, 97 Colum. L. Rev. 1 (1997).

<sup>7</sup> Ramos M., Alconaba N., “Duterte Defies Supreme Court” *available at* <http://newsinfo.inquirer.net/804700/duterte-defies-supreme-court>.

discourse which ignores reason and blinds the masses from seeing the adverse consequences of circumventing the law.

These problems are clear effects of a lack of understanding of the rule of law. This willful ignorance is even reinforced by the uninformed discourse fueled by rage, disappointment, and frustration. The same emboldens vigilantes and nurtures contempt for the rule of law. Without addressing these issues, a system of accountable officials and agents; clear, publicized and stable laws which protect fundamental rights; accessible, fair and efficient administration of the laws; and competent, independent and ethical adjudicators, attorneys or representatives and judicial officers, will always be in constant jeopardy.

One way to nip the problem in the bud is to address the problem in education. Reforms should be made in the current curriculum to encourage critical thinking, social awareness, and understanding of our laws. The solution shouldn't be confined to government action, however. Civil society and the private sector should also chip in and aid in nurturing progressive thinkers who see the bigger picture and who possess the fortitude not give in to the strong demand for conformity.

### *III. Promoting this philosophy as a student and in my future legal career.*

This is why, as a student, I intend to promote the foundation's philosophy by continuing to teach debate, the law, and relevant issues inside and outside our country. The growth of debate culture will create safe spaces for people to speak up and to learn how to cope with criticism. While speaking in front of others is a frightening experience for most people especially the youth who were raised to respect authority, it is a necessary fear to overcome in order to encourage more participation in public discourse and to keep ignorance in check. This in turn ensures the health of our democracy and our liberty. Despots rise to power when people are silent. Abuses become normal when nobody expresses indignation against them.

In my future legal career I still plan to teach and volunteer as a lecturer in legal education workshops for non-law students. My background in policy and law will help me in making people understand the relationship between law, policy, and discourse. I plan to teach both in law school and in college. In law school, I want my future students to learn that the law must be appreciated in light of reality because legalese devoid of reality is counterproductive. Aspiring lawyers should learn that the law is not a lifeless body of rules. It is reason given life. Apart from teaching, I also plan to work as a government lawyer. I believe that the government

needs young blood. It needs young people who still have some optimism left in them who have the energy and enthusiasm to propose reforms when necessary.

Laws and policies change as often as public officials come and go. What I hope to achieve is to make a substantial contribution towards enriching public discourse by encouraging people to become more responsible and reasonable participants — to see beyond petty differences and mistakes and look at the bigger picture. I want people to understand the important role of their opinion in affecting policy and that they should be responsible for their opinions and criticisms no matter how small these are in comparison to the much larger ocean of discourse. I want them to realize that “the aim of argument, or of discussion, should not be victory but progress.”<sup>8</sup>

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<sup>8</sup> Joseph Joubert

HILARIO, JOSE NOEL B.

UST LAW

TO: Foundation for Liberty and Prosperity (FLP)

## **Safeguarding of Liberty and Nurturing of Prosperity**

### **Under the Rule of Law**

When I was a child I always hear the importance of education. I heard it several times from my parents and from others which at times seem trivial perhaps by reason of my young age. Like a trivia we often acknowledge its importance without delving deep as to its real significance as long as we know it for a fact. Nonetheless, looking back I thank God for our situation in life for it helped me realize education's true importance.

As a boy I already knew that we are not among those fortunate people born with a silver spoon albeit we are not poor. That is why I have been well oriented that I must do well in school and in enriching my knowledge and wisdom. One of the greatest values I learned is that education is a treasure that will never be and cannot be taken from you. In addition, I knew then that it is also life's greatest equalizer. That is why I fully submit and adhere to my High school's philosophy, which espouse that "The Essence of Education is Liberation from the bondage of Ignorance and Poverty". Life reminds me now that I'm blessed to have been liberated from the ills of ignorance which plague some of our fellows by reason of many factors such as lack of opportunity, poverty, lack of support and proper mindset including the seemingly never-ending cycle of poverty which many of our poor brethren cannot seem to unchain. Indeed, experience taught me that with enough support, opportunities, proper conditioning of one's mind and with sufficient premium to education, liberty and prosperity is not too far.

Liberty and prosperity goes together in perfect harmony. One cannot perfectly achieve lasting peace and satisfaction without the other. We are by nature interdependent beings. First, is our interdependence with the Creator in which we attribute all our works for His glory and joy, in the hopes of receiving the better end on judgment day. Second, is our interdependence with the fellow beings because I believe that indeed, no person and no country could achieve its optimum

development and prosperity in isolation. Liberty and Prosperity however, were often treated separately and worse in complete disregard or isolation with the other. But who can we blame for that? Facts and previous data suggest that albeit our nature requires us to walk in perfect harmony we would rather choose and be plagued with just either or even none of these essentials, which is in complete disregard of our purpose and faculties' ability. As we examine some human behaviors we would see people acting as if they are god, although they are no more than men in complete ignorance acting that they know everything and could live in isolation. States as well act with utter superiority, struggling for their quest for power, affirmation and dominance. This might be stretching the point but these behaviors can be attributed due to the failure to observe basic principles of interdependence which failure in practice and continuous denial hereof would result to instability and downfall. An illustration can be shown by what happened in our country during martial law, because of our leader's desire to "achieve prosperity" thru unwarranted control and by giving a very high premium to stability which at the end of it backfired not just to the President's leadership and administration but also to our country. Instead of prosperity what we received are revolutions, coup d'état, and the glorious people power, all because of the lack of balance and interdependence of liberty and prosperity. History told us that to a certain extent, our people's liberty was denied resulting to the natural consequence of an unsatisfied populace who because of such denial of human rights, due process and liberty revolted to be freed from the clutches of dictatorship.

As I continue to study law, I realized that our laws are astoundingly beautiful although at the same time I recognize its own shortcomings and limitations. To some students of law they may say that they want to study the same to liberate others from abuse and denial of rights. While to some they may assert that they wanted to become lawyers simple because they want to earn and enrich themselves. As to the two views, notably, our Code of Professional Responsibility rightfully and logically responds by saying that a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him (Canon 17). This implies that as a lawyer we are not engaged in a mere money making business, instead we owe fidelity to the real purpose of our profession which is the safeguarding of liberty and nurturing of prosperity under the rule of law. That is why in the words of Chief Justice Panganiban in *BURBE v.*

*MAGULTA* "Lawyering is not a business; it is a profession in which duty to public service, not money, is the primary consideration". As lawyers, and responsible citizens of the Republic of the Philippines we hold the duty to the public of safeguarding the rights of our fellow under the rule of law and at the same time to promote their prosperity within the bounds of the law.

In my day to day journey at the University of Santo Tomas, my usual routine is to first ride the tricycle bound to Hi-top Anonas. From there I will walk to the Light Rail Transit (LRT) to ride the train bound to Legarda. I will then again find myself riding a pedicab or tricycle to eventually reach my destination, UST. In the midst of this daily routine I would always encounter a poor and helpless old woman in the streets of Anonas. My first and honest response is to pray for her and oftentimes, I would also give her whatever kind of food or snack I have inside my bag. As a student, that was the only thing I know I can do for her considering that I may not have the sufficient funds and also because my mindset was always preoccupied with many other things including the difficult law subjects.

One Friday afternoon, my mom decided to go to Quiapo so I decided to travel along with her since we're both bound to Manila. In this travel again we encountered the old woman. This time my mom saw what I did. Notably however mom said jokingly "Panay pambara lang binibigay mo, susunod samahan mo ng tubig naman". From that simple joke I realized that mama was right. Indeed, I could do more than that. Yes, I might have save the old woman from her hunger during that day but the question remain unanswered, did I really help her on her struggle that way? I may not have because I have failed to give her water or I may have done my part. But, from that simple instance I learned a bunch of things. I realized that sometimes we are too focused on doing good on one aspect. Moreover, when that one aspect is already an act of doing well (like giving some food to the needy) we are often satisfied without delving deeper as to the real need and mourning of our brethren. Indeed we usually respond in a shallow way. In a similar vein, as a law student, I believed before that my calling as a lawyer starts and ends by safeguarding the liberty of my fellow, until I saw a different light.

As future lawyers, we must safeguard and advocate the value of promoting our brothers and sisters well-being. It is not sufficient that we just act and expect that our real long term outcome would be realized by focusing on only giving food

without anything else. That is why according to Chief Justice Panganiban, “Justice and jobs; freedom and food; ethics and economics; democracy and development; nay, liberty and prosperity must always go together; one is useless without the other. The attainment of this dual goal involves an understanding of the intertwining relationship of law and business; and of regulation and entrepreneurship.”

Just like my experience, the story above also goes well with the majority of our society. Law students and lawyers were often too focused in the single aspect of the value of the rule of law. Many if not few, were conditioned that as long as he safeguards his/her liberty he has done his part. On the other hand, some might have that mindset that as long as they receive compensation, they are at the victorious side of it notwithstanding the fact that they did might have done that the expense of chaining one’s soul for lack of conscience. Liberty without prosperity and vice versa seems to dominate the field. But this cannot be perpetuated. As a lawyer, our culture and DNA must change. A life check must be realized by everyone to understand that our duty does not end by espousing one and leaving the other. Karl Marx historical materialism proves that the pattern of our history is in line with logic. Our history championed well the cry of the society. From the rise of consciousness to liberate from our colonizers; from dictators and from poverty and its repetitive cycle we now move to the value of individual rights. All of which as Marx argues, is the product of the clash of the thesis and anti-thesis. This therefore follows that in order to successfully champion the rights of our people and clients, we must as lawyers and law students start to champion human rights in all of its aspect, lest our duties of safeguarding their rights would become a mere illusion in this modern age. Gone are the days when people struggle just for their liberty and nothing more because today requires a more dynamic lawyer to safeguard the more dynamic and complex lifestyle of our society.

So the question goes like this, how would I espouse liberty and prosperity under the rule of law? To answer that, allow me to divide the response in a variety of levels and views.

First, as a law student, I would have to first study by heart that my duty is to learn in every way that I am studying to promote liberty and prosperity. This basic step I believe would be the foundation of translating it into reality. Consequently,

this require transforming myself into an advocate of such philosophy. Currently, after being oriented with the value and realizing that liberty and prosperity must indeed be espoused by each and every lawyer, I am already asking myself in each and every legal question that I face on how I would apply the interdependence of liberty and prosperity under the rule of law. This is manifested by the line of questions in my mind that now already works this way “How can I help solve his/her/their legal problem and at the same time help them live a good life after it, by promoting their prosperity?”

Indeed, this line of thinking perhaps goes out of the norm as of now because students often only think of answering the question at hand without considering the consequence afterwards, but I submit that with sufficient advocates starting from the grassroots which is inside the law school where future lawyers are being honed, liberty and prosperity under the rule of law would eventually be the name of the field.

An illustration of the above is when I studied the Intellectual Property Law. Normally, I would study it for the purpose of learning the underlying policy and solution answered by the law, like to promote and protect intellectual creations. But nowadays, I am thinking beyond it like responding beyond. I am now more inclined in asking how that law can help promote the prosperity of the stakeholders. For example, on the part of the intellectual property owners, this law would encourage creativity, invention and innovation because of the reward of exclusive rights to their respective creations that can be used to recover the cost and effort of their production. On the other hand, for the part of the government, if this law would be successful in its goal of protecting Intellectual property rights and at the same time of preventing if not eradicating illegal sale and transaction of any product of imitation of intellectual properties, our government funds allocated for the administrative expenses would be minimized and would be used for some other general welfare purposes. Hence, supporting what I have said earlier that our law is beautiful that in espousing both ways—liberty and prosperity.

Moreover, with respect to our law on transportation I submit that the current proscription to the so called “Kabit system” must be given teeth by a proposed penalty for its violators. For currently, I believe that the law and jurisprudence only caters to the civil aspect of reimbursing the victims as to the damage it directly

cause them without considering the public that is still chilled by the fear of being one of the victims of recklessness, the root of which is the lack of check and responsibilities established among this kabit system users. Again, liberty from fear by the public and prosperity by the assurance or security.

In addition, as a current understudy of the UST Law Review I hope to someday use the journal as an avenue to espouse the philosophy of the foundation by promoting its importance through the journal that is annually published by the Facult. Hence, as a law student, I believe that my enthusiasm for studying criminal law, political law and civil law must likewise flow with my study of the other fields and branches of law on the premise that in order to fully cater the best solution to our society, it warrants that we produce dynamic lawyers and equip them with the tools of espousing liberty and prosperity.

Second, as a future lawyer, I will apply the philosophy of safeguarding liberty and the nurturing of prosperity under the rule of law by always considering the philosophy as a goal in every area of my work as a lawyer. In civil cases, since it is our duty as lawyers to first examine the merits of every claim before accepting a case, I must bear in my mind and heart, that liberty and prosperity must be achieved. This follows that if the case clearly warrants an honest direct statement that you better just settle it because your side might be on the losing end, I must do it notwithstanding missing the opportunity of gaining work and money. Indeed, the duty mandated by the Code of Ethics must be practiced and must not be left in the papers dormant. Consequently, by being faithful to this ethical requirement at all times (which I submit would be very difficult for most practitioners) the liberty from an unfounded lawsuit would be really realized and at the same time promoting the prosperity of the stakeholders by saving them from the expenses of lawsuit. On the otherhand, with respect to criminal cases, I would be the guardian of the poor faced by criminal charges who cannot afford the benefits of a real counsel who often do the task merely as a work but not as an advocate. I owe my fidelity to God first and foremost, hence, I will do my best in advocating that the pain of penalty must be carefully thought of and examined before it would be imposed to any individual. Hence, I will assure that their rights will be fully protected within the bounds of the law.

As an illustration, nowadays, many people were charged by cases related to drugs or the airport related dilemma of the “tanim Bala”. To an extent, some are said to be victims of planting of evidence or false accusations. As a lawyer advocate I would pay extra effort and attention to these victims. Consequently, by acting within the bounds of judicial ethics I would offer myself to represent our poor brethren prejudiced by this kind of societal ill. Indeed, in this way I did not only help liberate our poor fellow from these kinds of idle activities but likewise I would be promoting the fight against corruptions by checking the illegal activities which perhaps involve some of our government officials. In this way I believe that the liberty of our people and the general prosperity of our nation is espoused.

Consequently, since college I already envisioned myself speaking before the public espousing a worthwhile advocacy. I view myself as a future professor of law. With liberty and prosperity under the rule of law now embedded within my DNA and personal philosophy, I believe that I would be able to spread and share its value to a wider number of people. Moreover, as a professor of law I view this position as a catalyst of change, since as I have mentioned earlier law school serves as the key institution in which future lawyers were molded and trained. Just like how the container shapes the water, our law institutions shapes what kind of future lawyers we would become.

Often the masses are plundered and do not know it, that is why they need advocates. Hence, as a lawyer I take the task of minimizing the bondage of poverty and hunger by studying, applying and promoting the rule of law. For after all, as in the words of *Bastiat, Claude Frederic*—“Life, Liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place. - THE LAW (1850).

## **SAFEGUARDING LIBERTY AND NURTURING PROSPERITY UNDER THE IMPERATIVE OF THE RULE OF LAW**

*by Ma. Janine V. Pedernal*

In a country where adherence to due process and the rule of law is uncompromising, it is indeed a well-settled principle that the law may be harsh but is still the law, or *dura lex sed lex*. This legal maxim does not only refer to the implementation and enforcement of the laws and to the administration of justice, but also to safeguarding liberty, nurturing prosperity and conquering poverty. Everything in this country does not always revolve around the orbit of politics, economy, and justice. However, with the current changes in our political system, especially with the new administration, we must also take into consideration the minor details, not just the major issues or problems, as these would definitely have great impact in the profession of law, and most importantly, to the public at large.

To an ordinary Filipino citizen, life has not always been the best with respect to each aspect thereof. There are still Filipinos struggling to overcome poverty. Consequently, other people might prefer surviving all the walks of life by settling for less, and not wanting for more, such as not pursuing any educational attainment as one of their options primarily because basic necessities should be prioritized, and education is not treated as a priority. Other people also tend to become devouring and self-centered, thus they become corrupt. And in worst cases, people commit crimes to gain wealth. These are just few of the instances that might happen just because of poverty. For the ordinary individuals, the rule of law has often been disregarded in a sense that everything boils down to this – inequality.

It is then the public and civil society which strengthens the rule of law through whatever contribution they may impart, such as mass opinion and proposals for the enactment of laws. Apart from this, holding the public officials and government institutions accountable to the people makes the rule of law unbending. The relation between the public and the government, then, is a vital element to promote one's philosophy and to achieve his desired outcome of protecting the rights of the citizens, sharing prosperity and reaching out to the poor and the underprivileged.

Under the 1987 Philippine Constitution, it is the duty of the state to promote social justice. Social justice, as defined by Justice Laurel in the landmark case of *Calalang v. Williams*, is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. It means the promotion of the welfare of

all the people, the adoption by the government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice is the very foundation of the philosophy of safeguarding liberty and nurturing prosperity. Protecting and developing the right of all the people to human dignity, reducing political, economic, and social inequalities, and removing cultural inequities through a fair distribution of wealth and political power for the common good are the underlying principles of my commitment to espouse what I have learned in the field of law and apply them for the betterment of both the nation and its citizens.

In safeguarding liberty, it is not necessary for us to be lawyers, judges, or justices. Any choice of profession will do because regard for everyone's right is also everyone's duty. A journalist can protect one's liberty by writing whatever he thinks is the truth. Those engaged in the field of medicine are also capable of doing this by reaching out to remote areas and conducting voluntary medical missions for the indigenous peoples and for those who cannot afford medical assistance. Engineers and architects also allot their time and share their skills in building home for the homeless and for those affected by calamities and other natural disasters. Business enterprises also protect the rights of the laborers as the human asset of every employer. Even students can be advocates of this aim as the youth has always been the hope of our nation. Ordinary citizens, whether employed or unemployed, are endowed with the freedom of expression and the right to petition the government for the redress of their grievances. Lastly, through the use of social media, all of us can express our thoughts, in a justifiable and decent manner, and voice out our opinions, as part of our freedom of speech and of expression. In other words, liberty does not only involve civil and political rights, but also the natural and inherent rights of a person. Regard for human dignity is a must.

Sharing prosperity, on the other hand, does not always refer to money, material possessions or to any tangible thing. It is about instilling in our minds that peacekeeping is one of the abstract things that would bring prosperity and hope for the future. As much as we need prosperity in economy, we also need prosperity in kindness and decency. This prevents the evil of being corrupt and self-centered. We need to nurture every individual's perception of prosperity. Just because one is poor or underprivileged, does not mean he cannot be prosperous. Of course he can,

be not financially. I think this has been the wrong connotation of this word. We need to emphasize, cliché as it may seem, that money cannot buy us happiness. Truly, money creates sustenance for living, aside from food and shelter; because, basically, one cannot acquire food and shelter without finances. In the words of Tacitus, prosperity is the measure or touchstone of virtue, for it is less difficult to bear misfortune than to remain uncorrupted by pleasure. Thus, our goals must be broad enough to include the needs of others.

In this case, Hilary Clinton and I would be on the same page. If a country does not recognize minority rights and human rights, including women's rights, you will not have the kind of stability and prosperity that is possible. And that substantiates the correlation of liberty and prosperity based on my understanding.

Promoting, then, these philosophies is another thing. We must not be that kind of person who is more of words than deeds. Personally, I am not writing this essay just to comply with the requirements. I am writing this because I want it to be read not just by my target readers, but by everyone. What I am implying here is that being a law student, I understand how the world moves and how the government works, not just through the legal aspect, but based on reality. Current events and recent jurisprudence tell us that with the change in the administration, certain improvements are to be expected, yet, danger cannot be avoided. Today's extrajudicial killing is really violative of the due process clause of the Constitution. The imperative of the rule of law is that it must always be complied with, without prejudice to the rights of any person. It is beyond doubt that the commission of a crime is punishable under the law and preventing any person from its commission or imposing penalties to those who have been rendered guilty beyond reasonable doubt, can be deemed as legal as to the purpose. Yet, we cannot take the law into our own hands. Adherence to due process and to the rule of law is a must. Thus, the right to life and the right to be presumed innocent until the contrary is proved shall be upheld at all times. Consequently, rights, aside from those contained in the Bill of Rights, such as natural rights, shall also be protected. This does not apply only to the current issues in our country, but must apply to future events as well.

Nevertheless, a law student can promote the protection of the rights of others by simply recognizing their right and giving them their due. We must not degrade one's dignity for the reason that they are poor or underprivileged. Instead, we must extend both of our arms to help them or assist them in every possible way to espouse their claims and grievances. We must also support their legitimate advocacies, especially those of the women, the laborers, the youth and those economically disadvantaged.

We must not also impede other's freedom of speech and of expression through social media, but at the same time, we must also be accountable for our entries or comments on social media sites. In the case of *Vivares v. St. Theresa's College*, a 2014 case penned by Justice Velasco, Jr., it is of the opinion that in a social networking environment, privacy is no longer grounded in reasonable expectations, but rather in some theoretical protocol better known as wishful thinking. Thus, as a cyberspace community member, one has to be proactive in protecting his or her own privacy. It is in this regard that many online social networking users, especially minors, fail. Responsible social networking or observance of the "netiquettes" must be observed, as one must have skills or general wisdom to conduct himself/herself sensibly in a public forum.

I also believe that in nurturing prosperity, one's means does not necessarily refer to the financial aspect in order to achieve the said goal. As a law student, I have the means to help others by imparting knowledge in the field of law, especially when they have legal claims or suits. It can also be achieved by rendering much of your time – time to listen, time to help, and time to communicate – to others who are in need of it. Lastly, prosperity can be achieved by showing kindness to others. And this is something not capable of any pecuniary estimation.

The license to practice law in the Philippines is almost reachable. As such, my legal career will then pave the way for new opportunities, new environment, and new responsibilities. I can choose any path in the legal field, so long as it will not negate my principles and philosophies in life. By then, I still have to apply what I have learned in law school and promote the same philosophies embodied in this paper.

As a future lawyer, I can be a prosecutor, wherein I can stand on behalf of the State in prosecuting crimes and in finding pieces of evidence that will justify the offender's sentence, as can be obtained from the court. I can also be corporate lawyer, wherein I can be of legal aid to business enterprises which can provide goods and services to the public. I can also be a labor lawyer, where I can take up labor suits in favor of the labor or in favor of the employer, when warranted under the circumstances. In other words, I do not have to specify what field of law I shall take, because regardless of profession and of track I would choose, I still have to uphold the rule of law in safeguarding liberty and nurturing prosperity.

But aside from these personal takes on the subject philosophies, we must also take into account political, economic, and social growth, as well as good governance in this country.

With respect to political growth, it would really depend upon the branches of our government. The Legislative then is in charge of enacting measures as would safeguard liberty and share prosperity in this country. Of course, this cannot be done solely by ordinary citizens, like me. Laws must be enacted to promote social justice and also to mandate any other matters as would be necessary for the common good. The Judiciary shall not only be mindful in the interpretation of the laws and in the administration of justice, but care must be given in protecting and preserving civil and political rights of the citizens, but also to nurture prosperity through securing our people from poverty and illness. The courts shall also uphold rights of the public at large, when there are far-reaching implications in certain cases.

Furthermore, upholding economic rights is also of the essence of these philosophies. Under the Constitution, the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all. Encouraging foreign investors, emergence of different business entities and providing numerous jobs will surely attain the desired economic prosperity in the country. Wealth must also be equitably diffused to the society, so that social issues will be avoided.

Finally, Justice Panganiban once said his vision-mission – to look for competent and ethical lawyers who are responsible, dependable and morally upright; and who courageously uphold truth and justice above everything else. And under the Code of Professional Responsibility, a lawyer is needed to observe his duties to the society, to his legal profession, to the courts, and to the clients. Lawyers shall not be blinded by money or any material gifts. But, lawyers must observe the rule of law and help in safeguarding liberty and nurturing prosperity.

With the understanding of these philosophies, one must not dwell only on the legal aspect, but also on the political, social, economic, cultural, and psychological aspects. The risk of sacrificing one phase of life is inevitable. Adversity would be a necessary consequence. Nevertheless, with great respect to the rights of one another and to the fair and equal distribution of wealth to the public, the outcome then would be amity and economic progress.