

## EXPANDING THE RULE OF LAW FOR LIBERTY AND PROSPERITY

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For retired Chief Justice Artemio Panganiban, the limitless truth is that “humans need both justice and jobs; freedom and food; ethics and economics; peace and development; liberty and prosperity; these twin beacons must always go together; one is useless without the other.”<sup>1</sup> Professor Elizabeth Aguilin-Pangalangan clarifies that “[l]iberty embraces civil and political rights, while ‘prosperity’ embodies economic, social, and cultural rights.”<sup>2</sup> The core judicial philosophy of Chief Justice Panganiban is that liberty and prosperity are “mutually inclusive” and must be equally valued.<sup>3</sup>

Meanwhile, Dean Pacifico Agabin argues that framers of the earlier constitutions, in light of Spanish colonial rule, emphasized the protection of *negative* liberty which prevented civil and political rights from being impaired by the government.<sup>4</sup> In response to capitalism and industrialization, however, the understanding of liberty later evolved “to be seen not only in terms of the negative duty of the state to refrain from infringing on the rights of the people but also in terms of the *positive duty* to combat hunger, to provide economic opportunities, and to redistribute the gains from economic activity.”<sup>5</sup> The 1987 Constitution recognizes both negative and positive liberty.<sup>6</sup>

It is in this framing that I hope to better understand the philosophy of liberty and prosperity. Liberty and prosperity should be understood as equivalent to Agabin’s understanding negative and positive liberty<sup>7</sup> respectively. There are two implications of this equivalence. *First*, conceptually, it emphasizes that liberty and prosperity are not just two different but interrelated concepts but are rather just two aspects of a singular concept. *Second*, since both positive and negative liberty are

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<sup>1</sup> Artemio V. Panganiban, Address entitled *Unleashing Entrepreneurial Ingenuity* delivered at the Opening Luncheon of the 12<sup>th</sup> General Assembly of the Asean Law Association (ALA), Makati Shangri-la Hotel, Makati City (Feb. 26, 2015), available at <https://cjpanganiban.com/2015/02/26/unleashing-entrepreneurial-ingenuity/>. (Emphasis removed.) I used the digital transcript for this essay.

<sup>2</sup> Elizabeth H. Aguilin-Pangalangan, Parents and Children: When Law and Technology Unbundle Traditional Identities, at 1, FOUNDATION FOR LIBERTY AND PROSPERITY WEBSITE, at <https://libpros.com/wp-content/uploads/2019/06/final-paper-lp-lecture-adoptionssurrogacy.-6.2019.pdf>.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> PACIFICO A. AGABIN, MESTIZO: THE STORY OF THE PHILIPPINE LEGAL SYSTEM 277 (2nd ed. 2016). (Emphasis modified.)

<sup>5</sup> *Id.* at 278.

<sup>6</sup> *Id.* at 280.

<sup>7</sup> *Id.* at 277–78.

enshrined in the Constitution,<sup>8</sup> then the idea of liberty and prosperity is not just a philosophy, but a Constitutional mandate.

For Chief Justice Panganiban, the rule of law exists “when a country is governed according to the constitution and the laws enacted by representatives chosen democratically by the people, not pursuant to the wiles and whims of the rulers.”<sup>9</sup> In relation then to liberty and prosperity, the rule of law should be the *means* through which liberty and prosperity is realized.<sup>10</sup> I agree with this point on the foundational importance of the rule of law.

I want to focus this essay, therefore, on two questions that hope to expand the understanding of the rule of law in relation to this philosophy of liberty and prosperity. First, *what laws should be considered when one invokes the rule of law?* Second, *how should we understand what the law means?*

### **A. On Expanding “Law”**

First, *what laws should be considered when one invokes the rule of law?* To me, our understanding of the word “law” referenced in the “rule of law,” should not be limited to domestic or municipal law. Our Constitution declares that “[t]he Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”<sup>11</sup> The Court has also recognized in *Tañada v. Angara*, that “[u]nquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world” and that “[o]ne of the oldest and most fundamental rules in international law is *pacta sunt servanda*—international agreements must be performed in good faith.”<sup>12</sup> Thus, we must expand our understanding of law to include international law. Both the State and Filipino citizens must not only assess our compliance with the statutes and the Constitution, but we must also measure compliance with the country’s international obligations. In this sense, we are also able to better heed the call of Chief Justice Panganiban to

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<sup>8</sup> *Id.* at 280.

<sup>9</sup> Artemio V. Panganiban, Address entitled *Towards a Just World Society* delivered before the Asia Field Representatives Meeting of the Canadian International Development Agency, EDSA Shangri-La Hotel Ballroom, Mandaluyong City (May 8, 2008), *available at* <https://cjpanganiban.com/2008/05/08/towards-a-just-world-society/>. I used the digital transcript for this essay.

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

<sup>11</sup> CONST. art. II, § 2.

<sup>12</sup> *Tañada v. Angara*, G.R. No. 118295, 272 SCRA 18, 66, May 2, 1997.

abandon self-centeredness and isolation.<sup>13</sup> Although, of course, this must be done in a manner that still ensures the protection of national interest. This is particularly timely given how the Philippines has been situated between many global issues that intersect with international law from the West Philippine Sea to the International Criminal Court. Thus, in both determining what constitutes as liberty and prosperity, and defending such, one must use the road paved by domestic law, but expanded by international law.

In furthering the rule of law which underpins liberty and property—<sup>14</sup> particularly the rule of *international* law—it is important to begin with awareness of international law. To me, Philippine law is complex and complicated, but international law is even more difficult to understand.

In this regard, I believe in the power of moot court. My law school life illustrates its power. Through joining various moot court competitions such as the Stetson International Environmental Moot Court Competition (“Stetson”), and recently, the Philip C. Jessup International Law Moot Court Competition (“Jessup”), which is “the world’s largest moot court competition,”<sup>15</sup> I was forced to immerse myself in the contemporary issues relating international law. Doctrines we learn in class morphed into arguments. In Stetson, I was exposed to technical issues involving deep-sea mining and the limits of environmental activism. The grueling preparation for Jessup, which thankfully resulted in us winning the coveted World Championship, compelled me to read up on the emerging scholarship and debates regarding *erga omnes* and *erga omnes partes* obligations, nationality, statelessness, and multiple nationality. Beyond the substantive knowledge, moot court was a great training ground for developing my skills in legal advocacy and reinforcing the confidence to deal with one’s ideas being tested by a panel of judges eager to ask questions. Moreover, I learned to thrive in exploring nuanced and contrasting positions of law, and deepened certain values such as hard work, discipline, and perseverance. I was also able to meet and learn from a diverse network of law students, professionals, and experts from around the world.

Recognizing the benefits of such exercise, I have made it a point to dedicate a significant portion of my law school life in helping other law students have a

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<sup>13</sup> Artemio V. Panganiban, Address entitled *Safeguard Liberty, Conquer Poverty, Share Prosperity (Part Three — for the Business Community)* delivered at the 4<sup>th</sup> Integrity Summit, Dusit Than[i] Hotel, Makati City (Sept. 19, 2014), available at <https://cjpanganiban.com/2014/09/19/safeguard-liberty-conquer-poverty-share-prosperity-part-three-for-the-business-community/>.

<sup>14</sup> See Panganiban, *Towards a Just World Society*, *supra* note 9.

<sup>15</sup> *What is the Jessup?*, ILSA WEBSITE, at <https://www.ilsa.org/about-jessup/>.

similar experience. As President of the UP Law Debate and Moot Court Union, one of my main advocacies is to make mooting as accessible as possible, regardless of one's background. For this end, we have coordinated with the College to get the necessary financial and administrative support. I have helped in efforts to organize the Magallona Cup which is an internal moot court competition for UP Law Students who are beginners in the activity. I was given the opportunity to share my knowledge by coaching two teams. The organization has also relaunched efforts to introduce Moot Court and Law Debate to students from other law schools. Through these efforts, I hope that we do not only expand the technical knowledge of international law, but rather, we help build culture of appreciation towards the role of international law through hands-on experience.

As I hopefully begin my legal career soon, I wish for more opportunities to give back and expand the moot court community. I aim to help reduce the non-meritocratic barriers that prevent people from accessing such endeavor. Hopefully, this breeds awareness and understanding, which would grow into a greater sensibility and valuation of international law. In this sense, we are not only better able to expand our understanding of the law, but we are also able to strengthen the understanding that we must be ruled by such.

## **B. On Interpreting the Law**

Proceeding to the second question, *how should we understand what the law means?* Chief Justice Panganiban notes two main ways of interpreting the Constitution – textualism and originalism and the living constitutionalism.<sup>16</sup> Chief Justice Panganiban aligns with the latter camp and argues that “the Constitution should be interpreted according to the evolving needs of our people who ratified it, not rigidly according to its letter.”<sup>17</sup> I believe, however, that there is a way to reconcile and harmonize both methods of interpretation. I broadly agree with Jack Balkin’s constitutional theory of “*framework originalism*[.]” which suggests a “*text and principle*” method of Constitutional interpretation and construction that is “both originalist and living constitutionalist.”<sup>18</sup> Here, the method adheres to the text’s original meaning and purpose, but also recognizes that different generations would have different ways of fleshing out the principles in such basic law.<sup>19</sup> The method categorizes the text of the Constitution into either “determinate rules” which must

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

<sup>17</sup> *Id.*

<sup>18</sup> JACK M. BALKIN, LIVING ORIGINALISM 3 (2011).

<sup>19</sup> *Id.*

be applied, and “standards” and “principles”[.]”<sup>20</sup> Balkin notes that “[w]hen the Constitution uses vague standards or abstract principles, we must apply them to our circumstances in our own time.”<sup>21</sup> In this sense, the theory differentiates original meaning from original expected application. The latter “asks how people living at the time the text was adopted would have expected it would be applied using language in its ordinary sense[.]”<sup>22</sup>

Thus, in the Philippine situation, we must astutely and carefully identify which parts of the Constitution call for standards and principles as opposed to rules. By doing so, it is precisely through interpreting the Constitution “rigidly through its letter[.]”<sup>23</sup> that we are able to have the flexibility to deal with “the evolving needs of our people who ratified it[.]”<sup>24</sup> We do not necessarily have to trade of one with another. Admittedly, operationalizing this theory in the Philippine context requires greater elaboration. Legal scholarship is pivotal in expanding this philosophy then.

In my senior year, after a long and competitive examination, I was fortunately able to qualify as one of the ten members of the Editorial Board of Volume 98 of the Philippine Law Journal. The Board is tasked to review submissions for publication. I took part in the deliberations of whether to publish a particular article. Further, I was assigned to work with different authors to edit and improve on their work. Exposure to the inner workings of the publication system for scholarship has given me a greater appreciation for the work that has to be put in to get words onto paper. Particularly, we are tasked with vetting and screening the information of the articles. I take this obligation take very seriously, to promote the spread of the truth, and not error. I was also assigned as one of the heads in organizing the Legal Academic Writing Seminar that aimed to equip students with the necessary skills to conduct legal research and engage in legal scholarship. Promoting legal scholarship not only benefits the readers of the work, but the scholars themselves as they are also better able to deepen their understanding of the topic they are writing on.

Beyond editing, I have also attempted to write myself in my free time and not only for school requirements. My research interests have primarily revolved around political law, private and public international law, and family law. My Supervised Legal Research largely focuses on the intersections of family, private international law, and political law. On the side, I have found an interest in exploring different

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<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> Panganiban, *Safeguard Liberty, Conquer Poverty, Share Prosperity*, *supra* note 13.

<sup>24</sup> *Id.*

theories of interpreting the Constitution and laws and hope to write more on such topics. I have started collecting books particularly about interpreting the law. When we were permitted to choose elective subjects, instead of exclusively choosing bar review subjects, I also enlisted in electives that were heavier in terms of written output about comparative law and international law which further developed my writing capacity.

Again, as I hopefully begin my legal career soon, my goal to write even more and contribute even in a small way to the larger body of legal scholarship. Particularly, I would like to focus on studying more democratic, and liberating ways of reading the Constitution and laws. I have been involved in debating since I was a child, and thus I have always enjoyed arguments. Arguments intrinsically give me joy. However, the value of legal scholarship goes beyond such, as it has a broader instrumental value. I genuinely believe in the power of a well-reasoned argument to make positive societal impact.

The story of my legal education has never been limited to the physical or virtual confines of the classroom. A *codal* is like any other *codal* until the student chooses to annotate it and transform it to become their own. Throughout my law school life, I have sought to color the blackletter law with highlights from other activities. It is through countless hours of training for moot court competitions and devoting myself to the pursuit of learning anything possibly related to the moot court problem, through reading and reviewing various submissions to the Philippine Law Journal, and diligently checking every footnote for even the most minor of errors, that I have made my law school story different. I hope that when I am more able, I could help in supplying the colors for law students to make the story of their legal education—their own.