

## **Raising the rainbow flag: liberation and empowerment of queers through the rule of law**

*“They got it wrong when they called it ‘the closet.’ This was a prison. Solitary confinement. I was locked inside myself, dark and afraid and alone.”<sup>1</sup>*

### **A life without prosperity and liberty**

I am no stranger to a life without liberty and prosperity.

I come from an occasionally low-income family. I say occasionally because whenever both my parents would be able to secure stable jobs, we would move up to the lower middle-class bracket. Unfortunately, most of the time, only one of my parents is able to get a job. With only one low-income breadwinner, we would live hand to mouth. While we are fortunate enough to be able to eat three times a day, and I was able to go to good schools with the help of my relatives, the other aspects of our lives were neglected. Our house, once beautiful, has become dilapidated and infested for being unkept for so long. Our healthcare needs, often, are ignored. We would also rack up debts from loan sharks just so we could pay our bills, and the high interests would bury us deeper and deeper into debt. Our financial situation has afforded my family only brief teases of comfort, but we never had enough to live in comfort. This also forced me, for the longest time, to let go of opportunities because I couldn't afford to participate. That is why I know what prosperity is not.

I am used to a life of holding my breath. I knew deep within me that I was queer, but I didn't believe it and I thought I could avoid it. I lived my childhood tiptoeing around my identity. As a result, I grew up with a deep despair and loneliness. I did not have avenues to discover nor express myself. My daily life was always an endless quest of hiding myself while secretly and desperately yearning for freedom and safe spaces. At that time, I didn't know it yet and I didn't quite understand myself. It was only when I first accepted myself as queer at a rather late age and allowed myself to try living my life that I understood why I was so lonely for so long. I am now aware that to find myself in history, in books, in media, I would have to read between the lines. I am now aware that in order to marry someone I love legally, I would have to move abroad. I am aware that to keep myself safe, I

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<sup>1</sup> JULIE ANNE PETERS, KEEPING YOU A SECRET (2007).

would have to be careful with whom I reveal my identity to. That is why, all my life, I know what liberty is not.

## **The synergy between prosperity and liberty**

My understanding of the synergy between prosperity and liberty dates back to my undergraduate days in political science, where we were often tasked to read books about politics. In one of our readings, I encountered the theory that there is a link between inclusive economic and political institutions; and economic growth prosperity.<sup>2</sup> Acemoglu and Robinson, in their book *Why Nations Fail*, argued that inclusive institutions that protect liberty also foster economic growth. According to them, inclusive institutions are those which encourage public participation in the economy and in politics.<sup>3</sup> Governments with inclusive institutions incentivize economic activity by securing rights, providing public services and opportunities, investing in education, maintaining of an unbiased system of law, and all other acts that empower and motivate its citizens.<sup>4</sup> On the other hand, extractive institutions are those which concentrate power in the hands of a narrow elite, enriching such elite at the expense of the impoverished masses.<sup>5</sup> Such institutions serve as barriers to industry because they do not create the incentives needed for people to save, invest, and innovate; resulting in economic stagnation.<sup>6</sup>

The authors cite North and South Korea to illustrate their point. Those in North Korea grow up in poverty, without entrepreneurial initiative, creativity or adequate education to prepare them for skilled work.<sup>7</sup> Teenagers in North Korea know that they will not be able to own property, start a business, nor have legal access to markets.<sup>8</sup> They are not even sure what human rights they will have.<sup>9</sup> On the other hand, teenagers in South Korea are provided a good education and face incentives that encourage them to exert efforts and excel in their chosen vocation.<sup>10</sup> They know that if they work hard, they will become successful and reap the fruits of

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<sup>2</sup> DAREN ACEMOGLU AND JAMES ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY*, (1ST ED. 2012).

<sup>3</sup> *Id.* at 429

<sup>4</sup> *Id.* at 73-75

<sup>5</sup> *Id.* at 81

<sup>6</sup> *Id.* at 372

<sup>7</sup> *Id.* at 74

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

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

<sup>10</sup> *Id.*

their labor.<sup>11</sup> They would be able to buy a house, own a car, start a business, and have good healthcare.<sup>12</sup>

North Korea, by virtue of its extractive economic and political institutions, stifles the people's potential and demotivates them from chasing a good and prosperous life. Logically, a person who expects that his rights would not be protected would have little incentive to work. By contrast, South Korea, by virtue of its inclusive economic and political institutions encourages its citizens to grow and be successful, consequently fostering economic at the macro level.

In other words, liberty motivates you to live a good and prosperous life. If you know that your rights will be protected, that you and your family will be safe, that you will have the government support that you need to succeed in your career or business; then you will have great motivation to make something of your life, which in turn, would benefit the country's economy. On the other hand, if you know that the legal system is biased, that the government is corrupt, that the law cannot protect you from harm, and that your earnings would be largely taxed, then you would have little motivation to work hard.

Ultimately, it is the law which creates these institutions and which dictates whether it is inclusive or extractive. The rule of law empowers the minority; and at the same time constrains the exercise of power by the elite. A stable rule of law creates a "virtuous circle" where greater liberty leads to greater economic prosperity, and greater economic prosperity then leads to greater liberty. As the source of society's rules, it is the law which ultimately safeguards liberty and nurtures prosperity.

### **Case in point: the relationship between LGBT inclusion and economic development**

An example of how laws and institutions that tend to gatekeep liberty from a minority can lead to further impoverishment is one which, for me, hits closer to home: the relationship between social inclusion of lesbian, gay, bisexual, and transgender (LGBT) people and economic development.

In a study, it was found that there is substantial evidence that LGBT people are limited in their human rights in ways that also create economic harms, such as lost labor time, lost productivity, underinvestment in human capital, and the

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

suboptimal allocation of human resources through discrimination.<sup>13</sup> By using legal and economic data for 132 countries from 1966 to 2011, the study found that provision of legal rights for LGB persons is associated with an increase in real GDP per capital, which suggests that **LGBT inclusion and economic development are reinforcing**.<sup>14</sup>

On the other hand, it is found that **discrimination against LGBTs hampers economic growth**. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labor market.<sup>15</sup> It reduces economic output by excluding or under-valuing LGBT talents in the labor market and impairing their mental and physical health, hence their productivity.<sup>16</sup>

In the Philippines, LGBT discrimination is a colonial heritage. In pre-colonial Philippines, non-heteronormative sexuality was considered normal and accepted. Philippine culture and laws changed upon the arrival of the Spaniards. At present, the discriminatory norms and laws brought by the Spaniards still remain. The suffering and discrimination of the LGBT community is already heavily documented.<sup>17</sup> The law adds to their burden and facilitates further discrimination by retaining vestiges of the discriminatory norms brought by the Spaniards. For instance, the Family Code mentions the terms “homosexuality” and “lesbianism” only twice throughout the entire law. These two terms may be found under the grounds for annulment and legal separation of marriage.<sup>18</sup> Even worse than that is the offensive silence of the Family Code on a matter of extreme significance: marriage. Notably, the Family Code limits marriage to that between a man and a woman.<sup>19</sup> It does not acknowledge any union that falls outside the heteronormative standards, thereby depriving members of the LGBT of family and marriage rights that are available to their heterosexual counterparts. From these legal provisions, one message rings loud and clear: The LGBT community has no place in the Filipino family.

One noteworthy fact is that while the Philippines suffers under discriminative family laws; Spain, our colonizer, has long promoted gender equality in its own law. Studies show that legal LGBT inclusivity in Spain has increased threefold over the past two decades, and Spain is one of 17 countries in the OECD that have most legal

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<sup>13</sup> M.V. LEE BADGETT, KEES WAALDIJK, AND YANA VAN DER MEULEN RODGERS, *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: MACRO-LEVEL EVIDENCE 1* (2019). WORLD DEVELOPMENT, VOLUME 120

<sup>14</sup> *Id.*

<sup>15</sup> OECD, *OVER THE RAINBOW? THE ROAD TO LGBTI INCLUSION- SPAIN*, (2020).

<sup>16</sup> *Id.*

<sup>17</sup> HUMAN RIGHT WATCH, “JUST LET US BE” DISCRIMINATION AGAINST LGBT STUDENTS IN THE PHILIPPINES, (2017).

<sup>18</sup> FAMILY CODE, EXEC. ORD. 209, AS AMENDED (PHIL.), ART. 46 (4) IN RELATION TO ART 45 (3) AND ART 55 (6).

<sup>19</sup> *Id.*, ART. 1

protections for sexual and gender minorities.<sup>20</sup> Ironically, the country which colonized us and imposed the most discriminatory policies against LGBTs has been able to do the exact opposite in their state. In fact, as early as the 2005, the Spanish Parliament officially legalized same-sex marriage, giving them the same rights as their heterosexual counterparts, including the freedom to marry and to adopt children.

One can only imagine what our country could achieve if, through the rule of law, it provided inclusive institutions that protect the liberty of everyone, including the LGBT community; and incentivized them to lead a good life by participating in the economy. The lack of laws that protect our liberties is one of the greatest barriers to reaching our maximum potential, both individually and as a nation. In the case of Spain, we can see the standards of living that our country is missing out on.

In my own life, I know what it is like to live without liberty and prosperity as a member of the LGBT community in conservative Philippines. Growing up as a closeted queer left me oppressed and deprived. In trying to appear as what society perceived as normal, I hid even the best parts of myself. For years, I battled an inferiority complex. I was nowhere near living my best self nor being happy. In school, I was merely average, and I did not enjoy learning at all. My talents remained undeveloped, and my potential was hampered. It was my lack of liberty in the past which held me back and prevented me from growing and prospering. But I found my liberation in education.

### **What inclusive institutions can do**

One of the greatest decisions of my life was when I took a liberal arts degree in college. Taking up such a degree was literally liberating, because it made me a part of an inclusive institution. The liberal arts community opened my eyes to new possibilities for my future as a Filipino queer. While it truly was a long and painful journey towards self-acceptance, it made me experience growth like never before. I discovered that I had a knack for logical reasoning and I had good comprehension skills. I studied well and participated in organizations. I got elected as the president of our academic organization. I ended up graduating from college with latin honors. Eventually, it was these achievements that enabled me to gain a scholarship to study in the UST Faculty of Civil Law, where I remain to be a dean's lister and academic scholar. What the rule of law couldn't give me, I got and continue to get from my peers. I found liberty and belongingness in our community. Only then did I get a

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<sup>20</sup> OECD, *supra* note 15.

taste of prosperity, as I felt myself thrive and flourish. I discovered my liberation and prosperity in education, and I credit my family and friends who supported me, loved me, and inspired me to love myself and seek liberty. Of course, things would have been much easier for me if the laws and culture of this country protected people like me, queer people, from discrimination and abuse; and empowered us to be our best selves. It is this failure in our law that inspired me to pursue a career that would assist in the actualization of inclusive institutions in our country. I endeavor to make our community a safer place for queers by performing my role as a student and as a future lawyer.

### **My role in raising the rainbow flag**

As a law student, and eventually as a lawyer, there are three tasks which I ascribe myself to safeguard liberty and nurture prosperity under the rule of law: 1) to study well, 2) to be myself, and 3) to continue the good fight.

Firstly, by studying well, I imbibe to myself the necessary knowledge and skillset needed in living a good and progressive life as a future lawyer. It was through studying the liberal arts that I found the courage to accept myself, and it is through studying the law that I learn how I can protect the rights of the minority. I found that the more I study, the more I empower myself to be an agent of social change. As such, I shall study well not just in law school but even when I become a full-fledged member of the legal profession.

Secondly, by being myself, I am able to increase the visibility of the LGBT community. Much of the reason why I was afraid to be myself during my younger years was because I did not see people like me around. Queers are not often represented in media and literature. In real life, a lot of queers are closeted. By being true to myself and living a genuine life, I would be able to serve as representation of the LGBT community for those looking for people like me. At the very least, for those around me who are part of the minority, they would see that there is someone like them, and it might help them find strength to likewise be themselves.

Lastly, by continuing the good fight through advocating for laws against discrimination on a wide range of grounds and for laws which protect, empower, and facilitate social inclusion of LGBTs and other minorities; thereby making the Philippines a better, safer, and freer place for minorities to live and grow old in. I know what it's like to live a life without liberty and prosperity, where life can be terrible, and the future can seem bleak. To those like me, whose liberty and

prosperity have not been sufficiently protected by the law, I see you, I feel you, and I will do my best to be here for you, as others have for me.

As a future officer of the court, I understand that I hold greater responsibility in ensuring that the rule of law helps those who need it the most. Lawyering is not merely a vocation but a public trust that requires lawyers the obligation of giving back to their communities.<sup>21</sup> I would always stand up for our community. I would always stand up for the minority. And I would always advocate that the laws of this country do the same. No amount of money nor power would ever blind me from that truth – that the rule of law creates our institutions and dictates our lives. It is only when the law creates inclusive and libertarian institutions that we can achieve true and lasting prosperity.

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<sup>21</sup> JANET RENO, ACCESS TO JUSTICE FORUM: ENSURING AN AMERICAN IDEAL, US DEPARTMENT OF JUSTICE (MARCH 19, 1996), <https://www.justice.gov/archive/ag/speeches/1996/03-19-1996c.pdf>