

## **Safeguarding Liberty and Nurturing Prosperity under the Rule of Law**

*“The life of the law has not been logic; it has been experience...The law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.”*

- Justice Oliver Wendell Holmes (1881)

The Philippines is comprised of approximately 7,500 islands, making it the second largest archipelago in the world. It houses 106 million people. It has 175 spoken languages and ranks fifth in the largest English-speaking nations<sup>1</sup>. It is known for its rich biodiversity, being endowed with beautiful beaches, plenty of marine resources, rain forests, mountain ranges, and other natural resources. In terms of trade freedom, the Heritage Foundation<sup>2</sup> has given the Philippines a grade of 80.7. With respect to educational attainment, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Institute for Statistics has recorded an estimate of 85.79 percent of primary educational attainment in the Philippines for year 2013 – the highest level recorded in the country since 1970<sup>3</sup>. At the same time, however, in the Philippines, 21.6% of the population still lives below the national poverty line, the third worst among ASEAN countries<sup>4</sup>. Moreover, the Philippine Statistics Authority recently reported that 2, 185, 000 Filipinos remain unemployed in 2017<sup>5</sup>. The Heritage Foundation likewise reported a grade of 62.6 for business freedom in the country and 45.0 for property rights, stating that while the Philippines recognizes property rights through its laws, enforcement remains weak<sup>6</sup>. In short, the Philippines exhibits a number of contradictions. It is rich in natural resources yet many still live in poverty. It boasts of high educational attainment but millions are still unemployed. It vows openness to outside markets yet business freedom and protection of property rights remain low.

The challenge then is to bridge the gap between these contradictions. Viewed in this light, the concepts of liberty, prosperity, and the rule of law become crucially important. Analyzing the gaps through these concepts would show that liberty, prosperity, and the rule of law are concepts which are inherently and necessarily

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<sup>1</sup> Schriever, Norm. “Incredible Facts About the Philippines.” (2017). The Huffington Post.

<sup>2</sup> The Heritage Foundation. “2018 Index of Economic Freedom.” (2018).

<sup>3</sup> UNESCO Institute for Statistics. “2013 Sustainable Development Goals Report.” (2013).

<sup>4</sup> Asian Development Bank. “Basic Statistics 2018.” (2018).

<sup>5</sup> Rey, Aika. “Unemployment Rises Under Duterte’s Watch.” (2018). Rappler.

<sup>6</sup> The Heritage Foundation. “2018 Index of Economic Freedom.” (2018).

intertwined. One affects the other. The impairment of one would similarly have an adverse effect on the other. Likewise, the promotion of one necessitates the promotion of the other if positive change or effect is sought.

### ***Bridging the Gap: Liberty, Prosperity, and the Rule of Law***

The Philippines is a nation of creative, talented, and intelligent people. However, because of poverty, it is not uncommon to hear stories of those who have to give up studying or who have to give up their dreams of establishing a business or pursuing something that they really like in order to put food in the table or to support one's self or one's family. Recently, two social media posts in Twitter became viral. One of these two is a photo of a UP Los Baños graduate, Inocencio, wearing farm clothes, wherein she narrated that her professor once told her that why would a girl living in Makati would be interested in Agribusiness. Another post is that of a student in a certain university who, while walking towards her campus building, noticed their security guard scribbling something in a piece of paper. When she tried to peek at the said paper, she was surprised to see a beautiful sketch drawn by the guard who immediately told her that if given the chance, he would have pursued a degree in fine arts. However, poverty came in the way and as such, he was constrained to stop his studies and find a job.

From these narrations I would like to establish my point:

The rights to life, liberty, and property are rights which are innate to every human person, and which exist independently of any government and of any particular kind of society. As such, each person is entitled to these rights from the moment of birth. It follows then that every person must have the liberty or the freedom of choice to pursue what one wants to do. Simply put, one must have the choice to control his or her destiny in this world. He or she must be free to unleash the genius within him or her and to turn the same into reality. In connection with this, the liberty to do what one wants on one hand cannot be achieved if there is no prosperity on the other. This prosperity must be understood in the economic sense. Moreover, it must be noted that this economic prosperity does not only mean being able to eat and to live with one's basic necessities while doing what one wants to do. More than being able to put food in the table for the day, prosperity must mean economic security. While exercising his or her liberty to translate into reality the genius within him or her, the person must feel a sense of security that he or she need not bother 'survive' the coming days because whatever he or she pursues in the exercise of liberty, there will be security – in food, in basic necessities, in monetary stability, and in his or her other consequent rights. Finally, all of these must take place under the rule of law which must guarantee the protection of property rights,

the presence of free market, and most importantly, the inclusivity of liberty and prosperity.

To expound, there are three fundamental characteristics of the rule of law: (1) the supremacy of regular law as opposed to arbitrary power, i.e., the rule of law, not men; (2) equality before the law of all persons and classes, including governmental officials; and (3) the incorporation of constitutional law as a binding part of the ordinary law of the land<sup>7</sup>. In general, “the rule of law encapsulates such values as stability in legal rules, restraints on arbitrary governmental action, and safety of investment capital.<sup>8</sup>” The rule of law ensures access to the markets to expand wealth and at the same time protects the property rights of the people in the exercise of their liberty in unleashing their “entrepreneurial genius<sup>9</sup>”. Moreover, the end goal of all of these must be the eradication of poverty, unemployment, and unequitable wealth distribution. Liberty and prosperity must be inclusive to the end that no person is left behind.

Going back now to the narrations in the first paragraph of this section, to bridge the gap then means that Inocencio must have the liberty to pursue her desire to enter Agribusiness, without any hesitation and with the consequent assurance that there will be prosperity. The same goes to the security guard who dreams of becoming an artist and draw for a living. He must be given the liberty to unleash the genius within him in order to attain liberty’s twin right of prosperity. As aptly summarized by Zywicki<sup>10</sup> in *The Rule of Law, Freedom, and Prosperity*:

“As Adam Smith observed, if a society provides a stable and sensible legal and political framework, the innate genius of human energy and imagination will allow growth to take care of itself. The lesson is simple but important—the rule of law is the underpinning of freedom and prosperity throughout the world. After several decades of neglect, this message is becoming clear again. There are many ways that societies may choose to live, but there are few ways for societies to live well. A society that seeks freedom and prosperity must also seek the rule of law.” [*Emphasis supplied.*]

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<sup>7</sup> A.V. Dicey. “An Introduction to the Study of the Law of the Constitution 107–22 (Liberty Classics Reprint of 8<sup>th</sup> ed., 1915), as cited in “The Rule of Law, Freedom, and Prosperity” by Zywicki.

<sup>8</sup> Zywicki, Todd J. “The Rule of Law, Freedom, and Prosperity.” *Supreme Court Economic Review* 10 (2003): 1-26. <http://www.jstor.org/stable/1147136>.

<sup>9</sup> Ret. C.J. Artemio Panganiban. “Unleashing Entrepreneurial Ingenuity.” (2015).

<sup>10</sup> Zywicki, Todd J. “The Rule of Law, Freedom, and Prosperity.” *Supreme Court Economic Review* 10 (2003): 1-26. <http://www.jstor.org/stable/1147136>.

### ***Role of Law Students in Safeguarding Liberty and Nurturing Prosperity under the Rule of Law***

As a law student and as a future law practitioner, then, how can one promote liberty and prosperity under the rule of law? First and foremost, as a law student, one must keep in mind that he or she treads in a path of privilege. Fortunately having the resources to read the law and be acquainted daily of the prevailing jurisprudence puts the law student in a path of privilege because compared to persons who have to set aside reading and at times even education as a whole to work for sustenance and to be able to afford the basic necessities, a law student probably knows more of the rights of said persons than these persons themselves. Hence, a law student must understand that the study of the law is more than and never just about himself or herself. A great number of our population are not fortunate enough to have the same opportunities and as such law students are under the obligation to bring the law to the people. Moreover, it is both our legal and moral duty for us, students of law, to lead the public in safeguarding our rights against government overreach especially in trying times like this where the rule of law is under attack by various institutions.

Secondly, always be of service – to the people and to the community. Law students must use the strength and power of fighting for an advocacy together in order to put into the spotlight the challenges which in any way threaten the rule of law. Moreover, law students must strive to communicate and foster dialogue with the communities. There is no better way to bridge the gap between liberty and prosperity on one hand, and poverty on the other, than to listen and to engage in fruitful discussions with those who are in need for they know these struggles the most.

Thirdly, we must not only start the dialogue between and among communities but we must see it through its end. Students must exercise their right to free speech and voice out not only their own concerns but also the concerns of the community. Students must train themselves to communicate the law in a manner easy to comprehend in order that people may easily understand the importance of the message and to be able to convey the message themselves to others. That is the goal. We must help build a community of people who can speak out for their own selves and who can transfer the message and values of liberty and prosperity under the rule of law to others. We must keep the dialogue and the advocacy of liberty and prosperity under the rule of law alive and we must see to it that the same reaches the policymakers, the influencers, and even the hard-to-reach corners of the world, until the advocacy materializes.

Finally, students of the law must always keep in mind that these hard-earned rights and freedoms won by earlier generations are not intangible concepts; they have to be exercised in order for us not to lose them. After all, excellence in the classroom is not the end all and be all of learning the law. It is to use our knowledge to promote justice, liberty, and prosperity for everyone in our democratic society. It is in practicing our legal knowledge and more importantly, our moral beliefs, that we can enrich our democracy. And to this end we return to what Justice Oliver Wendell Holmes has said as above-quoted: “the life of the law has not been logic; it has been experience.”