

## TO CHARITY AND BEYOND!

In a poverty-stricken nation, the hopes of an ordinary citizen are, more often than not, tangled with the notion of charity. In decades of battle against poverty and inequality, an ordinary man loses grasp of lofty ideals and starts clinging to charity as source of day-to-day hope. This charity takes a lot of faces: a generous neighbor from the closely-knitted Filipino community, a philanthropist who bears a Messianic figure or a government in its earnest effort to provide *ayuda*. To the needy, a charitable act may not answer the roots of the problem, but surely it gives him a fighting chance to live another day.

Take for example the rise of community pantries. On one hand, among the people in line for goods, no questions are asked on how long will they desperately remain in line to fill their empty stomachs. On the other, among the organizers and sponsors, no one dare use sustainability as measure of success. This is precisely because community pantries, like all charitable acts that are borne out of generosity, do not concern itself with silver bullets against poverty but only to make life for everyone less difficult, no matter how temporary. In other words, to any person in need, charity must only be good while it lasts.

Another example would be the national government's *Pantawid Pamilya Pilipino Program*(4Ps) which provides conditional cash grants to the "poorest of the poor" with the aim to improve health, nutrition and education of children.<sup>1</sup> Albeit laudable in its aim to alleviate poverty and commendable as to the number of its beneficiaries, the cash transfer may not always go beyond a week's provision or payment of overdue debts. Every so often, as the term suggests, it serves only as *pantawid* of the most immediate needs of its beneficiaries.

This leads to the question, if charity and charitable acts do not end the battle of the poor, what then is needed?

In this essay, I would like to expound the need to go beyond charity by bringing to fore my understanding of Chief Justice Panganiban's philosophy of liberty and prosperity as the twin beacons of justice.

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<sup>1</sup> *Pantawid Pamilya Program*, <https://www.officialgazette.gov.ph/programs/conditional-cash-transfer/>, accessed April 28, 2021.

## Liberty and Prosperity, the twin beacons of justice<sup>2</sup>

### *Liberty*

There are two prevailing conceptions of liberty, the negative and positive liberty. The negative liberty refers to the absence of external restraint. It is essentially freedom from restrictions and impediments. Under this concept of liberty springs civil and political rights. Recognizing the inherent autonomy of an individual, the State has duty to abstain from undue interference to an individual's exercise of his civil and political rights.

On the other hand, the concept of positive liberty refers to the possibility of acting in such a way to take control of one's life and realize one's fundamental purpose.<sup>3</sup> While negative concept of liberty connotes the absence of something, the positive concept implies the presence of something, i.e., control, self-determination and self-realization.<sup>4</sup> From this second notion arises economic, social and cultural rights or essentially the rights to seek a better quality of living.<sup>5</sup> This understanding of liberty is essential in fulfilling the primitive notion of freedom from restraint and all the rights identified therewith. For in the words of Chief Justice Panganiban: *"Of what relevance is free speech to people who are hobbled by grinding poverty, debilitating disease or permanent physical disability"*

Indeed, liberty does not only depend on the capacity to choose without restraint but more importantly on the availability of choices. If he cannot choose anything for himself, what then is the point of being able to choose at all? Without available choices, freedom is nugatory. One cannot claim that he is free for being slave to no one when he cannot also be the master of himself. Thus, the freedom to self-determination and the consequent right to seek a better life is as important a consideration as the freedom from restraint. For without purpose, any exercise of civil and political rights will remain futile.

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<sup>2</sup>, Elizabeth Aguilong-Pangalangan, *Parents and Children: When Law and Technology Unbundle Traditional Identities* citing CJ Panganiban. <https://libpros.com/wp-content/uploads/2019/06/final-paper-lp-lecture-adoptionsurrogacy.-6.2019.pdf>, accessed April 28, 2021

<sup>3</sup> Positive and Negative Liberty, August 2, 2016, <https://plato.stanford.edu/entries/liberty-positive-negative/>, accessed April 28, 2021

<sup>4</sup> *Id.*

<sup>5</sup> Aguilong- Pangalangan, *supra* note 2 at p. 2

These two-fold conception of liberty is embodied in the evolving obligations of a State within the international human rights framework. —the obligations to *respect, protect, and fulfill*.<sup>6</sup>

With abuses against civil and political rights being more blatant, it is not unexpected that the default measure of success (or failure) of a democratic nation is anchored on the negative notion of liberty. The gauge is on the absence of restraint from third persons or the government's negative duty of respecting and protecting the exercise of these rights. While these factors are to a certain extent measurable to ascertain the success in protecting rights under the negative notion of freedom, the measure in complying with the State's obligation to *fulfill* economic and social rights under the positive form of freedom is more complicated. As a positive duty, the state's duty to fulfill can be deemed co-terminus with the full realization of human rights. As such, it becomes a relentless pursuit —both of the individual and the State.

Such complexity in measuring the obligation to fulfill is embodied in the case of *Abakada Guro Party List v. Ermita*<sup>7</sup> where the constitutionality of Value Added Tax (VAT) was assailed on the ground that it was regressive.

In this case, while the Supreme Court acknowledged that VAT is an antithesis of progressive taxation and that in its own words, “*at the end of the day, it is the lower income group or businesses with low-profit margins that is always hardest hit...*”<sup>8</sup> the Court went on to rule that the same is constitutional citing the case of *Tolentino* saying: *The Constitution does not really prohibit the imposition of indirect taxes which, like the VAT, are regressive. What it simply provides is that Congress shall ‘evolve a progressive system of taxation.’ The constitutional provision has been interpreted to mean simply that ‘direct taxes are . . . to be preferred [and] as much as possible, indirect taxes should be minimized.’*<sup>9</sup>

Here, we realize that the positive duty to fulfill human rights as incorporated in a Constitutional directive to evolve a progressive tax system can also be interpreted to simply mean a policy “*to be preferred ... as much as possible.*” Even without delving into the intricacies of taxation and the wisdom of the Congress in enacting the said law, this case nevertheless grants us a glimpse of how vague and difficult it is to measure success in safeguarding liberty in its fullest sense. So much so that the

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<sup>6</sup> Aguilin- Pangalangan, supra note 2 at p.3 citing *Maastricht Guidelines on Violations of Economic, Social and Cultural rights*.

<sup>7</sup> G.R. No. 168056, September 01, 2005

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

duty to make a positive act to fulfill economic and social rights are hardly enforceable, even as constitutional provisions.

This begs the question, what then do we use as a tangible policy to ensure our success in fulfilling liberty to its fullest sense?

The answer is in Chief Justice Panganiban's philosophy of prosperity as the twin beacon of liberty.

### *Prosperity*

While it is as necessary as its counterpart, prosperity is not as abstract as freedom. In itself, it is a tangible measure. Unlike concepts of freedom and rights, the numbers when it comes to prosperity is finite. It is just one economic pie defined in finite numbers and distributed in finite portions to individuals. As such, it is more tangible for its effects are readily apparent to our senses. An ordinary vendor, fisherfolk, farmer, street dweller, and any other person who relentlessly toil with meager resources are easily identifiable. This is because resources (and the lack thereof) is physically discernible in our everyday experiences.

Prosperity is inextricably intertwined with liberty that in the words of Chief Justice Panganiban, "liberty must include the freedom that prosperity allows, and in the same manner, prosperity must include liberty, especially the liberty to strive for the "good life" according to one's conception."<sup>10</sup>

Prosperity necessarily gives us tools to actualize and enjoy our freedom. It is a necessary groundwork for the full realization of human rights. As have been earlier discussed, the freedom to choose and to exercise one's rights depends not only on the absence of restraint but also on the quality of available choices. The essence of freedom, being to determine oneself can only be made possible once fostered by the right environment.

As the adage goes, "**to a man with a hammer, everything looks like a nail.**" This is the kind the freedom that prosperity allows. With sufficient devices, man is necessarily equipped to choose the best for himself. Under equitable conditions, every choice is an opportunity to better himself. To a society that has nurtured prosperity, liberty is not only safeguarded but even fulfilled. It goes beyond the

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<sup>10</sup> Aguilin-Pangalangan, supra note 2 at p.1 citing CJ Panganiban

enjoyment of freedom from actual restraint, but more importantly advancing liberty to strive for a better standard of living in general.

Furthermore, it must be noted that prosperity is different from our notion of charity. The former always strives for permanence; to uplift living conditions for liberties to flourish. Prosperity goes beyond the temporary needs of the here and now but suggests an arduous struggle not only to fairly divide the economic pie but to enlarge the same by giving more law to those less in life.<sup>11</sup>

In this philosophy, the economic well-being of every individual will not depend so much on the generosity of another but will be fostered by a system that guarantees long term equality of opportunity to everyone regardless of their race, color and creed.<sup>12</sup>

This system which will allow liberties to flourish and prosperity to dwell is one made possible by the Rule of Law.

The World Justice Project in its Rule of Law Index provides for certain indicators of such success namely, constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement , civil justice and criminal justice.<sup>13</sup>

With the presence of such indicators, one can assure that liberties and fundamental rights are protected from the whims and caprices of people in power. Thus, creating a stable environment which will attract more people to *unleash their entrepreneurial ingenuity* within the liberty and prosperity under the rule of law *where the government takes a back seat, allowing people to freely innovate and initiate, interfering only to check avarice and to level the playing field.*<sup>14</sup>

### **Advocating for this philosophy as a student and as a future lawyer.**

I have always believed in the axiom that nothing is more practical than a good theory. For good theories always find its way into practice. Thus, as a law student, I will promote and pursue this philosophy by stocking up on good theories, of lofty ideals

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<sup>11</sup> CJ Artemio V. Panganiban, *Safeguard Liberty, Conquer Poverty, Share Prosperity*, September 19,2014 <https://cjpanganiban.com/2014/09/19/safeguard-liberty-conquer-poverty-share-prosperity-part-three-for-the-business-community/#more-2341>, accessed April 28, 2021

<sup>12</sup> CJ Artemio V. Panganiban, *Towards a Just World Society*, May 08 2008, <https://cjpanganiban.com/2008/05/08/towards-a-just-world-society/#more-1029>, accessed April 28, 2021.

<sup>13</sup> Factors of the Rule of Law, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/factors-rule-law>, accessed April 28, 2021

<sup>14</sup>CJ Artemio V. Panganiban, *Unleashing Entrepreneurial Ingenuity*, February 16, 2015, <https://cjpanganiban.com/2015/02/26/unleashing-entrepreneurial-ingenuity/> accessed April 28, 2021

of justice, liberty and prosperity and by holding on to it as far as idealism can take me.

For me, the theories of justice, liberty and prosperity together with legal knowledge and skills I earn in my stay in law school will be my armory when I go to the actual practice. I always tell myself that trailblazers, those who create novel jurisprudence and innovative policies, were also once deemed impractical for not adhering to the conventional way of understanding the law. Tony Oposa in the case of *Oposa v. Factoran* knew that the government's motion to dismiss based on technicality had good grounds in law. Nevertheless, he persisted in what he calls as an attempt to tell a simple story and to send a message in a court of law. 30 years later, according to Oposa, what seemed impossible—a total logging ban— had become inevitable. Good theories. With it, everything is possible.

I remember being a neophyte who was struggling with the vicious transition into law school when my professor in Constitutional Law 1 left us with a point-blank reminder: “the Bar examinations is not be all and end all of law school.” Those words were etched in my memory because from the time I entered law school, all I heard were pieces of advice on grit, perseverance and preparation for the bar.

Coming to the realization that the bar is not my be all and end all, I have always been eager to seek knowledge wherever it may be found. May it be in the voluminous class syllabi or in random commentaries online. I was determined to stock up with theories, with the *whys* and the rationale behind the system that we have. As early as freshmen year, aware that I cannot embrace the lofty ideals of law without embracing the rigor it demands, I joined the *UST Law Review* as an understudy to hone my skills in writing and research. Now as its Articles Editor, I can propose relevant topics to our student writers and spearhead projects in furtherance of this philosophy of safeguarding liberty and nurturing prosperity under the rule of law.

Another thing with theories is that they are never monopolized and are easily communicable to other persons. In the advent of social media and a variety of online platforms, I can promote this philosophy by way of discourse not only within my limited circles in law school and the academe, but even to laypersons and strangers in social media. By consistently sharing and reminding people of their rights under the Constitution, labor laws, Consumer Act, etc., I'll be doing my part to empower them to safeguard their own liberties and stand ground even against all the powers that be.

In the future, I will not hesitate to pay everything forward. For I will always acknowledge that if I have seen further, it is only by standing on the shoulder of the Giants. Thus, with the same ardor in which advocates imparted to us their wisdom, I vow to pass on the same to my students once I can teach law. I also vow to be in constant pursuit of enlarging and redistributing the economic pie, be it in the grand narrative of directing policies once I get into government service or by simply paying forward the meager resources I can muster through scholarship and sponsorship programs.

In any case, I vow to remain charitable yet resolute in the advocacy of safeguarding liberty and nurturing prosperity under the rule of law.