Turning 38: In Pursuit of Evolving the Precept

In about a year's time, the 1987 Constitution will have been in effect for 38 years, equaling the longevity of its 1935 counterpart, which—notwithstanding its effective suspension during the Second World War—has so far been the Philippines' longest operative. Beyond serving as a mere marker of longevity, this imminent threshold should be viewed as an opportunity to reflect on the essence of our nation's charter. In particular, the legal profession (and those who aspire to join it) must realize that the Philippine people will soon be as far removed from the milieu of its constitution's drafters as any generation of Filipinos ever have since 1898. In fact, it appears that this liminal era has already begun; with the 19th Congress at the precipice of passing the first constitutional-amendment proposals under the current Constitution, there is a substantial likelihood of at least *some* changes to the Constitution being made in the near future. Some would argue that the passions, grievances, and aspirations that inspired the Constitutional Commission of 1986 are simply alien to the Filipino of 2024. However, whether or not the Constitution is ultimately amended or revised, an atavistic approach to understanding the Constitution is no longer a viable one, requiring a second look at its very text.

In construing our supreme law, then Justice (later Chief Justice) Artemio Panganiban once wrote that it had to be "read in broad, life-giving strokes."[1] Indeed, the drafters of our Constitution cannot be faulted for their work if the text they drafted has been left largely unramified nearly four decades later. The failure to further develop our understanding of the Constitution is tantamount to obscuring its true meaning, which generally calls for a consideration of contemporary circumstances to inform the interpretation of the otherwise static text. It is in this spirit that I would appreciate Chief Justice Panganiban's philosophy of safeguarding liberty and nurturing prosperity under the rule of law.

The term *liberty* occurs twice in the Constitution;[2] *prosperity* and *rule of law*, once each.[3] A consideration of their particular locations within the charter would

[1] La Bugal-B'laan Tribal Ass'n v. Ramos, G.R. No. 127882, 445 S.C.R.A. 1, 79 (2004) (en banc) (resol.).
[2] PHIL. CONST. art. II, § 5 ("The maintenance of peace and order, the protection of life, *liberty*, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy." (emphasis supplied)); *id.* art. III, § 1 ("No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (emphasis supplied)). Excluded from this count is its occurrence in the specific term *liberty of abode*. PHIL. CONST. art. III, § 5.
[3] PHIL. CONST. art. II, § 9 ("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." (emphasis supplied)); *id.* pmbl. ("We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve

actually reveal that Chief Justice Panganiban's precept corresponds with the Constitution's treatment of the concepts. While liberty and prosperity are both mentioned in the Declaration of Principles and State Policies, only the former is found in the Bill of Rights; thus, it is only logical that the precept concerns a *safeguarding* of a matter included in the self-executing third article of the Constitution, while the concept only touched upon in the mainly non-enforceable Philippine state policies is *nurtured*. As to the rule of law, it serves as a common qualification between the two operative components of the precept; correspondingly, it occurs in the unifying preamble to the Constitution. All in all, these three terms would benefit from a renewed understanding, especially if one were interested in guaranteeing the very precept itself from the risk of anachronism.

Dissecting the Three Components

In his preface to *Lumanlaw y Bulinao v. Peralta*, Chief Justice Panganiban provided a characterization of the institution he led, stating that "[t]he Court safeguards liberty and will therefore always uphold the basic constitutional rights of the people, especially the weak and the marginalized."[4] While the first clause describes a duty that could actually be ascribed to *any* court, it is the succeeding one that invites attention. The link made between the concept of liberty and basic constitutional rights—with the addition of a preferential option for the disadvantaged—evinces a conception of liberty as the very bedrock of our Bill of Rights. When this line of thought is placed against the background of a progressive understanding of the Constitution, including its constituent concepts, then it begs the question of whether the *safeguarding of liberty* called for by Chief Justice Panganiban requires a concomitant validation of those rights previously unrecognized. This question is but a nagging consequence of the gradual passage of time separating us from the drafters of 1986. While our Constitution is nascent compared to its American progenitor, the fact remains that an increased novelty may be demanded of us in interpreting our basic law. The tapering currency of the Commission's record and journal—which have frequently and conveniently provided *specific* answers to those ostensible ambiguities and contradictions in the constitutional text—will not necessarily constrain courts from continuing their use as interpretative texts; rather, judges will now have to engage in a more nuanced analysis of the Commission's proceedings to glean those *general* principles to use as bases for decisions. In truth, what would be labelled in our country as judicial

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and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the *rule of law* and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution." (emphasis supplied)).

[4] Lumanlaw y Bulinao v. Peralta, 517 Phil. 588, 591 (2006) (div.).

legislation today could very soon be deemed but a necessary and ordinary exercise in constitutional interpretation.

The challenges that attend the evolution of the Philippine conception of liberty is primarily owed to its perception as a negative right. In contrast, Chief Justice Panganiban's call for a *nurturing* of prosperity reflects the concept's status as a positive right. Furthermore, he virtually acknowledged the nebulous nature of the path to prosperity during his time on the bench; for instance, in *Tañada v. Angara*, he even depicted prosperity as an uncertain commodity.[5] In that case, concerning the Philippine ratification of the Marrakesh Agreement establishing the World Trade Organization, the Court humbly commended the *economic* matter to the political branches of the government and refused to address doubts against those branches' wisdom in pursuing ratification. While said case features an admirable exercise of judicial restraint, the pursuit of nurturing prosperity within the legal profession would then appear tentative. Having said that, it then becomes crucial to remember that the term *nurture* does not carry the same absolute connotation as does *safeguard*. Unlike when liberty is involved, considerations of prosperity do not require courts to scrutinize so strictly. In a speech given towards the end of his term on the Court, Chief Justice Panganiban noted that some international organizations had observed that the existence of a stable, functioning judiciary was actually necessary for economic development to occur, as courts were essential to ensuring effective state regulation and an environment conducive to commerce.[6] Hence, it would appear that the nurturing of prosperity under the tripartite system of government prescribed by the Constitution is fulfilled by the legal community—whether on the bench, of the bar, or merely aspiring to either—through the existence of a fair administration of justice, as led by the courts.

While our halls of justice are not the only fora available to those in the legal profession who wish to contribute to Chief Justice Panganiban's mission, they nevertheless occupy a central position among lawyers. It is in our courts where the phrase *under the rule of law* is actually realized. Therein, those on the bench are called to lucidly ascertain the law, bearing in mind that even the Supreme Court itself, as the then Justice Panganiban put it, "can only apply the letter and the spirit of the law… if it must be true to its mission under the rule of law."[7] As such, the concept serves to mediate the safeguarding of liberty and nurturing of prosperity by binding both under the strictures of the rule of law. Moreover, this unifying phrase

[5] *See* Tañada v. Angara, G.R. No. 118295, 272 S.C.R.A. 18, 63–64, 82 (1997) (en banc) (unanimous result).
[6] *See* Artemio V. Panganiban, *Safeguarding the Liberty and Nurturing the Prosperity of the Peoples of the World*, 82 PHIL. L.J. 178, 188 (2007).
[7] PNB v. Palma, 503 Phil. 917, 936 (2005) (div.).

cements the role that the legal profession is to play in fulfilling both operative components of Chief Justice Panganiban's philosophy.

Personally Realizing the Precept

As a law school junior today, I realize much of my understanding of the law so far has been informed and improved by my past experiences outside of the classroom. During my undergraduate years, I wrote for my university's newspaper, the *Guidon*, where I was assigned to write on national and international events. There, I was able to publish pieces on topics such as agrarian reform and the Philippine military; in retrospect, it was my time there when I realized law was a viable profession for me. Later into my college years, I interned for my local congressman, a vocal member of the House minority during the Duterte administration. My time there provided me an occasion to get acquainted with the basics of lawmaking; from sitting in on meetings about professional regulation to intensive research on constitutional reform, the opportunities to learn rendered me aware of just how vital legislative work is to the effective administration of government. Coupling this experience with what I know now as a law student, I can say that the rule of law is much easier to apply when the law is crafted with care and precision.

While both of these experiences were key to my eventual entry into law school, my novice legal skills were truly tested and edified during my summer interning for Justice Alfredo Benjamin S. Caguioa of the Supreme Court. Going into the two-month assignment, I admit to having proceeded with some preconceived notions of what work there would be like, inspired by the consistent reading assignments of the Court's seminal decisions. Ultimately, I came to realize just how broadly the Court functioned as an institution, far from its popular (and narrow) image as a body of 15 only dealing with the most critical of legal controversies. For instance, much of its work lies in the unsigned and minute resolutions that are usually ignored in law school for their lack of binding authority; nonetheless, the sheer volume of these unsung dispositions reveals the rendition of justice done with every review of an appeal or petition. It is even more noteworthy when one remembers that the Court retains *mandatory* jurisdiction over appeals from criminal convictions involving life imprisonment or reclusión perpetua. Since these criminal appeals require a proactive approach on the part of reviewing courts, there are only but a few other opportunities for the justice system to actually safeguard liberty than when it reviews the sufficiency of a conviction carrying either of the two heaviest penalties imposable under law today. As to civil cases, it can be said that the Court—as the apex of the Philippine judiciary—contributes to the nurturing of prosperity by

simply functioning as it should. In maintaining a consistent set of precedents and enforcing those already established, the Court exemplifies how a predictable and stable administration of law is essential to the engendering prosperity. This is what Chief Justice Panganiban meant by the Philippine people's "entrepreneurial spirit…[being] unleashed…because our permanent institutions are being strengthened and relied upon."[8]

Summarizing the Renewal

On balance, the 1987 Constitution deserves a renewed appreciation that situates it aptly within the times of the present. Constitutions are designed to withstand the shocks of change and progress; while our Constitution's amendment process was indeed crafted to serve as a lawful mechanism to modify the otherwise immutable text, the reality remains that the original 1987 Constitution is still in full effect. It is from this point of view that I choose to appreciate the precept introduced and developed by Chief Justice Panganiban. The liberty jealously safeguarded by the courts may require an expansion of its conception if it is to remain the bedrock of our Bill of Rights; thus, both the blessings and the dregs of the modern world must be considering to determine if the current definition of liberty is in need of a revision. Thus, what were once mere shades of liberty may approach (and even reach) the solid center under the right circumstances. As to the nurturing of prosperity, such task remains primarily lodged with the presidency and Congress—being the national institutions directly subject to the will of the people—both as to how it is to be realized and what form it is to take. While this may seem like a call to fallow on the part of the legal profession, those holding the scales of justice can contribute enough to this goal by ensuring that the system is fair and logical for Filipinos to feel secure enough to engage in those ventures that are the building blocks of national wealth. Finally, the rule of law is best preserved when both its letter and spirit are applied faithfully by the bench and the bar; the latter play an indispensable role as the conduit between the judiciary and the public it serves. Under our democratic system of government, the rule of law will sometimes lead to results that run counter to one's own view; a becoming respect for the law will demand the submission of the latter view to the former.

[8] Artemio V. Panganiban, Opinion, *Unleashing Entrepreneurial Ingenuity (2)*, PHIL. DAILY INQ. (Mar. 8, 2015), https://opinion.inquirer.net/83142/unleashing-entrepreneurial-ingenuity-2.