

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

An essay by Frances Mickaella Noreen M. Chavez based on the theme “*safeguarding of liberty and nurturing of prosperity under the rule of law.*” Submitted as part of the requirements of the Foundation for Liberty and Prosperity (“FLP”) Legal Scholarship Program for the academic year 2021-2022.

## **INTRODUCTION**

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*“The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive.”*

*-Rufus W. Peckham*

Taxation is not the power of the government that is being applauded by its citizens and is definitely the one being frowned upon. Taxes may impose more burden on people than alleviate the existing burdens that they carry. Taxes may benefit the rich and at the same time, starve the poor to death. That theory, however, disregards the very reason why taxation stands through the test of time: as it is the lifeblood of the State.

Taxation Law, even in law school, is usually not the subject that students have the eagerness to study. It is not even the field of law one will think of when they hear “liberty and prosperity.” The legal profession usually associates these two intertwining philosophies with our Constitution’s Bill of Rights or perhaps with the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which are both multilateral treaties adopted by the United Nations General Assembly to promote the protection of human rights.

Nevertheless, I would like to differ. I see Taxation Law as the field of law that is instrumental in the nations that are able to ensure liberty and prosperity in their respective territories. In my view, we have some commendable laws in taxation, which if Filipinos were aware of, and if these tax revenues were used properly, the Filipinos would not look at the State as the greatest robber for taxing them for earning income. Thus, in this essay, I would like to elaborate on the role of Taxation Law in *safeguarding liberty and nurturing prosperity of the States* and how students

and aspiring lawyers like me, can use Taxation Law in ensuring that liberty and prosperity under the rule of Taxation Law will be felt by every citizen of our country.

## **THE TWIN BEACONS OF LIBERTY AND PROSPERITY**

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*“Humans need both justice and jobs; freedom and food; ethics and economics; peace and development; liberty and prosperity; these twin beacons must always go together; one is useless without the other.”*

*-Chief Justice Artemio V. Panganiban*

Generally for most people, “liberty” deals with their freedom of speech, freedom of expression, freedom to exercise their religious beliefs, freedom to elect or be elected as a public official, and freedom to peaceably assemble. Behind these freedoms that we enjoy are: food and water that enable us to speak and to move, a home that gives us a place of comfort after we have expressed ourselves to the world or even simply after going to our church’s mass, education that gives us understanding and confidence in exercising these freedoms, and a job that enables us to feel financially secure whenever we exercise our freedoms.

Food, water, home, education, and a job are merely basic necessities, and cannot define “prosperity.” Yet, only a few Filipinos are able to have these basic necessities. Prosperity, in my view, is the certainty that tomorrow morning, I will still be able to live and help the world. Prosperity is having the capability to be “of value” to others, not only in terms of money, but also of knowledge, of culture, and of service.

It is difficult to imagine how people, who do not have food, water, a home, and a stable job, are able to exercise their liberties to the fullest. Some of us do not have a voice in our society, because they do not have the means to share our thoughts with the nation. Some of us are talented in the field of art, science, theatre, music, and dancing, but they do not have the means to explore these talents, to further improve them, and enjoy them to the fullest. Some of us have the passion to lead and serve our people with integrity, but they do not have the financial capacity to reach all the voters nor do they have enough connections to give them a stage where they can present their platforms to the people.

It is true that no one is forbidding you to take the path that you want to take, but at the end of the day, it boils down to the question, “after you have exercised your freedom, do you have food, water, a home, and a job that will keep you alive and will keep you from further exercising your freedom?” In all honesty, I cannot see liberty without these basic needs. It is as if you have the freedom in theory, but you

do not possess them in practice. As these basic needs also form part of the potential prosperity of our nation, it is conceivable that we should secure them first for every citizen of our country.

## **LIBERTY AND PROSPERITY UNDER THE RULE OF TAXATION LAW**

*“[Taxation] is a necessary burden to preserve the State’s sovereignty and a means to give the citizenry an army to resist aggression, a navy to defend its shores from invasion, a corps of civil servants to serve, public improvements for the enjoyment of the citizenry, and those which come within the State’s territory and facilities and protection which a government is supposed to provide.”*

*-Chief Justice César Bengzon*

Under the necessity principle of taxation, “without taxes, the government cannot fulfill its mandate of promoting the general welfare and well-being of the people.”<sup>1</sup> Taxation is supposedly a way to distribute or trickle down the wealth of the State to the bottom of the pyramid and to enable every citizen of the State to enjoy their liberties to the fullest without the fear of having no food on their tables tomorrow. There are several countries that are successful in safeguarding their nations’ liberty and in nurturing their prosperity through their taxation laws. Interestingly, Finland, Sweden, Switzerland, New Zealand, Australia, and Canada, who belonged to the Top 20 Countries with the highest International Tax Competitiveness Index in 2021,<sup>2</sup> also belonged to the Top 20 Happiest Countries in the 2020 World Happiness Report<sup>3</sup> made by the editors of the Center for Sustainable Development of the Columbia University in New York City. This World Happiness Report also shows the satisfaction of citizens with their lives, with their country’s progress, and with how they deal with other people.

Notwithstanding the inevitability of having regressive taxation in our economy like the Value Added Taxes (“VAT”), our current Tax Code,<sup>4</sup> which has been amended by the TRAIN Law and the CREATE Act, along with other laws, has numerous

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<sup>1</sup>*Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007.

<sup>2</sup> Daniel Bunn & Elke Asen, International Tax Competitiveness Index 2021 taxfoundation.org (2022), available at <https://files.taxfoundation.org/20211014170634/International-Tax-Competitiveness-Index-2021.pdf> (last visited Apr 27, 2022).

<sup>3</sup> John Helliwell et al., World Happiness Report 2022 (2022), available at <https://happinessreport.s3.amazonaws.com/2022/WHR+22.pdf> (last visited Apr 25, 2022).

<sup>4</sup> NATIONAL INTERNAL REVENUE CODE, as amended by R.A. No. 10963 or the Tax Reform For Acceleration And Inclusion (TRAIN) Law and by R.A. No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act [hereinafter “TAX CODE”].

provisions, which provide a cushion for the poor, directly or indirectly; promotes our state policies in education, arts, culture, sports, labor; and protects freedoms like freedom of expression and freedom of exercising our religion.

For instance, the Constitution grants charitable institutions, churches, and mosques real property tax exemption for all their properties actually, directly, and exclusively used for religious, charitable, or educational purposes.<sup>5</sup> Also, the Tax Code exempts from donor's and/or estate taxes those gifts in favor of an educational and/or charitable, religious, cultural or social welfare organizations,<sup>6</sup> subject to some conditions. The Tax Code also allows nonstock organizations for these charitable and religious purposes to be exempt from income taxation as long as their income will not inure to the benefit of a specific person.<sup>7</sup>

Meanwhile, to promote our state interests in education, the Constitution grants a blanket tax exemption on all revenue and assets of nonstock nonprofit educational institutions used actually, directly, and exclusively for educational purposes.<sup>8</sup> The Tax Code supplements this by exempting the educational services rendered by private educational institutions from the imposition of VAT.<sup>9</sup>

In encouraging the Filipinos to exercise their freedom of expression, the Tax Code excludes from income tax prizes that are given in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement,<sup>10</sup> and reduces the income tax rate to 10% of royalties derived from books, literary works, and musical compositions.<sup>11</sup> Sec. 109(R) exempts from VAT the sale or publication of books, newspapers, magazine, and journals, subject to certain conditions.<sup>12</sup>

To promote the health of the Filipinos, medical, dental, and hospital services except for professional fees of the doctors,<sup>13</sup> and some medicines are also exempt from VAT,<sup>14</sup> while excise taxes on tobacco<sup>15</sup> and alcoholic<sup>16</sup> products have been imposed on by the Tax Code. *Prizes* granted to athletes in local and international sports

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<sup>5</sup> 1987 PHILIPPINE CONSTITUTION, Art. VI, Sec. 28(3).

<sup>6</sup> TAX CODE, Sec. 87 and Sec. 101.

<sup>7</sup> *Id.* Sec. 30(E).

<sup>8</sup> 1987 PHILIPPINE CONSTITUTION, Art. XIV, Sec. 4 (3).

<sup>9</sup> TAX CODE, Sec. 109(H).

<sup>10</sup> *Id.* Sec. 32(7)(c).

<sup>11</sup> TAX CODE, Sec. 24(B)(1).

<sup>12</sup> *Id.* Sec. 109(R).

<sup>13</sup> *Id.* Sec. 109(G).

<sup>14</sup> *Id.* Sec. 109(AA).

<sup>15</sup> *Id.* Sec. 144-147.

<sup>16</sup> *Id.* Sec. 141-143.

competitions accredited by their national sports associations are also exempt from VAT.<sup>17</sup>

To make sure that a minimum-wage earner will still be able to buy food, the sale of agricultural and marine food products in their original state,<sup>18</sup> as well as the fertilizers and feeds that are needed to produce them,<sup>19</sup> have been exempted from VAT. No VAT is being imposed also on the transportation of passengers by common carriers on land, as they are subjected to a common carrier's tax of 3% instead,<sup>20</sup> which reduces the transportation costs in the country.

Lastly, in order to recognize the hardwork of the Filipino people, the 13<sup>th</sup>-month pay, Christmas Bonuses, the GSIS, SSS, and/or Medicare contributions, and the retirement benefits of every employee have been excluded from the computation of their income tax liability.<sup>21</sup> The Tax Code also helps the generation of employment in the country by providing for special economic zones, which create tax incentives for businessmen who would like to venture in those places.

Admittedly, our tax laws are far from perfect as they lack provisions on giving tax buffers to solo-parents, to single employees who are heads of their families, to those suffering from diseases other than COVID-19, diabetes, hypertension, cancer, mental illness, tuberculosis, kidney diseases, and to other marginalized sectors who need tax exemptions. However, it is indisputable that our current tax laws have tried to safeguard our liberty and prosperity through their provisions.

Like any other law, the purpose of these tax laws can only be realized depending on how people will use them. They are again, in theory, beneficial to the majority of our people; but in practice, the very citizens we ought to protect by these tax laws have no knowledge of what they are entitled of. Oftentimes, they exercise their freedoms without knowing that they have rights under these tax laws that could have improved their prosperity. On the other hand, these tax laws may seem to be futile if the revenues cannot be felt by an ordinary taxpayer, which is the very purpose of their enactment. 'Distrust' against these tax laws has also seemed to have emerged as big fishes in society are able to '*legally*' avoid them. Only if the taxes that were collected by the government had been used by our elected officials prudently and

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<sup>17</sup> *Id.* Sec. 32(7)(D).

<sup>18</sup> *Id.* Sec. 109(A).

<sup>19</sup> *Id.* Sec. 109(B).

<sup>20</sup> *Id.* Sec. 117.

<sup>21</sup> *Id.* Sec. 32(B).

honestly, the tax laws' objective of safeguarding liberty and nurturing prosperity would have been achieved by every citizen of our country.

## **LIBERTY AND PROSPERITY THROUGH EMPATHY**

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*"The more empathy you have and the more connected you are to society, the better off you'll be."*

*-Jasmila Zbanic*

I, for one, did not come from a family, who are capable of exercising their freedoms without having to worry about the food and the bills to pay for tomorrow. Neither did I have knowledge of what taxes are until I reached high school. I was born in a family who are being evicted by the lessors every single month due to failure to pay the monthly rental. My parents separated when I was about to graduate from a public high school. Since then, my mother left the Philippines to work abroad and support me and my younger sister. Despite that I graduated as the Class Valedictorian, I was full of uncertainties. I did not know how I will be able to finish college. I did not know if I will be able to enter law school since I also have to send my sister to school.

Fortunately, I was able to qualify at the University of the Philippines-Diliman, and this institution is one of the reasons why I have so much enthusiasm for taxation. Being funded by the nation's taxes, UP taught me the realities in life that I would have never imagined, and most importantly, it imparted to me the value of the taxes that are being used to educate us. As a student, I believe that I have embodied the philosophy of *liberty and nurturing of prosperity under the rule of law*, whenever I have tried to the best of my abilities to help people who are marginalized sectors of society.

During my first year in college, we went to Isabela and spent four days learning about the plight of our farmers. To say that they are unable to make the ends meet is an understatement. They would cry in front of us and ask for our help because the government does not give them assistance despite the fact that they have lost all their crops due to the typhoons. They shared to us that they are always being threatened to give the landlords most of their yields from farming, or worse, they are always threatened to be evicted by their landlords, which strengthened my connection with them. They felt captive of opportunities in spite of having the freedoms given by our democracy.

During my second year in college, our class in Sociology also went to the New Bilibid Prison, particularly in their Maximum Security Compound. I was at first afraid of them, but most of them welcomed us with open arms. They have shared with us the stories of injustices that they have experienced in and out of the prison, especially in our courts. Their food and their bed spaces were scarce, yet some of them felt freer behind the bars than outside, because as they said “we’re not paying taxes here.” They ironically felt more captive and restrained outside the prison than being inside it.

Although our class has helped these farmers and prisoners with some basic needs and also in sharing with them knowledge of their rights and the remedies they can seek for their problems, I still felt useless and I wished I was already a lawyer during those times, so I can defend them and not let their rights be abused by those who could afford the law. Had these two marginalized sectors of our society been knowledgeable of their rights under the law, and had they been able to receive government assistance and programs from the taxpayers’ money, they would not have felt captive while being able to exercise their liberties.

As a law student, I also apply the twin beacons of liberty and prosperity, whenever I compete in mediation and arbitration moot court competitions. I have written memorials to defend refugees or internally displaced persons using the principles of international law. In one mediation competition, I have also applied these two when my team was able to successfully ensure that the citizens of our client, who are construction and project employees, will not be displaced by their employer and be granted assistance after the project. My team was able to do this by granting tax incentives to the other party, who were foreign investors. Lastly, in the arbitration that our organization has joined, I was able to convince the arbitral tribunal that, despite the benefits it would give to the national economy of our client, the continuation of the project will be detrimental to the health and environment of its citizens; and thus, will hinder them from fully exercising their liberties. Right now, I am also excited that I will be able to further apply these philosophies during my internship with the Office of the Solicitor General this coming June. Being the State defender, I am quite sure that I will learn a lot from the cases dealing with our liberties under the law.

In the future, I would like to apply these twin beacons when I finally get to serve our people, by being a member of the judiciary branch, the Public Attorney’s Office, or the Commission on Audit. With regard to my dream of serving our judiciary, I would like to boost the public’s confidence in our dispensation of justice, by applying the laws in view of the interests that they want to protect and the evils that they ought to

avoid. I also think that if I will have an opportunity to become a Public Attorney, I will be able to aid the marginalized sectors of our society in enforcing and protecting the rights that they are entitled to, without them worrying about the fees that they have to pay me. If I will be able to serve in the Commission on Audit, an independent constitutional commission, I would be able to ensure that the taxpayer's money are being directed towards the safeguarding of liberty and nurturing of prosperity of each and every Filipino, and not towards the pockets of the politicians. Of course, by being a government employee, wherever branch or commission it may be, I will already be able to effectively and efficiently use the taxpayers' money by always sticking with my non-negotiable of having integrity in everything that I do.

Lastly, I would like to teach law students, so that I can impart to them these philosophies of liberty and prosperity under the rule of law, and even in Taxation Law. In a way, teaching will also make me learn from these students and will keep me abreast of the legal developments in the country.

## CONCLUSION

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*“The purpose of human life is to serve, and to show compassion and the will to help others.”*

*–Albert Schweitzer*

Until now, I can still remember the promise that I made to the farmers and prisoners I met: I will come back for them and gratuitously help them with their problems, once I become capable of doing so.

I sincerely hope that I will be able to do that soon, *as a lawyer*.