

The Hoist of Justice: Elevating Prosperity with the Weight of Liberty

By: George Mariano A. Soriano

“The best way to conquer poverty, to create wealth and to share prosperity is to unleash the entrepreneurial genius of people by granting them the freedom and the tools to help themselves and society.”¹ -Chief Justice Artemio Panganiban

I. Why a Hoist?

For the longest time, members of the legal community and the public at large ascribe the mechanics of justice to a scale. In discussing the idea of liberty and prosperity, Chief Justice Panganiban states that *“eventually and inevitably, all the peoples of the world need and deserve **liberty and prosperity in equal measure**”*². In interpreting what Chief Justice Panganiban meant, the tendency is to apply the Scales of Justice paradigm wherein the **Rule of Law intervenes in balancing opposing interests**. The Scales of Justice paradigm is further reinforced when Justice Panganiban said that, *“first, in cases involving liberty, the Scales of Justice weigh heavily against government and in favor of the people... second, in cases involving prosperity and development issues, deference is accorded to the political branches of government; namely, the Presidency and Congress”*³. The framework provided by Chief Justice Panganiban would be sufficient if the legal issues pertaining to Civil Liberties and Prosperity are separable in all circumstances. However, what happens when an economic action by the Government would be at odds with Civil Liberties? In this regard, I will argue that the traditional Scales of Justice view **does not fully encapsulate** the relationship between the twin pillars of Liberty and Prosperity.

A Hoist is a device used to lift heavy loads using counterweights. The more counterweights are used in a hoist, the higher and more stable the load is elevated. In using the hoist paradigm, Civil Liberties are considered the counterweight and Prosperity is the load. **If the weight of laws and jurisprudence are sufficient in protecting our Civil Liberties, the State will**

¹ A.V. Panganiban, *Unleashing Entrepreneurial Ingenuity* (12th General Assembly of the Asean Law Association (ALA), Makati Shangri-La Hotel, February 26, 2015)

² *Id*

³ A.V. Panganiban, *Spreading the Gospel of Liberty and Prosperity* (National Forum on “Liberty and Prosperity”, Manila Hotel, August 24-25, 2006)

have more leeway in introducing sweeping and innovative economic reforms and poverty alleviation programs. In cases where in the Courts are confronted with economic policies encroaching on the Civil Liberties of the people, **the latter should be given more weight and importance.** As aptly said by Chief Justice Panganiban, *“this judicial no-interference rule on economic policy should not be taken to mean, though, that the courts will abdicate their duty to strike down (1) gravely abusive legislative or executive acts that clearly violate the Constitution, the laws, or settled jurisprudence; or (2) those that have been issued with arbitrariness, whim, caprice, bias or personal hostility⁴”.*

However some sectors would argue that the full exercise of Civil Liberties does not translate and at times even counterproductive to economic progress. If we take a look at China, Vietnam, and three of the Four Asian Tigers (Singapore, Taiwan, and South Korea), we can see that their paths to industrialization were cemented by one-party rule and curtailment of Civil Liberties. As a matter of fact, Singapore’s founding father, Mr. Lee Kuan Yew, said that *“the expansion of the right of the individual to behave or misbehave as he pleases has come at the expense of orderly society. In the East the main object is to have a well-ordered society so that everybody can have maximum enjoyment of his freedoms⁵”.* How then do we justify the Hoist of Justice paradigm given the context of these economically progressive countries? The answer to this question lies in the particular context of a country’s political and economic history. In undertaking a contextualized discussion on Liberty and Prosperity, Chief Justice Panganiban’s words are instructive:

“Some countries, taking into account their unique backgrounds, start with improving their people’s economic lives first and restrict temporarily in measured stages their political liberty. Some others begin with political liberty thinking that their economy would flourish as a necessary consequence. Still some others rise with a combination of both liberty and prosperity at the very beginning. I think that such differing starts and focus are necessary in the growth of nations⁶”.

⁴ *Supra*, See Note 3

⁵ Gordon, U. (2000). Machiavelli's Tiger: Lee Kuan Yew and Singapore's Authoritarian Regime Tel-Aviv, Israel: Retrieved September 22, 2019, from <https://pdfs.semanticscholar.org/73c8/d4ae93f61f34412f9daf9b2c235620fe7cef.pdf>

⁶ *Supra*, See Note 1

II. Contextualizing the Hoist

According to the Philippines Institute of Development Studies, “*the Philippines had a fast start in the 1950's, registering the highest growth rate in Southeast Asia (even higher than for South Korea), in part due to the relatively smooth transition from colonial status to independence compared to Malaysia, struggling with a full-scale Communist rebellion, Indonesia plagued with instabilities as a result of the aftermath of the war of independence, and South Korea devastated by the Korean war and slowed down by reconstruction*”⁷. At the outset, the Philippines seem poised to be one of the most advanced economies in Southeast and East Asia. However, the declaration of Martial Law changed the political and economic landscape of the Philippines altogether. The detrimental effects of authoritarian rule are discussed by Mr. Litonjua below:

*“The power of martial law was also supposed to unshackle the economic and political life of Filipinos from the fetters imposed on them by the oligarchy. True, it loosened the grip of selected oligarchs, like the Lopezes and the Jacintos, but Marcos soon confined Philippine society in more onerous shackles. He subordinated the entire apparatus of the state, particularly the military, to his personal command. He dismantled all countervailing institutions, demobilized, and disarmed the opposition, and jailed those whom he could not coopt. He ruled with all the coercive power of the state for his benefit and those of his family and clique.”*⁸

However, there are certain sectors which point praise to the economic policy accomplishments of the Marcos administration under the New Society. In his paper, Mr. Sicat described technocracy in the New Society:

“From the start, Marcos paid great attention to the reform of the government machinery. To do this, he surrounded himself with competent officials who would help him execute his program. Among the first steps that he took was to appoint the best available and place them in charge of major duties. He identified the departments and agencies of the government that dealt with economic matters and those that implemented major government programs to these groups of officials. By and large and with few exceptions, the leaders of various departments of the government were chosen from well-qualified

⁷ Oshima, H. (1983). SECTOR SOURCES OF PHILIPPINE POSTWAR ECONOMIC GROWTH: THE OVER-ALL RECORD IN COMPARATIVE PERSPECTIVE Manila, Philippines: Retrieved September 22, 2019, from <https://dirp4.pids.gov.ph/ris/pjd/pidsjpd83-1postwar.pdf>

⁸ Litonjua, M.D. (2001).. Litonjua, M.D. (2001). The State in Development Theory: The Philippines Under Marcos. Philippine Studies, Volume 49 (Issue No.3), pp.368-398 . Retrieved from <http://www.philippinestudies.net/files/journals/1/articles/2708/public/2708-2706-1-PB.pdf>

professionals and tested administrators. This covered the areas of finance, budget, planning, financial institutions, and the principal departments of the government that implemented major government programs – education, health, public works, infrastructure, and agriculture.⁹

With all these highly qualified technocrats under Mr. Marcos, why is it that the economic policies under Martial Law failed to deliver? Mrs. Tadem answers this by explaining how **technocracy was besmirched by the curtailment of Civil Liberties under Martial Law:**

*“Technocracy became synonymous with the repression which occurred during that era foremost of which was economic development at all costs, e.g., dislocation, militarization, and elimination of communities which got in the way of development projects. This reputation, therefore, earned the technocrats the “(dis)honor” of being referred to as the **third leg of the stool which propped up the authoritarian regime**, the other two of which were the military and Marcos’ relatives/cronies.*

*The technocrats were also blamed for encouraging an apolitical and pro-business atmosphere which gave the leadership a “legitimate” excuse to depoliticize the Filipino people. This was implemented in various forms, e.g. the elimination of leaders of national movements and the **denial of civilian rights**. Repressive labor policies included the **prohibition of the right to strike by both the workers and the rural peasantry and the disbandment and constant harassment of labor unions by the state**. These actions were implemented with the excuse that these labor activities were a threat to internal security.¹⁰”*

The distrust of technocrats and economic managers persisted beyond the 1986 revolution and eventual democratization of the Philippines. Ms. Tadem’s paper further explains:

*“If the left movement during the martial law period spearheaded the **opposition against technocratic policies under the umbrella of the anti-dictatorship movement, in a period of democratization, this was carried out by civil society**. **The failure of the technocrat’s economic policies to address poverty and socio-economic inequalities as exacerbated by the adverse effects of globalization as epitomized by the 1997 Asian financial crisis brought about the***

⁹ Sicat, G.P. (2011). The economic legacy of marcos. UP School of Economics Discussion Papers, Volume 2011-11 Retrieved from <https://www.econstor.eu/bitstream/10419/93568/1/672723204.pdf>

¹⁰ Tadem, T.S.E (2001). Philippine Technocracy and the Politics of Economic Decision-Making: A Comparison of the Martial Law and Post-Martial Law Periods. Southeast Asian Studies, Volume 3 (Issue No.2), pp.345-381 . Retrieved from https://englishkyoto-seas.org/wp-content/uploads/SEAS_0302_05_Tadem.pdf

emergence of civil society alliances with prominent allies sympathetic to their cause.¹¹”

The Martial Law era embarked on an aggressive industrialization policy implemented by the curtailment of dissent and exercise of Civil Liberties. When the economic policies failed to produce dividends in the mid-80’s, the economic reform program of the Marcos administration lost its credibility. The Marcos regime, having no grounding in Civil Liberties, was toppled by the people due to their disillusionment and oppression. The fall of the Marcos regime took with it the people’s trust on the economic reforms espoused by his technocrats. **As a result, economic policies of successive administrations are always looked upon with scrutiny and distrust.** The only way forward is to alleviate the long standing fear that aggressive economic policy will encroach on the exercise of Civil Liberties. **The paradigm of looking at the twin Pillars of Liberty and Prosperity must evolve. Liberty and Prosperity are not opposing forces to be balanced on a scale but complementary parts of a Hoist to be operated.**

III. Operating the Hoist

In operating the Hoist of Justice, what is needed is an **evolving** and **responsive** interpretation of the Constitution. As Chief Justice Panganiban said:

*“the Constitution should be **interpreted according to the evolving needs of our people** who ratified it, not rigidly according to its letter. It is a living instrument that can be construed to **fight new perplexities unknown to or unanticipated by its framers.**”*

*With this mindset, our Supreme Court can use its vast powers to **speed up justice, minimize technicalities and make meaningful distinctions** to promote the general welfare. It can uphold our people’s paramount security, peace and economic wellbeing. Indeed, with the prudent use of its awesome powers, the Court can safeguard liberty and at the same time nurture prosperity.¹²*

As a government Civil Engineer and a law student, I intend to use the Hoist of Justice in **promoting swift and efficient delivery of government services and infrastructure projects** in the hope that these endeavors will help spur economic growth and encourage participation from the private sector. In demonstrating these principles of the Hoist of Justice, I will examine two new

¹¹ *Supra*, See Note 10

¹² A.V. Panganiban, *Safeguard Liberty, Conquer Poverty, Share Prosperity (Part Three — for the Business Community)* (4th Integrity Summit, Dusit Thani Hotel, September 19, 2014)

pieces of legislation addressing my two long-term objectives: the **Philippine Identification System Act (R.A. 11055)** and **Right-of-Way Act (R.A. 10752)**.

Republic Act No. 11055, or the “Philippine Identification System Act,” was signed by President Rodrigo Duterte on August 6, 2018. Its principal sponsor, Senator Franklin Drilon said that “*with a national ID system in place, it would be easier for individuals seeking basic services from the government to identify themselves and for agencies, both public and private, to verify the information*¹³”. However, in the case of *Ople vs Torres*¹⁴, the majority opinion therein invalidated a National Computerized Identification Reference System (A.O. 308) because it cannot be issued by the president without legislation and that it **encroaches on the right to privacy**. In the subsequent case of *KMU vs Director General*¹⁵, the Supreme Court ruled that the UMID card (E.O. 420) is constitutional because the UMID only consolidates existing ID systems and it does not violate the right to privacy “*because it even narrowly limits the data that can be collected, recorded and shown compared to the existing ID systems of government entities. EO 420 further provides strict safeguards to protect the confidentiality of the data collected, in contrast to the prior ID systems which are bereft of strict administrative safeguards*¹⁶”. In using the Hoist of Justice, how then should the rulings in *Ople* and *KMU* be used to clear RA 11055 of Constitutional infirmity and ensure its success against any Constitutional challenge? RA 11055 must anchor its validity on the protection of Civil Liberty in order to fulfill its Prosperity objectives. Chief Justice Panganiban provides insight on how this can be done when he said that:

*“data should be **confined to basics**, like full name, birthdate, birthplace, age and gender. I also agree with Sen. Franklin Drilon that **the ID should be “incentive-based,” not “security-based,” to facilitate government transactions, not to screen people for security purposes**¹⁷”.*

Republic Act No. 10752, also known as “The Right-of-Way Act,” was signed into law by President Aquino “*which aims to facilitate the acquisition of right-*

¹³ Rega, A. & Earl, C. (2019, June 12). National ID system law has enough safeguards. Philippine News Agency. Retrieved from <https://www.pna.gov.ph/articles/1072174>

¹⁴ *Ople v. Torres*, G.R. No. 127685, July 23, 1998

¹⁵ *KMU v. Director General*, G.R. No. 167798, April 19, 2006

¹⁶ *Id*

¹⁷ Panganiban, A.V. (2017, December 10). Controversial national ID system. Inquirer.net . Retrieved from <https://opinion.inquirer.net/109359/controversial-national-id-system>

of-way (ROW) site for government infrastructure projects¹⁸. An interesting provision of RA 10752 can be found in Section 4 wherein it says that:

*“When it is necessary to build, construct, or install on the subsurface or subterranean portion of private and government lands owned, occupied, or leased by other persons, such infrastructure as subways, tunnels, underpasses, waterways, floodways, or utility facilities as part of the government’s infrastructure and development project, **the government or any of its authorized representatives shall not be prevented from entry into and use of the subsurface or subterranean portions of such private and government lands by surface owners or occupants, if such entry and use are made more than fifty (50) meters from the surface.**”¹⁹*

The IRR of R.A. 10752 expounds this by saying that:

“As provided in Section 4 of the Act, when it is necessary to build, construct, or install on the subsurface or subterranean portion of private and government owned lands...if such entry and use are made more than fifty (50) meters from the surface.

XXX

If the national government project involves underground works within a depth of fifty (50) meters from the surface, the IA may undertake the mode of acquisition in the following order:

- a. Negotiate with the property owner a **perpetual easement of ROW** for the subterranean portions of his property required by the project; and*
- b. Offer to **acquire from the property owner** the affected portion of the land, including the affected structures, improvements, crops and trees therein in accordance with the provisions of the Act²⁰”*

Taking the law and its IRR together, **the government need not pay just compensation if the entry and use of subterranean portions of said government and private lands are beyond a depth of 50 meters** (roughly 17 storeys). However, the Supreme Court’s ruling in *NPC vs Ibrahim*²¹ may be used to invalidate this provision. In *NPC vs Ibrahim*, the Supreme Court ordered NPC to pay the respondent landowners for just compensation when the

¹⁸ (2019, June 12). RA 10752 paves way for just compensation for acquired land. Inquirer.net. Retrieved from <https://business.inquirer.net/226362/ra-10752-paves-way-just-compensation-acquired-land>

¹⁹ Section 4, R.A. 10752, The Right-of-Way Act

²⁰ Section 11, IRR of R.A. 10752, The Right-of-Way Act

²¹ NPC vs Ibrahim, G.R. No. 168732, June 29, 2007

former built “*underground tunnels 115 meters below respondents' property*²²”. The Supreme Court therein reiterated what constitutes taking of in the exercise of the State’s power of Eminent Domain:

“(1) *the expropriator must enter a private property;*

(2) *the entrance into private property must be for more than a momentary period;*

(3) *the entry into the property should be under warrant or color of legal authority;*

(4) *the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and*

(5) *the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property*²³.”

The *Ibrahim* case goes on to say that “*notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use*²⁴”. In this regard, how can the evolving and responsive approach of the Hoist of Justice be used in deciding the Constitutionality of the said provision? The answer to this is to interpret **Article III Section 9**²⁵ in an **as-applied manner taking into consideration the facts of each case and in light of the progress in Engineering and Construction technology**. Sophisticated boring and drilling technology may enable construction of subterranean facilities without any disruption to surface facilities especially considering the depth threshold of 50 meters (17 storeys below ground). The parties to the case may appoint technical experts to enlighten the bench and the bar if a particular subterranean infrastructure would be disruptive so as to oust the owner and deprive him of all beneficial enjoyment of the property. If in its wisdom, the Supreme Court finds that a construction beyond 50 meters deep would gravely disturb the use of the property, then it should strike down the application of the law in that particular case. The recourse of the public to an as-applied challenge before the Supreme Court would give them **assurance**

²² *Supra*, See Note 21

²³ *Id*

²⁴ *Id*

²⁵ Section 9, Article III, 1987 Constitution: Private property shall not be taken for public use without just compensation.

that the said law will not encroach on their Civil Liberty while at the same time enabling the government to undertake the necessary subterranean infrastructure projects without being hampered by expropriation cases.