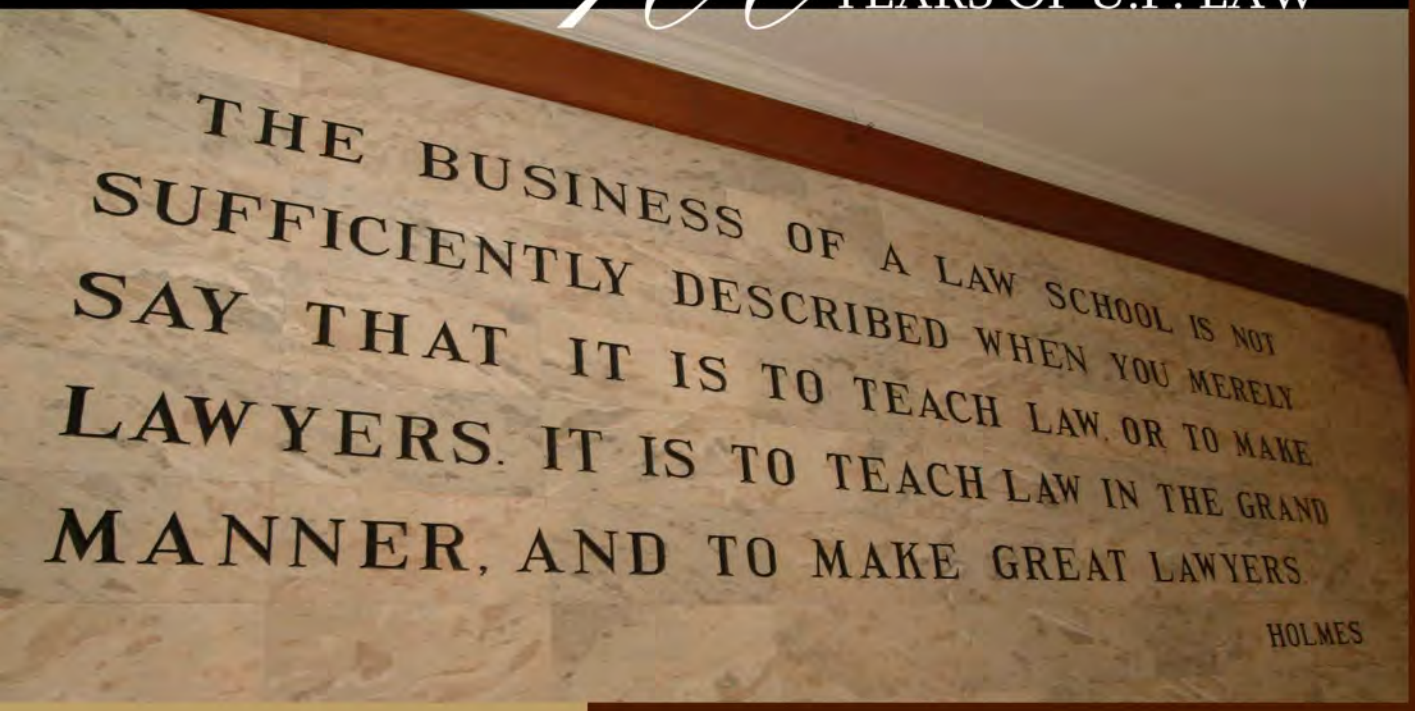
IN THE GRAND MANNER:
LOOKING BACK, THINKING FORWARD
100 YEARS OF U.P. LAW



DANILO L. CONCEPCION
MARVIC M. V. F. LEONEN
CONCEPCION L. JARDELEZA
FLORIN T. HILBAY

EDITORS

IN THE GRAND MANNER:

LOOKING BACK, THINKING FORWARD

100 YEARS OF U.P. LAW

PUBLISHED BY THE

UNIVERSITY OF THE PHILIPPINES

COLLEGE OF LAW

Diliman, Quezon City

Book Design by Aileen Estoquia

CONTENTS

FOREWORD

It is difficult to write the history of an institution whose influence is so intertwined not only with the lives of those who were part of it, but also with the story of a nation. The multiplicity of versions and voices, the judgment that goes into the decision to highlight or sideline, the interpretation of facts and opinions—these are all ingredients that make up the challenge to construct a grand narrative of the U.P. College of Law.

As part of the plethora of activities attendant with the celebration of the Law School's centennial, we asked members of the faculty and alumni to contribute to the publication of a set of essays about various themes that could invite readers either down the path of memory lane or towards a meditation on what lies ahead.

The result is *In the Grand Manner: Looking Back, Thinking Forward*, a noisy and unrelated yet colorful and incisive set of snapshots about Malcolm Hall and its celebrated members, its unique culture, and its claimed hegemony. The essays that appear in this collection fixate on Justice Holmes' famous phrase that has become associated with U.P. Law and the activities of its sons and daughters, from vantage points separated by generations, beliefs, and style. Given this diversity, what we offer is not a single monolithic story about U.P. Law; instead, we present a selection of threads in an unfinished tapestry.

Danilo L. Concepcion
Marvic M.V.F. Leonen
Concepcion L. Jardeleza
Florin T. Hilbay

Grand Mannerisms: Reflections on Greatness and Grandeur

FLORIN T. HILBAY*

AS A YOUNG member of the Law faculty back in 2000, I distinctly remember then U.P. President Francisco Nemenzo introducing his remarks at an event in Malcolm Theater with a curious declaration: the U.P. College of Law *is* the University of the Philippines.

I can only assume that it was said half-jokingly, at the very least, by a renowned academic from another department. It was the first time I ever heard someone make such a remarkably grand statement about the College of Law, an institution whose faculty and students are no strangers to grand claims.

It was even more remarkable because it came from an outsider, someone who did not graduate from the College. Just recently, at a dinner during the celebration of the centennial of the College of Law last January 11, 2011, incoming U.P. President Fred Pascual who, like Nemenzo, is an outsider, also quipped that the University of the Philippines *is* the College of Law.

* Associate Professor and Enrique O. Chan Professorial Chair, University of the Philippines, College of Law. A.B. (Univ. of Santo Tomas), Ll.B (Univ. of the Phils.), Ll.M (Yale Law School).

I can only imagine that this notion of an equivalence between the College of Law and the University, especially when coming from the University President, is something that is said tongue in cheek by anyone who is not a graduate of U.P. Law, but is shrewd enough to know that when you visit Malcolm Hall or are a guest at its event, proper obeisance must be observed. I am almost certain that today,[1] one can never be so sure, this notion of equivalence is something that is not seriously held by both faculty and students of the College: it is a hyperbole, a bombshell that is dropped whenever we or our graduates feel the need to assert the supposed hegemony of the College of Law.

Truth to tell, its faculty and students are capable of even grander statements, of the type that spills institutional arrogance beyond the confines of Diliman. One such claim is that the law school is the College of the Philippines, University of Law; another is that—a veritable set of fighting words—the College of Law is not just the best law school in the country, but that it is the only one around because all others are bar review institutes.

---

[1] I emphasize the current status of my opinion because apparently, in the earlier days, both faculty and students had a (or an even) greater sense of self-importance. In *The U.P. College of Law—Its Founding and Accomplishments,* 35 PHIL. L. J. 1121 (1960), Vicente Abad Santos, then Dean of the College of Law, spoke before the Rotary Club of Manila in 1960—"Almost every alumnus of the College of Law is wont to boast that the College of Law is the University of the Philippines. This is not at all surprising, because the principal purpose of the College of Law is to train leaders (sic) for the country.

. . . . . .

As law dean I have not voiced any opinion that the College of Law is the University of the Philippines, for I have to get along with my fellow deans as well as the alumni of the other schools."

These assertions about the status of the College inside and outside the University is a characterization that has ripened into a powerful meme about the institution, not just for those who are part of it, but especially for those who have seen the institution from afar, or have known it for the reputation—deserved or not, good or bad—of its graduates, or have felt the institution's influence one way or another.

To be sure, it is not a reputation primarily directed, if at all, at the other departments within the University; it is an institutional goodwill that exists for the admiration or envy of those outside the University of the Philippines, that is, of the public in general, and of all the other law schools, in particular. It is the kind of institutional image that is in the mind of many prospective law students weighing their chances of admission into a law school and planning their lives after it, and those as well of good-intentioned parents who simultaneously want a stellar future for their child and the bragging rights that can potentially transcend money, influence, and good breeding. This is the kind of self-image that, transformed into hubris, apparently made Chief Justice Fernando ask every bumbling lawyer orally arguing his case before the Supreme Court: "Mr. Counsel, which law school did you graduate from?" with the assumption that the poor lawyer did not come from U.P. Law.

IN THE GRAND MANNER

As a long-term and committed resident of the College of Law protected by tenure, I am of course interested in the kinds of images reflected by the institution where I spend an inordinate amount of my time. Beyond the natural curiosity of a scholar in his place of work, I am also interested in the public value of such reputation in terms of the kind of standards and expectations that are created in the minds of people whenever anyone talks about an institution and starts using the words great and grand to describe it. For an institution that is embarking on its second century of existence, the cultural impact of its image as an intellectual and social playground for movers and shakers should invite some analysis and reflection.

Let us start with the numbers, which speak for themselves: 4 Presidents of the Republic, 12 Supreme Court Chief Justices, 75 Associate Justices, 8 Senate Presidents, 8 Speakers of the House of Representatives, 111 Senators, 248 Members of the House of Representatives, 52 members of the Batasang Pambansa, and 3 U.P. Presidents.[2] Those looking for objective measures of institutional success can find comfort and pleasure in these facts which serve the double purpose of grounding greatness in incontestable indicators and constructing the bar by which all other institutions that wish to lay claim to a similar status can be compared.

[2] Statistics collated by the Office of the Dean and publicized during the centennial celebrations.

The numbers automatically establish a hierarchy that can settle disputes among those faithful to various institutions and available for the assessment of outsiders. Most of us do measure institutional success by the amount of influence it is able to generate over time through the individual or collective efforts of its products, who in turn become the poster boys and girls that signal to every stranger the kinds of lives offered by the institution to those whom it admits. This is true even if the overwhelming number of graduates of that institution are, to borrow from Holmes, puny anonymities. By these standards, the U.P. College of Law is without equal. Those upstarts who wish to try to match the institution's achievements would have to bite the dust for quite some time.

But these numbers, though incapable of lying, have their limitations. For one, an institution can never claim full responsibility for the deeds (or misdeeds) of its graduates—the causal relationships between the fact of graduation and the resulting achievements of the graduate can be quite difficult to establish.

This is because the types of achievements the College of Law proudly advertises require an extended gestation period. A graduate who becomes a Justice of the Supreme Court must wait at least two decades before the Constitution qualifies her for the position, and at least a decade to become a Senator of the Republic. In between, she may have acquired those skills necessary for success by working in a law firm, doing advocacy work, or engaging in some other activity that actually prepares her for public life and responsibility.

Given the political culture in our country, it is possible that regardless of the stamp of approval of the College of Law, she would have nonetheless succeeded if she bore a recognizable surname, or looked good, or was ambitious enough to give up pride and self-esteem in exchange for mobility in the social ladder.

The achievements of our graduates are theirs. Every time the law school advertises their successes, we must all realize that it is the law school that gets a free ride by appropriating the achievements to increase its political capital. This strategy of claiming a graduate's success is also tainted by the long-standing belief that students of the College of Law learn not because of their professors, but in spite of them. My colleague, Professor Ed Labitag, in recalling his days in law school in the 1960s, says that he and his classmates did not learn much from their teachers, although they surely got a good dose of terror.

Thus, instead of a narrative that grounds the success of the College of Law on its supposed responsibility for what its graduates have been able to accomplish, perhaps we can construct a different story, one in which the institution appropriates the successes of its graduates who may have done well despite what it has done to them.[3] This is a fairly plausible account that even undermines the institution's claim to intrinsic greatness and paints the picture of the College as an unintended beneficiary of whatever goodwill is generated by its alumni.

The other limitation of sheer numbers as a source of institutional pride is that these statistics say nothing about the actual contribution of these graduates of the College of Law, just the fact that they have amassed power through appointment or election to public positions which have entitled them to inflict either good or harm. We can therefore consider the numbers as a

[3] Interestingly, if one is able to talk with graduates of the College of Law, some as late as the latter years of the 1980s, one will find that that there are many who relish their memories of the law school not as a place where they learned law, but as a place where they learned how to deal with stress, unreasonable demands, and even injustice. In other words, the great contribution of the College of Law to the success of these graduates is apparently not that they learned the rules, norms, and processes of law properly, but that its depravations reflected that of the real, that is, professional life. This is a very interesting topic that I hope someone who belongs to that era can write about.

shallow gauge of the moral worth of the political credentials of the institution, assuming we want to place more subjective considerations into the question of institutional success. At best, the numbers will show that the College of Law is a haven for ambitious people whose accreditation is a stamp of approval that allows its graduates to further pursue their ambitions.

The present reputation of the College of Law is thus the result of a symbiotic relationship between the institution, on the one hand, and its students and graduates on the other, who mutually benefit from the claim to institutional greatness. At the fulcrum of this relationship is the combined force of numbers, facts that publicize the historical successes of people who believe that they have learned the law in the grand manner because they were so taught by those who professed in the way described by Holmes. From this perspective, the greatness and the grandeur of the College of Law is more of a mannerism, a habit of the mind thinking about the institution, accentuated by bits and pieces of beliefs woven together to generate a self-view that has been perpetrated to justify continued existence, and perpetuated by its students, faculty, and graduates to enhance self-esteem and create a public image.

We can even go deeper and problematize this tendency to ground pride in the rise to power of an institution's graduates, in much the same way that we smirk at the claim to fame of other law schools based solely on their performance in the national bar examinations. We usually say, so what if a law school's graduates do well in the bar? It says nothing about how the professional licenses of these lawyers are going to be used. In the same manner, we can ask, as every citizen should perhaps do, can we really measure institutional success primarily on the basis of the combined influence of its alumni, discounted by a political assessment of how such influence was used?

It can be argued that the history of this country during the

last century is the history of the political successes of the graduates of the College of Law. Our graduates have consistently packed important institutions of the State and their influence has been nurtured by a public awed by the reputation of the institution for producing leaders. The numbers show that our graduates' ambitions know no separation of powers, given that no other institution can match the dominance of U.P. Law at the highest levels of the Executive, Legislative, and Judicial branches of the government.

However, those who claim success from the assumption of such awesome responsibilities must make themselves accountable for the way they wielded public power, and this is where the institution's claim to greatness for the successes of its graduates gets mired in a conversation about the quality of the contributions of those men and women who have played significant roles in the history of the country. Those who consider the history of the College of Law as intertwined with the history of the nation should pause to consider the impact of that view in relation to the fact that the nation we profess to have influenced is a poor one, mired in tragic contradictions, and generally seen as having been failed, if not betrayed, by its elites, many of whom are the same ones whose names we so casually drop whenever we speak about our institution's greatness. Once we move beyond the factual claims and enter the subjective arena of the quality of the impact of our *who's who*—the moral contributions of our esteemed graduates to communities larger than the College of Law, the ethical examples they have set to the legal profession, and the public consequences of their political judgments on the welfare of the nation—the concreteness of our claims, when based solely on the amount of public power that has been possessed by former students of the College of Law, may become less convincing. Once we do an accounting, once we weigh costs versus benefits, some of us might be left unconvinced that the damage our recognizable graduates have inflicted on the nation is worth the contributions they have made.

Perhaps the biggest limitation in measuring institutional greatness by focusing on the publicity-laden achievements of its famous graduates is that it makes us overlook those other qualities of our beloved institution that make it at once enduring and endearing, and worth writing about. At the same time, this penchant for highlights, though understandable in the context of the inevitable comparisons, also blinds us to the contributions of so many others—unnamed, unrecognized, and unaccounted for—the faculty, staff, and the other graduates who have made the College of Law the premiere institution that it is today, a hundred years after it was transformed from a humble colonial outfit in YMCA under the leadership of George Malcolm, a young American who self-styled himself as a "colonial careerist," after whom the building of the law school is now named.

So instead of measuring the worth of the institution by looking outside it and banking on the achievements of its graduates, it is probably more appropriate to assess the College of Law by talking about the institution as it is today, and by examining the components and processes of the institution that make it the unique, influential, powerful, historic, and cultural site that, *incidentally*, has been home to the greatest achievers of the 20th century and a place of learning and experience for many others. A more sober view of the institutional characteristics of U.P. Law might actually yield a more concrete basis for its popular image.

THE FACULTY

At least in this country, the greatest peculiarity of the College of Law lies in the fact that it has a set of full-time faculty members, numbering more than twenty, whose status as such is no different from all the other regular faculty members in the various departments of the University. This feature of the

College, which makes it a traditional institution within the university set-up, is what formally sets it apart from all the other law schools in the Philippines. This is not a mere technical distinction between full-time and part-time members of the faculty. It is, to be sure, a crucial institutional feature that determines the identity of a law school, whether it is purely a professional school, with or without academic pretensions, or an academic institution that also prepares its graduates for the legal profession.[4]

Not many lawyers, indeed, not many of those who teach in law schools in this country, are familiar with the trappings of the tenure system that is the standard feature of the modern university. To have such a system is to provide a mechanism for filtering different types of people who teach in an academic institution. For instance, the University adopts a publish or perish criterion for the award of tenure across all departments, the College of Law included, thus transforming into a positive requirement the academic culture in the leading universities outside the country.

This rule provides a powerful signal for those who want to permanently teach in the various departments that there is a difference between a teacher and an academic—the former can guide students along the various paths to insight and categories of knowledge, while the latter is, apart from being a classroom performer, simultaneously a collator of knowledge and a producer of new understandings. The teacher prepares for and goes to class; the academic does these things, and in addition,

[4] Ernest Weinrib wrote, "[l]egal education exists at the confluence of three activities: the practice of law, the enterprise of understanding that practice, and the study of law's possible understandings within the context of the university." *Can Law Survive Legal Education?* 60 VAND. L. REV. 401 (2007). The purely professional law school, which is what most law schools are today, focus on the first of the three activities and, to some extent, the second activity. A law school that is sensitive about its academic status will distribute its efforts and resources in performing all three activities.

engages in research and writing, and publishes her findings for the academic world to judge.

This is not, in any way, meant to demean the work of the part-time teacher, which today comprises more than half of the faculty of the College of Law.[5] After all, it is in the classroom that the enterprise of teaching locates its altar, where primarily the interests of the faculty, the law school, and the students intersect. But the academic's concern goes beyond the classroom experience. She is one who not only teaches but has also found a home in the university, where she lives the life of the mind—reading, writing, conversing with colleagues, stress-testing ideas, and adding to the universe of existing knowledge. Her concern is how to tie the past and the future, struggling for control of the meaning of the present moment, with the added ethical burden of calibrating the extent to which she should infuse her legal insight with her politics. This task, given her status, is a full-time job, and is not an option for those who have free time only after private practice.

The life experienced by those who are full-time academics is radically different from that of the private practitioner who dabbles in teaching, and this distinction spills into the law school, affecting the variety and content of legal know-how assimilated by the students, and constructing a different epistemic environment for every institution of legal learning. It is a fact that almost all law teachers in the country are practitioners in the daytime and teachers at dusk. This is why law schools are late-afternoon or early evening operations in Manila and elsewhere.[6]

---

[5] Part-time members of the faculty are appointed on a contractual basis, mostly for periods between six months and one year. These positions are reserved to private practitioners who have an interest in teaching, retired full-time members of the law faculty, and young academics who wish to become members of the regular or full-time faculty.

[6] The other reason for this is entirely financial. Hiring a set of full-time law professors is out of the question for private schools which have to worry about the fiscal impact of a full-time academic's salary and benefits, which not only include the usual benefits accorded to other full-time teachers such as health

Almost all law teachers spend most of their daily lives making a living in the private market for justice, immersing themselves in the operations of the legal system as merchants of legal service, and in the evening take on a different hat to, in the way some of them have described, relieve themselves of the stresses of private practice by talking about it in classrooms while preparing students for the bar exams.

We can highlight the distinction between the full-time legal academic and the part-time teacher by focusing on the amount of time available to either in their pursuit of learning, as well as the expectations of them as they go about the task of dispensing legal knowledge. The full-time academic is paid to live the life of the mind—she is expected to spend her time historicizing her subject, communing with fellow scholars, and expounding on her views through her publications. By the sheer amount of time given to the full-time academic, her understanding of her subject will be, in all likelihood, both broader and deeper than that of the part-time lecturer. This is especially true when, as in the case of the College of Law, almost all the members of the full-time faculty have advanced degrees awarded by reputable legal institutions abroad.

There is another aspect that distinguishes the legal scholar from the part-time teacher, and it is in the kind of perspective that is developed by the former in the course of her academic life. Those who spend a lot of time with their subject tend to see not only the status of the law, or the law as it is, but also its direction, either back in time or into the future. The broad perspective of the

---

insurance and retirement plans, but will also encompass the cost of a post-graduate education and allowance for attending conferences, among others. Given that the private practice of law can be very profitable (on the contrary, it is very difficult to think of "private practice" for historians, philosophers, or anthropologists,), academic institutions must be able to pay the opportunity cost of such private practice or at least provide for comparable benefits, monetary or otherwise. It is very unlikely that the money taken from the tuition and other fees of students can match this economic barrier.

scholar usually translates into a normative understanding when mixed with a set of positions as to how politics should be practiced. In the College of Law, when professors speak about teaching or learning law in the grand manner, they are usually speaking of the possibility of using legal knowledge in an instrumental way: the transformation of law and its practice into an *ism*, a play of ideas imbued with the kind of power that affects the life of the nation and spills into the private lives of every Filipino.

The sense, so powerful in the College of Law, that the legal education of students is not limited to a contractual engagement with the teacher to provide a descriptive account of legal rules, doctrines, and procedures in order that the former may be qualified to take the bar examinations, pass, and therefore practice law, is but a manifestation of the idea that the grand manner of teaching the law and its processes is not a private affair but an intensely public enterprise that involves not just the student and the teacher but, and perhaps more important, "the innocent society upon which the law students will be unleashed," to quote Raul Pangalangan, a former dean of the College of Law. This is evident not simply in the tendency to moralize about the law which, one would suppose, will probably be common enough with a lot of teachers who would like to transform their classrooms into altars and take advantage of the opportunity to become armchair revolutionaries three to five hours a week, perhaps to purge their conscience with what they actually do in private practice the rest of the time. It is likewise discernible in the approach to thinking about law exhibited at both the theoretical and the practical levels.

At the theoretical level, many faculty members of the College of Law see the teaching of law not as a way to prepare students for the licensure examinations but as a step in the acculturation of citizens in a legal system that is immersed in various social processes that are full of contradictions and mired

in injustices. The full-time faculty is especially known for this approach, most likely because time has given them the opportunity to look at the theoretical foundations of their discourse and the time to access comparative accounts of the development of law across jurisdictions. Given this intellectual tradition, it is therefore not uncommon to hear in the College of Law that legal learning would be such a waste if it is limited only to the demands of the bar examinations.

This thinking is but a natural consequence of the belief that the four or five years of training in the College of Law is a unique engagement with a powerful social force whose potency for reforming society is just too precious to give up in exchange for a high passing rate.[7] The idea that law is not an autonomous discipline powered by reason and its most powerful weapon, logic, is but a phenomenon of public force that is parasitic upon history, philosophy, sociology, social psychology, and many other disciplines can easily be translated into a perspective of law as something quite difficult to distinguish from politics itself. Of course, once the teacher realizes that the foundations of the rules and the doctrines they produce are but the epiphenomenal manifestations of the kind of problematic politics that have been played before and are still in force today, it is no longer easy to make students *just* memorize provisions of law or decisions of the Supreme Court, even if the bulk of their teaching still includes those sorts of activities. The consequence of this view of law is the highly normative approach to both teaching and writing about the subject, usually tending towards critique and the development of a good eye for injustice.

[7] That the debate over the extent to which the faculty of the College of Law should accommodate the demands of the bar exams is, I think, itself unique to the institution. On the one hand are those who think that law teaching should at least include some preparation for the bar examinations, and on the other are those who think or simply teach as if law teaching should not be tainted by the demands of the bar exams.

In contrast, the bar-oriented approach so deeply entrenched in other law schools forces their faculty to teach law in a descriptive manner. To focus on the bar examination in the classroom is to limit oneself to the current status of doctrine, with little interest in questions about the direction the law is taking and where it should go; it is to train one's students in the high art of formalism and prepare them to become legal technicians, with abstract logic as the weapon. Technical legal skills are, of course, essential, because these are needed both by the private practitioner and the advocate, though for varying instrumentalist purposes. The technician uses her skills to promote the interests of her client, a private person or entity, for material gain; the advocate plays the game for her client, the public or a favored community, for psychic income.

To this perspective is added another layer of belief that because members of the faculty of the College of Law are employed by the National State University and that its students are the quintessential *iskolar ng bayan,* then the content of law teaching and learning, the know-how discussed in the College of Law should have an other-regarding aspect. This thinking is not unique to it, and in fact might even be stronger in the other departments of the University or in other publicly funded institutions.

Nonetheless, the notion that graduates of the College should be taught in an environment that makes other-regarding a powerful (or at the very least, relevant) professional consideration, even if they are not actually taught to be so, but is either hoped or expected to be at some point in their professional lives, makes the College of Law a haven for advocates. This is clearly evident in the profusion of graduates of the College who have embraced advocacy as a way of life. One can search the roster of counsels of most of the successful non-government organizations, civic societies, and private organizations participating in the progressive movement and find graduates of

the College of Law who have severely undervalued themselves for the opportunity to be able to transform hope and idealism into change that benefits many of their economically challenged and disempowered fellow citizens.

We need not go far and simply go through the list of the current members of the law faculty to see that many of its members regularly leave the comforts of the classroom to practice what they preach. In fact, some of the current regular members of the law faculty have assumed the status of public figures for their work outside of the law school, particularly in the enforcement of accountability in government, promotion of human rights, protection of the environment, among many other public concerns. The presence of multiple examples in the College of Law of what lawyers can do with their professional license provides students not just templates for what they can do in the future but also that sense of comfort that a life of meaning in the law beyond private practice is actually possible and perhaps even worth pursuing.

The close nexus between the academic work of the law faculty and its political engagements are exemplars which diversify the kinds of professional lives available to the law school's graduates. This is no minor advantage of the College of Law, as I think students react differently when their professors, on one hand, teach them the pleasures and challenges of an ethical professional life or tell them how things should be done, and on the other, when they actually try to show the way, even when they are wrong. The net effect of this environment is to broaden and deepen the students' sense of the possible. I suspect that if learning in the College of Law would ever qualify as grand, part of it is because of this institutional characteristic.

THE STUDENTS

We cannot speak about the institutional success of a school without talking about its products, the students who carry with them the badge of institutional pride and therefore act as ambassadors of the type of learning they imbibed. We can, as I have previously discussed, talk about the students' relationship with the law school by reflecting on accomplishments which are then traced to the efforts of the law school. But we can also move to an earlier time frame, asking not why is it that so many graduates of the College have achieved so much, but what is it in the College of Law that makes young people want to be part of its traditions and why these students turn out to be so exceptional? A big part of the answer lies in its admissions process.

A crucial institutional feature that provides the Law School the reputation it has so long enjoyed is the exclusivity of the institution's admissions process, which acts both as a filtering process that substantially determines the kinds of students that enter the Law School and a public advertisement of the value of being a part of it. There are many who assume that most law students who are not from the College of Law fall into two categories: (1) those who attempted but failed to get in, and (2) those who never even dared. This manner of thinking about the profile of law students outside the Law School is not necessarily borne out of pure arrogance, given the overwhelming number of students who apply for admission into the College of Law and the small number of those eventually admitted.

From the beginning, the young George Malcolm envisioned the College of Law as a breeding ground of lawyers trained under the auspices of the American colonial regime. This is understandable considering that the goal of the colonial regime was essentially the transformation of Philippine law into something that was simultaneously familiar and favorable to the interests of the United States. Part of this program consisted of

the creation of institutions of support to the new forms and traditions of the legal system, and the establishment of a law school controlled by Americans was an essential project. The assimilation of American law into Philippine law and the inculcation of common law-type of thinking and legal practice has been, in fact, one of the most lasting influences of the United States on its former colony. Given this original goal, the College of Law created an almost all-American faculty of renowned judges and practitioners.[8] This was supplemented by a small group of law students who were expected to become, as they eventually did, the legal elite of Philippine society.[9]

The initial, if almost guaranteed, success of the College of Law in the bar examinations[10] validated the expectations about it and set the tone for its ensuing reputation. As the unofficial law school of choice of the colonial regime, it became the premiere institution for legal learning almost by default. But this institutional success, even if almost fortuitous, only explains why those first steps did not lead to an early demise. We therefore have to identify those institutional features that have made this initial achievement itself a tradition that has been translated into an institutional image.

---

[8] The members of the law faculty were Charles Burke Eliott, E. Finley Johnson, Charles Summer Lobingier, Amase Crossfield, Clyde DeWitt, Dean Fanslar, George Malcolm, Adam Carson, Jorge Bocobo, Carlos Sobral, John Ferrier, and John Weissen-hagen. *See* Leopoldo Yabes, FIRST AND FOREMOST: A HISTORY OF THE COLLEGE OF LAW OF THE UNIVERSITY OF THE PHILIPPINES. Unpublished manuscript, on file with the U.P. Law Library.

[9] For a list of the initial set of graduates of the College of Law, see Yabes, *id.* at 26-28. The list includes Manuel Roxas, Ricardo Paras, Jr., Eulogio Benitez, Quirino Abad Santos, Jorge Vargas, Jose Yulo, Jose Laurel, Elpidio Quirino, Conrado Benitez, and Jesus Paredes.

[10] As narrated by Yabes, "[p]roof of the effectiveness of instruction in the College was the result obtained by its candidates in the bar examinations. The percentage of successful candidates from the U.P. Law College for its first five classes was higher than that of other schools; and the topnotchers for the same years (1913-1917) all came from the U.P. College of Law. *Id.*, at 9.

Insofar as the admissions process is concerned, it appears that the advantages it gives to the College of Law is borne more by a mix of necessity and chance, than by deliberate institutional design. The reality is that the College of Law can accommodate no more than 200 students per year level given the limited number of teachers (ideally the major subjects should be taught by the full-time faculty), the limitations of space at Malcolm Hall (which has remained in size ever since the law school transferred to it in the 1950s), and the resources of the College (which, as a public institution, will always suffer from lack of funds). These are constraints the administrators of the U.P. Law have to deal with annually when they receive the applications of an average of 2,500 applicants from all over the nation.

The social capital that has been generated by the College of Law, the reputation of its individual faculty members, the relatively low cost of tuition, the successful careers of many of its students—these factors combine to ensure that many of the best and the brightest apply to the Law School. They, in turn, are filtered by the admissions process[11] to produce a set of students whose academic achievements are very difficult to match.

The most unique feature of the admissions process is the desire to ensure that the College of Law admits no more than a fixed number of students every year. This creates a bottleneck that increases the probably of obtaining quality students for every admissions cycle. Added to this is the fact that the small number of students that are admitted into the College will generally come from a wide spectrum (at both economic and social levels from the various regions) because of the relatively affordable tuition, the generally tolerant and diverse environment in U.P., and perhaps

[11]The College of Law uses the aggregate of weights assigned to an applicant's scores in the Law Aptitude Examination and undergraduate General Weighted Average (GWA), in addition to the scores obtained during an interview with the admissions committee composed of faculty members. Recently, the College of Law did away with the interview.

even the lack of a dress code. The consequence of these conditions coming together is that almost all of the students admitted into the College of Law are well-suited for the challenges the law faculty can throw at them. Put otherwise, the admissions process ensures that the Law School is able to work on very good hardware that can internalize both the experience and wisdom of renowned scholars and the implications of living a life in law.

It may surprise some that the ultimate basis of the capacity of the Law School to maintain this kind of admissions process is almost entirely dependent on its lack of interest in using the admissions process to generate funds. Because the College of Law is a public institution, public funding ensures that it will be able to operate even without tuition money which, incidentally, does not even go to the law faculty or its administration. There is thus no institutional incentive to relate the administration of the Law School with the private money of students and their families. Compare this with the realities of existence for private law schools and we can get a fair assessment of the economic challenges faced by law school administrators and how these challenges partly determine the environment of legal learning in private schools.

Unless funded by donations from private individuals or organizations, law schools will have to eke out an existence by imposing fees that need to be justified. Today, the source of this justification basically comes from an objective standard called the bar examinations. It takes some explaining to convince students and their parents of the value of a good background in legal theory, or a strong interdisciplinary curriculum, or the tendency to view law in prescriptive terms, or of having a good law journal.

On the other hand, most parents and students do not require convincing when shown a law school's good performance in the bar exams. This dynamic among law schools, the bar exams, and the interests of parents and their children powerfully drives law schools to be primarily bar-oriented, as excellence in

the bar translates into positive advertisement.

The economic pressure on private law schools also affects their admissions process. The most palpable manifestation of this pressure is seen in the practice of private law schools to admit as many students as they can enroll, coupled with a Social Darwinist policy of weeding out students until they reduce the number of graduates to a minimum number the administrators are confident will be able to pass the bar.

In the College of Law on the other hand, apart from the individual standards of the members of the law faculty, there is really not a lot of incentive on the part of the institution to massacre students for purposes of the bar. For a while, the College implemented a Quality Point Index, a system that requires students to maintain a certain grade point average under pain of dismissal. But the faculty had always been divided over either the usefulness of the system or its ability to implement the system properly. Today the system is under indefinite suspension.

Second, whether the issue is the admission or the retention of students, the dominant policies of the College of Law are open-mindedness and experimentation. To be sure, it is not as if bar performance is not a concern of the Law School. It is. But it is an entirely different matter when the institution is pressed into looking at the bar exams as a very important, if not the primary, concern for establishing an admissions or retention system or creating an institutional reputation. So far as I know, the only ones who are fixated about bar exam performance are the alumni, who always think they studied during some golden age of the College of Law—regardless of when they graduated—and thus feel worried that the institution's best years are over when its graduates do not end up garnering the top scores in the bar. Without the economic pressure to squeeze in more students and fix a market rate for the value of education, the institutional rationale for any admissions or retention policy will most likely be

geared towards the question of how to properly distribute the resources of the College to ensure the quality and diversity of the students,[12] rather than how to make its operations profitable through good performance in the bar.

The consequence of these structural qualities reflect on the kinds of students who enter the College of Law—highly accomplished and full of potential, and economically, socially, and ideologically diverse. Place these students in an environment that has minimal interests in minimum standards such as the bar exams and let them interact with the kind of faculty the Law School has always had and you will probably get a sense of the organized chaos that is the College of Law.

THE LAW CENTER

Almost invisible to the public, the U.P. Law Center is a chartered institution—a special creation of law—dedicated to promoting research and bridging the gap between theory and practice. In other words, the Law Center is the epitome of legal realism's belief in the possibility that law can be used for progressive ends. Though technically separate from the College of Law, it is practically an arm of the Law School in the promotion of its various projects. It is a place where faculty, researchers, and students work together, providing everyone the opportunity to work on specific projects and thus a chance to learn about the processes of law closer to the ground minus the traditional constrains of classroom learning in the law school.

---

[12] Because the College of Law is a public institution, the faculty regularly debates the question of how to distribute the resources of the institution through the admissions process. It is not difficult to see that the use of the grading system of universities in which applicants to the College of Law graduated from may have an economic bias. It is thus a legitimate question to ask whether the College of Law can craft its admissions process in such a way as to reduce the effects of economic bias to ensure greater diversity in the classroom.

The charter of the Law Center comes in the form of a Republic Act[13] supplemented by Presidential Decrees.[14] The charter meant to clarify the relationship between the College of Law and the Law Center, and provide funding for the latter's operations. As finally established, the Law Center came under the control of the College of Law, with four institutes—The Institute of Government and Law Reform, The Institute of Human Rights, The Institute for Judicial Administration, and The Institute for International Legal Studies—and the Training and Convention Division. These institutes, whose functions are self-explanatory, are headed by the regular members of the faculty appointed by the Dean.

The existence of the Law Center is crucial to the various aims of the Law School.

First, it allows members of the faculty to simultaneously diversify their interests and focus on the narrower concerns of their work at the practical level. The institutes are general-purpose research outfits for broad categories of policy concerns both at the local and international level. They are also platforms for networking and socialization with diverse stakeholders from different communities. Projects ranging from the drafting of bills to the implementation of statutes to policy studies are regularly participated in by faculty members, researchers, members of the different departments of government, and non-government organizations. These engagements not only make the Law Center an important arena of policy-making, they also provide the faculty the opportunity to use and develop their skills as they assist in the transformation of aims to reality. The Law Center, therefore, ensures that members of the law faculty are able to keep themselves grounded. This tempers the tendency among scholars, so common in the age of specialization, to divorce their work from

[13] See Rep. Act No. 3870, "An Act Defining the Functions of the U.P. Law Center, Providing for its Financing and for Other Purposes" 12 JUNE 1964.
[14] See P.D. Nos. 200 (27 May 1973) and 1856 (26 December 1982).

the relevant concerns of present society. It is not difficult to assume that all the value added to the law professors by their more practical engagements at the Law Center make them more well-rounded teachers, an advantage that redounds to the benefit of the students and the Law School.

Second. An important learning experience provided by the Law Center comes in the form of positions for graduate and research assistants that are regularly needed for the various projects in the Law Center. Because these positions are reserved to students of the College of Law, they are given a monopoly at paid positions some other students might actually want to pay for. But more important than the allowances obtained by students who work at the Law Center are the valuable lessons, which are not otherwise available in the classroom environment, that they get from the people they work with at the Law Center and the kinds of projects they handle.

Working at the Law Center provides the students the opportunity to see law in action, sometimes even as a participant. This type of experience is the kind that allows the student to level up her skill sets, specifically for policy work, thus placing her, as Roberto Concepcion once wrote of U.P. Law students, "at the vanguard of the movement for reforms."[15] Work experience with the different institutes of the Law Center can broaden the minds of students, as they are exposed to the workings of government (as when they help draft bills and implementing rules), the processes of partner institutions (as when they coordinate with international and local organizations), and become more sensitive to social problems (as when they help organize forums and conferences that are usually directed towards critique and review of government policies).

[15] Roberto Concepcion, *The U.P. College of Law and Its Heritage,* 46 PHIL. L. J. 426 431 (1971).

CONCLUSION

What I have tried to do in this piece is to describe certain institutions and institutional processes that constitute the background in which people who inhabit the College of Law work and play and create meaning for themselves and others. This is to identify the structural qualities of an institution that make it stand out from others, allow it to perform its stated goals, and set itself as the ultimate standard by which institutional success is measured.

The resort to structural qualities (as opposed to the highlighting of individual achievements) as markers for the capacity of an institution to make a dent, if not dents, in the lives of private individuals, diverse communities, and the law school's inarticulate constituency—the public—is meant to provide a more stable, maybe even objective grounds, for claims that are made about, or against, the College of Law. It is also meant to formally establish the fact that the College is separate from the people who inhabit it in various capacities, even if its achievements are a consequence of the actions of these people, not the sheer existence of the qualities I have just described. To resort to institutional qualities as standards for assessment is to say that these qualities are a strong determinant of the kinds of human beings that are attracted by the institution, that they interact with human beings to form an institutional culture and, to the extent that they inculcate in people not just ideas but a broad and deep sense of what the world is like and the possibilities for dealing with the world around them, that they have a profound influence on whatever is achieved by these human beings.

Perhaps, these are good reasons why those who are not part of the College of Law heap praises or feel the need to do so whenever they talk about it, and why, on the other hand, many of those who are a part of it feel they are justified or entitled to those grand mannerisms which, apart from providing comic relief to

non-combatants, can sometimes detract people from the true reasons why we are so proud to be from U.P. Law.

What, Exactly, is Teaching Law in the Grand Manner?

DEAN PACIFICO A. AGABIN*

THE OLD MAN Holmes did not give us a formula as to what is teaching in the grand manner, but he did give some illustrations.

In his *The Path of the Law*, he tells us that the rational study of law is still to a large extent the study of history, and that while the black-letter man may be the man of the present, the man of the future is the man of statistics and the master of economics.[1] And that, if you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict.[2]

In saying this, Holmes was probably rebelling at the study of law at Harvard when he was a student. At that time, the law at Harvard was a study of law in the books, which was "a conglomerate of Coke's artificial reason and Kent's equally artificial morality."[3]

So, as early as 1897, at a time when the Philippine revolution against Spain was being hatched, Holmes was already advocating the study of law in its historical context, and that it must be viewed from the lens of economics and statistics. George

* Former Dean, U.P. College of Law (1989-1995), Professor, Philippine Judicial Academy. Ll.B (University of the Philippines), Ll.M, JSD (Yale Law School). Most Outstanding Law Alumnus, U.P. Law Alumni Association (1996).

1 O. W. Holmes, Jr, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

2 *Id.* at 459.

3 M.D. Howe, The Positivism of Mr. Justice Holmes, 64 HARV. L. REV. 529, 538 (1951).

Malcolm, who founded the College of Law in 1910, must have read the Holmes article when he was a student at the University of Michigan Law School, from where he graduated in 1906. He founded the College for a specific purpose: to prepare ambitious young Filipinos to hold public offices in anticipation of the independence of the Philippines from the United States.[4] In justifying the founding of the College, Malcolm told the American Law Review:

> Experience shows that students have, at great expense, been sent to American universities, and have there acquired an excellent knowledge of the English language, and studied conscientiously the principles of American law, only, on a return to the Philippines, to find themselves hopelessly at sea in the Spanish law. Other students have pursued a course of legal study in the universities of Spain or France, or in schools in the Philippines in which, in the Spanish language, the Spanish codes are studied directly, only to come forth unacquainted with the future official language of the courts where they are to practice, and unfamiliar with American adjective or substantive law or cases. In both instances the method was wrong–the student was overdeveloped in one direction and underdeveloped in another.[5]

Malcolm taught law in the grand manner. "A principal purpose of the College of Law was the training of leaders for the country. The students were not alone tutored in abstract law dogmas; they were inculcated with the principles of democracy. All were made to work hard, and they developed a real sense of responsibility."[6] Obviously, Malcolm was following the

---

[4] G. A. MALCOLM, AMERICAN COLONIAL CAREERIST 96 (1957).
[5] C. Benitez, An Article on the College of Law, 2 PHIL. L. J. 46 (1915).
[6] MALCOLM, *supra* note 4, at 96-97.

pedagogical truth that a sense of purpose facilitates the learning process. This made it easier for him to indoctrinate the law students on the tenets of democratic government. He speaks proudly of the fact that three of his students, Manuel Roxas, Elpidio Quirino, and Jose P. Laurel, became presidents of the republic. Later, when Malcolm had the opportunity to look back on the record of American colonialism, he adjudged it a success compared to its record in Puerto Rico and attributed the favorable outcome of the policy of independence to the fact that the Filipino leaders were educated in the ways of democracy.[7] Teaching law in the grand manner had contributed to the triumph of democracy in the first Malayan republic.

What this means is that, as Stanley Karnow observes, Americans and Filipinos have diligently clung to the illusion that they share a common public philosophy, which is democracy–when, in reality, their values are dramatically dissimilar.[8] Or, at least, the Filipinos defined democracy distinct from that of the Americans.

THE CASE METHOD

Before the coming of the Americans, legal education in the Philippines was the monopoly of the private law schools. Their professors probably had not heard of teaching law in the grand manner. Or, possibly, they stuck to the civil law system method of teaching, i.e., they used the textbook method consisting of classroom recitations and quizzes on assigned portions of legal treatises.[9] On the other hand, when Malcolm took up law in the University of Michigan Law School from 1903 to 1906, the case method had become the favorite teaching tool in American law schools.

---

[7] G. A. MALCOLM, FIRST MALAYAN REPUBLIC 89 (1951).
[8] S. KARNOW, IN OUR IMAGE: AMERICA'S EMPIRE IN THE PHILIPPINES 19 (1990).
[9] C. Benitez, *The Private Law Schools*, 2 PHIL. L. J. 315 (1915).

The philosophy behind the case method is stated by Harvard Law School Dean Langdell himself:

> Law considered as a science, consists of certain principles or doctrines…the growth of which is to be traced in the main through a series of cases; and much the shortest and the best, if not the only, way of mastering the doctrine effectively is by studying the cases in which it is embodied. . . It seems to me, therefore, to be possible to take such a branch of law as Contracts, for example, and without exceeding comparatively moderate limits, to select, classify and arrange all the cases which had contributed in any important degree to the growth, development or establishment of any of its essential doctrines.[10]

The Langdellians, eager to jump into the bandwagon of science that was then starting to become intellectually fashionable, advanced the theory that the study of law was a science, arrived at through the inductive method. "Under this system," wrote one of his disciples, "the student must look upon the law as science consisting of a body of principles to be found in adjudged cases, the cases being to him what the specimen is to the geologist."[11]

It was thus that in the U.S. from 1870 to the 1920s, the science of the law meant the doctrinal analysis of cases on a given subject. Papers on law were treatises analyzing and even critiquing legal principles laid down in leading cases. But at least by 1870 the study of law had latched on to the scientific method,

---

[10] CHRISTOPHER C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS (1871).

[11] WILLIAM A. KEENER, A SELECTION OF CASES ON THE LAW OF QUASI-CONTRACTS 3 (1888).

and law professors shifted their allegiance from mysticism to science.

Before this, the study of law was undertaken by a priestly class of scholars who derived this tradition from the continental universities in Europe, which, in turn, inherited this from the medieval monks. Thus, the study of law was a ritualistic and mystical exercise which consisted of memorizing codal provisions and laws taught *ex cathedra* by monkish professors. The relationship between law and religion was emphasized by law teachers to compel obedience through the use of hellfire and brimstone. No wonder one realist professor branded this approach to law as "transcendental nonsense."

The case method, on the other hand, is coupled with the so-called "Socratic" dialogue between teacher and student. Here, the professor leads the student to elicit the principle from each case assigned to the student by asking about the facts of the case, the position taken by the litigants, the issues before the court, the ruling, and the reasoning employed by the judge. A famous professor, George Stigler, observed that originally, the Socratic method involved a teacher sitting on one end of a log and talking with a student at the other end. But sometimes it is more productive, according to Stigler, to sit on the student and talk to the log.

Langdell thought very strongly that a law school should become part of a university and not remain a separate institution.

> If printed books are the ultimate sources of all legal knowledge—if every student who would obtain any mastery of the law as a science must resort to these ultimate sources, and if the only assistance which it is possible for the learner to receive is such as can be afforded by teachers who have traveled the same road before him—

> then a university, and a university alone, can afford every possible facility for teaching and learning law."[12]

Note that Langdell's reason for integrating the study of law into the university has very little to do with the role of law in the social sciences. While his inductive method placed law at par with the other sciences then emerging in the sense that the study of law became part of the grand experiment in education and learning, it has not located law in the company of the emerging empirical social sciences. For the fact is that Langdell did not for a moment look at law as part of the social sciences. He looked at law as a self-contained and independent discipline, saying that: "Unless law was a package capable of rational analysis within its own confines it has no business being in the university." It is surprising how an accomplished master of logic like Langdell could have committed this non sequitur.

That is why there were skeptics who questioned Langdell's assumptions. Thorstein Veblen, for one, remarked that "law schools belong in the modern university no more than a school of fencing or dancing."[13]

THE CASE METHOD IN HIS MADNESS

In 1968, or four years before Marcos declared martial law, a perceptive and now obviously a prescient Filipino writer, Gregorio Brillantes, wrote an article in the Philippines Free Press entitled "The Education of Ferdinand Marcos."[14] From the words of Marcos, we can get a glimpse of how teaching in the grand

---

[12] C. Langdell, *Address to Students*, 3 L. QUARTERLY REV., 124-25 (1887).
[13] THORSTEIN VEBLEN, HIGHER LEARNING IN AMERICA 211 (1918).
[14] G. Brillantes, *The Education of Ferdinand Marcos*, Philippines Free Press, August 31, 1968.

manner was conducted by his professors. According to him:

> First of all, they were so strict, so unyielding in their standards there was no way of topping the class except through hard consistent work. Sinco and Garcia, especially. Of course I memorized all their books, including the commas, along with the Constitution and the different codes, everything, word for word. I was not the only one in class who could do that. Knowing this, they would ask things that were not in the texts, so we were compelled to research. I remember each one of them assigning no fewer than 50 cases a day. To be ready for classes the next day, you had to read 50 cases in an hour, and digest as much as you could…[15]

With the vision of a Cassandra, Brillantes then poses a good question for law professors as well as for moralists about the case method introduced in the U.P. College of Law by George Malcolm long before Marcos took up law:[16]

> For one skilled in memorization, in learning by rote since the grades, the "case method" in the UP College of Law, and in all Philippine law schools, for that matter, was the logical, even quite welcome, climax to a process of education that was in form and substance, from the lowest levels to the state university, almost entirely patterned after American public education. The

[15] *Id.*
[16] *Id.*

latter system in turn had been shaped by the naturalism, pragmatism and "social engineering" of such educational philosophers as John Dewey and his disciples at Teachers College in Columbia University.

These "secular" educationists held that there could be no absolutes, that inquiry must proceed without any end in view, the teachers must "recreate" the student according to a social design which was to be perfectly "neutral" on all religious and moral questions, although it favored a form of authoritarian instruction. And all this to succeed, educators of another persuasion have noted, must lay great emphasis on the inductive method, which has little regard for the universal, the absolute.

While the deductive method would proceed from the general to the particular, the inductive would proceed from particular cases to a proposition of general or universal application. The focus is on particulars: one must marshal enough of these to support a general conclusion and at the same time watch out for cases that might contradict the same proposition. So it is necessary to know as many particulars as existed and could be learned: so much the better if one memorized them all—as in the "case method." Cases decided by the courts—and interpretations depend on many relative factors, not the least of which is the judge—serve as precedents applicable to future litigation. The particular facets and aspects of the law then tend to assume greater significance than universal principles: what matters is the letter of the law

> rather than its spirit.
>
> At best, the method produces specialists with neither the time nor the inclination to delve into other fields: tacticians, not strategists. At worst, unleavened by the humanities, it breeds a practitioner who finds it profitable to uphold the law as the last refuge of scoundrels.

Mr. Brillantes, carping at the case method of teaching, traces its roots to empiricism, or pragmatism, or naturalism, "social engineering," or whatever "ism" seems congruent with neutralism on religious and moral questions. Here he mistakes teaching method for legal theory, and concludes that the inductive method has little regard for the universal and the absolute. This is not quite accurate. The case method, for all its faults, merely insists that theory should be founded on fact. It does not deny the fact that law is ultimately based on the moral judgment of society.

With perspicacity of vision, Brillantes talks of using law for social engineering four years before Marcos launched his martial law regime. It is not surprising, therefore, that when Marcos put the Constitution in "a state of anesthesia" and even after the EDSA revolution of 1986, some intellectuals began to look at the teaching method of the College with askance, asking us how the academic tradition of excellence could have twisted the mind of Marcos into an authoritarian bent.

It is possible, of course, that the College's tradition of academic excellence may, indeed, go against the grain of democratic government. Such a tradition, based on Western models of tertiary education, calls for the creation of a professional elite whose role is to preserve the status quo and to perpetuate the power of the ruling class. Not only that. The teaching of law in the grand manner is not confined to knowing

the doctrines and the dogma that constitute the body of substantive law. More importantly, it develops modes of thinking and even encourages skepticism about the laws. It transmits knowledge and develops skills needed for solving problems, like analysis, communication, advocacy, negotiation, and research. So the critics of teaching law in the grand manner are not completely unjustified.

But it is not quite accurate to blame the case method, or the grand manner of teaching, for Marcos' abandonment of universal principles and moral absolutes. It is not quite fair to blame his college education for his bent of mind or to curse the case method for his courage in launching his revolution from the center. It should be noted that Marcos took up law in the late 1930s. At that time, the College also bred radical student leaders who later launched their version of a revolution—law students like Jose Lava, Angel Baking, and Renato Constantino. Indeed, at that time, the intellectual milieu of U.P. was leavened with the socialist ideals of Quezon as well as the libertarian ideas of student leaders who were led by law students. The grand manner of teaching did open the mind of Marcos to the use of law as a means of social control, or as a veneer for trumping the Western tradition of constitutionalism.

Other extraneous predisposing factors can be cited for the Marcos phenomenon. For one, Marcos was a keen student of history who realized that our laws were imposed by colonizers and, such being incongruous with our culture, were the subject of evasion or avoidance by the people. Early on, the colonized Filipino was taught to evade or circumvent laws imposed by the colonialists. For another, Marcos had the overweening ambition to perpetuate himself in power. He was the quintessential example of the College's tradition of excellence. He was an obsessive achiever, notes Stanley Karnow, an energetic and disciplined student whose phenomenal memory lifted him to the head of his class at the University of the Philippines law school,

where he swept the top prizes for debating, oratory, and military science.[17] This bolsters the point of Brillantes that "for one skilled in memorization, in learning by rote since the grades, the 'case method' in the U.P. College of Law, and in all Philippine law schools, was the logical, even quite welcome climax to a process of education...."[18] But Marcos was not a mere memorizer of codes and analyzer of cases. He was acute enough to revolt against prevailing ideas of constitutionalism and morality, even as he cloaked obsession with power with the mantle of reforming society. He foisted the banner of New Society on a bewildered citizenry.

The prescience of Brillantes is revealed in the last paragraph of the article where he asks questions (and this was in 1968): "How will President Marcos perform during his second term? Will he remain the politician reluctant to offend the oligarchy, the reactionary elite? Is the thrust of his education now towards a new Enlightenment? Released from partisan pressures and commitments, will he not be in a position to serve the nation truly and sincerely and with the utmost devotion, an independent Filipino President, a 'strong' President at last of and for the people?"[19]

The answer to these questions now lies in history. But it is clear that Marcos did not look at the law as a bad man who cared only for the consequences of its violation. Nor was he seduced by the inductive logic behind the case method to overlook the universal absolutes and principles: he was too clever to be seduced by simple logic. The fact is that Marcos was a keen student of history, and he did not care so much about the Constitution as a document as he knew that it was an imposition by a colonial power. He was also a keen student of politics, and he knew that the Constitution could be used to perpetuate him in

[17] Karnow, *supra* note 8, at 367.
[18] Brillantes, *supra* note 14.
[19] *Id.*

power, as what Manuel Quezon had done. He mustered enough courage not only to offend but even to dismantle the oligarchy. He used the master's tools to dismantle the master's house, to use the apt metaphor of Audrey Lorde.

Unfortunately, he was derailed by absolute power he gathered in his hands. Whom the gods wish to destroy, they first make mad with power, observes Arnold Toynbee. The view that the content of the law could be divorced from morals probably blinded him from the universal principles enshrined in the civil law system.

It can be said that at least Marcos, among our lawyer Presidents, was one who realized how law can be made a vehicle for social control. It is a consequence of the tunnel vision of law developed by the case method if taught without relating it to the social sciences, which foster breadth of vision. Somehow, the case method makes the law student see the world only from the viewpoint of an appellate judge, which is a very narrow vision. It does not articulate social values and it develops only some of the intellectual skills without the vision of a statesman. Law is seen only in the context of the actual facts of the case, which are then pigeonholed into a legal doctrine classified by subject. By the late 1930s, Quezon was declaring the death of the *laissez faire* ideology and Jorge Bocobo was pleading for the socialization of law, but somehow, law students were seduced by the rhetoric of libertarianism. Surely, there must be something more to the case method than mere discussion and analysis of facts and presentation of conflicting arguments. The context of the law must be drawn at a wider and more panoramic angle. It must include the historical, social, and economic perspectives that form the source of law.

LAW AS A LIBERAL ART

In ancient law, Schulz points out that the Romans created *humanitas*, or the study of the humanities, to moderate the Draconian character of Roman law. The Roman praetors and magistrates were made to study music, literature, drama, painting, and sculpture to develop not only their moral and intellectual faculties, but also kindness, goodness, sympathy, and consideration for others.[20] Among law schools in the West, there has been a movement to include contextual materials from the social sciences as part of the course requirements in the study of the law. Thus, the curriculum is made to cover not only the traditional subjects of the law but also related problems that have social and legal significance.

Of course, this is not a novel idea. In the same article published in the Harvard Law Review in 1897, Justice Holmes had already pointed out the way to gain a liberal view of the subject is to get to the bottom of the subject itself. "The means of doing that are, in the first place, to follow the existing body of dogma into its highest generalizations by the help of jurisprudence; next, to discover from history how it has come to be what it is; and, finally, so far as you can, consider the ends which the several rules seek to accomplish, the reasons why those ends are desired, what is given up to gain them, and whether they are worth the price."[21]

Of course, we know Holmes to be the founding member of the realist or positivist school. It was the realist movement in law which delivered a significant blow to the case method in the arena of legal education. By the 1930s, the realists came to realize that reason is not such a reliable guide to moral understanding and a powerful guide to law. According to realists John Chipman Gray and Justice Holmes, the method isolated cases from their social and historical context and failed to take into account the factors

[20] FRITZ SCHULZ, PRINCIPLES OF ROMAN LAW 4 (1936).
[21] Holmes, *supra* note 1, at 476.

that caused the evolution of legal principles. The realists considered law as a process of legal observation, comparison, and criticism instead of an exact science of value-free principles. "The life of the law has not been logic; it has been experience," said Holmes.

The thrust of the realist movement, insisting on scientific prediction of how the judges would decide, moved law study closer to the social sciences. As Holmes himself said:

> No one will ever have a philosophic mastery over the law who does not habitually consider the forces outside of it which have made it what it is. More than that, he must remember that as it embodies the story of the nation's development through many centuries, the law finds its philosophy not in self-consistency, which it must always fail in so long as it continues to grow, but in history and the nature of human needs. As a branch of anthropology law is an object of science; the theory of legislation is a scientific study.[22]

Not without a tinge of irony, Holmes made that statement by way of introduction to Langdell's casebook on contracts. In another piece, Holmes scoffed at the case method, saying, "When a man has working knowledge of his business, he can spend his leisure better than in reading all the reported cases he has time for. They are apt to be only the small change of legal thought."[23]

Furthermore, in civil law countries like the Philippines, the case method of study had a very tenuous hold, except possibly in the University of the Philippines, not only because of the incompatibility of the approach with the civilian system based

[22] O. W. Holmes, *Book Notices*, 14 AM. L. Rev. 233, 234 (1880).
[23] O. W. HOLMES, JR., THE COMMON LAW 2 (1881).

primarily on legislation, but also for lack of materials. The expansion of the law as a result of the progressive movement dealt another blow to the case method, with the trend towards codification and the development of administrative law copied from Continental Europe. As A.V. Dicey, Vinerian Professor of Law at Oxford and Langdell's bulldog in England observed, the social justice movement which emerged at the turn of the century demanded legislation to change the common law so as to solve pressing social problems of society, and each law, in turn, gave rise to a new public opinion giving rise to stronger demands for more radical legislation.[24]

In the universities of the First World, the social sciences may be going out of fashion, i.e., they have lost their interest and evangelical fervor, as Allan Bloom had put it. Where before the social sciences, like economics, sociology, anthropology, psychology, and political science, were revered titles in the realm of scientific knowledge, they are now pale shadows in the intellectual landscape, eclipsed by the second coming of the physical and natural sciences.

The situation may be slightly different with law, for it was only recently that it has been discovered to be a social science. The stab of enlightenment suddenly hit American jurists and law professors so hard that they have been goaded to call law "the Queen of Social Sciences,"[25] in a spirit of partisan hyperbole characteristic of lawyers.

Of course we are in the Third World, and since we are at least a century behind the First World in educational philosophy and practice, and in the realm of science, perhaps even more, we are just waking up to the important role of the social sciences in the shaping of the law.

---

[24] A. V. DICEY, LAW AND OPINION IN ENGLAND 5 (1905).
[25] See, e.g., E. J. Bloustein, *Social Responsibility, Public Policy, and the Law School*, 55 NYU L. REV. 385, 416 (1980).

But I am not advocating the teaching of law as in the grand manner just because it is the fad among the law schools in the First World. It is time, I think, that the College of Law should now break tradition and deviate from its stated goal of producing an elite professional class catering to the needs of the business establishment. The fact remains that in the Third World, especially in countries that have been colonized by Western powers, laws have been imported wholesale by the colonial powers on the subject people in an attempt to create the latter in the colonizer's image. Sometimes, the result of such wholesale importation is a gaping disparity between life and the law, between reality and rules. The laws that have been imposed by colonial authorities on the native peoples did not fit the latter. This is what happened to the Philippines and in some other countries.

In the Philippines, there is an urgent need to approach law as a social science in view of our colonial past. Law in our country is of course a product of our colonial history. Because we were colonized for 400 years, the colonial powers imposed their laws upon us without regard to our customs and traditions as a people. Furthermore, our law is written in a foreign language which the majority of our people do not understand. Because we lived for 350 years under the Pope and 50 years under Hollywood, as one American wag put it, we have to re-examine the roots of our legal culture and see if it accords with the spirit of the people. The laws of any country are the product of its culture and its history; if these are merely imported wholesale into the country, they will not be an effective instrument for social control.

USING THE TOOLS OF SOCIAL SCIENCES IN TEACHING

Now, the problem in social reform is proving the basic premises. It is here, I think, where the tools of the social sciences serve us in

good stead, for they give us a good grasp of reality. It is only the methodology of social science which can validate our social and political assumptions. If utilized properly, the methodology cuts through the fig leaf of legal fictions to reveal the revolting realities in our country today. It is through empirical research that we pierce the veil of traditional legal rules to see if the implementation of laws leads to substantial justice, or to injustice. It is the only social science expertise which can strip our jurisprudence of its cherished myths adopted from foreign sources and be brought down to earth in touch with the mores of the people.

Once we know how laws stand in the way of social reform, or how far it has lagged behind economic and political developments, we can propose adjustments to effect social change. If we see that people empowerment is just an empty shibboleth, we can propose legal reform aimed at greater distribution of political power. If we see the effectiveness of groups against the warlords and vested interests, then knowledge of the law can be harnessed by non-governmental groups to access governmental power or to influence the private business sector. If we see that our form of democracy is backsliding into an oligarchy, we can take steps to counter this retrograde movement on the slippery slope.

This approach to the law views it as a multi-disciplinary phenomenon—historical, social, economic, political, religious, psychological, and anthropological. This will not, of course, merge the study of law with that of the social sciences, for law does not have that precision of methodology that characterizes the other social sciences. But it will broaden the study of law so that it will not be presented as an independent branch of study. Law will cease to exist in a vacuum; it will be studied with the best insights that the related behavioral sciences can offer. I believe that this should form the basic strand of teaching law in the grand manner, as Holmes puts it.

This method will also emphasize to the law student the role of law in the social order, its functions of defining interpersonal relationships and of redefining such relationship in the light of social changes, the legal institutions created for such changes, and how society adapts to social change. This will also give the study of the law a double focus, so that students will study not only the tools of the law but also its ends. This will underline the study of the values underpinning the legal system and the relationship of the means to the ends. While the study of values will reveal the lack of precision of the legal method, it will shed light on the ends sought to be attained by the law in the "constant tension between stability and change, freedom and security, history and logic, ideal justice, and justice in practice."[26] A professor advocating this approach lists seven central problems which circumscribe the main subject matter of the study of law in relation to the social sciences: the relation between law and social type; the functions of law in society; the modes of operation of law; the creation, development, and evolution of law; law, culture, and the main social institutions; law and social change; and law and law personnel.[27]

This list of problems is comprehensive enough to show us how law figures in the panorama of the social sciences of anthropology, sociology, political science, psychology, and economics.

Doubtless, these general prescriptions for the marriage of law and the social sciences, like any marriage, while easy to make, are difficult to consummate. First, the members of the law faculty will have to acquaint themselves with the tools of the related social sciences, which will take at least a generation of teachers.

---

[26] PAUL D. CARRINGTON, ASSOCIATION OF AMERICAN LAW SCHOOLS, CARRINGTON REPORT, MODEL LAW CURRICULUM 59 (1971).
[27] Yehezkel Dror, *Proglegomenon To a Social Study of Law*, 13 J. OF LEGAL ED. 131 (1960).

Second, the law school must expand beyond mere teaching and research and go into outreach and extension services. Its faculty must be endowed with the necessary empirical outlook and experience which they will transmit to their students. In the College, the younger members of the faculty have taken to the field by means of research, advocacy, barangay justice teach-ins, and organizing.

Whereas the social sciences are concerned with the behavior of individuals and groups in society, law is concerned with the control and regulation of human conduct and promulgation of rules to guide behavior in socially beneficial ways. The approach of the social sciences is thus different from that of law.

For example, the clinical method used in the Legal Aid Program or even the case method of law teaching focuses on the particulars of a case at hand. On the other hand, the social sciences focus on the statistics of a class of cases which are in some important ways similar to a particular case at hand. The law teacher looks at the trees; the social scientist looks at the forest. It is easy to guess who will mistake the trees for the forests. This is probably what Holmes meant by mastery of statistics.

The most popular example of the use of social science data is the case of *Brown v. Board of Education*.[28] The issue was complex: Does segregation of public school children solely on the basis of race deprive them of equal educational opportunities? The U.S. Supreme Court resorted to psychological data and found that (1) there are psychological harms to black schoolchildren in a segregated environment; (2) there are certain intangible factors which produce superior learning environment in integrated schools, and (3) public schools play a critical role in contemporary

[28] Brown v. Board of Education, 347 U.S. 483 (1954).

society.[29]

It is always better to test the underlying assumptions of the laws with the standards of the empirical sciences. As two psychologists have noted:

> Traditionally, the behavioral technology of the law is laid down in legislation in civil law countries and in precedents in common law countries…underlying these rules are assumptions of how individuals behave and how their behavior can be regulated. Since these assumptions are about the behavior of individuals, they are available for empirical research and testing…altogether, however, only scattered and isolated assumptions of the law are tested, usually aiming at direct application in the courtroom.[30]

EMPIRICISM AND SOCIAL VALUES IN LAW

Teaching in the grand manner, of course, does not mean completely teaching law using social science methods. In the first place, it cannot be done for two reasons: one, the style and form of the current national bar examinations would not permit this, such examinations being a test of the student's knowledge of legal doctrines, and two, it would be inconsistent with the nature of the law, which cannot be studied totally free from values and morals.

Morals are the source and not necessarily the content of law. Law is essentially normative, and a study of law delves into policy considerations behind the law. It cannot be limited by the

---

[29] S. Siegel, *Race, Education, and the Equal Protection Clause in the 1990s*, 74 MARQ. L. REV. 501 (1991).

[30] LAWYERS ON PSYCHOLOGY AND PSYCHOLOGISTS ON LAW 8 (P. J. Van Koppen, et al., eds., 1988).

methodology of value-free empiricism in the social sciences if we define empiricism in the context of morals and politics. Law must go beyond knowledge gathered by the senses; it must both be descriptive and prescriptive. There are also strong pressures that impinge on law schools for law reform, especially on state-supported institutions.

One example is the clinical legal education program. As pointed out by the president of Rutgers University, Prof. Edward Bloustein, it was the moral unease of the sixties searching for political and social relevance that caused the revival of the clinical legal program.[31] The palpable objective of the program was to extend the law school's responsibilities to society and to decrease the traditional emphasis on preparing students for corporate practice.

With respect to the legal aid clinic of the U.P. College of Law, its objectives are just as sublime: (1) to provide free legal services to those who cannot afford it; (2) to provide law interns practical experience and learning opportunities from actual handling problems albeit confined to those faced by the poor; (3) to conscienticize them to the plight of the poor and oppressed sectors in society; (4) to help improve the administration of justice by filing test cases; and (5) to assist in law reform activities.

The clinical method of legal education compels law students to focus on the judicial and administrative process and to apply scientific methods to the making and prediction of decisions. Here, the students realize the necessity for objective and external observation of law, that empirical data could be used to assist in solving legal controversies, and that scientific techniques could be useful decisional methods. Hopefully, the conscienticized student who is exposed to reality will soon realize that the law can be a vehicle for social transformation. This method gives the student a proper understanding of the law in the

[31] Bloustein, *supra* note 25, at 412.

light of social realities and in the context of his social environment. If he sees the law as laudable in theory but oppressive in practice, he will agitate for social change.

The interface of the instruments of social science with values is most revealing in law because such instruments may demonstrate the inequity behind seemingly neutral legal constructs. For example, the constitutional ideal of equality is certainly more than a cruel legal fiction in the light of economic realities in our society; as Anatole France once observed, the law, in all its majesty, prohibits the rich and the poor alike to beg on the streets and to sleep under the bridges. We do not even have to use the tools of social science to realize the cruelty of this delusion.

In fact, the studies of social scientists show that in a society based on the principle of legal equality, the bulk of the people actually live under a regime of practical inequality. This is due to four factors working in favor of those who hold economic resources: (1) the different strategic position of the parties; (2) the role of lawyers; (3) the institutional facilities, and (4) the characteristics of the legal rules favoring the 'haves.'[32]

There are also intellectual traditions in the social sciences that can operate to stimulate social changes. Because legal training is steeped in the tradition of conservatism, dislike for differing views, and adherence to the status quo, it will hardly initiate social change. "The master's tools will never dismantle the master's house," said Audre Lorde. The atmosphere of testing as well as experimentation in the social sciences can be an inspiration for questioning in law that will lead to legal reform. "Lawyers have much to learn from social change activists, who often work outside the formal legal and political systems to create institutions to address what they think the law ignores," writes a

[32] M. Galanter, *Why the "Haves" Come Out Ahead*, 9 LAW & SOCIETY REV. 95, 124-25 (1974).

law professor, Martha Minow.[33] It is worth noting that some of the younger alumni of the College have become social activists after an immersion process beginning with fieldwork in the social sciences. They have learned law in the grand manner, Filipino style.

It is not only the methodology of the social sciences that are useful in law but even the concepts developed therein. For instance, if law is viewed from the lens of political science in terms of power, then the students will get to know how law is linked to those who hold the levers of power in our society. This "economic interpretation of law," as Dean Pound calls it, sees law in terms of a system of rules imposed on men by the dominant class in a given society for the furtherance of their interests.[34] "So when it comes to the development of a corpus juris, the ultimate question is what do the dominant forces of the community want and do they want it hard enough to disregard whatever inhibitions stand in the way," Justice Holmes once wrote to Dr. Wu.[35] Seen in this light, law becomes a legalizing principle for the imposition of the wants of the dominant groups over the subject classes or the rest of society. For the ruling groups possess what Charles Merriam calls "the monopoly of legality" which enables them to utilize governmental systems of power for their own ends. In a mass democracy, the more numerous groups using people power can also utilize law as an instrument to pass laws and codes for their own benefit. But first they must get to see law as an instrument of policy, not as an independent body of rules handed down by divine decrees or by the colonial powers.

---

[33] M. Minow, *Breaking the Law: Lawyers and Clients in Struggles for Social Change*, 52 U. PITTS. L. REV. 723, 750 (1991).

[34] R. POUND, AN INTRODUCTION TO PHILOSOPHY OF LAW 29 (1959).

[35] JUSTICE OLIVER WENDELL HOLMES: HIS BOOK NOTICES AND UNCOLLECTED LETTERS AND PAPERS 187-88 (Shriver ed., 1936).

THE STUMBLING BLOCK TO TEACHING IN THE GRAND MANNER

The main obstacle to the introduction of social science courses in the law curriculum in the Philippines is the qualifying bar examinations. The bar examinations is a test of the student's knowledge of the law in almost all areas—civil law, political law, international law, criminal law, commercial law, procedural law, land titles and deeds, taxation, labor law, and legal ethics. It is seldom a test of skills, or of values.

From the doctrinal classification of subjects, one can readily see that law is seen as a set of enduring principles and rules existing independently of any social environment. It is viewed as a determinate collection of rules divided as to subject, and which the student is expected to memorize and apply offhand if he is confronted with a legal problem.

In view of this requirement of the Supreme Court, all law schools find it irrelevant or unnecessary to include the social study of law in their curricula. The emphasis of the law schools is in the 'pure' study of law, underscoring the analysis and application of the internal structure of the hierarchy of rules classified according to subject. As a result, we have produced proficient craftsmen who are not necessarily able leaders or even good citizens.

CONCLUSION

In summing up, the teaching of law in the grand manner involves a panoramic view of the law and the related sciences. As an institution supported by taxpayers' money, the College of Law cannot just limit itself to conserving and transmitting legal knowledge to an elite class of professionals. Elitism is out of place in a democratic system. By giving more training to law students in the methods and concepts of the social sciences, U.P. law

students will get to see the law as a means to achieve justice in a country where the quality of justice that a man gets depends on the quantity of property that he possesses. There is a need to give meaning to the concept of equality in a developing country like the Philippines.

In the statement of guiding principles I had crafted for the College before my appointment as Dean, and which was subsequently approved by the Board of Regents, teaching in the grand manner should abide by the following guidelines:

> 1. The study and teaching of law must be integrated with the social sciences. It is only thus that law can be viewed as part of the social process, that is, as a system for the making of important decisions by society.
>
> 2. Training in the Law Complex must be training in the public interest: it must be a continuous, conscious and systematic effort at policy decision-making, where important values of a democratic society are distributed and shared.
>
> 3. The College of Law should aim to train lawyers who are not only superior craftsmen but also socially-conscious leaders who would be more interested in promoting the public interest than in protecting the private property rights of individual clients.
>
> 4. To develop the professional skills of students and lawyers, the College of Law should not only impart substantive knowledge but it should also develop the basic working skills necessary for successful law practice, like analytical skills, communication skills, negotiating skills, as well as

awareness of their institutional and non-legal environment.

5. In order to enhance training for professional competence, legal education offered by the College of Law should be woven around a sense of purpose, as it is an accepted pedagogical truth that a sense of purpose eases the path of learning. Thus, students of law will more easily master legal doctrines and principles if they see these in relation to a given purpose and as tools for problem-solving, instead of just viewing them as diverse and disoriented rules and doctrines existing in a vacuum.

Teaching Civil Law in the Grand Manner

ARACELI T. BAVIERA*

I. INTRODUCTION

THE INSCRIPTION AT the lobby of Malcolm Hall, which was the last part of the speech delivered by Justice Oliver Wendell Homes at the alumni homecoming of Harvard Law School in 1886, was done during the administration of Dean Vicente Abad Santos. Since then, "in the Grand Manner" has been the theme of U.P. College of Law homecomings.

I consider this as the best part of the speech: "The main part of intellectual education is not the acquisition of facts, but learning how to make facts live."

An Academic Reforms Committee was formed in 2004, consisting of five law students appointed by the Law Student Government. The participants were asked to describe the kind of lawyers they want to be, the values they wish to espouse, and their definition of what it means to practice law in a 'grand manner.' The freshman respondent wished to practice law that would involve some form of social justice, while the respondents in the upper level felt that the "grand manner" was an unreachable ideal. The juniors to the fifth year felt that

* Professorial Lecturer, College of Law, University of the Philippines; Ll.B. (*cum laude*), U.P. 1954; Member, Code Commission, Family Code of 1987.

they were ill-equipped to face the world and inadequate as to their knowledge about the law. Those in the top 10% of their classes confessed that it would only be after law school that they would really begin learning about the law, and hoped to regain the idealism they had lost.

The report of the Academic Reform Committee ended by quoting the missing part of the speech of Justice Oliver Wendell Holmes, as follows:

> The aim of a law school should be not to make men smart, but make them wise in their calling – to start them on a road that will lead them to the abode of the masters. A law school should be at once the workshop and the nursery of specialists. It should obtain for teachers, men in each generation who are producing the best works of the generation. Teaching should not stop, but rather should foster production. The enthusiasm of the lecture room contagious interest of companionship should make the student partners in their teachers' work. The ferment of genius in its creative moments is quietly imparted. If a man is great, he makes others believe in greatness; he makes them incapable of mean ideals and easy self-satisfaction. His pupils will accept no substitute for realities, but at the same time, they learn that the only coin in which realities can be bought is life.

II. DEVELOPMENT OF CIVIL LAW AND ITS CODIFICATION

Civil law was traced from the ancient Roman Law[1] which developed from a priestly system to a highly developed secular system through treatises written by *jurisconsults*. In the sixth century, Emperor Justinian arranged for the production of a *Digest* and the codification of laws and doctrinal writings. The *Institutes* was also prepared for law students. This work enabled Roman law to survive after the destruction of the Roman Empire. It survived the Dark Ages and was studied in medieval universities. It also influenced the development of Canon law.

In 1803, during the Napoleonic era in France, the *Code Napoleon* was codified to embody French customary law and Roman law. A combination of the Enlightenment of the 18th century and the revolution led to modern codification.

III. CODIFICATION OF SPANISH LAW

The Spanish Civil Code was a codification of Spanish laws such as the *Siete Partidas*, *Ley de Bases*, Fuero, and Canon law which was then in force in Catholic Spain, with provisions borrowed from the French, Italian and Portuguese codes, leaving it open for revisions and avoiding radical changes.

The Spanish Civil Code was modified later by the Spanish Mortgage Law, requiring registration of all transactions affecting lands covered by Spanish titles.

---

[1] John D. Farran and Anthony M. Dagdal, INTRO. TO LEGAL METHOD (3rd ed., 1990) p 247-250, cited in Carl F. Stychin (1990) 365.

IV. CHANGES INTRODUCED IN THE SPANISH CIVIL CODE

A. STATUTES MODIFYING THE CODE

The Spanish Civil Code of 1889 was extended to the Philippines. However, it contained gaps due to the changing social and economic conditions in the country. Several laws were passed during the American regime, like the Code of Civil Procedure (Act 190), which repealed provisions on prescription; Divorce Law (Act 2710), which granted divorce on grounds of adultery on the part of the wife or concubinage on the part of the husband, and required previous criminal conviction for such offenses; and the Marriage Law (Act 3643).

B. GAPS IN THE LAW AND JURISPRUDENCE

As early as 1925, a case was brought concerning property relations between common-law spouses. In deciding the case, the Supreme Court said that the parties were deemed to have entered into an informal partnership, that as long as there was no impediment to the marriage, and the property was acquired through their joint efforts, they could share in their property.[2]

The Supreme Court, in cases brought after the Second World War regarding the collection of loans contracted during the last year of the Japanese occupation (when there was extraordinary inflation in Philippine currency) payable after liberation (when there was scarcity of treasury notes), applied the Ballantyne scale of values showing the purchasing power of the Philippine peso during the last year of the Japanese occupation, there being no provision in the Spanish Civil Code

[2] Marata v. Dionio G.R. 2449, Dec. 31, 1920 (unpublished), applying "justice and equity."

on the matter. [3]

American jurists in the Philippine Supreme Court had to apply common-law rules on statutory interpretation, and doctrines like estoppel, constructive trusts, and quieting of title in cases brought before them, for lack of Philippine jurisprudence on the matter.

V. NEW CONCEPTS INTRODUCED IN THE CIVIL CODE

A. RULES ON STATUTORY CONSTRUCTION (ART. 4-10)

1. In case of gaps

> Article 9 – No judge or court shall decline to render judgments by reason of the silence, obscurity or insufficiency in the laws.

In the case of *Alvarez v. Lim,*[4] the obligor was ordered to support his illegitimate child. He had no exclusive property as his salaries formed part of the conjugal partnership with his wife. Under Article 161 of the New Civil Code, the conjugal partnership is not liable for the support of the illegitimate child of the other spouse. The Court of Appeals applied Article 163 of the New Civil Code, expanding the meaning of the word "pecuniary indemnities" to include "support of the illegitimate child" of the obligor, making the conjugal partnership assets subsidiarily liable, after the primary responsibility of the conjugal assets are first covered.

[3] Applying economics.
[4] 61 O.G. 1529, applying the doctrine of *ubi jus, ubi remedium*.

2. In case of doubt in the interpretation of laws

> Article 10 – In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended *right* and *justice* to prevail.

What are "rights"?

The ancient Roman law and medieval legal system concept of "ius" referred to the "right thing to do" or "what is due according to law."

"Rights" come in at least two types: legal rights and moral rights, depending on whether the claim in question is grounded on authoritative sources, such as statutes, judicial decisions or constitutional provisions, or on moral theory.[5]

What is "justice"?

The word "justice" has two meanings. (1) Procedural justice refers to the outcome or decision arrived at by the proper functioning of the machinery of law to achieve justice; (2) the second meaning involves reference to some higher criterion or set of values which is presumed to be higher than and superior to that which is embodied in the law. The concept of "equity" was introduced to supplement the established procedure of law and adjudication.[6]

In recent thought, the most persuasive objections to the utilitarians was made by John Rawls.[7] He revived Kant's rationalist notion of the 'social contract,' whereby justice is *a*

---

[5] B. BRIX, JURISPRUDENCE; THEORY & CONTEXT 250 (4th ed., 2006).
[6] Glen R. Negley, *Theory of Justice*, in Collier's Encyclopedia, vol. 13, 682.
[7] *Id.*, 685.

priori right of each individual independently of the various wants and interest involved, measured against an ideal of 'fairness'. Judgment of 'fairness' would be largely *intuitive*, and would be made by individuals who are *rational*, *educated* and *morally impartial*, in a sane, well-ordered society.

B. MORAL WRONGS

The New Civil Code incorporated a rule on moral conduct taken from the Institutes of Justinian.

> Article 19 – Every person, in the exercise of his rights and in the performance of his duties, act with *justice*, giving everyone his due, and observe honesty and good faith.
>
> Article 21 – Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage.

According to the Code Commission which drafted the New Civil Code, the article was intended to give adequate remedy for untold number of moral wrongs which are impossible for human foresight to provide by law.

An example given by the Code Commission in the case of a 19-year old girl who was seduced by a married man, on a promise to marry. Although it is not punishable by law, it is a grievous moral wrong, for which the offender should be made answerable for damages. This was applied by the Supreme Court in the case of *Balane v. Yu*.[8]

[8] 54 O.G. 687 C (1958).

In another case,[9] a creditor, knowing that his debtor would institute insolvency proceedings in the event that the other creditors could not agree as to the manner of distributing his assets, assigned his credit to a sister corporation in the United States, which enabled it to attach an airplane belonging to said debtor. Even if no law was violated, the Supreme Court rendered damages against the assignor on the ground that the latter acted in bad faith and betrayed the trust and confidence of the other creditors.

In still another case,[10] the Supreme Court awarded damages against a former employer who in dismissing his employee, acted in an abusive manner and inflicted inhuman treatment in filing six criminal cases for dishonesty, in spite of the NBI finding that the employee did not commit falsification. The acts of the employer did not conform to the norms laid down in Article 19 of the New Civil Code.

C. NATURAL OBLIGATIONS – BOOK IV, TITLE III

> Article 1423, N.C.C. - Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations not being based on positive law but on equity and natural law do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what been delivered or rendered by reason thereof.

Natural law, through its long history of at least 2,500 years of Western philosophy, postulates the existence of moral principles having a validity and authority, independent of human

[9] Velayo v. Shell, 100 Phil. 186 (1956).
[10] Globe McKary v. C.A. G.R. 81262, Aug. 23, 1989; 176 SCRA 778.

enactment, derived from human nature, the natural conditions of the existence of humanity, the natural order of the universe, or the eternal law of God, discernable by human reason. [11] From the examples given under this title, natural obligations are *moral* obligations which, if performed, authorized the recipient to retain what is morally due him. Other cases of natural obligations found in the New Civil Code are: Article 1484, where necessaries are sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price therefor, and Article 1860, where interests on a loan is paid by the borrower when there is no written stipulation, therefor.

VI. METHODS OF STATUTORY INTERPRETATION

A. COMMON-LAW STATUTORY INTERPRETATION[12]

1. Literal Approach – (*Queen v. Judge*, 1QB 273, 1982)

If the words are clear, the words should be followed, even though they are absurd. The court has nothing to do with the question whether the legislative body has committed an absurdity in applying the ordinary natural meaning of the words.

2. Golden Rule (An alternative approach)

In the face of an absurdity resulting from the literal interpretation, take the whole statute together and construe it altogether, giving the words their ordinary signification, unless when so applied, they produce an inconsistency or an absurdity so great as to convince the court that the intention could not have

---

[11] ROGER COTTERELL, THE POLITICS OF JURISPRUDENCE (1989) cited in Carl F. Stychin, *op. cit.*, 6-7.

[12] PETER GOODRICH, READING THE LAW 54-57 (1986), cited in Carl F. Stychin, *op. cit.*, 138-9

been to use them in their ordinary significance, and to justify the court in putting on them some other significance which through less proper, is one which the court thinks the words will bear (*River Wear Commissioners v. Adamson,* 1877, 2HC 743, 763).

3. Mischief Rule (Heydon's case, 3 Co. Rep. 7, 1584)

The court should take the interrelationship between the *status quo* prior to legislation and the objectives of the new law to determine the mischief and defect sought to be remedied and the reason for the remedy.

3. Purposive approach

This approach takes into consideration the historical, social and economic aspects, the moral and legal history of the enactment. The role of the judge is to resort to the whole range of resources within the legal culture, such as social policy, economic and other administrative and political considerations to realize the purpose and objectives of the act.

B. AMERICAN RULE OF INTERPRETATION

The adoption in the United States of the English common law carried with it the statute law of England then existing. The common law of the several states varied substantially because of the rapid expansion of legislation in England during the period when the American states were adopting the English law, which included the statutory changes.[13]

As an English colony, the American courts utilized the British rule in Hayden's case, reformulating, expanding,

[13] SUTHERLAND, STATUTORY CONSTRUCTION, vol. 2 (3rd, ed). Horack citing Plucknett, STATUTES AND THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY 70 (1922).

restricting, explained and rephrased, but conclusions of it, the application of the law, according to the spirit of the legislative body, remains the primary and objective of judicial interpretation.[14]

1. Literal interpretation

When the intention of the legislative is so apparent on the face of a statute such that there can no question as to the meaning, there is no reason for construction[15]. An exception would be if the literal impact of the words is not consistent with the legislative intent, or such interpretation leads to absurd results, the words of the statute will be modified by the intention of the legislature.

2. Legislative purpose and intention

The modern cases also indicate that courts today rather than beginning their inquiry with the formal words of the Act, consider from the start the legislative purpose and intention.

C. PHILIPPINE JURISPRUDENCE

Our courts also follow the rules of statutory construction originating from England, which were expanded by American courts, and applied by American jurists in our Supreme Court.

1. Literal rule

In the case of *Sulpicio Lines, Inc. v. Cursyok*,[16] the brothers and sisters of a passenger who died in the sinking of an inter-island vessel owned by petitioner due to a typhoon claimed moral damages for breach of contract. The Supreme Court held that

[14] Sutherland, *op. cit*, 315 vol. 3 (3rd ed.)
[15] *Supra*, 333-4
[16] G.R. 157009, March 17, 2010, 615 SCRA 575.

Article 2206(3) mentions only the spouse, legitimate and illegitimate descendants and ascendants of the deceased. The enumeration excludes brothers and sisters of the deceased who may demand moral damages for mental anguish.

The power and duty of courts is to interpret and apply the law and do not include the power to *correct* the law by reading into it words not written therein. Article 2219 of the New Civil Code applies in cases of breach of contract, where the carrier acted fraudulently or in bad faith.

In the case of *Silverio v. Republic*,[17] the petitioner sought to change his first name and his sex from male to female in his birth certificate, as he had a sex-reassignment through surgery and injection of sex hormone and had become anatomically female.

The Supreme Court held that the common and ordinary meaning of "sex" applies, there being no legislative intent to the contrary. The Civil Registry Act was enacted as early as 1920 and remained unchanged. The Court said that it could not be argued that the term "sex" includes alternable sex through surgery or by post-operation. There is no law authorizing change of entry as to "sex" in the civil registry from "male" to "female." Such change would have consequences on the law of marriage and family relations and other laws like the Labor Law as to employment of "women," certain crimes in the Revised Penal Code, and the rule on survivorship under Rule 131 of the Rules of Court. The Court added that it was for the legislature to determine public policy.

Under Republic Act 9262, or "The Anti-Violence against Women and their Children Act,"[18] the question is whether the parents-in-law of the petitioner asking for protective custody of the child is included as "respondent" in the case, as the law speaks only of the "husband or common-law husband" of the

[17] G.R. 174689, Oct. 19, 2007, 537 SC 373.
[18] Go Tan v. Tan, G.R. 168852, Sept. 30, 2008, 567 SCRA 231.

petitioner, invoking the rule "*expressio unius est exclusio alterius.*" The Supreme Court held that the rule is merely an ancillary rule of statutory construction, used only as a means of discovering legislative intent not otherwise manifest, and should not be permitted to defeat the plainly indicated purpose of the legislature.

This is because Republic Act 9262, Section 47 provides that the Revised Penal Code and other applicable laws have a suppletory application to it. Article 10 of the Revised Penal Code also provides that it is supplementary to special laws unless the latter should specially provide the contrary. Section 5 provides that the acts may be committed "through another" and Section 8 provides that the protection order shall include prohibited acts done, "through another," "directly or indirectly." Section 4 provides that "this Act shall be *liberally* construed, to provide for the protection and safety of victims of violence of "women and children." Hence, the Revised Penal Code 'principle of conspiracy' was applied to parents-in-law.

In the case of *Republic v. C.A.*,[19] Republic Act 1899 authorized municipalities and cities to undertake and carry out at their own expense reclamation of any "foreshore" lands, and others. Pasay City passed an ordinance reclaiming 4,300 hectares of foreshore land in Pasay City. The issue was whether "foreshore" lands include submerged areas. The Court held that the words are clear and that there was no reason for interpretation. It said that resort to extrinsic aids like the records of Constitutional Convention is unwarranted as the language of the law is clear. "Foreshore" refers to that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tide.

[19] G.R. 103882, 105276, Nov. 25, 1998, 229 SCRA 199.

a. Exceptions

The general rule on construing words and phrases used in a statute is "that in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common meaning. However, a literal interpretation is to be rejected, if it will operate unjustly and lead to absurd results. In construing the meaning, the statute should be taken as a "whole."

In the case of *Koriega v. Sec. of Justice*[20], an alien who was convicted of trafficking in prohibited drugs (cocaine) in a U.S. Court in 1983, was able to enter the Philippines. Upon learning of this, the immigration officer arrested him on Sept. 17, 2001 and charged him before the Board of Special Inquiry of the Bureau of Immigration. He was ordered deported under Section 37 (a) (4) of the Philippine Immigration Act of 1940, for having been convicted and sentenced for violation of the law governing prohibited drugs. The Supreme Court held that to follow the letter of section 37(a) (c) and make it applicable only to convictions under the Philippine Prohibited Drugs Law would in effect pave the way to an absurd situation whereby aliens convicted of a foreign law on prohibited drugs may be allowed to enter, to the detriment of public health and safety of its citizen.

Such interpretation was not envisioned by the framers of the law and is contrary to reason and would lead to absurdity. It would defeat the purpose for which the law was passed. Section 37 (a) (c) makes no distinction between foreign prohibited drugs law and Philippine Prohibited Drugs law. The law applies to those convicted of all prohibited drugs, whether local or foreign.

In the case of *NPC v. Dama*, [21] Section 49 of the Electric Power Industry Reform Act of 2001 (EPIRA) provided that PSALM would take ownership of all *existing* NBC generation

[20] G.R. 166199, Apr. 24, 2009, 582 SCRA 513.
[21] G.R. 156208, Dec. 2, 2009, 606 SCRA 409.

assets, liabilities, IPP contracts real-estate and all other disposable assets, and that all outstanding obligations of NPC arising from loans, issuance of bonds, securities and other instruments of debt would be assumed by PSALM within 180 days from the approval of the Act. Section 50 of the Act states that the principal purpose of PSALM Corporation is to manage the orderly sale, disposition and privatization of NPC generation assets, real-estate and other disposable assets and IPP contracts, with the objective of liquidating all NPC fiscal obligations and standard control costs on an optional manner. The Supreme Court held that the word "existing" under Section 49 should be understood in the light of PSALM's purpose and objective by its existence. It said that it is absurd to interpret the word "existing" to refer only at the time EPIRA took effect on June 26, 2001.

Upon the effectivity of EPIRA, most of the assets of NPC's assets was transferred to PSALM. While the privatization of NPC's assets is in progress, NPC may still incur indebtedness. How can NPC answer for its liabilities if PSALM already acquired all its assets? It is unfair and unjust if PSALM gets nearly all NPC's assets but will not pay for liabilities incurred during the privatization stage.

The Court may consider the "spirit" of the statute if a literal meaning would lead to absurdity, contradiction, injustice or would defeat the clear purpose of legislation.

2. Constitutionality of a Statute (Art. 7, N.C.C.)

Republic Act 9165 (Comprehensive Dangerous Drugs Act), which provided for random drug-testing for the safety and interest of the student population, was held constitutional except as to its testing on senators (whose qualifications for office are provided in the Constitution) as it did not provide for criminal prosecution. The measure is intended to stamp out illegal drugs in the country, and to protect the well-being of citizens, especially the youth, from the

deleterious effects of dangerous drugs.[22]

The case of *ACCORD v. Zamora*[23] involved the issue as to whether Article X, Section 6 of the Constitution could be modified by Acts of legislature. Article X, Section 6 of the Constitution provides that "local government units shall have a just share, *as determined by law*, in the national taxes, which still be *automatically* released to them."

The deliberations in the Constitutional Convention showed that Commissioner Davide proposed to add the word "periodically" to the words "automatically release to them in" Section 13 of the Constitution. This was opposed by Commissioner Nolledo who wanted to delete the word "periodically," which was later agreed upon. The Supreme Court held that the authority to release the IRA is upon the executive department under the General Appropriation Act. The Constitution enjoins the legislature not to pass laws which would prevent the executive branch from performing its duty, as it would make the Constitution amendable by statute.

Where the meaning of a constitutional provision is clear, contemporaneous construction cannot change its natural meanings. The dictionary meaning is that the word "automatic" connote something "mechanical, spontaneous and perfunctory."

In the case of *Lagcao v. Labra,*[24] R.A. 7160 granted local governments the power to expropriate private lands. Ordinance 1843, Section 19 was passed to expropriate lands to provide socialized housing for homeless and low-income groups. R.A. 7279, Section 9 provides for priorities in the acquisition of lands for urban land reform and housing, and privately-owned lands is

---

[22] Social Justice v. Dangerous Drugs Board, G.R. 457870, Nov. 3, 2008, 570 SCRA 410.
[23] 459 SCRA 593, 599.
[24] G.R. 155746, Oct. 13, 2004, 440 SCRA 279.

the last in the enumeration. R.A. 7279, Section 109, provides for modes of acquisition like community mortgage, land-swapping, land assembly land banking, donation to government, joint-venture agreement, negotiated purchase and expropriation. Expropriation shall be resorted to when other modes have been exhausted and parcels of land owned by small property owner are exempted.

The Court held that Ordinance No. 1842 of Cebu City failed to comply with substantive requirements and that it was repugnant to the provision of the Constitution, R.A. 7279, and R.A. 7160. Thus, the ordinance was nullified and the decision of the RTC was set aside.

In the case of *La Bugal B'Laan Tribal Ass. Inc. v. Ramos,*[25] the President, under Section 2, Article XII of the 1987 Constitution, entered into an agreement with a foreign-owned corporation, involving technical and financial assistance for the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils. The issue was whether the word "involving' includes "service contracts." The Supreme Court held that the word "involving," either in technical and financial assistance, does not exclude other modes of assistance. However, debates during the 1986 Constitution show that the assistance include service contracts. Moreover, R.A. 7342 (Philippine Mining Act of 1995) vests in the Government sufficient degree of control over the mining operation.

In the case of *Quinto v. COMELEC,*[26] the constitutionality of Section 13 of R.A. 9691, which said "that any person holding a public appointive office or position, including active members of the Armed Forces, and officers and employers in government-owned and controlled corporation shall be considered ipso-facto resigned from his/her office and must vacate the same at the start

[25] 127882 Dec. 1, 2006, 445 SCRA 1.
[26] G.R. 189098, Dec. 1, 2009, 606 SCRA 258.

of the day of filing his/her certificate of candidacy "was questioned."

The proviso of the third paragraph of section 13 of R.A. 9369 was lifted from previous Election Codes, and traced its roots from the Omnibus Election Code (C.A. 666) passed in 1941 which provided for the automatic resignation of elective officials, and from the Election Code (C.A. 357, sec. 20) passed in 1936.

In the debates regarding Senate Bill 931 and H.B. 532 leading to the enactment of R.A. 18698, Senator Gordon, the author of the bill, stated that the proviso was copied from earlier existing laws. Senator Santiago opposed it on the ground that it was discriminatory to public appointive officials compared to elective officials. The issue before the Supreme Court was whether the proviso violates the equal protection clause in the Constitution. The Court held that the Constitution gives everyone the right to run for public office, and that proviso is not germane to the purpose of the law. The Court declared the proviso unconstitutional for violating the equal protection clause.

3. Prohibitive Law (Art. 5, N.C.C.)

In the case of *Home Bankers Savings and Trust Co. v. C.A.*,[27] Section 18 of PD 157 provides that no mortgage on any unit lot shall be mortgaged by the owner or developer without prior approval of authority such approval shall not be granted, unless the proceeds of the mortgage loan are used for development of the project. The HLURB has jurisdiction to declare the mortgage void and annul foreclosure. The Supreme Court held that it is a prohibitory law and seeks to protect the lot buyers, otherwise they could end up homeless.

[27] G.R. 128354, April 26, 2005, 457 SCRA 167.

4. Prospective or Retroactive Laws (Art. 4, N.C.C.)

R.A. 9302, Section 12, entitled creditors of Intercity Bank to surplus dividends. Its effectivity clause (Section 28) provides that the Act shall take effect 15 days following completion of its publication in the Official Gazette or in 2 news papers of general circulation. The Supreme Court held that the statutes are prospective and not retroactive in their operation, they being the formulation of rules for the future, not the past. The tendency of retroactive legislation is to be unjust and oppressive on account of its liability to unsettle *vested* rights or disturb the legal effect of prior transactions.[28]

In the case of *Yum Kwan Baying v. PAGCOR*[29], R.A. 9487, which amended the PAGCOR charter, granted PAGCOR the power to enter into special agreements with the third parties to share its privilege under the franchise to the operators of gambling casinos. The Junbel agreement was entered into with ABC on April 25, 1996, under its charter (P.D. 1818) prohibiting PAGCOR to enter with third parties to participate in casino operation. The Supreme Court held that laws should only apply prospectively unless the legislative intent is to give them retroactive effect expressly declared or necessary implied from the language used.

In the case of *GSIS v. City Treasurer,*[30] the constitutionality of cityhood laws were violative of Sec. 10(1) Article X of 1987 Constitution, which provides that "no province, city, municipality or barangay shall be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of votes cast in a plebiscite in the political units directly affected" The Supreme Court held that the

[28] PDIC v. Stockholder, G.R. 181556, Dec. 14, 2009, 608 SCRA 215.
[29] G.R. 163559, Dec. 11, 2009, 608 SCRA 207.
[30] G.R. 186242, Dec. 23, 2009, 609 SCRA 330.

legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, by applying a *verba legis* or strictly literal interpretation of the law may render it meaningless and lead to inconveniences, absurd situation or injustice.

To obviate this aberration, and bearing in mind the principle that the intent or spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls the better.

It is in this respect that the history of the passage of R.A. 9009 and the logical inferences derivable therefrom assume relevance in discovering legislative intent. The rationale behind the enactment of R.A. 9009 to amend Section 450 of the Local Government Code can reasonably be deduced from Sen. Pimentel's sponsorship speech of Senate Bill 2157 regarding the basis for the proposed increase from 20 million to 100,000 million pesos in the income required for municipalities wanting to be converted into cities, viz.

> Sen. Pimentel Jr: Mr. President …. It is a fact that there is a mad rush of municipalities wanting to be converted into cities. Whereas in 1991 when the LGC was approved, there were only 60 cities. Today the number has increased to 85, with more municipalities applying for conversion. I am apprehensive that, before long, the nation will be a nation of cities, no more municipalities.
>
> It is for the reason that we are proposing that the formal requirement under LGC be raised from 20M to 100M source from locally generated funds.

Upon questioning by Sen. Drilon, who asked whether the proposed Senate Bill would have retroactive effect on the

cityhood bills pending in the House of Representatives, Sen. Pimentel answered that the bill would have no retroactive effect. The Supreme Court held that the basis for the inclusion of the exemption clause is a clear-cut intent of the legislature that R.A. 2009 shall have no retroactive effect on bills pending in Congress.

Debates, deliberations, and proceedings in Congress and the steps taken in the enactment of the law is part of legislative history and may be consulted as aids in interpreting the law.

In the case of *Batong Buhay v. Dela Serna,*[31] R.A. 6715 was considered a curative statute because prior to it, Article 217 of the Labor Code was considered by E.O. as overlapping functions between the Labor Arbiter and the Regional Director of DOLE over money claims. So R.A. 6715 was passed, rectifying the infirmity in law, amending Article 1289 P.D. 442 (June 2, 1994) when the amount exceed P5,000. R.A. 7730 is a curative statute and was entitled "An Act to further strengthen the Visitorial and Enforcement Power of the Secretary of Labor and Employment, amending for this purpose Article 128 of PD. 442 otherwise known as the Labor Code (applied June 7, 1994) where the amount exceed P5,000).

Records of the House of Representatives showed that Rep. Veloso who sponsored R.A. 7730, said that the bill seeks to do away with the jurisdictional limitations imposed and finally seeks to settle any lingering doubts on the visitorial and enforcement power of the Secretary of Labor and Employment.

In the case of *Nepomuceno v. Salazar*[32], the petitioner filed the complaint on July 14, 1970 against the respondent regarding the lands owned by petitioner devoted to the growing of rice. The respondent was the agricultural tenant. The petitioners wanted to convert their agricultural lands to commercial or non-agricultural

[31] G.R. 86963, Aug. 6, 1999, 312 SCRA 22.
[32] G.R. 37165, 173 SCRA 366.

lands and to establish poultry and frog-farming projects, and to cultivate the rest of the land personally. The respondent filed a motion to dismiss on the grounds that R.A. 3844 had been amended by section 7 of R.A. 6389 by deleting personal cultivation by the landowner as a ground for permissible ejectment of a tenant, arguing that R.A. 6389 which took effect on Sept. 10, 1971 should be given retroactive effect as a piece of remedial legislation beneficial to agricultural tenants.

The Supreme Court held that R.A. 6389 was approved by Congress on Sept. 10, 1972. Its effectivity clause did not invest Section 7 with retroactive effect. The general rule under Article 4 of the Civil Code must be held applicable.

It follows that grounds for ejectment remained available at the time of filing of the complaint. As held in the case of *Calderon v. Dela Cruz,*[33] the purpose of the law is to encourage and attract small landowners to go to their respective provinces to till their lands. The policy of the law would be thwarted if the lessor-lessee relationship on tiny parcels of land would be perpetuated even when the owners can and desire to cultivate the land themselves.

5. Liberal or Strict Interpretation

In the case of *ECC v. C.A.,*[34] a police sergeant, a jailer at Pasig Provincial jail, was shot by another policeman during an interview at the CID of Mandaluyong Police Station regarding a stabbing incident. His widow claimed compensation benefits under PD 626. The ECC ruled that his death was not compensable as it was not work-connected. The Court of Appeals affirmed the decision. Upon appeal to the Supreme Court, the latter held that the police officer was carrying out one of his duties as a law enforcer. Citing the case of *Vicente v. ECC*, in case of doubt, the sympathy of the law on social security is towards its beneficiaries,

[33] 138 SCRA 173 (1985).
[34] G.R. 115858, June 28, 1996, 327 Phil. 510.

such that the law, by its own terms, requires a construction of utmost liberality in their favor.

For this reason, the Court lends a sympathetic ear to the cries of the poor widow and orphans of police officers. If we must demand strict accountability from our policeman in safeguarding peace and order day and night, we must also, to the same extent, be ready to compensate their loved ones, who by their untimely demise are left without any means of supporting themselves. The Court declared that the widow was entitled to compensation benefits under PD 626. By reason of his work, a police officer exercises his duty on a 24-hour basis and his death came as an incident in the performance of his duty in the police force and must be compensable.

In the case of *Sagliba v. ECC*[35], the deceased was a statistician at the Bureau of Agriculture Economics in Tacloban from 1969-1981 when he died of hepatoma. He had experienced general weakness, anorexia, fatigability, peptic ulcer, and carcinoma of the liver. He died at 37 years old. He had to go to remote places, woke up early and worked late at night, met different people to gather data, and was subjected to excessive fatigue, missed his meals, and was malnourished. He entered the service in 1969 in perfect health, but after years of employment, he contracted several diseases, including peptic ulcer, hepatoma, and liver cancer.

The widow claimed compensation with the GSIS, which dismissed the claim, saying the disease was not work-connected. The Supreme Court held that ECC should use liberal construction and that the rules of evidence are not applicable. It is not required that the employment be the sole factor; it is enough that the employment contributed even in a small degree to the development of the disease. Under section 1 (b), Rule III of P.D.

[35] G.R. 65860, Apr. 24, 1984, 128 SCRA 723.

626, the risk of contracting the disease was increased by working conditions reasonably work-connected; it is not required that there be a direct causal connection between work and the disease. Article 4 of the Labor Code provides that all doubts should be resolved in favor of labor. The GSIS was ordered to pay P12,000 reimbursement of hospital expenses, funeral expenses and attorney's fees in the amount of P1,200.

2. LEGAL EDUCATION

a. PHILOSOPHY OF LAW

Christopher Columbus Langley, Dean of Harvard Law School and originator of the case method of teaching law, advocated "that law is a science whose principles and doctrine could be "discovered" in cases,[36] in the following statement:

> The science of law involved the search for a system of general, logically consistent principles built up from the study of particular instances. It is then the task of scholars to work out, in an analytical rigorous manner, the subordinate principles entailed by them. When these subordinate principles have been well stated in propositional form and the relations of entailment among them clarified, they will, together, constitute a well-ordered system of rule that offers the best possible description of that particular branch of law – the best answer to the question of what the law in that area is".

[36] Speech to commemorate the 250th anniversary of the Founding of the Harvard College, quoted in Twining, Karl Llewellyn and Realist Movement, cited in Brian Bix, *op. cit*. p. 180.

In contrast, the philosophy of Roscoe Pound[37] is:

> I am constraint to think of law as a social institution to satisfy social wants – the claims and demands involved in the existence of civilized society – by giving effect to as much as we need with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society. For present purposes, I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interest; a continually more complete and effective elimination of waste and precluding friction in human enjoyment of the goods of existence – in short, a continually, more efficacious social engineering."

B. IN ENGLAND

Law schools assure that even though the law may appear to be irrational, chaotic and particularistic, it is in fact an internally coherent and unified body of rules, if one digs enough and knows what one is looking for. Following this idea, the law school's function is to identify legal principles. Students are to inculcate both these principles and that the method of understanding these principles i.e., English legal reasoning.[38]

The report of the Lord Chancellor's Advisory Committee

---

[37] Cited in Carl F. Stychin, *op. cit*. 13-14.

[38] Cownie & Bradney, ENGLISH LEGAL SYSTEM IN CONTEXT 126-130 (1996) cited in Carl F. Stychin, *op. cit*.18.

on Legal Education and Conduct (1996) [39] repeatedly mentioned that one of the central goals at every stage of legal education should be to inculcate "legal values," meaning a commitment to the rule of law, to justice fairness and high ethical standards.

The current status of legal ethics teaching in the United Kingdom is a consequence of the artificial division between academic and professional legal education. There is little knowledge in the university law school system about civil and criminal procedure or about all matters relating to legal practice including professional ethics.

Following the report of the Matre Committee, the Bar Council and the Law Society in 1988[40], vocational education at the Inns of Court School of Law and at the College of Law was revolutionized. The end product was a new name. "The Bar Vocational Course for Barristers," and the "Legal Practical Course for Solicitors" have a revolutionary skill-based approach. These courses have as their focus the development through practice and testing of skills as interviewing, drafting, advising, fact management, and advocacy. Knowledge of and/or research into the substantive law is prerequisite for participation in simulated practice through which the skills are developed; as far as legal ethics are concerned, the new approach has involved a short introductory course setting out the ethical framework provided by the Code reinforced by the weaving of ethical issues into the skills exercises.

Legal realists, critical legal studies advocates, feminist jurists and those supporting a law in context approach, found the narrow doctrinal system lacking, as it does not take into account the realities of law in practice, the economic and political context

[39] Cited in KIM ECONOMIDES, THE LEGAL EDUCATON AND CONDUCT 151 (1998).
[40] *Id.*, at 154.

in which law is made and operates.[41]

The first overt clinical programs started in UK in 1970. The undergraduate law students were exposed to real client and/or simulated work. Clinical activities now form an integral part of the curriculum in undergraduate programmes in a large number of both new and old universities.

C. U.S. LAW SCHOOLS

The principal method for teaching legal doctrine and analytic skills is the Socratic dialogue and case method. Students read appellate court decisions in casebooks and answer the professor's questions about the holdings and principles of law contained in the cases. The questions and answer practice is loosely referred to as "Socratic dialogue."

A central philosophy of Socrates' approach is that if the same questions are put to the students on many occasions and in different ways, you can see that in the end he will has knowledge on the subject as accurate as anybody's. Modern education would put it differently: through repetition and variations, a student can construct or internalize an independent understanding of a problem and its solution, developing a working knowledge of the subject.[42] Like Socrates, Langdell raised questions to provoke critical thinking.

The initial public response to Langdell's method was critical. Students complained that they were not learning anything, and even suggested that Langdell didn't lecture because he didn't know anything. Soon, only 7-8 students were attending

---

[41] Hugh Brayne,Nigel Duncan & Richard Grimes, CLINICAL LEGAL EDUCATION (1998).

[42] Davis & Steinglass, 258, cited in Roy Stuckey, et.al. BEST PRACTICES FOR LEGAL EDUCATION 208 (2007).

the class. Langdell persisted, despite criticism and declining enrollments for 3 consecutive years. Soon enrollment picked up again. Graduates of Langdell's program were apparently well-prepared for employment, and were getting good jobs. Within 30 or 40 years, schools all over the country were using Langdell's method.[43]

D. GOALS OF LEGAL EDUCATION

According to the authors of the Carnage Foundation's Report, the goals of legal education should be to give students the fundamental techniques, as well as the patterns of reasoning their make-up, the craft of law, the ability to grasp the legal significance of complex patterns of events, the skills of interviewing, counseling, arguing and drafting of a whole range of documents, and the intangible qualities of expert judgment; the ability to size up a situation well, discerning the salient features relevant not just to the law but to legal practice and most of all, knowing which general knowledge, principles, and commitments to call on in deciding on a cause of action.[44]

In practice, competence is the ability to resolve problems, using legal knowledge and skills and sound professional judgment. The core function of practicing lawyers is to help people and institutions resolve legal problems. This includes helping clients avoid legal problems, as well as helping them resolve disputes, process legal transactions and engage in planning. The central goal of legal education should be to teach students how to resolve legal problems.[45]

---

[43] *Id.*, 261-4.
[44] William Sullivan, et.al., EDUCATING LAWYERS, 135, cited in Stuckey, et.al. *op cit.*, 62
[45] *Id.* 62-3

E. U.P. COLLEGE OF LAW (U.P. LAW COMPLEX)

The purpose of the U.P. College of Law is to produce lawyers who are not only superior legal craftsmen but also socially conscious leaders who would promote the public interest above that of individual clients and pressure groups. This can be achieved only by viewing the law as part of the social process and by studying it in relation to related social services and discipline.

We have also adopted the case method and the Socratic dialogue as a mode of instruction. Unlike American courts which utilize the jury system, Philippine trial courts are both trier of facts and law. Students are required to study appellate decisions in the original reports, which contain a statement of relevant facts, arguments of both parties, issues raised before the appellate court, the legal method utilized by the appellate court, the legal method utilized by the appellate court, and the reasons justifying the ruling. Thus, the student sees the "real" facts in each case, supplying their lack of experiences.

In the question-and-answer method, the student is asked to state the relevant facts, the basis for the court's ruling, and to comment on whether the ruling is in accordance with law, and if not, the possible motive of the court in ruling thus. Hypothetical problems may be asked of the student to resolve on his feet. Leading questions may be utilized to enable the student to arrive at the correct solution. Students are also encouraged to ask question to remove any doubts in their minds. Discussions may follow.

Lectures may be employed to show the history of the provision to summarize the points taken in class, or to harmonize the law involved with other applicable laws. Thus, the case-method and the Socratic dialogue are supplemented with discussion, lecture, and problem-solving. To remove the monotony of the lesson, the professor may narrate to his students

his own experience in handling significant cases, to show how he handled the case, the procedure taken and evidence introduced. Thus, the students are given an "inkling" of actual practice and what to expect.

Thus, the U.P. College of Law has achieved its policy, as shown by their graduates in all fields of endeavor here and abroad.

The U.P. College of Law: From the Diliman Commune to Proclamation 1081*

RUBEN F. BALANE**

PROLOGUE

IT WAS THE last year of the 1960s—the decade which the College of Law began with the celebration of its Golden Jubilee. The revered founder of the College, Dean George Malcolm, had come to grace the occasion (a visit which turned out to be his last). The most memorable souvenir of that celebration was a photograph of all the previous deans: Malcolm, Bocobo, Espiritu, and Sinco. (This photograph was last seen hanging on the wall of the Faculty Lounge before it vanished without a trace some years ago, consigned perhaps to some old milk box in some musty storeroom, there to languish unremembered until, by diligent search or serendipity it turns up again, in time, who knows, for the College's bicentennial.) Their poses exuded an awesome *gravitas*, a kind of visual representation of the Olympian stature of the College in the public eye. The photograph still brings to my mind the now iconic picture of the Big

* Two time-markers, as the title indicates, define the limits of this narrative, which span a period of roughly 20 months. But to situate it properly within the story of the law school, the narrative will go backward and forward; to the sixties and briefly, to a day in the eighties. It is necessary to do so because the law school is a living organism and its story has no completely discrete parts.

** Professorial Lecturer, University of the Philippines College of Law; A.B. Ateneo de Manila University, 1961; Ll.B. U.P., 1966.

Three (Roosevelt, Stalin, Churchill) at Yalta in 1945. In my first year in law school, the dean, Vicente Abad Santos, declared to us humble timorous freshmen that the group of ex-U.P. law deans was the most exclusive club in the world, echoing Harry Truman's similar boast about the living ex-U.S. Presidents.

But in 1969, the last year of that portentous decade, events were germinating which in the next few years would thrust dramatic scenes and characters onto the stage of both the nation and the College.

National elections were scheduled for November of that year. Ferdinand Marcos, who at that time was considered by many as the law school's most distinguished alumnus, was completing his first term as President of the Republic and was on his way to winning an unprecedented second term. (He was, pointed out the law school catalogue of the time, one of the four alumni who had become President. The catalogue, with studied nonchalance and not unjustified immodesty, also proclaimed that, of the 11 sitting justices of the Supreme Court, 10 were alumni of the College).

At the same time, in the University, tremors were to jolt the academic community which would have deep consequences in the law school. A controversy erupted over the reassignment of Education Dean Felixberto Sta. Maria to Quezon Hall. A suit was instituted by him against Salvador Lopez, then U.P. President, challenging the legality of the transfer. It went all the way to the Supreme Court.[1] (The law faculty led by Dean Abad Santos issued a strong statement in support of Sta. Maria. Sta. Maria won the case, but the upshot of it all was the resignation of Abad Santos, then only 52, as dean of the College, and the appointment of Perfecto Fernandez as OIC. The deanship was suddenly up for grabs.

Fernandez was obviously on the list of *decanibili,* but the leading contenders for the position were Estelito Mendoza, a part-

[1] Sta. Maria v. Lopez, 31 SCRA 637 (1970).

time faculty member (professorial lecturer), who taught various subjects in the Evening Department; Deogracias T. Reyes (another professorial lecturer), who taught Remedial Law and was a former dean of the Ateneo Law School; and Irene Cortes, the only full-time professor among the three, who taught Public Law.

Each of these contenders had strong and weak points. There was a subtle but vigorous campaign waged by them or on their behalf. Some details of that campaign would be quite interesting reading but would make this narrative too gossipy.

In the end the choice fell on Irene Cortes. It was, all told, a commendable choice. Her academic credentials were impressive: after U.P. Law, she earned a Master's degree and a Doctorate from Michigan. She had a scholar's style and temperament, and considering the rising feminism of the time, her gender did not hurt.

THE PRE-CORTES YEARS: THREE CHANGES

Irene Cortes became Dean in February 1970. The College, in the final years of the Abad Santos deanship, had seen some important changes, three of which are worth mentioning: (1) the restoration of the senior review courses; (2) the transfer of the evening session to Diliman; and (3) the introduction of entrance tests.

The Review Courses: A traditional and *de riguer* feature of legal education in this country is the inclusion of what are called senior review courses in the fourth year, constituting in that terminal year of law studies either the bulk or the entirely of the academic load. These courses differ in style and content, depending on the predilections of the professor. By and large, however, they are designed to prepare the graduating student for that most celebrated, most notorious, and most caricatured rite of legal education: the bar examinations. It may not be amiss to state that, at present, the fervor, not to mention the fanfare and the frenzy spawned by these

examinations has degenerated to the level of burlesque.

The traditional subjects covered by the senior review classes are: Remedial Law, Civil Law, Commercial Law, and Public (or Political) Law. The U.P. Law faculty has always been divided on the issue of these review courses. Many were (and still are) in favor of them as an effective means of preparing for the bar. Others favor their abolition, decrying them as a kind of drill or mental calisthenics with very little intellectual value. This abolitionist bloc argues that, if the basic courses are taught well, review courses are a superfluity. But, like all traditions, the senior review was hard to kill. In the early Abad Santos years, the College had taken a bold measure: it abolished the senior review. Electives such as Comparative Law and Contemporary Constitutional Law Problems became the pedagogical content of senior year. Those of us who took up law in the 1960s went through law school under this "review-less" curriculum. Apparently the anti-senior review advocates were proving a point because its absence at this time did not seem to adversely affect the law school's bar performance, either in the passing average of its graduates or in its dominance of the Top 10 slots.

Nevertheless, there was discontent among both alumni and students, so in 1968, the faculty formed a committee headed by Prof. Deogracias Reyes to study whether review courses should be restored or not. Survey questionnaires, which were criticized by Irene Cortes for asking leading questions, were sent to the alumni. The Committee reported that an overwhelming number of respondents were in favor of restoration. The full faculty met to consider the recommendation of the Committee, and in the absence of Dean Abad Santos, who was out of the country, voted to restore the review courses.

It was a deeply divisive step. Abad Santos, with his famous Cancerian temper, fulminated his displeasure and called the move "deplorable." But the decision had been made and senior review was raised from the dead. It was back in the curriculum when I

joined the faculty in 1970, although I did not get to teach it until 1974.

Irene Cortes had been among the most vocal of the abolitionist bloc, which was not surprising, considering her strong academic views and scholarly temperament. Her accession, in the opinion of many in the retentionist bloc, sounded the death knell for senior review. Indeed, *circa* 1978, towards the end of the Cortes deanship, the faculty made a decision, but the worst fears of the retentionists did not materialize. Irene Cortes, as Dean, had shown herself quite tolerant of the status quo. Senior review was not sentenced to death but only partly emasculated. The review subjects were made electives. Dean Cortes was both a scholar and a pragmatist, and both these aspects of her *persona* won the day. It was, in the judgment of both Dean and faculty, a happy compromise. (The term, of course, is oxymoronic. Compromises are never happy. They are, however, if nothing else, eminently egalitarian: while no one is particularly happy, at least everybody is unhappy). It was a *modus vivendi* that has survived: to this day senior review subjects continue to be available as electives to seniors (the overwhelming majority of whom enroll in these electives).

The transfer of the evening department to Diliman: As all alumni know, the law school has two sessions—the day and evening (the latter at present referred to with admirable *elan* by the evening students as the *schola vespertina*). For years, the day and evening sessions—the former in Diliman and the latter in Padre Faura—were like the Western and Eastern halves of the Roman Empire, with many undercurrents—subtle, not apparent—of mutual competitiveness and jealousy. The rivalry was in many ways productive and its chief expression was the annual Night Meets Day Debate, where the best of the nocturnal locked horns with the bets of the *diumal*. The faculty coach of the day teams was Prof. Sulpicio Guevara while the evening team coach was Prof. Estelito Mendoza. The Night Meets Day Debate was one of the main events of the academic year.

The purpose of having the evening sessions in Padre Faura was of course laudably practical: the evening classes were meant for working students and the offices and business establishments were almost exclusively found in the City of Manila. The business district of Sta. Cruz (Escolta, Plaza Moraga, Avenida Rizal, Dasmariñas, Rosario) was only 10 or 15 minutes away. But in the 1960s, as the metropolis began to sprawl (Quezon City and Makati were becoming business sites supplanting the Old Manila), there was less and less reason for the law school to maintain a presence in the inner city.

So, in 1967, the College took another significant step: the freshman evening classes were opened in Malcolm Hall to start the transfer of the evening session in Diliman. By 1970, all the evening classes were in Diliman.

The law entrance examination. I remember how I enrolled in 1962. I walked into the Evening Department Office on the third floor of Rizal Hall in Padre Faura, at 5:30 in the afternoon with a copy of my Ateneo transcript of records rolled and tucked under my arm. I approached a man with salt-and-pepper hair (who turned out to be Macario Cargado, or Mac to all; registrar of the College) and asked him how to enroll. He asked for my transcript, gave me a form to fill out, and instructed me to pay the registration fees at the cashier's counter on the ground floor. It was the last day of registration and in about 30 minutes I was enrolled as a U.P. Law freshman. Oh the simplicity of those paleolithic days!

Somewhere along the line (in 1967 or 1968), the law school initiated the law entrance examination (LAE) to screen applicants. Apparently, the number of incoming freshmen had increased beyond the capacity of the law school's facilities. Presumably also, it was felt that some measure of quality-control should be taken to regulate the standards of admission.

The decision was both wise and necessary. The number of applicants has risen geometrically since the LAE was first

administered: from a few hundred applicants when it began, to 1,643 in 2010. Of these, only one in about seven is admitted.

THE START OF THE CORTES DEANSHIP AND PRELUDE TO THE DILIMAN COMMUNE

Irene Cortes assumed the deanship just a year before the College completed its 60th year. One of her first concerns was an appropriate way of celebrating it. In June 1970, she formed a steering committee, with Prof. Deogracias Reyes as chairman, to formulate plans for the College's Sixth Decennial. The Committee, composed, among others, of then Judge Ameurfina Melencio-Herrera, Sen. Ambrosio Padilla, Mrs. Teresita Cruz-Sison, Mrs. Gene Banzon-Jose, and myself (in my capacity as College Secretary, a position to which I had been appointed in June of that year, simultaneous with my appointment as full-time member of the faculty. I was to hold the post for three years, until June 1973) met regularly and frequently to plan for the event. Dean Cortes attended those meetings without fail. The day of the anniversary, January 12, 1971, was to be celebrated in Malcolm Hall, but many events were lined up for the months preceding and following the big day. There were lectures by former U.P. President and Law Dean Vicento Sinco and by Supreme Court Justice Jose P. Bengzon, as well as numerous other events.

But, apart from the plans for the Sixth Decennial, the year had other and bigger features. The year 1970 was, by any standards, a colorful, turbulent year. On January 26 of that year, thousands, mostly students, demonstrated in front of Congress as it opened its first regular session after the elections of the previous November. Newly re-elected President Ferdinand Marcos had perhaps intended to stride triumphant into the halls of Congress on the crest of an unprecedented second presidential mandate. Instead, on that Monday afternoon of January 26, he was met by jeers and catcalls from an angry multitude. A *papier mache* crocodile was hurled at him as he ascended the steps of the Legislative Building. It missed him

but only narrowly. Four days later, on Friday, January 30, an even bigger and angrier crowd stormed Malacañang—the incident came to be referred to as the Siege of Malacañang. The demonstration degenerated into widespread rioting, primarily affecting the University Belt. Police and demonstrators battled. As the city's litter-filled streets cleared and as an uneasy quiet descended on the metropolis, four students, one from U.P., lay dead on the city's pavements.

Those were the first, but by no means the last of the demonstrations that year. So frequent did those demonstrations become that the city seemed to be in a perpetual state of siege. But people adapted, and a veneer of normalcy returned. The College coped and adjusted, and did so gracefully. But the tremors caused by these events in the larger world could not but affect the campus. In August, the annual Student Council elections were held. Four candidates ran for chairman, all from the law school—Jose Ricafrente (a senior and a member of Alpha Phi Beta), Firdausi Abbas (a junior and a Sigma Rhoan), Manuel Ortega (a sophomore and an Upsilonian), and Ericson Baculinao (a freshman supported by the left-leaning groups KM [Kabataang Makabayan] and SDK [Samahang Demokratikong Kabataan]). The elections, which before then had been more like fraternity competitions, took on an ideological color. Baculinao came out of the winner, to the chagrin and surprise of the frats. The elections had become a different ballgame.

In November of that year, just as the nation was preparing for the visit of Pope Paul VI, the first-ever papal visit, a vicious virago decided to jump the gun on the Pontiff—Typhoon Yoling. With her 240 kilometer-per-hour winds making a direct hit on Manila, Yoling, the strongest typhoon in living memory, left the metropolis a wasteland. Malcolm Hall was not spared—more than a third of its roof (those beautiful red tiles) were shaved off. It took only a few weeks before the tiles were replaced, however.

As 1970 drew to a close, the law school put on the festive spirit of Christmas as it held the Law Fest (which in subsequent years would be called Malcolm Madness). The practice of having a week-long celebration before the Christmas holidays had begun about a couple of years earlier. The Law Fest was a fun time when students carried guitars instead of law books (except during class hours, for classes were not suspended). On the last day of the festivities, the students put up a kind of talent show with song-and-dance numbers, skits, poetry recitation, and presentations of a more slapstick and uproarious nature. The number that brought the house down that year was a pantomime where the juniors (Class of 1972) materialized on the stage in all manner of hilarious attire: one came as a cross-dresser, another as a Russian bear, another as a Chinese emperor, still another (a male) in diaphanous night gown. If painless incongruity is the stuff of humor, it was no wonder that the audience was roaring with delight. Malcolm Theater was absolute bedlam.

That evening, to cap the festivities, the students and faculty sat on the floor of the Malcolm Hall Lobby, singing songs and doing dance numbers. As the last song was sung, there was the stern-looking and impeccably proper Dean Cortes, holding hands with the students, going around in a circle and singing "Leaving on a Jet Plane." The year 1970 was not so bad after all.

THE SIXTH DECENNIAL AND THE DILIMAN COMMUNE

In January 1971, the College was all set to celebrate its 60th anniversary. The day of the anniversary, January 12, a Tuesday, was to begin with a gathering of the law school community at Malcolm Hall. But events occurred a few days earlier which derailed these plans. The activists on campus, apparently in anticipation of the first anniversary of the First Quarter Storm, decided to flex their muscles.

By January 12, their show of strength had gone so far as demonstrating that they could control the campus and paralyze it.

They now had the critical mass. So the faculty and students of the law school who trooped to the campus found their way barred by wooden electric posts laid across all the University entrances and exits. To prevent the day from becoming a total fiasco, the professors, students, and staff, upon the invitation of one of the students, motored to a farm in the hills of Antipolo for an instant picnic and celebrated the 60th anniversary of the law school there. Curiously, the image that persists to this day is that of the redoubtable Dean Cortes in a brown pant-suit harnessing the laws of physics by flying a kite. A few students, authentic members of the flower generation and true to the spirit of Woodstock, stamped their seal on the sixth decennial by embarking on a trans-galactic trip and smoking pot.

Back on the campus, in the ensuing days, the situation progressively turned much nastier than just wooden posts being laid across streets. The activist groups took possession of the campus, effaced the names of many of the buildings and in defiant red paint, scrawled on their facades names of leftist revolutionary leaders. Malcolm Hall was puzzlingly spared this act of vandalism. There was sporadic violence on campus and the occasional crackle of gunfire. Rumors were rampant, stories grew taller and taller. One report was that the activists had the technology, and in fact were planning, to blow up the library by remote control. In that pre-cellphone age, that act of terrorism would have been state-of-the art indeed. Fortunately for posterity, the U.P. Main Library, unlike its famous counterpart in ancient Alexandria, remained unscathed and unburned.

But the activists assumed full control of the campus. All classes were cancelled, all academic activity ground to a halt. All of us—faculty, students and staff—were barred from entering the campus. Those who lived on campus were prevented from going out. U.P. Diliman became a virtual internment camp. One campus resident, a faculty member of the College whose daughter had a serious asthma attack, had to plead, cajole, and expostulate before the barricaders allowed her to take her gasping child to the hospital.

The occupation lasted about a week. Finally the occupiers relented. The University President, a diplomat to the manner born, put to use his vast reserves of tact and diplomacy, first, to keep the police and the military out, and second, to persuade the activists to end the occupation. There are two sides to every coin: some saw the U.P. President's way of dealing with the crisis as consummate diplomacy; others considered it abject capitulation. But few applauded him when, on live television on the day the occupiers agreed to dismantle the Diliman Commune, asked when classes would resume, he turned meekly to the Student Council Chairman, a freshman law student, and asked: "Can classes resume tomorrow?"

Only gradually did normalcy return to the hapless campus. The sentiment of the law faculty was unequivocally adverse and combative. Dean Cortes was almost bellicose (the world ballistic was not yet current). She initiated the preparation of a faculty statement condemning the occupation of the campus, which was endorsed by the great majority of law professors. She personally incorporated a sentence in the draft declaring that the U.P. law faculty refused to be manipulated "like marionettes" in lawless acts of this nature. That part of the statement drew flak and ridicule from the activists but won wide approbation among the general University constituency. Dean Cortes may have been a petite wisp of a girl but when occasion demanded, she could be a very tall woman indeed.

But the University and the law school did return to normal, and the sixth decennial celebrations went on in the succeeding months of 1971. Perhaps the last word on the Diliman Commune should be an epigrammatic declaration of a professor of Legal Philosophy who, when asked what side of the barricades he was on during the occupation of the campus, whether in front of them or behind them, petulantly replied, De Gaulle-like: "I am above the barricades."

The year of the sixth decennial, dampened somewhat by the

fractious events on campus, slouched towards the end of the second semester and graduation time. Because the University commencement exercises had become too long and tedious, the College decided to hold separate graduation exercises prior to the general commencement, also as part of its observance of the sixth decennial. The rites were held at Abelardo Hall, with the revered Chief Justice of the Supreme Court, Roberto Concepcion (a U.S.T. alumnus but erstwhile professor at the College), as guest speaker. There had been loose talk of activities intending to disrupt the proceedings but nothing of the sort happened. The graduation ceremony turned out to be as dignified as its guest speaker. It was a fitting feature of the law school's sixtieth year.

THE BIRTH OF THE UPLAA

The summer of 1971 was a long, hot one. The fad of the time was Erick Segal's novelette, *Love Story,* and its unforgettable line: "Love means never having to say you're sorry." The film made from that book, which premiered in Manila in June 1971, caused a traffic jam.

For the law school, which was still celebrating its jubilee year, another milestone event took place. On the initiative of Dean Cortes, a law alumni association was finally established, with former Dean Abad Santos as its first President. Under its auspices, the school's alumni gathered at the Plaza in Makati to hold the first alumni reunion. These reunions have since become traditional, annual extravaganzas in which the hosts, always the class celebrating its silver jubilee, try to outdo the previous celebrations. All told, these are extremely enjoyable events, noisy, chummy, nostalgic. For a time, they turned a bit ho-hum, with the same guest speaker year in and year out. But recent years have seen more variety. The venues, too, have changed—Plaza, Club Filipino, DBP, Manila Hotel, Malacañang, Intercon, Bahay Alumni, the University Oval, and so forth. Lately, the favorite has been Shangri-La Makati.

SCHOOL YEAR '71: THE GATHERING CLOUDS

Towards the end of academic year 1970-1971, the law entrance exams were given as usual. Interviews of applicants who made the cut-off were held in early June. These interviews were at that time a long, and for the members of the Admission Committee, wearisome process. There was only one interviewing panel, composed of, at any given time, at least three faculty members (a non-voting student member was added in later years).

The chairperson for that year was Prof. Marita Campos. The members were Bart Carale, Carmelo Sison, Pepe Espinosa, Flery Romero, and myself. Dean Cortes participated, too, as often as she could. The Committee met daily for two weeks – Monday to Friday – from 9:00 a.m. to noon and 2:00 p.m. to 5:00 p.m. Approximately 250 applicants were scheduled for interview over these two weeks; an average of 25 interviews a day. Of these, about 130 were admitted; 120 were axed. So inexorably rolled the Fates. Only one of three possible ratings could be written on each interviewing professor's slip: ADMITTED, DENIED, or WAITLISTED. The wait-listed were consigned to a kind of limbo, there to pay and wait to be admitted, should any of the admitted elect fail to turn up at enrollment time. The souls in limbo would be admitted in numbers equivalent to the no-shows. Behind the scenes of course was the lobbying—the bane of every dean then and since for inclusion in the interview list, or for reconsideration of the rejects, by alumni, politicians, benefactors, the whole lot.

And so school year 1971-72 began. It proved to be a momentous year for the College and for the nation. It was the last normal year before the darkness of Martial Law engulfed the land.

The Constitutional Convention (Con-Con) had opened its sessions (elections had been held in November of the previous year). Former President Carlos P. Garcia had been elected Con-Con President defeating his rivals Diosdado Macapagal and Raul

Manglapus. Amid a worsening national crisis brought on by a rising activism and a President in Malacañang whose unpopularity was increasing by the day, Garcia sought to raise national morale with his inaugural speech entitled *Sursum Corda* (Lift up Your Hearts). That speech was to be his last—a few days later, Garcia was felled by a massive heart attack. He was succeeded by another former President, Diosdado Macapagal, whom he had bested in the election for ConCon president but had lost to in the much earlier presidential election of 1961.

In the University, student council elections were scheduled soon after the opening of the school year. This time there were only two candidates for Chairman: Reynaldo Vea, an engineering student, and Manuel Ortega, a third-year law student who had run and lost the previous year. It was a bruising campaign. Vea, running under the banner of Sandigang Makabayan, was backed by the activists and the ideologues, whereas Ortega (standard bearer of KAMP, or Katipunan ng Malayang Pagkakaisa), by the so-called moderates and the fraternities (which seemed to have learned their lesson from the previous year's debacle, when they fielded separate candidates against the activists' man).

It was also bruited about, as a left-handed compliment, that Ortega, with his matinee-idol good looks, was the candidate (and the heartthrob) of the not-too-intelligent coeds. In any event, the campaign turned dirty, with a good deal of mud being flung at and by both sides; it assumed the prominence of a national electoral campaign, carried even by the national dailies. The elections were held on Friday, August 6, with Ortega emerging as victor. He won big in the law school, of course, and in a couple of other units. In most colleges, however, it was touch-and-go.

Within that month, however, that campus hoopla became less than a tidbit, because on August 21, a grenade blast jolted the entire nation more strongly than the mammoth earthquake in April the year before. The bombing of the Liberal Party rally at Plaza Miranda

left the leading members of the opposition, most notably the highly-regarded Jovito Salonga, one of our most eminent alumni, maimed and wounded. The reverberations were cataclysmic: Ferdinand Marcos suspended the privilege of the writ of *habeas corpus.* It was not to be restored until Christmastime, four months later.

But life in the law school went on. Its sixth decennial was honored by the Bureau of Posts with the issue of beautifully-designed commemorative stamps. The formal presentation took place at the Post Office, with Dean Cortes, Myrna Feliciano, then law librarian, and myself representing the College.

When the school year ended in April, 1972, the law school, continuing the practice begun the year before of holding separate commencement exercises, this time invited as guest speaker a titan of Philippine law, J.B.L. Reyes, who in a few months was to retire from the Supreme Court. No better choice could have been made. His speech to the graduates of 1972 is, to my mind, comparable in its loftiness to the celebrated speech of William Faulkner at the Nobel Prize awarding ceremonies. He ended the speech thus:

> I shall conclude by pleading with the new graduates that they indelibly engrave in their hearts a maxim we have inherited from the great lawyers of antiquity – *'Non omne quod licet honestum est'* Not everything that is permitted is honorable. Do not equate law, which is but the tool, with justice, that is the ultimate goal. Ever abide in the ways of honor and may the Almighty be with you.

Those stirring words, in the perspective of what was to happen later that year, were both an elegy to freedom and a flame of hope amid the approaching darkness.

PROCLAMATION 1081

The summer of 1972 was, in most respects, no different from those of the past years. The College offered summer courses, among which was one handled by the inimitable Bart Carale. The final exam he gave in that course carried the heading "Summer of '72," a take-off from the novel so popular at that time and the movie based on it: *The Summer of '42*.

Through the summer months, talk was rife that the presidential elections scheduled for November of the following year would take place after all and that Imelda Marcos would be fielded by the administration. It was generally presumed that the opposition standard-bearer would be Ninoy Aquino. Predictions of Martial Law, so prevalent in the past months, had somehow abated and were now dismissed by many as doomsday charlatanism. The columnist Doroy Valencia, widely regarded as unofficial spokesman of the Marcos regime, declared pontifically in his daily column, "Over A Cup of Coffee," that whatever rumors of impending martial law were all political hullabaloo and were the best proof of a simmering political cauldron presaging elections in 1973.

Even the frequency and intensity of the demos seemed to be on the wane. The surface signs seemed to indicate a gradual normalization. The public of course saw only these superficial indicators. Beneath the surface, unseen by and unbeknownst to all but the select circles privy to the most covert designs of the regime, moved forces that would bring disaster.

In the law school, the usual activities took place preparatory to the opening of still another academic year—the interviews of freshman applicants and the registration after that. The annual student council elections also took place: the political and ideological alignments of the year before fought a rematch, this time with the opposite result: the activists' candidate, Jimmy Tan, of the medical school, bested the moderates' Ed Robles, a senior law student. The

campus campaign, however, though spirited, was nowhere as acrimonious as the past year's.

In July and August, as if to presage the impending political deluge, Nature went berserk. Rains started falling without let-up. The clouds seemed inexhaustible, pouring torrents without end not only on the hapless metropolis but over most of Luzon. Many were reminded of the seeress Jeanne Dixon's vision of Luzon becoming part of the sea. In fact, people looking down at the island from the air said that from above, Luzon did look like a huge lake. The city was paralyzed, its streets remaining underwater for days. When the floods subsided and the sun finally showed itself again, the roads, their asphalt washed away by the floodwaters, turned to dusty thoroughfares, forcing the city's residents to wear hats, caps, and bandannas to prevent their hair from turning blond. The law school, like all other colleges, remained closed for weeks. When it opened in August, the resumption was but a brief prelude to a longer and more terrible closure.

By the second half of September, the rhythm of normalcy seemed at last to have returned to the College. The lessons were of course behind, owing to the extended suspension caused by the rains and floods, but professors and students were coping with the time loss. It was thought that perhaps, the semester could be extended by only a week or two. But it was not meant to be.

On Friday evening, September 22, the night classes were in full session. I was holding a class in Succession. The lesson that night was conditional testamentary dispositions. The classes ended at nine. Driving out of the campus along University Avenue, we (I had hitched a ride with a student) noticed several Metrocom cars coming in—an odd thing, I thought, but perhaps some crime had been committed on the campus, more serious than the University security could handle, some serious break-in perhaps or a kidnapping, or a homicide. I thought no more of it.

The following morning, September 23, as I was preparing for the morning classes at the Ateneo (I was then enrolled in graduate courses in literature), I turned on the radio for the morning news. What I got was the crackling sound of static. Nor could I get news from the morning papers because the newsboy didn't deliver any. I took a cab for Loyola Heights but I did not get very far; the taxi driver, better informed than I, quite matter-of-factly told me that Martial Law had been declared. Actually, it had not – not publicly anyway. Later that morning, when I turned on the TV; all the channels were dead except Channel 9, the KBS station, owned by somebody on the President's good side. There were no regular programs on the station either but across the screen was written: "Stay tuned to this station for a very important announcement."

In the law school, Saturday classes were in session. But well before noon, the soldiers came. Mrs. Nena Agbayani, the College's administrative officer, was at her desk as usual at nine that morning. The men in uniform asked her the whereabouts of the students they were after—students identified with the activist groups, students known for civil rights advocacies, students who were critical of the Marcos regime. Mrs. Agbayani was so cool as a cucumber; of course she had no information to give. Of course, she didn't know their whereabouts; all she knew was that they were enrolled in the law school. Most of the students on the list were not there that morning—they had heard rumors ahead of time. The few who were there were taken to the stockade; the rest, the soldiers eventually picked up.

As for the arrested professors, some of them were identified, a few closely so, with the activist movement, some were known to have ideological biases, some were simply libertarians and dissenters. A number of them had been picked up by the men who came in Metrocom cars the night before. There were a few surprises though. Some were picked up who were not generally considered to be on the list, and more perplexingly or perhaps (in the light of subsequent events) not so perplexingly, some who were thought to

be strong protesters, were not touched.

That night, true to Channel 9's promise, the important announcement was made. Ferdinand Marcos and Secretary of Information Francisco Tatad went on air. A grim-looking President told a stunned nation that he had imposed Martial Law "to save the Republic." A midnight-to-4 a.m. curfew was declared. Then the Secretary of Information read the fateful proclamation. Perhaps for anesthetic purposes, memory has a way of trivializing experience. It is funny that the only thing I remember of that scene is Kit Tatad repeatedly extending his right hand downward; apparently to ward off mosquitoes or to scratch his leg. Later he claimed that he was pulling up his socks. Well, after all, Nero fiddled while Rome burned.

Again, classes in the College and everywhere else were suspended, this time indefinitely, without any assurance of resumption. Dean Cortes, the staff, and I continued to report for work, even if there was not very much work to be done. Once in a while, students would come to inquire when classes would be resumed. My usual answer was: "Ask Malacañang."

It was desolate time. Everything seemed to lie fallow. Perhaps it was symbolic of that time that, in our literature class, when classes finally resumed, Malraux's "Man's Hope" was replaced on the reading list with Bronte's "Wuthering Heights."

But classes did resume, albeit with an aura of uncertainty and tentativeness, sometime in November. Examinations were not held until December and the second semester opened in January. School year 1972-1973 finally closed in May 1973, and after a mere three-week break, the next school year – 1973-1974 opened in June. That was the shortest summer vacation in memory. In the midst of a political turmoil, even time is out of whack.

Gradually, however, things did normalize, and the College recovered its stride. Looking back, one is amazed at the resiliency even of old institutions, *especially* of old institutions. If one does come to think of it, a living thing—and the College is a living thing—would not exist long enough to become old unless it were resilient. Not only did the College return to normal, it took some significant steps. After all, if the College survived a world war and an invader's occupation, there was no reason to suppose that it would not survive Martial Law and a dictator's iron fist.

The class of 1973, like its predecessor classes, marched up the stage in May. Their yearbook, *Memorandum*, a name carried over from the yearbook of the previous class, recalled that it rained on their graduation day (a symbol as ambivalent as the times). But before that rainy university graduation day, they had the college graduation rites, which had become a practice since 1971. The speaker was former Dean and then Justice Secretary Vicente Abad Santos. He chose to make it a light-hearted speech, full of jokes and banter, so different in content and texture from the graduation speeches of the two previous years. The flabbergasted Dean Cortés, between the many humorous cracks of the speaker, asked in a stage whisper: "Where's your speech?" It was a question the speaker either ignored or failed to hear. But Dean Cortés, serious by temperament, had a jovial side and could be a real trouper. Realizing that no formal speech was forthcoming, she decided to enjoy the jokes and laughed as heartily as everyone else.

We had a welcome addition to the full-time faculty when school year 1973-1974 opened. Buddy Carlota, a schoolmate and friend, had just finished his graduate studies in Illinois. He had applied to teach and joined us in June of 1973. I was elated at having him as a colleague, not least because there was finally a full-time faculty member junior to me to whom I could pass on the not exactly enviable post of College Secretary. I took up this matter with Dean Cortés (who, by the way, had just been appointed to a second term as Dean, a term which now ran for five years instead of the original

three). She acceded to my request for relief as Secretary but her accession carried an onerous condition: I was to take over the faculty editorship of the law journal, a position which I assumed when Buddy Carlota took over as Secretary.

EPILOGUE

The next few years saw some changes, chief of which was the conversion of the senior review courses into electives—a happy compromise, as already pointed out, between those who favored their retention in the curriculum and those sanguinely for their abolition. This conversion, though, has, to a large extent, been merely nominal. Students in overwhelming numbers choose these review courses (not, one suspects, out of purely academic or scholarly motives, but as a drill for the bar exams. To call these courses electives has become incongruous.)

At about the same time, the evening program was lengthened to a five-year course. The academic load for the evening classes, now spread over 10 semesters, thus became lighter. Hand in hand with this change, it was now required that, to enroll in the evening section, one had to be a working student, and proof of this, in the form of a certification, had to be submitted. There were two reasons for these changes regarding the evening program—first, to make it more feasible for a working student to meet the demands of law studies, and second, to prevent full-time students from enrolling in the lighter evening program and thus gain an unfair advantage. Whether these objectives have been met can be debated.

This narrative ends with school year 1972-1973. It focuses on three calendar years—1970, 1971, 1972— a mere three percent of the College's first century, and then only a fraction of the events of those momentous years. But if this narrative has succeeded in revealing, no matter how clumsily, part of the official and human face of the College during a period which was but an episode, though a crucial

one, of its life, it shall not have been entirely useless.

As a kind of epilogue to this story and to close the circle of the narrative, we journey in time to a morning 13 years later, in February 1986. The snap elections had been held, but as the Catholic Bishops Conference (CBCP) declared in a pastoral letter, "the elections were unparalleled in the fraudulence of their conduct." The Comelec computer operators had walked out and sought refuge in Baclaran Church, announcing in the most public manner that they had been compelled to tamper with the election returns. A rubber-stamp parliament had impudently declared the loser as the winner based on fabricated figures. Cory Aquino called for a mass boycott and protest. The College was not insensitive to these historic events. A vast majority of the faculty members agreed to boycott their classes, and many decided to end the semester.

On a sunny morning that fateful February, I met my class in Civil Law Review for the last time, not in the usual classroom but under the trees by the driveway in front of Malcolm Hall. As best I could, I tried to explain to the students the meaning of the word civil: that it referred to a citizen, that it encompassed the role, the rights, and the duties of being citizens, that at that critical moment of the nation's life, in the loftiest sense, the word civil meant to stand proud and defiant against those who would debase that civil to the servile. We then bade each other goodbye.

On the morrow of that valedictory meeting under the trees, it began. It became the nation's bravest hour. It had no name at that time, but later they called it simply EDSA.

An American Professor at U.P. Law: Memories and More, 1981-2011

OWEN J. LYNCH*

EARLY YEARS

I FIRST ARRIVED in the Philippines on August 28, 1980, fresh out of The Catholic University of America's (CUA) Columbus School of Law in Washington, D.C., and having just taken the Minnesota bar examination a month before. Earlier that year, the U.S. Peace Corps had recruited me for a two-year tour as a volunteer attorney in the Philippines for their new, innovative, and short-lived Upland Community Development Program.

The program was the result of lobbying by in-country Philippine Peace Corps Volunteers (PCVs) who were attracted to the special challenges, cultures, and opportunities posed by unhispanicized upland groups, referred to at the time as National Cultural Communities. The volunteers had also lobbied for the recruitment of an attorney volunteer who, it was hoped, could help the local communities secure legal recognition of their ancestral domain rights.

To my father's enduring chagrin, I was the recruit. I underwent 10 weeks of intensive Tagalog language training at the beautiful Boy Scouts' Jamboree site at Mount Makiling in Los Baños, Laguna. After which, I found a place to live on Katipunan Road in Loyola Heights, Quezon City. Not knowing how to begin,

* Visiting Professor, University of the Philippines College of Law

I arranged to work as a volunteer in the Bureau of Forest Development's (BFD) Forest Education and Extension Division (FEED) in the then Ministry of Natural Resources (MNR) on Visayas Avenue, just off Quezon Circle. I became active in the Upland Development Working Group funded by the Ford Foundation. The group promoted social forestry and assisted in the preparation and editing of various brochures for distribution to the general public.

I also began visiting PCVs working and living in the uplands among so-called ethnic minorities, who were then also called Tribal Filipinos. I travelled to Mindoro, Mindanao, Palawan, Zambales, the Cagayan Valley and the Gran Cordillera of northern Luzon on two to three-week trips. I was fortunate to hike and stay for days in remote and spectacularly beautiful locales alongside the South China Sea to traditional villages adjoining terraced mountains in Ifugao and Mountain Provinces. Best of all, I was warmly welcomed by local communities who knew of and welcomed my arrival and professional objectives, thanks to the committed volunteers who worked with them.

The Hanunoo Mangyan community of Malutok in the hills east of San Jose, Occidental Mindoro especially lingers in my memories. Malutok was home to two generations of volunteers and more than 150 indigenous people, led by a charismatic and intelligent young man named Bido Wagan. I took up Malutok's cause and after a much focused determination in 1982 helped to navigate through the BFD's Central Office a 25-year renewable lease of 1,340 hectares of ancestral domain. The irony was that according to the then largely unknown Philippine law, they should have received a Certificate of Ancestral Domain title. Nevertheless, the lease to the Pundasyon Bagong Buhay ng Gubatnon, Inc. was a positive development and helped catalyze the establishment of a nationwide community forestry program, with the 25-year renewable community forestry lease as its hallmark. The program endures today.

It became evident early on that I was unlikely to help many indigenous Filipinos to secure legal recognition of their ancestral domain rights while working at the BFD. I opted during my first year in Manila to visit the U.P. College of Law and explore what other opportunities there might be. I remember well the day in 1981 when I first walked up the hill to the Law Center. My first meeting was with Prof. Myrna Feliciano, the Law Librarian, who not only warmly welcomed me to the College, but immediately offered full access to the law library's resources. Unbeknownst to me at the time, that meeting and Prof. Feliciano's welcome marked the beginning of a 30-year relationship with U.P. Law that I trust has been mutually beneficial.

One of the most rewarding aspects of meeting Prof. Feliciano was being invited for lunch to her spacious outer office on the second floor of the Law Center (the new law library only opened in 1983.) Over the next seven years I bought a lot of *baon* and rice and took it to Prof. Feliciano's informal dining area. I shared many lunches with her, along with Prof. Eddie Labitag, Prof. Carmelo Sison, and Prof. Doming Disini, Roshan Jose, and an occasional straggler. The conversations were often animated, and on rare occasions, disputatious. The interactions loomed large on my social calendar and I remember them fondly. The setting was not as fancy as the current faculty dining area in Malcolm Hall, but the camaraderie and conversations were rewarding.

NATIVE TITLE

Soon after, while I was in the law library researching Philippine Supreme Court decisions on property rights, I came across a little known, and often misinterpreted, 1909 decision of the U.S.

Supreme Court titled *Cariño v. Insular Government*.[1] The decision overruled the Philippine Supreme Court in a unanimous opinion written by no less than Oliver Wendell Holmes. The U.S. High Court held that when land in the Philippine colony "had been occupied and used since time immemorial ... it will be presumed to never have been public land."

My heartbeat quickened. I couldn't believe it, and I couldn't understand at that time why the decision was not widely known or understood, as it should be, by the Philippine Supreme Court and others in the legal community. I would only fathom this much later as my doctoral dissertation unfolded. Meanwhile, I was greatly affected, encouraged and inspired by the *Cariño* decision.

Thus I began in 1981 to draft in longhand my first of what have so far been six articles in the *Philippine Law Journal*. Zenida Antonio, then the administrative assistant to Prof. Feliciano, patiently typed and retyped my drafts over and over. I shared her excitement when she obtained a state-of-the-art electric computer that could backtrack and instantly erase a mistyped letter. I wrote and revised that article so often with my hand, that I developed something akin to carpal tunnel syndrome in my right shoulder that still pesters me today.

The article "*Native Title, Private Right and Philippine Land Law: An Introductory Surv*ey" apparently has been widely read in Philippine law schools in courses on land and property law for nearly three decades. For me, my first law review article was a public declaration that indigenous peoples did not violate Philippine law by living within their ancestral domains. Rather, the Government of the Philippines, primarily through the then MNR, violated the 1935 and 1973 Constitutions when it arbitrarily issued forest concessions, pasture leases, mining permits, and so-

[1] 212 U.S. 449 (1909); 41 Phil. 935 (1920).

called public land patents that overlapped with ancestral domains.

I first laid out this position publicly in March 1982 at an annual conference of the *Ugnayan Pang-Agham Tao* (Anthropology Association of the Philippines) in Iligan City. I could almost hear the air being sucked out of the room.[2] Most of the conference participants were, of course, excited and pleased to hear what I was saying. I expected that to a certain extent. My main worry as a PCV was what the Martial Law regime and the U.S. Government would think and do. (Oddly, I felt less safe personally in the Philippines for months *after* the demise of Ferdinand Marcos.)

I also commenced my peripatetic career teaching at U.P. Law in 1981. My first course on Comparative Human Rights Law in Southeast Asia was co-taught with the tenacious and brilliant Haydee Yorac and included the members of the Diamond Jubilee class of 1985-1956. When Haydee and I first met she gave me one of her notoriously imposing wide -eyed and scary frowns, but perhaps because it made me laugh, we became good friends and collaborators. I missed her presence in my latest return to U.P. Law.

I pause here to herald two other Filipinos who supported my fledgling efforts. The late Celso Roque, undersecretary of the MNR in the early 1980s and an early leader of the Philippine environmental movement, tuned in early to my efforts at the MNR/BFD. His support was unyielding, even as the political situation became increasingly muddled. Together we drafted the MNR Administrative Order No. 48 of 1982 which established the

[2] The next time I would speak at an UGAT gathering was 28 years later in October 2010 when I was keynote speaker at the 32nd Annual Conference "Kalikhasan in Flux: Indigenous Peoples' Creativity in a Changing Environment" held at the National Museum. I presented a paper titled *Mandating Recognition: International Law and Native/Aboriginal Title* that while global in important respects, was influenced by my first PLJ article.

regulatory guidelines for implementing the ministry's path-breaking Integrated Social Forestry Program. It was an innovative and progressive effort to reverse previous anti-*kaiñginero* — aka forest zone farmers — government programs and allow local individuals and forest communities to lease "public" land. Celso and I also took the initiative in 1988 to establish and raise start-up funding for an important and still vibrant public interest non-government organization, the *Tanggol Kalikasan*. It initially focused on litigation but now undertakes a broader array of important tasks, many of which are supportive of environmental justice, including community-based natural resource management.

The other is the late Senator Jose Diokno. To my great surprise, he visited me unexpectedly in my office at U.P. Law in early 1983. He came to encourage and support my efforts regarding indigenous laws and cultures. He is the only major Filipino politician to ever do so. Sen. Diokno told me that my work was important and necessary. Besides my enduring gratitude for his encouragement, what was almost as surprising was that the former senator was widely perceived at the time as being anti-American. That attitude was not present at our meeting. (I learned later that Sen. Diokno also queried the U.S. Embassy in Manila as to who I was, and that his grandfather was a U.S. citizen!)

PHILIPPINE INDIGENOUS LAW

I left the Peace Corps in August 1982. Before that however, I was fortunate to obtain on behalf of U.P. Law a two-year grant from the Ford Foundation's office in Manila for what was titled "The Indigenous Law Project." The project title was inspired by the late Prof. Perfecto V. Fernandez who had authored a path-breaking book *Custom Law in Pre-Conquest Philippines*.[3]

[3] U.P. Law Center (1976).

More than anyone else, Fernandez, also known as Mang Pecto, became my mentor during my initial efforts to learn about, understand, and teach the novel course "Philippine Indigenous Law." Among other things, the course was an indirect way to promote effective advocacy in support of the legal recognition of ancestral domain rights, and its eventual effect exceeded any reasonable expectation. It also introduced me to an array of students who soon broadened the ambit of my concerns.

Several former students, including former U.P. Law Dean Marvic Leonen, Ateneo School of Government Dean Antonio La Viña, and first lady Chief Justice Mei-Lou Aranal Sereno, conducted important research and wrote course papers that helped me understand various "top down" and "bottom-up" perspectives.[4] They and many more have successfully pursued professional careers in ways that have kept me inspired and searching over the years for opportunities to effectively address the still growing array of problems—legal and otherwise—that are related to the national identity, rural disenfranchisement, cultural degradation, sustainable development, and environmental justice.

The course on Philippine Indigenous Law was intended to familiarize U.P. Law students with legal norms and dispute settlement processes that do not necessarily derive their origin and legitimacy from the Republic of the Philippines but in many instances are still indigenous and community-based. By community-based, I mean to say that the primary legitimacy and authority is derived from the local community in which they arise, and not necessarily from the nation-state where they are located. In other words, not all legal rights derive from nation-states,

[4] Besides five former students mentioned in the main text of this essay, the Acknowledgements page of my dissertation also named six others: Eviess Acorda, Rosario Bernardo, B. Norman Kalagayan, Roan Libarios, Ma. Inez Marigomen and Maricar Sugayan who "broadened the ambit of my concerns...and are pursuing professional careers in ways that have kept me inspired."

including from the Republic of the Philippines. This is especially true in regard to human rights and other rights that are *sui generis* and emerge from natural law.

A good example is when the revered senators Jose Diokno and Lorenzo Tañada visited the Kalinga leader Macliing Dulag in early 1980. They offered to take the case of the Kalinga and other Igorots against the World Bank-funded and government-supported Chico River Basin Development project to the Philippine Supreme Court. The initiative threatened to involuntarily displace up to 100,000 people from their ancestral domains in the Chico River valley of the Gran Cordillera. Dulag is reported to have thanked the senators but declined their offer because the Kalinga already knew who owned their land and therefore had no need to ask a faraway court in Manila.[5]

Students of Philippine Indigenous Law were also encouraged to learn that Tagalogs and other Hispanicized Philippine ethnic communities have much in common with unhispanicized populations like the Kalingas, Mangyans, and Maranaos. Indeed I am convinced, today more than ever, that the old historical divisions and understanding of Philippine majorities and minorities are outdated, divisive, and harmful to the Filipinos' perception of their authentic ethnic identity and national aspirations.

Meanwhile, my first time in a classroom as the sole professor was in 1982 for the inaugural course on Philippine Indigenous Law. I vividly recall as the class began that I suddenly realized something previously unknown to me: that the professor

[5] Soon after on April 24, 1980, Dulag was assassinated in his own home in Kalinga by Philippine Army soldiers. Thirty years later, in my classes in 2010, only two of my 150 plus U.P. Law students knew who Macliing Dulag was. It merits noting that historic fact that the demise of the Chico River Basin Development Project was the first time a civil society coalition anywhere in the world stopped a World Bank financed initiative.

does not know everything about the class topic. I certainly did not and was abruptly startled by that crashing realization. I also sensed intuitively that I should not tell my students what I had just realized. After all, no professor of mine had ever professed her or his ignorance. To this day I believe it was smart to maintain that façade.

Oddly though, I committed my biggest mistake that same day in the same class. It was to tell my students that they need not stand up when I walk into the room, and that they could call me Owen. After more than 20 years of graduate-level teaching—including 16 years at Johns Hopkins School of Advanced International Studies (SAIS) in Washington, D.C. (1991-2006)—I still joke that that was the biggest mistake yet that I have ever made in a classroom.

I was 29 years old in 1982 and the youngest teacher then in the faculty of U.P. Law. Most of my upper-class students were only five or six years younger, and I think some male students especially took my more informal and relaxed North American style as an invitation to be friends, which was not my intent. In fact, because of that experience, I have ever since usually told my students on the first day of classes that I'm not there to be their friend. I tell them that I am there to facilitate learning, and I prefer to invoke inspiration over intimidation. Possible friendships can be considered after final grades are in. Indeed many former students subsequently became my friends. I even became a godfather to some of their children.

I also emphasized in my first class that there were three important matters that needed to be addressed at the outset. I announced that, number one, I was not a CIA agent, although I understood why I could be suspect to some. The classroom would typically erupt in laughter. Number two, there was no doubt there were a lot of CIA agents in the Philippines, especially with the growing political unrest and the presence of the largest U.S.

military facilities in the world outside of the U.S.. Muted laughter would ensue. Number three, I pronounced, somewhat smugly I suppose, that most agents look like them, not like me. The response was silence. I concluded by observing that the CIA had little relevance to a course on Philippine Indigenous Law and that we had much to discuss, so I began the class.

HOPE RENEWED

August 1983 was the culmination of my third year in the Philippines. The funding of Ford Foundation for the U.P. Indigenous Law Project would end in August 1984 and I was beginning to doubt the efficacy of my efforts. I felt frustrated and I wondered if it was time to return to the USA and launch my career there. Progress at the MNR/BFD was torturously bureaucratic, byzantine, and slow. It seemed as if there was little awareness of the need to respect public space or for those better off, to accept moral responsibility of their duty to help those in dire need. My research on the history of Philippine land law left me disappointed with the lack of commitment to justice and meaningful social change by most leading Filipino political figures throughout the 20th Century. Most irritating perhaps was that too often, simply trying to get on a bus or in a jeepney at rush hour was an unnerving and unpleasant experience. There was no order and everyone was pushing. I hated the shoving and lack of queues.

My mood would soon change though, and abruptly. August 21, 1983 is a day I shall never forget, along with many other extraordinary days that ensued. From the moment Senator Benigno Aquino was assassinated, he became to me and millions more a martyr in an epic struggle against a dictatorship with powerful foreign support.

I was deeply moved and angered by the assassination, and

knew immediately that there was high-level official involvement. A few days after, I went to Santo Domingo Church to pay my respects and view the bloodied body. Long before I even entered the church I stood amazed. There was a line that stretched for blocks with tens of thousands of people patiently waiting to view the bier. I had never seen anything like it and, at that moment, hope was renewed in me.

The funeral and its aftermath were extraordinary. I walked for hours the next day alongside the casket's route to Senator Aquino's final resting place. The crowds of waiting people were enormous and the sheer number and political sentiment they symbolized fuelled my renewing hope. The lead news story that night on government-controlled television was that several people had fallen from trees, but there was no mention of what prompted them to climb!

So I decided to stay. Then, only months later, another astonishing development occurred. Dr. Harold C. Conklin, a professor of anthropology at Yale University who conducted path-breaking work among the Hanunoo Mangyans and Ifugaos, had learned of my initiatives through his longstanding connections to PCVs and others in Baguio and beyond. We had met previously. Thus he invited me to dinner during his visit to the Philippines in January 1984. During our get-together, Prof. Conklin handed me an application to Yale Law School and encouraged me to apply. "What do you have to lose?" he asked.

All of us have dreams. But I never, ever had even dreamed of attending Yale Law School. I am the seventh of 12 children from a third-generation Irish Catholic family. My father was a used car salesman, albeit an incredibly talented one. We lived in a big house that had once been a nuns' convent, in a blue collar, working class neighborhood in north Minneapolis, Minnesota, in the Upper Midwest of the USA. It is virtually impossible for young adults from that kind of background to be admitted to Yale

University, let alone Yale Law School. But with nothing to lose, I applied.

Lo and behold, to my shock and awe, I was admitted with a full scholarship plus stipend to the Master of Laws (LL.M.) program beginning in September 1984. I have never fully understood how. After all only 14 people are admitted to the masters program each year. Perhaps my application was mixed up with someone else's, or maybe I was chosen for an Asian slot for the 1984-1985 academic year. In any event, I hope I merited the admission.

So I returned to Minnesota in August 1984 and arrived the following month in New Haven, Connecticut for the start of the school year. I was drawn early on to renowned professors W. Michael Reisman and Michael Posner, both experts in international law and human rights issues. I took Ethnology in Insular Southeast Asia in the Anthropology Department with Prof. Conklin and wrote my first comparative study of ancestral domain rights in the Philippines and Indonesia. (In fact I learned way more about Indonesia in New Haven than I had during my first four years in Indonesia's neighbor, the Philippines!)

In addition, I took courses on U.S. Indian Law, Legal Anthropology, Law and Sociology, Liberation Theology (in the Divinity School), International Human Rights Law, and Jurisprudence. The last course was my second under Prof. Reisman after World Public Order. The professor then supported my application to enroll in the JSD (Doctor of the Science of Law) program with him as my supervisor, and I was accepted.

By then I was deeply worried about the lack of basic knowledge and understanding regarding Philippine legal history, and the ubiquitous, simplistic mantra and belief about the good intentions of North American colonizers in the Philippines. I had heard enough in the Philippines about how the colonial laws left

by the U.S. were good but that implementation by Filipinos was bad. Talk about skilful public relations coupled with self-blame and abnegation by the subjugated!

Initially, the primary objective of my dissertation was to develop a national description and analysis of indigenous Philippine laws among various unhispanicized groups and to identify interconnections with Hispanicized groups and Philippine national laws. But, as I began my research, it became evident early on that the more pressing need was to deconstruct and analyze the history of colonial and post-colonial land law in the Philippines.

It perhaps merits emphasis that I did not enter the JSD program to get a third postgraduate law degree. By then it almost seemed irrelevant. I entered the program to better assure support for further study on promoting social and environmental justice and sustainable development in the Philippines. I believed then, and still do, that when Filipinos better understand the unjust connections between colonial-era and contemporary land law, political support for meaningful agrarian reform and legal recognition of ancestral domain rights will grow, as will broader acceptance and appreciation of the nation's indigeneity.

RETURN TO THE PHILIPPINES

After doing research for my dissertation in New Haven, Washington D.C., Ann Arbor, Michigan, and Berkeley, California (where I was when the Marcos regime collapsed with extraordinary media coverage in the San Francisco Bay area), I returned to the Philippines in May 1986 using a one-way ticket, purchased by close friend Bridget Ann Ryan. My mother was near-death, and my father was angry and unwilling or unable to grasp any noble or worthwhile purpose in my determination to

return.[6] Simply stated, a more fair and accurate story needed to be written about the enduring U.S. colonial land laws in the Philippines, and I was uniquely positioned to try and offer one.

I arrived in Manila broke, sad, and with my bicycle in tow. I slept for several weeks in my office in Malcolm Hall. At night I sometimes felt I could sense the spirit of Malcolm in the then dark and empty hallways! I did not realize until years later that some former students and friends actually knew where I was living but maintained discreet silence. I like to think their awareness helped allay any remaining worries about my motivations and CIA (non-) connections.

Soon after, I secured a smaller grant from the Ford Foundation, to which I am especially grateful. I found a place in Teachers' Village and in 1986 became one of the first U.P. professors to commute via bicycle to the Diliman campus. It was where I began composing my dissertation. Fortunately, before I left the USA once again for the Philippines, following the death of my mother in September 1986, my father and brother Loren purchased for me a then high-tech (now seemingly heavy and ancient) Kaypro portable word processing computer. It made an enormous difference (no more repeated writing and retyping!) and explains in part how my dissertation ended up being 736 pages long, to be exact.

The years 1986 to 1988 were largely spent teaching Philippine Indigenous Law and writing. I also embarked on an unplanned effort to catalyze the creation of public interest law NGOs focused on promoting environmental justice, especially

[6] The day before my return to the Philippines was the last time I saw my mother alive. She was back in the hospital again. I went to visit her full of sadness and with a piece of paper in tow. I proudly informed her that I had finished the first page of my dissertation, and handed it over. She read the dedication page "To my Mother, Elaine Catherine Lynch" and was pleased. So was I. I later unexpectedly added my father's name, Owen J. Lynch Sr.

with regard to the legal recognition of ancestral domain rights. I was prompted by an inquiry from a program officer at the Asia Foundation in Manila. He wondered whether any of my U.P. Law students would be interested in pursuing public interest law careers, implying that the Foundation would be willing to fund their start-up.

Soon after, without hesitation, I approached Marvic Leonen. I remember well the day I located him studying in the U.P. Law library. I sat down at his table, asked if he had a minute, and proceeded to inquire "If you could do anything you want after law school, what would it be?" I then described to him my conversation with the Asia Foundation. If I recall correctly (and it was nearly a quarter century ago), Marvic asked for time to think about it and promised to get back to me shortly.

Months later, the Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK) was established with funding from the Ford Foundation. LRC-KSK has long refused to accept any direct funding from the U.S. Government. The Asia Foundation is partially supported by the U.S. Government.

LRC-KSK's four founders were all former students of mine in Philippine Indigenous Law, and all have had, and are having, distinguished careers. Marvic became executive director of LRC-KSK and professor and Dean of the U.P. College of Law, and more. Antonio LaViña is a leading world expert on climate change, former Undersecretary of the Department of Environment and Natural Resources (DENR) and current Dean of the Ateneo School of Government, and more. Antoinette (Nonette) Royo-Fay has served as Vice-President for Social Development and Research at Xavier University in Cagayan de Oro and is a co-founder of the progressive and creative Samdhana Institute in Bali, Indonesia (of which I am a fellow), and more. Gus Gatmaytan, meanwhile, is the most anthropological of the four and of any lawyers I know

anywhere, having lived for years after U.P. Law in Manobo villages in northern Mindanao. He is now engaged in his doctoral studies at the London School of Economics.

THE INDIGENOUS PEOPLES RIGHTS ACT (IPRA) OF 1997

I was aware from afar that the movement in favor of legal recognition of ancestral domain rights was gaining steam in the Philippines in the 1990's, thanks in large measure to LRC-KSK, other public interest NGOs, including TK, PANLIPI, and PAFID, and a wide national array of indigenous and other peoples organizations, civil society and church groups, as well as key allies in the Philippine Senate and House of Representatives, particularly Senator Juan Flavier.

I still think it absolutely incredible that they successfully navigated a bill in 1997 through both houses of congress that was then signed by President Fidel V. Ramos. The law is titled the Indigenous Peoples Rights Act of 1997. I could not have reasonably hoped for its enactment—in a best case scenario—before the 2020s, if ever, but it happened more than two decades earlier than I had even imagined possible.

From my vantage point, the mining, logging, and agri-business industries in the Philippines must have been clueless about IPRA.Regardless, they tuned in closely once IPRA became law. The most prominent response by the mining industry was to secure the services of former Supreme Court Justice Isagani Cruz. Justice Cruz attacked IPRA before the Philippine Supreme Court as being unconstitutional and in violation of the mythical Regalian Doctrine. Fortunately, he did so under the first truly democratic Filipino constitution of 1987,[7] a Constitution passed after the

[7] The 1987 Constitution superseded the Martial Law Constitution of 1973. The previous 1935 constitution was promulgated pursuant to U.S. Government directives in the Philippine Commonwealth and Independence (Tydings -

ascendency of Corazon Aquino, the wife of the martyred Benigno, to the Philippine presidency during 1986.

I literally could not believe it at first when I learned from Dean Leonen while in Washington, D.C. in December 2000 that the Philippine Supreme Court had upheld IPRA in *Cruz v. Secretary of DENR* by a vote of 7 to 7, a tie vote, meaning the constitutionality of a law being challenged is upheld. Almost as astonishing was that the High Court cited my research more than once in support of the prevailing decision. What a thrill! I felt humbled, honoured, and pleased beyond words. I prayed that perhaps in some small way the people of the USA had atoned for their colonial foray in the Philippine Islands.

LRC-KSK, which is on its 24th year, remains the leading environmental justice NGO in the Philippines. I believe that had there not been a LRC-KSK, there would not today be an Indigenous Peoples Rights Act of 1997 or a favorable Philippine Supreme Court decision upholding its constitutionality in 2000. I am enormously pleased and proud of LRC-KSK's accomplishments, creativity, innovation, and ongoing achievement. As I once heard on the Gran Cordillera of northern Luzon, "may their tribe increase!"

COLONIAL LEGACIES IN A FRAGILE REPUBLIC

I left the Philippines shortly before Christmas in 1988[8] and spent

McDuffie) Act of 1934. It mimicked the U.S. Constitution in parts, including the absurd proclamation that "Sovereignty resides in the people and all government authority resides in them." That was patently false until at least 1946.

[8] Before leaving in 1988, I donated my collection of books to the U.P. Law Library, which established the Philippine Indigenous Law Collection that is relatively intact today. Prior to my return in 2010 I shipped over another 200 plus books and donated them. I believe it was one of the best Filipiniana collections in North America at the time. My hope is that the expanded collection will be renamed the Philippine Law and Social Science Collection, and facilitate better

most of the next year in Minneapolis living with my youngest sibling Matthew while trying to wrap up my dissertation. I remember my *inaanak ng pamangkin*, Kevin Timothy Lynch, then about five years old, visiting me in 1989 and seeing an already thick pile of papers on the floor nearby. He asked what they were and I explained I was writing a long story called a dissertation. He stared at the pile of papers and earnestly asked with wonderment in his eyes "Is every page different?"

I left Minnesota on September 7, 1989 to begin what my father described as "my first real job" ever since graduating from law school nine years earlier. He brought me to the airport and tragically died later that same day. I returned unexpectedly the next morning to Minnesota. As the only lawyer in my family (still), I bore responsibility for helping process my parents' estate and more. I returned to the Philippines for Christmas a few months later to get away, to mourn, and to heal amongst friends. After that, I left once more to launch my career in Washington in late January 1990, the day after my younger brother Theodore Owen was diagnosed with full-blown AIDS. (He died the following year in yet another September.)

Meanwhile, I was nearly obsessed with completing a great dissertation: an obsession I understand is fairly common among doctoral candidates. But there were many distractions and things to do in D.C., and thankfully a thoughtful friend in October 1991 picked up the latest draft of my dissertation from the floor of my apartment and said "I think you're finished. I'm going to bring these pages to the binder." I nodded silently and the die was cast.

My dissertation, titled "Colonial Legacies in a Fragile Republic: A History of Philippine Land Law and State Formation with an Emphasis on the Early U.S. Colonial Regime (1898-

---

understanding of the connections between law and society in the Republic of the Philippines.

1913),"[9] was submitted to my committee, which included Profs. Conklin and Reisman in 1991, and was approved. I received my Doctor of the Science of Law (JSD) degree in May 1992. To my total surprise, I was also awarded the Ambrose Gherini Prize for the best work in international law at Yale University in 1992.

Although it was focused on the colonial era, my primary objective in writing the dissertation was to identify and analyze the rationale for and the initial impacts of Philippine land and other natural resource laws, many of which are still invoked, albeit in various reiterations, as of January 2011. The most important decade in my inquiry proved to be 1894-1905. Aside from the Philippine Revolution, this decade included the enactment of the Maura Law, Spain's unilateral revocation in 1895 of its long-standing historical commitment to recognize and protect undocumented ancestral-domain rights in its Philippine colony.[10] It also witnessed the promulgation of the still-enduring U.S. colonial framework for allocating and recognizing legal rights to land, forests, and minerals.

The dissertation was intended to do more than break new intellectual ground. It contains a significant amount of original research and insight. But another turned shovel is not likely to stir the minds of policy-makers and students mired in ignorance and with little access to reliable information. In my early years at U.P. Law, I learned firsthand of students' thirst for a more comprehensive and inclusive understanding of the nation's legal heritage. Their interest and the absence of easily accessible materials prompted me to also undertake a synthesis of previously scattered historical information and analysis.

---

[9] Other names I considered for the dissertation were "In Search of *Kalayaan*," "Invisible Peoples," and "Colonial Legacies in a Misbegotten Republic."

[10] Contrary to a still widespread, and incorrect, understanding of Philippine legal history, the Maura Law of 1894—a mere four years before the U.S. acquired sovereignty in the Philippine Islands—is the theoretical origin of the mythical, misunderstood, and often oppressive Regalian Doctrine. It was effectively overturned in 1909 by the U.S. Supreme Court decision in *Cariño v. Insular Government*.

Ultimately, the dissertation's most important finding was that the enduring U.S. colonial framework for allocating and recognizing legal rights to land and other natural resources had a hidden agenda. It was designed to prevent, not facilitate, the issuance to small holders of any formal documented grants or recognition of land rights from the Hispano-American colonial state. In other words it was purposefully constructed to not work as purported.

This is in total contradiction to the longstanding—and perhaps the still-prevailing—view that U.S. colonial era land laws were intended to help build a future nation of small landowners. The opposite was actually true. The Taft Era colonial land and other natural resource laws were intended primarily to be investor-friendly, especially for large corporations like the American Sugar Refining Company and the Georgia Pacific Timber Corporation.

The Taft era colonial regime (1899-1914) was closely allied to and especially supportive of the U.S. sugar cane industry (also called the Sugar Trust). For its part, the Sugar Trust was a hugely powerful political force in Washington, D.C. and was eager to import sugar cane duty free into the USA. That meant the U.S. would need to acquire more territory. Hawaii had already been taken, but production simply was not large enough. Cuba and Java were off limits, albeit for different reasons. But the Philippines Islands fit the bill, and once the U.S. acquired sovereignty, the Philippine Commission tried hard, really hard, to help the Sugar Trust.

The Commission was dominated in many respects by the highly unpopular birder, Commissioner Dean C. Worcester who surreptitiously collaborated with George Malcolm among others, to suppress the *Cariño* decision and calculatedly ignore it. The primary objective was to keep the legal landscape as

unencumbered as possible so that if and when the U.S. Congress lifted restrictions on the size of corporate holdings in the Philippine Bill (Organic Law) of 1902, large-scale sugar cane plantations could be quickly established. Indeed the Commission formally requested the U.S. Congress to remove the size limitations every year between 1903 and 1914 when Worcester resigned from his position, the same month that Taft's presidency ended. An alliance between congressional backers of the domestically produced U.S. sugar beet industry and anti-imperialists, meanwhile, prevented any change in limitations on the size of corporate holdings, the same limits that in 2011 are still in the Public Land Act (1024 ha or 2500 acres) today.

It is stunning to realize that the corrupted, colonial legal principles for recognizing and allocating legal rights to natural resources that were developed by the Commission in the first years of the 20th century still largely endure in 2011. The prime examples are the Property Registration Decree, the Revised Forestry Code, the Mining Act, and the Public Land Act that was last reconfigured in 1936.[11] What U.P. Law graduates will do about these corrupted colonial legal legacies in the 21st Century is yet to be known.

EXPANDING WORLDVIEW

Meanwhile, my focus and exposure to the world quickly began to expand after my move to D.C. I began working in January 1990 at the World Resources Institute (WRI), an international environmental think tank.[12] While there, I embarked on a much broader engagement with the world, and was the lead author of a collaborative 1995 WRI publication titled *Balancing Acts: National Law and Community-Based Forest Management in Asia and the Pacific*. (The nations collaboratively studied were India, Nepal, Sri Lanka,

[11] Commonwealth Act No. 141.
[12] See http://www.wri.org.

Thailand, Indonesia, Papua New Guinea and the Philippines.) The Philippines was prominently featured, largely due to my then ongoing research on native title and to increasingly innovative and expansive work by the now DENR Integrated Social Forestry Program, and of course my familiarity with and enduring fondness for the country.

In 1997, I moved to the Center for International Environmental Law (CIEL), a small progressive public interest environment law NGO.[13] At a staff retreat soon after my arrival, CIEL's lawyers were endeavoring to draft an external mission statement for the general public. At the outset, everyone but I agreed that the opening sentence should read "CIEL stands for the rule of law." I objected vigorously and nearly resigned on the spot! We haggled and after a short while we compromised. I accepted the adjective and the opening sentence agreed to read "CIEL stands for the rule of just law." My experience in the Philippines and other nations in the Global South gave me the confidence to insist on this important revision. It seems so obvious: not all laws deserve to be or should be enforced, especially if they are not just.

My work at CIEL built on my efforts at WRI and we expanded local partnerships in East, West and Southern Africa, Papua New Guinea, and South and Southeast Asia, including the Philippines.

During my time at WRI and CIEL I helped catalyze the establishment of several public interest law NGOs. They include the Indonesian Center for Environmental Law (ICEL), the Center for Law and Community Rights of Papua New Guinea (CELCOR), the Lawyers Environmental Action Team of Tanzania (LEAT), the Institute for Law and Environmental Governance of Kenya (ILEG), the Advocates Coalition for Development and the

[13] See http://www.ciel.org.

Environment of Uganda (ACODE), and the Zimbabwe Environmental Law Association (ZELA). I am enormously proud of all of these NGOs and their founders, which continue in 2011 to promote environmental justice and sustainable development.

From 1997 to 2002, I worked closely with the USAID-funded Biodiversity Support Program at the World Wildlife Fund to establish and implement a U.S.$10 million five-year public interest law initiative (aka BSP KEMALA) on community-based property rights (CBPRs). Dozens of lawyers and law advocates from throughout Indonesia were involved. My major contribution was another collaborative book published in 2002 and titled *Whose Natural Resources? Whose Common Good? Towards a New Paradigm of Environmental Justice and the National Interest in Indonesia.* Full translations into Bahasa Indonesia and publication were made of both of my major books at WRI and CIEL.

My engagement with the Philippines continued throughout my time in Washington, D.C. The primary means even before the new millennium dawned was through CIEL's Law and Communities Program Environmental Justice Project (EJP), which I took the lead in designing. EJP brought together three leading public interest law groups in the Philippines—the Manila-based Tanggol Kalikasan (TK), the Cebu/Palawan-based Environmental Law Assistance Center (ELAC), and the Davao-based Paglingkod Batas Pangkapapatiran Foundation (PBPF). Later, the University of the Philippines at Los Baños College of Forestry and Natural Resources Department of Social Forestry and Forest Governance joined as a fifth partner.

The funding throughout the project (1997-2007) was provided by the United States Agency for International Development (USAID/Philippines), with the steadfast and crucial support of Oliver Agoncillo. Under the auspices of EJP, CIEL's Philippine partners provided an extraordinary array of legal assistance to struggling rural local communities throughout the

nation that were grappling with an array of human rights and environment issues.

ANOTHER RETURN TO THE PHILIPPINES

Despite my marvelous experiences in Asia, Africa, and the Pacific, my Midwestern idealism was waning and increasingly endangered after more than 20 years of living in D.C. Even with the goodness, talent, and noble commitment of so many colleagues and friends, and the excitement of just living in Washington, D.C., I had never before lived amid so many ego-driven and ambitious alpha males and females. I came to realize that my ability to recognize integrity in people was not as good as I had long believed.

I had bought a house in D.C. in 1994, and I loved it. It was a large nearly century-old three-story brick townhouse (a shared walls row house). The Park View neighborhood of D.C. is primarily African-American, and after living in it for a few years some neighbors began calling me "O-Dawg," which I found endearing and a sign that I had been welcomed in my neighborhood. Gentrification was occurring in many inner city U.S. locales, including Park View. It occurred in my "hood" among other reasons, because a new Metro (subway) station opened in 1998, a mere three-minute walk from what was then my front door.

But I had had enough. After 18 years in D.C., I sold my house amidst the onset of the Great Recession of 2008. On Halloween weekend, just days before the first election of an African-American to the presidency of the USA, I left D.C. and drove 1,200 miles back to Minnesota with a small U-Haul attached to my 2006 Honda Civic.

It was good to be "home." I first left Minnesota for law

school in 1977 and had only moved back for about a year in 1989. In short, I had been away a long time, nearly three decades overall. During that time my family was growing almost exponentially. At the outset of 2011 I had 41 *pamangkin*, including eight *pamangkin ng tuhod* and seven *pamangkin ng batas* who married the children of my 11 siblings.

In hindsight, I believe it was also good for me to leave D.C. I spent time in Minnesota and caught up with siblings, *mga pamangkin*, in-laws and old friends. Coming back, I was reminded often of how much I missed of my family's lives during my many, years away.

Besides my family, Minnesota is one of the most straight-talking, progressive, and idealistic states in the USA, and folks who learned of my work were very encouraging. Minnesotans have consistently voted for the Democratic candidate for U.S. president in modern times longer than any other state in the union, and many Minnesotans yearn to be better connected and fair with the world.

I lived with my brother Daniel, along with Whippet (dog), Howey and Tabby (cat), and Hood, who came with me from D.C. Minnesota weather in December through February can be extremely cold and ice-laden, with the temperature sometimes falling to 15 degrees below zero Fahrenheit or less. It was quite a shock and adjustment for all three of us!

I should note that because of climate change, winters in Minnesota have become milder. Indeed, as an environmental justice lawyer, I have stopped resisting the pull of climate issues. On my return to U.P. Law I began to study, analyze, and safeguard climate justice issues with Dean LaViña and others. Few nations are more vulnerable to the potential wrath of climate change than the Philippines. The USA bears a disproportionate responsibility for the havoc that climate change may wreak,

although few people in the USA have realized this.

TWENTY TWO YEARS LATER AT U.P. LAW

After my rewarding experience in the 1980s, I had always wanted to return to U.P. Law, but doubted it would ever be possible, at least not until I retired, and that is still a decade away, maybe in 2021. The Philippines has long seemed to be my second home on Earth. But it never occurred to me when leaving D.C. in late 2008 for Minnesota that in a year and half I would return, after 22 years, to teach and do research again at U.P. Law. Thanks to a Fulbright scholarship awarded to me in June 2010, I was able to return much earlier than expected.

Overall, having been largely away from the Philippines from 1988 until 2010, I was pleasantly surprised upon my return to see firsthand how well the nation has coped, in some respects, with urbanization and its extraordinary and unsustainable population growth. The overall population doubled between the time I first arrived in August 1980 until January 2011. Yet Katipunan Road, where I lived for my first four years in the Philippines, from 1980 to 1984[14] has been reconfigured in intelligent and responsive ways to cope with ever increasing traffic. Over the past half year, thanks largely to the light rail transit system, I have not been stuck once in a serious Manila traffic jam, unlike during the 1980s in Metro Manila when I was riding jeepneys.

One of the biggest surprises since my return has been the

[14] Coincidentally, as I write this, I am living on the same block in 2010/11 that I did in 1980/84. During my first years I often walked across Katipunan Road in the early morning or late evening and onto the beautiful campus of Ateneo de Manila. The guards typically greeted me by saying "Hello father." I would smile and proceed to an outdoor swimming pool near dormitories alongside the magnificent ridge (hence Loyola Heights) overlooking the Marikina Valley. Unfortunately, the pool is no longer there.

realization that many people whom I have never met know of me. I did not know how widely my articles in the *Philippine Law Journal* and elsewhere have been read during the past two decades, thanks to Dean Pacifico Agabin, Prof. Dan Gatmaytan, and others. Indeed, since my return to teach at U.P. Law I have sometimes felt beloved—a great feeling, perhaps one that is truly in the grand manner!

Ironically, learning of the ongoing use of my writings has left me more frustrated with a decision I made long ago, haphazardly. I have a major professional regret, and that is not having published my dissertation in the early 1990s at Yale University Press and/or elsewhere, including U.P. Press. I wish I had done it when I began working professionally at the World Resources Institute and at the Center for International Environmental Law.

I had always felt it would be *mayabang* to publish a thick book, and I long planned to pare it down before publication. But I have yielded now, especially after understanding more fully the enduring dearth of and thirst for material on Philippine legal history. The entire dissertation, all 700 pages plus, is being reviewed and is slated to be revised for publication in 2011 by U.P. Press, as part of U.P. Law's year-long centennial commemoration.

REFLECTIONS ON GEORGE MALCOLM

Obviously Dean Malcolm holds special interest for an American professor at U.P. Law. After all, I too owe much to U.P. Law and Malcolm is widely understood to be its founder. At first glance, Malcolm and I might even be thought to have much in common. I prefer to think otherwise. We are both lawyers born, raised, and educated in the United States. Malcolm graduated in 1906 from the University of Michigan Law School; I from CUA Law School

in 1980. We both arrived in the Philippines right after law school and began teaching at U.P. Law in our late twenties.

But the similarities end there. Although Malcolm's name still adorns the building where the College of Law is located (and where I slept for several weeks), I heartily support another name for the building in which the main law school classrooms and faculty and administrative offices are located. I have heard some faculty members favoring a name change to Mabini Hall, which, besides being more nationally and historically appropriate, would maintain the first two letters of the building's current name.

Here are my reasons: Whether or not Malcolm catalyzed the establishment of the U.P. College of Law is not clear to me, despite his acknowledged interest in teaching law. This was evinced by his work at the new English language law school established at the American-European YMCA of Manila in 1910.[15] For its part, after its founding in 1908, the University of the Philippines sprouted an array of educational institutions.

Surely it was evident at the founding of U.P. (and even more so by 1910) that a law school would become an important component. In other words, it is my impression that the 29-year-old Malcolm—with less than five years as an eager colonial subordinate in the Philippine colony – may merely have been opportunistic and was in the right place at the right time. He was the first and only U.S. citizen to ever serve as Dean, until his appointment in 1917, at the age of 36, to the Philippine Supreme Court. (Malcolm continued teaching at U.P. until 1936.)

Malcolm's time in the Philippines spanned the early era of

---

[15] The faculty was made up entirely of U.S. citizens and the student body was mostly Filipino. The forty-four students who completed the first year of the YMCA course were allowed to enroll the next year at U.P. Law as sophomores. Leopoldo Yabes, FIRST AND FOREMOST: A HISTORY OF THE COLLEGE OF LAW, UNIVERSITY OF THE PHILIPPINES. U.P. Law Center 6-13 (1982). ..

U.S. Philippine colonialism of which he was an active and eager participant. Malcolm reportedly "liked to identify himself as a young American colonial careerist,"[16] a label I would vigorously shun. Malcolm played a key role in legitimating the political ascendancy of U.P. Law's elite alumni, and in uncritically bolstering the legal and bureaucratic colonial frameworks established by the defunct Spanish regime and its U.S. successor, a legal framework primarily beneficial to the colonizers and later collaborating native elites.

My time in the Philippines by contrast began in 1980 as a Peace Corps Volunteer attorney, decades after Philippine political independence had been attained in 1946 and only a few years after the end of the tragic U.S. war in nearby Vietnam with almost eerie comparisons to the Philippine-American war.[17] My Philippine sojourn commenced during the waning years of Martial Law and I witnessed many political demonstrations, including many on the campus of U.P. Diliman, which were accompanied by the ubiquitous chant "*Ibagsak ang diktadura US/Marcos*." I was already post-nationalist in my worldview and knew that colonialism was inherently unethical, regardless of which country the colonizers came from.

---

[16] Yabes, *id.*, 20.

[17] A profound, tragic, overlooked and enduring outcome of the skilful disingenuousness of the U.S. colonial regime is that in 2011, there is still no national monument or memorial—over a century later, and sixty plus years of political independence—commemorating the death of an estimated 22,000 Filipino soldiers who fought for independence against the U.S. Army during the Philippine American War, not to mention the tens of thousands or more Filipino civilians who died during the conflict. I suspect it is largely the result of the control the U.S. regime maintained until 1946 over the curricula in public schools, and the camaraderie forged during WW II by U.S. and Filipino troops and others who struggled against the distinctly brutal Japanese occupation. Of course, in all its guises, war is by definition ugly and brutal from all directions. Yet the Philippine American War was the first in a little over one century of five U.S. Asian wars and much Filipino blood hemorrhaged in a noble pursuit for freedom and justice.

Having written a legal history of Philippine colonial land law, I am keenly aware, perhaps more than most, of how inappropriate and unfair it would be to judge someone by standards and beliefs that exist decades after that person lived. Such is the case with Malcolm. But having read his book, *Philippine Government: Its Development, Organization and Functions*,[18] his Supreme Court opinions, and after scouring through the Malcolm Papers at the University of Michigan, I feel little connection to him.

RUBI V. PROVINCIAL BOARD OF MINDORO

One reason no doubt is the decision written by Malcolm in the infamous case of *Rubi v. Provincial Board of Mindoro*,[19] which was issued on March 7, 1919. It denied a writ of *habeas corpus* to approximately 300 peaceful Mangyans who were involuntarily removed from their ancestral domains and resettled on a "reservation" in Mindoro. Some of the Mangyans subsequently escaped and were captured and imprisoned. The Philippine Supreme Court denied their plea for a writ. The ponente was Malcolm, who wrote a 60-page long lead opinion, indicating the importance and the effort put into explaining it. Malcolm referred to the Mangyans as having a "low grade of civilization" and who were "a drag on the progress of the state." He relied on Sections 2145 and 2759 of the Administrative Code of 1917 authorizing the resettlement of so-called "non-Christian tribes."

Four justices dissented (three Americans and one Filipino). The dissent signed by three noted that Malcolm had ignored the "first paragraph of Section 3 of the Act of [the U.S.] Congress of August 29, 1916 (the Jones Law)," which reads:

> No law shall be enacted in said Islands which shall deprive *any* person of life, liberty or property without due process of law, *or deny to any person*

[18] With Maximo M. Kalaw. (1923).
[19] 39 Phil. 660 (1919).

> *therein the equal protection of the laws.*[20]

The other dissent by Justice Johnson was shorter and even more to the point:

> The petitioners were deprived of their liberty without a hearing. That fact is not denied. I cannot give my consent to any act which deprives the humblest citizen of his liberty without a hearing, whether he is a Christian or non-Christian. All *persons* in the Philippine Islands are entitled to a hearing, at least, before they are deprived of their liberty.[21]

Clearly, according to Malcolm, the Mangyans in 1919 were not persons. Equally disturbing is the fact that Malcolm totally ignored, and must have thought he knew better, than the U.S. Supreme Court's 1909 decision in *Cariño v. Insular Government*. Indeed, *Rubi* and the other resettled Mangyans were not only involuntarily removed and imprisoned, but pursuant to the Jones Law and the *Cariño* decision, there was no due process or just compensation for the taking of presumably private property prior to the state action, let alone the subsequent denial of a writ of *habeas corpus*. (One might reasonably wonder why Malcolm seemed so determined to have the ancestral domain of the Mangyans emptied of people. Were timber and/or mineral interests present?)

Malcolm's opinion, and presumably the majority support it garnered, was a manifestation of the Philippine Supreme Court's inclination, similar to the *Audiencia* during the Spanish era, as well as the Governor Generals under both regimes, to

[20] *Id.*, at 726. Emphasis provided in dissent.
[21] *Id.*, at 723-4.

sometimes ignore the metropolitan power, and embark on their own *de facto* autonomous course, being thousands of miles away from their superiors for three centuries.[22] It reflected the still evident tendency (at least until recently) of the post-colonial Philippine Supreme Court to subordinate itself to directives emanating from the executive branch.

Perhaps as troubling for revealing a double standard, only 18 days after *Rubi* was issued, was the decision in *Villavencio v. Lukban*.[23] The case involved 170 alleged female prostitutes in Manila who were incarcerated for their alleged income-generating activities and soon after were involuntarily deported to Davao to work "as laborers at good salaries" for a *hacendero*. Malcolm was the *ponente*. The decision ordered that a writ of *habeas corpus* be granted. The 37 year-old Malcolm, who first married in 1932 at the age of 51, waxed indignant:

> One fact and one fact only, need be recalled – these 170 women were isolated from society, and then at night, without their consent, and without any opportunity to consult with friends or to defend their rights, were forcibly hustled on board steamers for transportation to regions unknown.

Where was Justice Malcolm's umbrage in *Rubi*? Why was he unaware and unconcerned for the 300 other people who also "were isolated from society ... without any opportunity to consult with friends or to defend their rights," and who were involuntarily, arbitrarily and "forcibly hustled" from their homes, not from public streets? Oddly, despite the Philippine Supreme Court having rendered a landmark opinion written by Malcolm on *habeas corpus* less than three weeks earlier, no mention was

---

[22] See C. CUNNINGHAM, THE AUDIENCIA IN THE SPANISH COLONIES AS ILLUSTRATED BY THE AUDIENCIA OF MANILA (1919).
[23] 39 Phil. 778 (1919).

even made in *Villavencio* of the decision in *Rubi* to deny the writ.

To be clear, I agree with the decision in *Villavencio*. My point is that the same outcome was also called for in *Rubi*. After all, unlike the women in *Villavencio*, the Mangyans had not allegedly violated any laws. They were merely living traditionally within ancestral domains, as had their forebears, and those of millions of other Filipinos. Malcolm, of all people, surely knew as much and more: to wit, native title existed in the Philippines as determined by the U.S. Supreme Court only a decade earlier in *Cariño*, yet he egregiously failed to even acknowledge as much.

Frankly, I believe the decision in *Rubi* should offend the sensibilities of anyone who, like Malcolm's dissenting colleagues, understand that all human beings are persons. We belong to one species on a fragile and increasingly threatened planet, and as a singular species we all have much in common with one another, genetically and otherwise. The fight for that universal truth ignited the Civil War of the United States during the 1860s, albeit perhaps in a more limited way. Yet Malcolm seems to have been unaware, indifferent and/or intellectually careless, or callous and dishonest towards the plight of the oppressed Mangyans. Indeed, contrary to the plaque at the entrance to U.P. Law, Malcolm clearly was not a "true friend of the Filipino people" at least not to all of them.

For me, the bottom line is that Malcolm appears to have been largely oblivious to the plight and potentials of rural people, who comprised the vast majority of the colony's population. He demonstrated little concern for the poor and oppressed, which raises the question: for whom and for what was Malcolm's justice?[24]

[24] Other decisions by Malcolm left me similarly unimpressed by his reasoning and writing. See e.g. Kwong Sing v. City of Manila, 41 Phil. 108 (1920); People of the Philippine Islands v. Perez, G.R. No. 21049 (1923); Yu Cong Eng v. Trinidad, 47 Phil. 385 (1925).

Malcolm's ignorance, whether real or feigned, surely helped him justify in his own mind the privileged colonial position he and his "boys" [25] at U.P. Law enjoyed. After all, look how far Malcolm's boys had come from the time when their forbears lived like the Mangyans. All of them benefited from their affiliations with U.P. Law, and for many, the Philippine Supreme Court. Justice Malcolm, for his part, was consistently averse to ever publicly criticizing or second-guessing any of his influential protégés for any reason.

The foregoing is not meant to suggest that Malcolm or his boys were malicious or meant ill toward anyone. It is to share my impression that as an eager colonial subaltern, Malcolm lived a comfortable life and clung to and reaffirmed colonial stereotypes, unless prostitutes were involved. He wrote in an intellectually loose and careless manner (check out the length of the many extensive quotations in his Supreme Court decisions, however well-attributed), and intentionally ignored in *Cariño* a clear decision promulgated specifically for the Philippine colony only a decade earlier by the then highest court of the realm, the U.S. Supreme Court.

The bottom line in my opinion is that Malcolm was neither an inspirational person nor someone to be emulated. U.P. Law deserves a better namesake.

ENDURING IMAGES AND DIVISIONS

One important perception obviously prevalent during Worcester's and Malcolm's time has not changed as much in 2011 as I have

[25] The term was reportedly used publicly and often by former U.P. Law students of Malcolm. Malcolm died in January 1962. On February 9 of that year Ameurfina Melencio-Herrera, Malcolm's *inanak* and a future Philippine Supreme Court Justice, wrote his widow and assured her that "we'll see what we can do about a Malcolm Boys Hall of Fame." Letter in the Malcolm Papers, Bentley Historical Library, University of Michigan.

hoped since the 1980s. I have observed and extensively researched on these images and divisions over the past three decades and a portion of my dissertation was specifically devoted to identifying and analyzing their origins and effects.[26]

Unfortunately, ethnic and historical divisions of the past, especially those literally reified in the 1903 Census of the Philippine Islands, still endure in many respects. Emphasizing the divisions between the so-called Christian and non-Christian tribes at the time was a purposeful and needed counterbalance to Governor General Taft's successful Policy of Attraction, and the ensuing negative imagery and stereotypes endure. As the U.S. colonial rulers 'attracted' Hispanicized Filipino elites, both groups articulated a widening gap between the islands' 'civilized' peoples and its 'non-Christians.'[27] The latter category even indicated the possibility of the collaborating native elite eventually acquiring internal colonial subjects and territories, which actually occurred and arguably still is.

The gap was not always clear. Although the Ivatans of Batanes, for example, were Hispanicized/Christianized, they were nonetheless labeled non-Christians in the census; the Warays by contrast were classified as Christians, but Samar was nonetheless designated as a special province, a designation for areas inhabited by non-Christian tribes that were under Commissioner Worcester's almost total legal control until 1914. Apparently, Spanish military forays to subdue Samar during the 1880s and 1890s were sufficiently successful to keep the Waray off the non-Christian tribe roster but not the special-provinces designation.[28]

---

[26] See *The Colonial Dichotomy: Attraction and Disenfranchisement*, PHIL. L.J. Vol. 63, No. 2 (1988).

[27] PAUL KRAMER, THE BLOOD OF GOVERNMENT: RACE, EMPIRE THE UNITED STATES & THE PHILIPPINES 5 (2006).

[28] For perspective on the process of Hispanization in northern Luzon, see W. Henry Scott, *The Making of a Cultural Minority* in CRACKS IN THE PARCHMENT CURTAIN AND OTHER ESSAYS IN PHILIPPINE HISTORY 28-41(1982)..

IN THE GRAND MANNER

In my first weeks back at U.P. Law in 2010, I inquired of my 80 first year students in Philippine Legal History (Blocks C and D), 20 upper class students in my course on International Law and Environmental Justice, later about 40 U.P. undergraduate anthropology students who invited me to speak at Palma Hall, and in December around 200 plus students at De La Salle University, if there were any indigenous people in the room. To my surprise and concern, only 2½ hands went up, out of approximately 320 students. The ½ was a student who began raising his hand but abruptly pulled it back when it became apparent he was the only one in the room doing so. Two professors at La Salle also raised their hands.

In contrast, at the behest of one of my U.P. Law first year students, Ivan Galura, I also spoke during the 2010 semester break before a group of around a hundred 13 – 15 year old students at Diliman Preparatory School. They displayed a different consciousness. Twenty hands went up when I asked: "Are there any indigenous people in the room?" Although anecdotal, I took this as a positive sign that perhaps, ever so slowly, generation by generation, Filipinos are reappraising and changing traditional concepts of self-description and becoming more open to identifying with more affirming and historically accurate cultural identities.

Let me explain. In the 1980s when I was teaching Philippine Indigenous Law, I was once confronted in the halls of Malcolm by a full-time law professor who asked in an irritated tone: "Why are you doing this to us?" I was stunned and asked what the professor meant. The reply was that I was encouraging Filipinos to go backwards by emphasizing their indigenous heritage. "That is the past and today we want to move forward," I was told.

It was not the first or the last time that my efforts were questioned, and honestly I didn't mind. In my years at U.P. Law

in the 1980s I was asked more than once: "Why don't you leave and go back to the USA and help YOUR Indians."

Remarks like that reaffirmed my hope that some progress, however small, was being made. After all, the worst response for an advocate is to be ignored, and these types of reactions assured me that if nothing else, my efforts and assertions were being reacted to.

At the same time, I remain astonished after all these years at the fact that so many Filipinos still do not recognize and acknowledge their indigeneity. Even more incredible, some who recognize it deny it. Why?

If the Irish are indigenous to Ireland, and the Japanese to Japan, how could anyone possibly think that Cebuanos are not indigenous to Cebu, or Ilocanos are not indigenous to Ilocos, and so on? From my vantage point, it is more than obvious that the overwhelming majority of Filipinos are indigenous, although most no longer live within ancestral domains. Among the enduring legacies of U.S. Philippine colonialism is that this indigeneity is largely denied by Hispanicized Filipinos. It is perhaps because the USA is comprised mostly of immigrants and their descendents that I am more aware of the fact.

I believe a broader appreciation of the indigeneity of the Philippines will contribute positively to the ongoing refinement of a more affirming national narrative, and for shedding the lingering, and hopefully fading, colonial legacy of cultural and personal abnegation. It is something the Irish have in common with Filipinos. Both peoples emerged from cultures that were berated and oppressed. As such, it behooves all of us to liberate our minds from historical stereotypes that prevent full understanding and appreciation of cultural and ethnic identity, and impede efforts to develop greater and more affirming and humane nations.

I envy Filipinos because you are overwhelmingly indigenous. I am a native of Minnesota, USA, but the bulk of my genetic pool derives from Ireland. I suppose that is why so many Irish-Americans go to parades and drink alcohol on March 17, which is St. Patrick's Day. That behavior I believe, among other things, reflects a yearning to reconnect with one's historical roots.

Here in the Philippines, most people still live in the land of their forefathers who under the Spaniards were disparaged and who were largely referred to as *los Indios*. And then there are the endearing cultural traits—*Bayanihan, pakikisama, utang na loob, pasalubong*, smooth interpersonal relations, strong family ties, animism, and much more—shared by Filipinos, regardless of ethnicity, geographic locale, or degree of Hispanicization.

As Dean Leonen reminisced in 2009 in a lecture to the Philippine Judicial Academy in Malcolm Theatre,[29] each semester when I taught Philippine Indigenous Law, I began by my saying that just because something is colonially derived does not mean it is all bad, and just because it is indigenous does not mean it is all good. The opposite, of course, is also true: all things indigenous are not all bad, nor are all things colonial good. And when the time arrives in a hundred more years for the bicentennial of U.P. Law, I very much hope there will be much, much greater awareness of and pride in the indigeneity of the Philippines, and its importance to law, justice, and the promotion of human dignity.

CONCLUSION

The brilliance and idealism of (some) U.P. law students and

[29] "Law at its Margins: Questions of Identity, Ancestral Domains, Indigenous Peoples and the Diffusion of Law," 6th Metrobank Professorial Chair Lecture, October 21, 2009, p. 1.

professors have encouraged and inspired me for three decades, albeit intermittently, and in a myriad of ways.

For that, and for the knowledge that I have gained, and the many friendships I have forged, I am forever grateful. During my years at the U.P. Law, I hope I was able to promote a better understanding of the Philippines' past and its importance to the present and the future. It has been a unique and rewarding experience to be an American Professor at U.P. Law.

Reminisces of a Law Librarian

MYRNA S. FELICIANO*

THESE REMINISCES take off in 1959 when Miss Marina G. Dayrit, then Law Librarian, called me to work as graduate assistant in the Law Library. She was intent on classifying the law collection, which stood at approximately 16,600 volumes. At that time, the Dewey Decimal Classification Scheme was inadequate for the law collection and there was no Library of Congress for Law. This led to the adoption of the Los Angeles County K Classification for Law system.

The Law Library was then located at the entire third floor of Malcolm Hall and was open from 7:30 a.m. to 9:00 p.m., Mondays to Fridays, and on Saturdays at 7:30 a.m. to 5:30 p.m. I was assigned to catalogue books from 7:30 to 11:30 a.m. at the library stacks and attend to reference work in the O.G.-G.R. room from 6:00-9:00 p.m. The classification and cataloguing of books was completed in 1961.

Interspersed with my library duties was my assignment to the Dean's Office. Because Dean Vicente Abad Santos wanted his newspapers, magazines, letters and office files in order, I doubled as private secretary/clerk. Little did I know that a future I never envisioned for myself was taking shape at that time.

Dean Abad Santos was a hard taskmaster – his command was always "*ora mismo*" and he expected results soonest—from

* Retired Professor, U.P. College of Law; Ll.B., U.P., Ll.M. Harvard Law School

everybody. Once, he told me to oversee the garden, which he wanted cleared of debris and even to see that the toilets were cleaned every day. I replied that I could not inspect the men's restroom so the task was assigned to a male staff member. The next thing he did was to take pictures of all the restrooms and posted them not only on doors of the restrooms but on the different bulletin boards. He was trying to shame the students into observing cleanliness!

At the time, I was also privy to what was happening in the law school; for instance, when faculty members were called to his office for infractions such as unauthorized absences, tardiness, and late submission of grades. The barometer of whether he was in a good mood was whether he had already been served his cup of tea for the morning. Dean Abad Santos carried out his daily inspection of the college premises. One morning, he requested me to give a folded note to Prof. Bienvenido Ambion, then teaching class on the third floor. Temptation drove me to take a peek before handing in the note, which read "Bien, don't mumble like Marlon Brando!"

The Golden Jubilee of the U.P. College of Law with the theme "National Progress through Law" kicked off on Law Day, September 19, 1960 and climaxed with the Jubilee Night on January 14, 1961. It was a busy period for me, being called upon to provide support services for the activities lined up. A Golden Jubilee Committee was constituted, chaired by Regent Gonzalo W. Gonzalez (Class '46) with Minister Emilio Abello (Class '47) as co-chair and Atty. Ameurfina Melencio-Herrera as Secretary-General. The success of the Jubilee was largely due to the presence of Dean and Mrs. George A. Malcolm. The principal activities were:

1. A Convocation at which Dean Robert Storey, former Dean of the Southern Methodist University Law School of Texas, was the guest speaker;

2. Establishment of the U.P. Law Alumni Scholarships;
3. The holding of a legal authorship contest among the alumni. Professor Ramon C. Aquino and Professor Perfecto Fernandez won first and second place, respectively. Their essays were published in the Golden Jubilee issue of the *Philippine Law Journal*.[1]
4. A two-day legal education conference at the Law Theater participated in by justices, judges, prosecutors, 21 educational institutions, and five bar associations;
5. On Jubilee Night, 30 awards were distributed to outstanding law alumni from 1913-1934.

These activities culminated in a self-study report in 1962 which addressed several pressing needs of the College. Among these were the adoption of measures for a systematic program of faculty development and the progressive increase of faculty salaries; the establishment of visiting and exchange professorships with foreign law schools; improvement of research productivity and the hiring of research assistants; and expansion of the library collection, its physical plant, equipment, facilities, and staff development. This led to the Law School's five-year development plan, beginning in Academic Year 1963-1964.

Through the intercession of Dr. Charles Martin of the American Studies Program of U.P., an arrangement was made for Prof. Cornelius Peck of the University of Washington Law School in Seattle to teach for a period of six months in 1963. He taught Legal History and Legal Writing and at the same time researched on Philippine Administrative Law. His article was later published

[1] R. C. Aquino, *The Filipino Dream On National Progress Through Law Since The Inauguration of the Republic*, 35 PHIL. L. J. 314-360 (1961); P. V. Fernandez, *Sixty Years Of Philippine Law*, 35 PHIL. L. J. 1389-1411 (1960)

in the *Washington Law Review*.[2] Professor Peck had brought his family with him and they stayed on campus. In fact, their baby girl was born in the Philippines and was named Marian Maganda.

Another Visiting Professor who came for two weeks to teach International law under the auspices of the Carnegie Endowment of International Peace was Professor Richard Baxter of Harvard Law School (later on, he served as Judge on the International Court of Justice). I was designated as his tour guide and host and I found him to be a very warm person. We even went to see the film *Dahil Sa Isang Bulaklak* where all the dialogue had to be translated for him. His comment: "It is like a Spanish movie with lots of crying." In later years, when I studied in Harvard, he took me under his wing and we met over lunch every other month.

Pursuant to the faculty and staff development plan, Prof. Irene Cortes left for the University of Michigan on a De Witt Scholarship and obtained her S.J.D. degree in 1966. Her dissertation, "The Philippine Presidency: A Study in Executive Power"[3] became a major and creative contribution to our legal system. Prof. Bartolome Carale followed suit and received his Ll.M. degree from the same University in 1968. Prof. Merlin M. Magallona was Visiting Fellow at Oxford University in 1968-69 under a Colombo Plan Grant.

Dr. Florentino P. Feliciano returned from Yale Law School and was appointed as the first Malcolm Professor of Constitutional Law. He also served as a member of the Philippine panel that went to the United Kingdom to negotiate the Philippine claim to North Borneo in 1964. Dean Abad Santos spent his 6-month sabbatical leave in 1965 at Yale Law School as Senior

---

[2] C. J. Peck, *Administrative Law and the Public Environment Of The Philippines*, 40 WEST L. REV. 403-446 (Aug. 1965).

[3] I. R. CORTES, THE PHILIPPINE PRESIDENCY: A STUDY OF EXECUTIVE POWER (Q.C., U.P. Law Center, 1966). 327 p.

Fellow where he undertook studies and research in international law. This resulted in the publication of *Cases and Materials on International Law*.[4]

I, too, left for Seattle in 1964 to pursue my Master's degree in Law Librarianship on a University of Washington (UW) scholarship. During the mid-term, I was able to attend the American Association of Law Libraries (AALL) meeting in New York on an Oceana Scholarship and had a chance to see the New York's World Fair. Part of my training involved practicum at the University of Washington Law Library, the King County Law Library in Seattle, and the Los Angeles County Law Library (reputed to be the third largest law library in the USA). I spent a month in Los Angeles under Dr. William Stern, the Foreign Law Librarian. I learned much from him insofar as the classification of their collection was concerned and in answering reference questions involving Latin American Law, German Law, French Law and the English common law system.

After graduation in 1965, I went on an extensive tour of law libraries—University of Michigan, Harvard University, Stanford University, Columbia University, New York University, University of California, Berkeley, University of Miami and the famous Law Library of Congress. This tour was arranged by Prof. Marian Gallagher who was my UW teacher and mentor. In Michigan, Miami, and Los Angeles, I received job offers but declined these tactfully, alluding to my being small fish in a big pond over there but looking forward to something promising in the small pond at home.

It was also at this time that the Continuing Legal Education and Research Center was established as a modest unit of the College in December 1963. Its first activity was the Institute on the Revised Rules of Court, which consisted of five lectures by

[4] V. ABAD SANTOS, CASES AND OTHER MATERIALS ON INTERNATIONAL LAW. 1971 ed. (Q.C., Central Lawbook, 1971) 754 p.

Justice Alejo Labrador given to law practitioners, government lawyers and law professors.[5] Subsequently, it led to the establishment of the U.P. Law Center on June 12, 1964 with the enactment of Republic Act No. 3870. Our alumni in Congress who introduced and supported the measure were: Antonio Raquiza, '38; Emilio R. Espinosa, Jr., '40; Aguedo Agbayani, '47; Tecla San Andres Ziga, '30; and Jose J. Roy, '30. The Dean's Report in 1963-64 attributed its creation chiefly to the lobbying efforts of Prof. Perfecto V. Fernandez and the invaluable assistance of Profs. Crisolito Pascual and Sulpicio Guevara.

The U.P. Law Center was established t meet these objectives:

1. advancement of legal scholarship
2. protection of human rights with emphasis on the improvement of the legal system and the administration of justice; and
3. assumption of leadership in overcoming the criticisms directed at professional competence and responsibility.

The Law Center was headed by Prof. Crisolito Pascual as its first Director and organized into four divisions, *i.e.,* Research and Law Reform under Dr. Melquiades J. Gamboa; Continuing Legal Education under Prof. Flerida Ruth P. Romero; Publications under Prof. Hugo E. Gutierrez; and the Administrative Division under Atty. William Gumtang.

Upon my return to the Philippines in November 1, 1965, I was designated Acting Law Librarian[6] by Dr. Melquiades J. Gamboa who was then Officer-in-Charge of the College of Law. I was a bit young then and the library staff — "Maestro," Mr.

---

[5] A. LABRADOR, PROCEEDINGS OF THE INSTITUTE ON THE REVISED RULES OF COURT (Q.C., U.P. College of Law, 1963). 121 p.

[6] Mrs. Teofila S. Gonzales had resigned to join her family in the U.S..

Lapuz, Mrs. Gonzalez, Mr. Alex España — were all much older than me. Moreover, some of the law students reviewing for the bar at the time were my classmates in high school or at the College of Liberal Arts. The library was their meeting place. If they were noisy and they disregarded the librarian's bell or the staff's plea to keep their voices down, I simply shouted "QUIET!" This proved effective; they either kept quiet or left the library premises. From then on, I became identified with this "trademark." In fact, I had occasion to use it in later years, when the Institute of Judicial Administration was still managing the judges' seminars. In one such seminar, Justice Oscar Herrera was lecturing but took a 15-minute break. When the session was resumed, however, the audience continued talking among themselves and Justice Herrera's voice could not be heard. I went to the podium and said over the microphone, "Your Honors, please return to your seats," and then shouted, "KEEP QUIET!" I got the required response, pronto! It would seem that my reputation had preceded me at the Philippine Judicial Academy.

People say that I am feisty. I do not dispute it. But I believe the description applies only when I find that rules are being violated. For example, as Law Librarian, I saw to it that if faculty members who did not return borrowed books that were long overdue could no longer borrow until the missing books were returned. Prof. Laureta once irately confronted me about this before Professors Marita Campos and Irene Cortes when we had a meeting at my office. Another incident involved Prof. Esteban Bautista who had duplicated the library key, which he had earlier obtained from Mang Gandi.[7] When I learned that there were some SCRAs (Supreme Court Reports Annotated) missing from the shelves and were not charged out, I went to Prof. Bautista's house to retrieve them. I explained to him that the accountability for the books would fall on me as librarian. He was quite incensed and shouted that he paid P2.00 for duplicating the key. I gave him the amount and took back the key, along with the books.

[7] Filomeno Gandeza, our janitor.

Ms. Linda Kintanar served as Assistant Law Librarian when she returned after a three-year study leave for her M.S. in Library Science from Simmons College, Boston, Massachusetts and after serving as an intern at the Harvard University Widener Library. She became the Assistant Law Librarian but served only on a part-time basis because she was needed as Reference Librarian at the U.P. Main Library.

Dean Abad Santos came back in February 1966 from his sabbatical at the Yale Law School as Senior Fellow where he undertook studies and research in International law. He gave me his manuscript on *Cases and Materials in International Law* to check the citations and sources. This was a learning experience for me; if there were terms or concepts I did not understand, he was patient enough to explain them. In the end, he acknowledged me as his factotum when the book was published. It was also at this time that Dr. Gamboa gave me the revision of his book, *An Introduction to Philippine Law*[8] for checking his citations and indexing.

Efforts to improve our library collection especially on International law began with the donation of a set of the *U.S. Naval War College Blue Books* through the efforts of Professor Baxter, the *League of Nations Treaties*, a 35-volume collection on *Trials of Major War Criminals Before the International Military Tribunal, Nuremberg*, *All England Reports, 1775-1935*, a set of the *American Federal Tax Reports*, 2d series, Miller's *U.S. Treaties and International Agreements*, Malloy's *Treaties, Conventions, International Acts, Protocols,* a set of *Marten's Recueil General de Traites*, 2 me. Series, *U.S. National Labor Relations Board Reports*, CCH on *Labor Law*, and on *Federal Taxation*, *Transactions of the Grotius Society, U.S. Treaties and Other International Agreements, Code of Federal Regulations,* the Hague Academy of International

[8] M. J. GAMBOA, AN INTRODUCTION TO PHILIPPINE LAW, 7th ed. (Q.C., Central Lawbook, 1969). 479.

Law, *Recueil des Cours*, and Clive Parry's *Consolidated Treaty Series* all donated by Ford Foundation. To complete this collection, the *U.N. Treaty Series* was transferred to us from the Main Library. A complete set of Spanish Codes was donated by Sr. Marcelino Cabañes, Secretary-General of the Conference of Ministers of Justice, Philippines and Latin American countries. Likewise, the Carnegie Endowment for International Peace donated a complete set of *Classics of International Law*.

The Library was also the beneficiary of alumni generosity. The U.P. Law Class of 1941 set up an "Operation Law Library Fund," which was spent on the acquisition of the Spanish collection of the late Judge Juan T. Santos, sets of *Uniform Laws Annotated, Halsbury's Laws of England,* Moore's *History and Digest of International Arbitration* and the acquisition of the Felipe Ysmael Collection. Justice Alex Reyes donated *Siete Partidas*, a digest of the Castillan-Spanish Law completed in 1265 in four volumes. This was the highly prized Gregorio Lopez edition published in Madrid in 1829. Mayor Cesar Climaco donated lumber for the library shelves. The law alumni was able to raise P18,175.00 for steel library shelves that would be needed when the library transferred to Bocobo Hall. To supplement our annual book budget (culled from student library fees collected every semester), the Law Center started to endow P25,000.00 annually. This amount was increased in later years. Whenever the Law Center had savings, these were given to the Law Library.

A seminar on Law Library Organization and Legal Research was held from August 1-26, 1966 under the auspices of the College of Law, Law Center, and the Asia Foundation. Mr. Earl C. Borgeson, the Law Librarian of Harvard Law Library, acted as Seminar Director with the University Librarian, Ms. Dayrit, and myself as coordinators. There were 16 participants (two each from Japan and Korea, one each from India, Singapore, and Pakistan, and nine from the Philippines) and two observers who attended the sessions. The topics ranged from library

management, budgeting, cataloguing and classification of library collection, research, and reference functions of the law library to library architecture. In order to approach librarianship from varying needs and requirements, Senator Jose W. Diokno (as legislator), Judge Guillermo Santos (speaking for needs of the Court), and Dr. Ernesto Sibal (law publisher) were invited as special lecturers. Other guest speakers were Prof. Juan F. Rivera, Mr. Philip F. Cohen of Oceana Publications and Mr. Jaime Roxas of Lawyers Cooperative Publishing Co. There were also observation tours to several types of law libraries, *i.e.*, House of Representatives Library, National Library, Department of Justice, law firms, the Phoenix Press, and the IBM Division of the University of the Philippines. On the weekends, the group travelled to Baguio City, Corregidor, and Tagaytay City for recreation.

The LL.M. Summer Regional Program of the College of Law in Davao was inaugurated in 1960 with Prof. Sulpicio Guevara holding class on problems in Business Associations and Prof. Crisolito Pascual on Labor Relations. Other professors in the program who travelled to Davao annually were: Dean Abad Santos, Hugo E. Gutierrez, Gonzalo T. Santos, Jr., and Bartolome S. Carale. However, the program ceased in 1968 due to the following problems: having only 14-20 students, lack of enthusiasm on the part of the students, lack of local library facilities (if library books were brought to them by the faculty, the students did not return them), and lastly, the thesis requirement in order to graduate was fulfilled more in the breach than undertaken by the students.

Plans were prepared for the building of the Law Center by University Architect Prof. Victor Tiotuyco on August 25, 1967. On April 27, 1968, the building was dedicated and named Bocobo Hall. Although the law library completed its transfer to the second and third floors of Bocobo Hall at the end of June 1969, some old sets of the English Reports and U.S. State Reports were

left at the third floor of Malcolm Hall. In November 1971, typhoon Yoling, the most destructive to hit Metro Manila in 88 years, tore off part of the roof of Malcolm Hall, damaged the ceiling, and soaked the library materials on the third floor. Classes had to be suspended for a week and repairs on the roof alone cost the University P36,450.00.

These were times of ferment in the country. On the eve of the 60th Anniversary of the College of Law, the so-called "Diliman Commune" occurred. Dean Irene R. Cortes described its effects succinctly in her Annual Report in 1970-71, as follows:

> It is not as easy to assess the damage nor erase the effects of the second occurrence which will doubtless go down in University history as the nine-day crisis of February 1971. In the course of the crisis student activism and mass action which had been building up for the past few years reached a new high. The whole academic life of the University came to a standstill. What started with barricades as a protest against the increase in oil prices developed into confrontations with the military, punctuated with violent incidents, as students took over university buildings and certain facilities, cut off vehicular access to the campus established a "Diliman commune" and otherwise made their power felt. While the College suffered no external physical damage it was not left unscathed. The loss of class hours and the effects on the teaching-learning process as well as on administration-faculty-student-community relationships have left their mark. Frantic efforts were subsequently made to salvage the year by holding make-up classes but these did not completely neutralize the harm done. Already the

> disruptions have taken their toll. Statistics on student performance during the second semester of the last school-year reveal that only out of 278 (a ratio of 1.70) upperclassmen now enrolled in the College of Law obtained the required average for at least a college scholarship (1.75) while 1 out of every 4 among them has some form of scholastic delinquency.[9]

I recall that Dean Cortes, Prof. Gonzalo T. Santos, Jr., Prof. Eduardo Labitag and I held a meeting at her residence and then went to the Lawyers Inn of Atty. Norberto Quisumbing to see if we could hold fourth year law classes in their building. He agreed to accommodate our students as long as we provided additional chairs. However, the crisis ended after nine days and so the arrangement became unnecessary.

Miss Dayrit and I also had difficulty with University President Salvador Lopez who summoned us to his office. He told us that he was going to file administrative charges against us because we allowed the entire library staff to take a leave of absence during the crisis. On my part, I informed him that two of the staff members were pregnant and could be harmed or injured when they crossed the barricades because of the presence of pill boxes. I reasoned that should something happen to them, the University would be liable. Despite the barricades, I continued to report for work to safeguard the library collection and also attended some "teach-ins" inside the campus.

After the "quarter storm" ended, the Law Center began work on the Constitutional Revision Project, which was headed by Dr. Melquiades Gamboa. This resulted in a three-volume output consisting of proposals for a revision of the 1935 Constitution, comparative provisions in foreign constitutions, alternative proposals for other systems of governance, and an opinion survey

[9] 46 PHIL. L.J. 466-67 (1970/71).

on the 1935 Constitution conducted by the Institute of Mass Communications.[10] The Law Library compiled a bibliography on the Constitution, a list of cases construing every provision, and other reference materials.

Prof. Carmelo Sison prepared a project proposal on the compilation of Philippine Permanent Statutes based on a study made by Atty. Gabriel Trinidad, Jr., the Assistant Chief of the Senate Revision of Statutes. The project was approved by the Law Center and funded by Atty. Eugenio Lopez, Jr. Thus, the *Philippine Permanent and General Statutes* (PPGS) was born, with Atty. Trinidad assigned on special detail at the Law Center. Likewise, the *Philippine Treaty Series* (PTS) was initiated with the cooperation of the Philippine Society of International Law and the Ministry of Foreign Affairs. The first volumes were compiled and annotated by Prof. Haydee B. Yorac.

There was also the Law and Population Project in 1972 which was funded by the U.N. Fund for Population Activities (UNFPA) and managed by Dr. Luke Lee of the Fletcher School of Law and Diplomacy of Tufts University, Massachusetts. The Philippines was the first country to undertake such a study and it was replicated in several countries. Director Crisolito Pascual was designated as Project Director and Dr. Gamboa as coordinator, with Dean Irene R. Cortes as consultant. This resulted in the *Law and Population in the Philippines: A Country Monograph* which made an examination of laws, administrative regulations, and jurisprudence with important recommendations for statutory instruments to address the population explosion in our country.[11] We joked that at least the members of the project team were not contributors to the country's population explosion – Dr. Gamboa was already in his seventies, Prof. Pascual was childless, Prof.

---

[10] U.P. LAW CENTER CONSTITUTIONAL REVISION PROJECT. (Q.C., 1970). 352 p.

[11] U.P. LAW CENTER, LAW AND POPULATION IN THE PHILIPPINES: A COUNTRY MONOGRAPH (Q.C., 1975). 266p.

Sison had one child, while Dean Cortes and I were single.

The bombing of a political rally in Quiapo, Manila on 21 August 1971, led to the suspension of the writ of *habeas corpus* and the issuance of Proclamation 1081, which imposed Martial Law on September 21, 1972. Classes were suspended and government offices were closed. Since petitions were filed before the Supreme Court, the high tribunal specifically ordered the parties to answer 12 questions on the imposition of Martial Law and gave them 15 days to submit their memoranda and another 10 days to file their respective rejoinders.[12]

On the part of the law library, I compiled a bibliography on Martial Law and requested the Supreme Court librarian to photocopy the books and periodical articles for the use of each justice. They returned these materials to us after four days. We mimeographed the bibliography, distributed it to legal researchers in the reading room, and placed the materials on the open shelves.

One morning, Justice Enrique Fernando came to the library requesting that he take home all periodicals pertaining to Martial Law. I respectfully told him that periodicals were for room use only in accordance with the library rules and regulations. I informed him that the law library was under the University Library and that these regulations were promulgated by the Board of Regents. Then, he asked me, "Are you a law student? I said, "Yes," and further remarked, "Are you threatening me?" I tried compromising with the Justice by suggesting that he could borrow one volume at a time at 5:00 p.m. when the library closed, provided he returned it at 8:00 a.m. the next day when the library opened.

But he was adamant that he wanted all the materials. He

[12] "SC Hears Arguments on Habeas Corpus Plea," *Philippine Daily Express*, September 30, 1972, p. 1, 6.

then went directly to Director Crisolito Pascual's office and complained about my actuations. I was called to his office to explain the problem; Director Pascual said (as had Dean Cortes earlier), that I was merely following the University Library rules and regulations and that the librarian was not under him in terms of administrative policies. Justice Fernando marched out, grumbling. This was only one of my encounters with the good justice. I vividly recall my thoughts during this incident. Although I was a law student at this time, I planned not to take the bar examinations when I graduated. However, owing to this confrontation with the Justice, I resolved that I would sit for the bar exams after all.

One morning at 7:00 a.m., the library telephone rang. The caller identified himself as President Marcos. At first, I thought it was Antonio "Oniot" Oposa, Jr. playing a joke on me, as was his wont, but when the voice inquired if the library had a copy of the book, *Constitutional Dictatorship* by Clinton Rossiter, it confirmed the identity of the caller. I checked the library records and informed him that then Assistant Solicitor General Vicente Mendoza had borrowed it. He told me that Vic (meaning Secretary Abad Santos of the Department of Justice) would get the book for him. After a few minutes, Secretary Abad Santos verified that the book was with Assistant Solicitor General Mendoza. The book was not returned to the library until after the People Power Revolution in 1986 when Executive Secretary Joker Arroyo requested me to look for certain evidence in the Malacañang Presidential Library. I saw the book on the shelves and was able to retrieve it for our law library.

When Martial Law was imposed, I had difficulty securing copies of the so-called "secret decrees" from Malacañang. Even if I tried to obtain these through our alumni working there, the frequent answer was that the matter was confidential. An opportunity arose when a law convocation was called by Dean Froilan M. Bacuñgan, with Minister Franscisco Tatad as speaker,

on the Freedom of Information Bill. During the open forum, I prefaced my question with the Civil Code provision, "Ignorance of the law excuses no one from compliance therewith." I asked, "How can a person be arrested if the applicable law[13] was never published?" I told him frankly that there were various gaps in the numerical listing of published Presidential Decrees.[14] His reply was that perhaps his office had run out of photocopying paper. I retorted that I had sent five reams of photocopying paper and toner to his office but the library had not received any of the missing decrees.

It was also during Martial Law that I complained to Dean Bacuñgan about the congestion in the second and third floor of the Law Center as could be seen when students sit on the floors to read their assignments. Dean Bacuñgan relayed the situation to Atty. Rolando de la Cuesta, then U.P. Law Alumni Association President, who spearheaded a fund drive for a new law library. President Marcos donated funds for the building while each law class contributed money for the furniture and equipment. The Law Theatre was demolished but was rebuilt with the library's four floors above it. My only condition to Prof. Victor Tiotuyco, then University Architect, was to pattern it after the Spanish architecture of Malcolm Hall so as to make it appear that it was a part of it. Construction of the library building began in 1981. It was inaugurated on June 4, 1983 and named Espiritu Hall in honor of Dean Jose Espiritu who rebuilt the library collection after World War II. The Law Student Government assisted us in the transfer of books from the Law Center to the new building. Present in the inauguration were the past presidents of the U.P. Law Alumni Association (UPLAA) who raised funds for the project, namely: Vicente Abad Santos (Class '40); Juan Ponce Enrile (Class '53); Edgardo J. Angara (Class '58); Jose Leido, Jr. (Class '58); Rolando de la Cuesta (Class '63); Luis Villafuerte

[13] Presidential Decree.

[14] A listing of the missing PDs was enumerated in the first *Tañada v. Tuvera* case, G.R. No. 63915, April 24, 1985, 136 SCRA 27, 34 (1985).

(Class '59); Romulo Villa (Class '59); and Manuel Abello (Class '58).

Since I was elected member of the Board of Directors of the International Association of Law Libraries (IALL) from 1977-1983, the officers decided to hold a Roundtable Conference at the U.P. Law Library on August 18-23, 1980, simultaneous with the 46th Congress of the International Federation of Library Association (IFLA) in Manila. With the financial assistance of the U.P. Law Center, we drew a week-long program consisting of discussions on the latest developments in law librarianship by Dr. Igor Kavass and on the activities of IALL, followed by visits to the libraries of Batasang Pambansa, Commission on Audit, Department of Justice, Supreme Court, Ayala Group of Companies, ACCRA Law Offices, and Siguion Reyna Law Offices. There were 35 participants coming from Australia, Canada, Japan, Malaysia, Nigeria, Thailand, USA, and the Philippines.[15]

It was here that Dean Bacuñgan broached the idea of organizing a local chapter that could affiliate with the IALL and brought about the birth of a new organization—the Philippine Group of Law Librarians, Inc. (PGLL).[16] Right then and there, the officers were elected and inducted by Chairman Francisco Tantuico at the Commission on Audit on August 22, 1980.

Among the few objectives of the PGLL are: to establish a cohesive force to unite law librarians throughout the Philippines in a common endeavour to raise and maintain at a high level the standard of law librarianship in the country; to serve as an instrument for the advancement of legal documentation and

---

[15] S. Lazo-Gonzales, "Philippine Group of Law Librarians, Inc. (PGLL)," BULL. OF THE PHIL. LIB. ASSN., INC., 82-3 (October, 1988).

[16] *Id.*, citing the following officers: Myrna S. Feliciano, U.P. – President; Susima Lazo-Gonzales, DOJ – Vice-President; Celerina Villena, SC – Secretary; Ma. Teresita Santiago, Siguion Reyna – PRO; Milagros Santiago-Ong, U.P. – Asst. PRO; Marcia Angeles, ACCRA – Treasurer; Esperanza Galvez, Ayala – Asst. Treasurer; and Purita Vestil, COA – Auditor.

scholarship and the furtherance of research in the field of law in the Philippines and other countries; and to provide a forum for the consideration and analysis of problems and issues affecting law librarianship. To date, it has 100 members from government, the academe, and law firm libraries.

Because of the advocacy of the PGLL, the U.P. School of Information and Library Science offered a Diploma in Law Librarianship which was approved by the Board of Regents on April 16, 2002.[17] The course offers subjects that include Legal Bibliography, Law Library Administration, Selection and Processing of Library Materials, and Reference and Information Service.[18] This was a significant development as it led to the professionalization of Librarianship in later years.

I went to Harvard Law School in 1979 and obtained my LL.M. degree. I would have loved to extend my stay in Harvard to further my graduate studies but Dean Bacuñgan wrote to me that my leave could not be extended because work awaited me here. He informed me that the legal aid project proposal of the IBP for the setting up of IBP law libraries and training of para-librarians was approved by the USAID and my presence was required. He also wrote that the proposed library building was being planned. Coming back in August, 1980, I provided the IBP a list of titles of books and periodicals that each IBP law library should acquire. Afterwards, I trained para-librarians to create library records, catalogues, and classify legal materials, how to answer reference questions, and how to index laws and cases.

When Ms. Dayrit retired on October 27, 1981, I was appointed by President Angara as Officer-in-Charge of the University Library on a half-time basis. Within a six-month

---

[17] L.F. Echiverri, "Law Librarianship as a Profession in the Philippines," 10 p. Typescript.

[18] M.S. Feliciano, *Formal Education in Law Librarianship*, 1 PHIL. J.L. LIBRARIANS 1 (1990).

period, personnel problems were solved by meeting with all the college librarians from Diliman, Manila, Los Baños, Baguio, Iloilo, Tacloban, and Pampanga. In order to assess the performance of college librarians, I made appointments to see each Dean and exchange views on how to improve the effectiveness of their staff and increase their resources not only in terms of collections but also to make available maintenance and other operating expenses (MOOE) since the University Library did not have the necessary funds.

As to the University Library, I directed that we open the stacks, catalogue the Filipiniana fugitive materials for research purposes and give autonomy to the heads of divisions to make decisions and thresh out problems during our weekly Monday meetings. Later, Edgardo J. Angara, then U.P. President, requested me to furnish him a list of law books needed for our library. I recommended that the list be extended to include the different college librarians to make a desiderata list regarding the gaps in their social sciences collections. As luck would have it, he obtained funding from the Ford Foundation, Rockefeller Foundation, and other sources when he visited the United States.

On September 1, 1983, Executive Order No. 8 was issued by Angara which operationalized the U.P. Law Complex. It consisted of the College of Law and the following allied components: (1) Law Center (2) Academy of Asean Law and Jurisprudence (AALJ) (3) International Studies Institute of the Philippines (ISIP); (4) Institute of Judicial Administration (IJA) and (5) Legal Resources Center (LRC). Prof. Flerida Ruth P. Romero was appointed Director of the Law Center, Prof. Purificacion V. Quisumbing of AALJ; Prof. Merlin M. Magallona of ISIP, Atty. Demaree Raval was the OIC of IJA, and I headed the LRC. Dean Bacuñgan became the Supervisor of the U.P. Law Complex while the Director of each component had administrative supervision over the unit.

Per Administrative Order No. 124 (1983), the Legal Resources Center had the following divisions: the Law Library, National Legal Information Service (LEGIS)/Data Bank; Law Publishing House; and the Translation/Audio Visual and Other Services. As a result, the Law Library became autonomous from the supervision of the University Librarian although we are being consulted in terms of library policies and our law cataloguing and classification is still being processed in the University Library for uniformity purposes.

At its 1021st meeting on May 29, 1989, the Board of Regents approved the reorganization of the Law Complex.[19] The Law Center is now headed by the Dean of the College of Law, assisted by the Associate Dean whose term is co-terminous with the Dean. The Law Center is now composed of four Institutes, namely, (1) Institute of Government and Law Reform (IGLR) (2) Institute of Human Rights (IHR) (3) Institute of International Law Studies (IILS), and (4) the Institute of Judicial Administration (IJA).

All the Institutes undertake basic research and publication programs as well as extension services. In undertaking such programs, the Institutes utilize the interdisciplinary approach. Support services are provided by the Law Library, the Information and Publication Division, and the Training and Convention Division. By virtue of the Administrative Code of 1987, the Office of the National Administrative Register was established.

I was appointed IJA Director in December 1988 and served until my retirement in 2002. Atty. Antonio M. Santos, who also

[19] Dean Pacifico A. Agabin was the Chairman of the Law Complex Reorganization Committee and the following appointments were made: Prof. Merlin M. Magallona as Associate Dean, Prof. Raphael Perpetuo M. Lotilla as IILS Director, Prof. Esteban Bautista as IGLR Director, Prof. Perfecto V. Fernandez as IHR Director, Prof. Rogelio Quevedo as Head of the Training and Convention Division, and Atty. Perla Frianeza as Head of Information and Publication Division (IPD).

possesses an LL.M. degree from the University of Washington, was designated Law Librarian in 1989. Under his leadership, the library now contains 90,800 carefully selected volumes and, significantly, its services are fully automated and integrated with the University Library system at http://ilib.upd.edu.ph. The library has an extensive collection of electronic databases containing laws, local and foreign jurisprudence, administrative issuances, international documents, and index to foreign periodicals. These CD-ROMS are all networked, which enables more users to utilize the facilities simultaneously. Also, the U.P. Law Library has subscribed to Westlaw, an online database containing laws, cases, law reviews, and journals from the U.S., UK, EU, Canada, Hong Kong, Australia, New Zealand, Singapore, and UAE.

It should be mentioned that Professor Santos has garnered many awards, including Outstanding Professional Awardee, Professional Regulations Commission, June 19, 1999; Gawad Chancellor Award, *Pinakamahusay na REPS*, U.P., February 21, 2003; Outstanding UPAA Professional Award in Information Technology, June 21, 2003, and Outstanding Librarian of Southeast Asia, Congress of Southeast Asian Librarians (CONSAL), World Summit, Singapore, April 24, 2002. Because of his admirable work, he has held leadership positions in several organizations, namely Philippine Group of Law Librarians (PGLL), 1992-1994; Philippine Library Associations, Inc. (PLAI), 1993-1997, Overall Chairperson, Organizing Committee CONSAL XIII General Conference, 2006, Manila, and Chair, National Committee on Library and Information Services, NCCA, 2007 to date.

AFTERWORD

These have been reminiscences of my life as a librarian. However, when I retired from work, I made the transition to law teacher and was a member of the Law Faculty for 20 years or so, discounting the years I taught Legal Bibliography and Legal Research.

So, how did I become a lawyer? Taking up law was not my ambition because I was a happy-go-lucky person in college. One morning, Dean Abad Santos fetched me from my house and told me that I had to open the library for him so he could borrow some books for research purposes. When we arrived in front of Malcolm Hall, Mang Rizal Olivar handed me a pencil and an exam permit. Dean Abad Santos instructed him to see to it that I did not leave the Law Theater until the Law Aptitude Exam was over. A month later, I passed it with flying colors.

Still, I was adamant about not entering law school. The next thing I knew, Dean Abad Santos brought me an envelope addressed to Prof. Marita Campos who was interviewing law applicants with Profs. Ruben Balane, Eduardo Labitag, and a student representative at the Roxas Room. When I gave it to her, she asked to stay for a while and we had merienda. After a few minutes, while we were partaking of sandwiches, she asked me about the library and its operations and about my schedule of work. After this, I went back to my office. The next thing I knew I was already in the roster of incoming first year students.

Despite these efforts of well-meaning mentors, I did not enroll. When classes began, Dean Abad Santos came to my office and handed me my class-cards and matriculation forms; apparently he had paid for my enrolment. I attended evening classes and was forced to study hard because according to my professors, among them Teodorico Taguinod, Hugo Gutierrez,

they were instructed to call on me to recite everyday. In fact, Prof. Jose Espinosa, who was then the Law Evening Director, observed that every time he passed by, I was always reciting. I studied hard, telling myself, "Hindi naman ako bobo!"

Thus, my trials and travails began as a student, law librarian, and instructor in Legal Bibliography until I graduated in 1973. How I passed the bar examinations is a wonder because during that period I was called to Malacañang to organize the presidential library, which was the First Lady Imelda Romualdez Marcos' gift to the President on his birthday. When I passed the Bar, three law firms offered me jobs, but Dean Cortes asked me to stay with the College. I did, with the condition that I be allowed to practice the profession. She assigned me to the Office of Legal Aid, which was then newly established. I was its first intern on half-time basis and I remained there for 10 years.

Before I end this trip down memory lane, I must acknowledge my mentors: Ms. Marina Dayrit who taught me discipline and to be systematic in all undertakings; Dean Abad Santos; Dean Irene Cortes, who taught me the finer points of lawyering and advocacy of women's and children's concerns, Prof. Arturo Balbastro for trial practice in the courts, and Dean Froilan M. Bacuñgan who did not promote me, thus forced me to undertake graduate studies at Harvard Law School. (I might add that he was instrumental in the building of the present law library).

I hope I am now paying it forward with generations of students who have attained their dreams as lawyers.

Reaching for the Stars: In the Grand Manner

FLERIDA RUTH P. ROMERO*

INTRODUCTION

FOR YOU WHO read these lines, U.P. College of Law means and has always meant Malcolm Hall. Not for me. My association with the College of Law took place in at least three sites.

I entered the Law School as a freshman in 1948 at the then College of Engineering in Padre Faura, in what is now the Court of Appeals. Barely was the year over when I joined the Grand Exodus to the "Diliman Republic." Riding in the yellow Halili bus with my mother for an ocular inspection, my heart sank with each kilometer we left behind. During what seemed an interminable trip, all our eyes could feast on were the endless rows of *talahib*. I somehow expected an idyllic scene at the end of our journey because we were told that the campus was adjacent to the Balara Filtration Plant, a favorite place of excursion of urbanites who wished to get away from the "madding crowd."

But the bleak and forlorn expanse of space that unfolded before my eyes, dotted by nondescript buildings, could not possibly be the training ground for the future leaders of the country. Being the

* Senior Associate Justice, Supreme Court of the Philippines (ret.); Judge, Administrative Tribunal, International Labour Organization (ILO), Geneva (2000-2005); Judge, Administrative Tribunal, Asian Development Bank (2001-2006; President (2004-2006).

faithful and loyal alumni they were, my family kept an open mind.

WHY THE U.P. COLLEGE OF LAW?

On the way back to Manila after inspecting the still undeveloped U.P. campus, I was quiet, but within me, a debate was going on: to go or not to go. Should I stick to U.P. simply to follow the family tradition? What about the distance? Can I find a "home away from home" on campus? The unprepossessing sight of unkempt hectares of land was anything but inviting.

On the other hand, there was the fierce pride I felt at being a "U. P. product." Having finished an abbreviated secondary course at the U.P. High School, I never doubted that I would pursue my college degree in the same institution. Nor did my family.

From my early readings and alumni anecdotes, the glorious history of the U.P College of Law was a generally-accepted fact. For want of a law school teaching in English at the turn of the century, a young American who was then Assistant Attorney at the Bureau of Justice, George A. Malcolm, successfully convinced the Educational Department of the Young Men's Christian Association (YMCA) to offer law courses—in English. This YMCA Law School was the forerunner of the present U.P. College of Law when it opened on July 1, 1910.

By the end of school year 1910-1911, the U.P. Board of Regents arrived at a major decision to establish the College of Law as a separate unit of the University. Thus it was that in June 1911, the College of Law formally opened at a rented building at the corner of Isaac Peral (now United Nations Avenue) and Nebraska with two classes of 125 members.

Then U.P. President Murray Bartlett appointed Justice Sherman Moreland as the first Dean of the fledgling school, but

Moreland held the post only for a brief period of four months. The College Secretary, George A. Malcolm, was promoted to the Deanship, which office he occupied from 1913-1917 when he was appointed to the Supreme Court as Associate Justice.

On Dean Malcolm's youthful shoulders fell the burden of organizing the College of Law from scratch. His invaluable accomplishments are his enduring legacies, not only to the College of Law, but to the University as well.

Professor Jorge Bocobo, who was appointed permanent Dean on January 12, 1918, held the office for 16 years. He became President of the University afterwards.

At the time I was trying to reach a decision on what to me was a momentous issue, the Law Dean was Prof. Jose A. Espiritu who was the incumbent when the Pacific War broke out on December 8, 1941. He remained Dean during my four years of stay in the College of Law. Later he followed the career path of Dean Malcolm to the Supreme Court, but returned to his "first love," the College of Law. Described by his colleagues as "paternalistic and a stern disciplinarian," he undertook the Herculean task of rehabilitating the devastated Law Library when the College reopened on August 6, 1945 by soliciting donations from American law schools. He is also credited with introducing vital changes in the Law curriculum.[1]

Unuttered but a "given" in weighing the pros and cons regarding the issue of transferring to Diliman was the desire of being able to claim as my Alma Mater the school that produced the country's national leaders. Past Presidents who graduated from the U.P. College of Law were: Japanese Occupation President Jose P. Laurel (1943-45); Manuel A. Roxas (1945-48); Elpidio Quirino (1948-

[1] The foregoing historical facts on the U.P. College of Law were taken from the article *Retrospect on the U.P. College of Law* written by Professor Bienvenido C.Ambion, 33 PHIL. L.J., 380-397 (July 1958).

53) and Ferdinand E. Marcos (1965-86).

Of the many Associate Justices of the Supreme Court who were graduates of the U.P. College of Law, 12 became Chief Justice. When I was appointed Associate Justice on October 16, 1991, I was the fifth from Law Class '52. Serafin Cuevas who was appointed to the Supreme Court in 1984 had already left by the time I climbed on board. I joined three former classmates: Hugo Gutierrez, Jr. (1982-93); Florentino P. Feliciano (1986-95) and the incumbent Chief Justice Marcelo B. Fernan (1988-1991), who later served as Senate President.

Too numerous to mention were the brilliant Law graduates who occupied high positions in the executive, legislative and judicial departments, the local governments, the administrative agencies, the foreign service, the independent Constitutional Offices, those who joined the academe and the entrepreneurs who made good in the business and finance Sectors.

AS A LAW STUDENT IN DILIMAN

After a family conference at this crucial stage in my law studies, I finally decided to follow U.P. to Diliman. From the third floor of the Engineering building in Padre Faura, we law students were installed in a ramshackle Quonset Hut left by the post-World War II liberation G.I. Joes.

With grim determination, I braved its spartan facilities, with its pock-marked concrete floors below a roofing of rusty galvanized sheets. The building was also an oven in summer. During the rainy season, we could not hear our voices recite our lessons above the din of the clatter on the roof and the howling winds. But nothing was too great a sacrifice for a legal education in U.P.

What made things worse for me was having to stay on campus because Diliman felt like light years away from Manila,

where my family lived. I had never slept away from my family. It was another aggravation. What became my "home away from home" was a faculty member's cottage in Area 5 right across Malcolm Hall. This has been demolished to give way to what is now known as the Asian Center. During my first year in Diliman, I was quite unhappy as I missed my mother who had gone to the States to work for her Doctoral degree in Education under a scholarship grant given by Indiana University.

Soon enough, to our great relief, the College was moved to one of the two concrete buildings on either side of the Sunken Garden. Its vaulted ceilings and large, open windows made air conditioning unnecessary. The 45 sophomores were split into two sections which held classes on the second floor. Until I graduated, I remained in Section B, the afternoon class. Above us was the library where I stayed up to 9:00 in the evening pounding away at my manual typewriter which I was allowed to leave in one corner by the Librarian father and son tandem, "Maestro" and Alex España. The next day, the boys would take turns copying my notes and digested cases or would prevail on me to open my notebook when the classmate behind me was called upon to recite. Unfortunately for them, high-tech copying machines were yet to be invented.

There were only nine girls in the two sections. With me in Section B were Perla Salvador, Angeles Pilar and Fabiana Inserto; in Section A were Paz Agcaoili, Aurora Soberano, Teresita Reyes, Teresita Soriano and Fidela Vargas, all of us having been inducted into the Portia Sorority early on. At the time, we in Section B were quite unsophisticated and simple, compared to those in the other section. The naughty boys behind me used to pull my pigtails in their playful moments.

Distributed between the two sections were the scions of prominent families who drove themselves to school in flashy cars: Salvador (Doy) P. Laurel who later became Vice-President of the Philippines; Marcelo B. Fernan, the charismatic campus politician

who became Chief Justice of the Supreme Court of the Philippines and capped his political career by becoming Senate President; Carlos (Mike) L. Romulo, the self-appointed postman for the stateside letters regularly sent me by my mother because he regularly dropped by the Office of the Secretary to pick up his own letters from his famous father, General Carlos P. Romulo (unfortunately the young Romulo died in a plane crash early in his life); Augusto (Jake) Almeda-Lopez whose mother was well-known as one of the pioneer lady Justices in the country and others.

Exhibiting his academic prowess early in our Law studies was scholar *nonpareil* Florentino P. Feliciano who obtained his A.B. *summa cum laude* and his LL.B *magna cum laude*, both degrees from U.P.; subsequently, his LLM and JSD degrees from the Yale University School of Law. (One could spot him from afar due to the native *bastipol* hat he always wore.) From a highly successful law practice as Managing Partner (and currently Senior Counsel) in the Sycip Law Office, reputed to be the largest law firm in the Philippines, he soared into the global legal firmament in diverse capacities.[2] He was Associate Justice of the Supreme Court of the Philippines in 1986-95.

The class Salutatorian and *cum laude* was Bartolome Fernandez who was a very diligent and articulate student. He practically devoted his life serving as Commissioner in the Commission on Audit, from which government office he has retired.

The youngest in the class and *cum laude* when we graduated was Estelito P. Mendoza. Having obtained his Master of Laws from Harvard University, he has made a name for himself as a high-calibre

[2] Of his countless international positions, the more recent are : Former Chairman, World Trade Organizational Appellate Body; President, Asian Development Bank Administrative Tribunal; Member,World Bank Administrative Tribunal; member of several international arbitration commissions (ICC, ICSID, CIETAC, etc.) He has been past lecturer at the U.P. College of Law, Yale University School of Law and The Hague Academy of International Law.

lawyer and as some of his *compañeros* insist—the most expensive litigator and law practitioner. He was the staunch pillar and legal luminary during the Martial Law rule of President Ferdinand E. Marcos, having held these powerful positions in the government: Solicitor General; Minister of Justice; Governor of Pampanga and Assemblyman in the Batasang Pambansa.

Other outstanding classmates who helped Class '52 acquire a reputation as a "strong class" are Joker Arroyo and Catalino Macaraig, Executive Secretaries of President Corazon C. Aquino; Court of Appeals Justices Alfredo Marigomen, Ricardo Pronove, Jr. and Cesar Fransisco; diplomats Augusto Caesar Espiritu and Luis Ascalon; College of Law Dean and COMELEC Commissioner Froilan M. Bacuñgan; Sandiganbayan Justice and PHILJA Vice-Chancellor Nathanael Grospe; COMELEC Chairman Vicente Santiago; MERALCO General Counsel and Chairman, Energy Regulatory Board Marcelo N. Fernando; Pedro Animas who placed No. 1 in the Bar Examination; Albay Governor Felix Imperial, Jr. ; Liliano Neri who later became President of the Integrated Bar of the Philippines (IBP); Judge Fabiana Inserto Tejada; NLRC Commissioner Romeo Putong; brothers Antonio and Jose Viterbo who were well-known businessmen in Capiz; and several law practitioners whose law firms brightly light up the legal firmament.

The classmates I remember who were quite conscientious and consistently got high grades were: Paz Mauricio, Aurora Soberano, Jose Armonio, Antonio Ceniza, Gabriel Magno, Tomas de la Cruz, Leopoldo Serrano, Gregorio Puruganan and Tomas Tadeo. I am sorry if I have forgotten other faces and names.

Fifty-nine years later, Class '52 which had some 45 Law graduates, has been decimated, with more than 50% of its members having been admitted to the "heavenly tribunal." Two of the living members, Estelito P. Mendoza and Flerida Ruth P. Romero, are members of the U.P. Law Centennial Commission which planned, designed and conceptualized the College's projects and activities for

its 100th year's anniversary celebration in 2011.

OUR "TOR-MENTORS" LIGHT U.P. DILIMAN

"Teaching law in the grand manner" was already an ideal aimed at by our law professors long before it was emblazoned in the lobby of Malcolm Hall.

In my mind's eye, I see pass in review the professors who left indelible imprints on us, whether by their intellectual acumen, their unique teaching methods, or their ability to terrorize us. The venerable mentors first: the silver-haired Batangueño, Gaudencio Garcia, whose book, *Questions and Problems in Philippine Political Law*, in question-and-answer format, was used by us and succeeding generations of law students for a long time. Some bar examiners handily lifted their questions from this book. Having obtained his Ll.B from the U.P. College of Law in 1915, he pursued his graduate studies in Columbia and New York Universities in the United States.

Then there was the portly Judge Juan T. Santos, who was a master in the subject of Remedial Law which he taught us expertly. When someone came up with a wrong answer or tried to be a "smart aleck," he would raise his eyeglasses to his forehead, a sure sign that one was treading on precarious grounds. Under his long, penetrating gaze, the student would start fidgeting, shifting his weight from one foot to the other and floundering about in utter confusion.

But I found out how paternalistic he was when I had to request him for the use of his name as a reference when I applied for a fellowship grant from Indiana University School of Law which was his Alma Mater in his own graduate studies. Thanks to his kindness, I was granted the fellowship I sought and followed in his footsteps and those of my mother and sister who worked for their post graduate degrees under scholarship grants in what had now become our "family university." My sister obtained her M.S. in Home

Economics and my mother, her M.S. in Education and Doctorate in Education just before I arrived in Bloomington, Indiana.

Another elderly professor was Judge Hilarion U. Jarencio who had taught at the U.P. College of Law almost continuously since 1938. As with his colleagues, he obtained his A.A. (1924), Ll. B. (1928) and Ll.M. (1938) from U.P. In 1947 and several years thereafter, he served as Government Corporate Counsel. After teaching us Torts, he went on an indefinite leave of absence in 1954 to be a Court of First Instance Judge of Iloilo.

The cluster of our professors belonging to Classes '38,'39 and '40 managed to graduate from the College of Law just before World War II broke out in the Philippines. It was the *magna cum laude* of Class '38, Enrique M. Fernando, who earned, hands down, the title of terror professor. Because his reputation usually preceded him, enrollees in every semester tried to avoid his classes. His standards were very high and he expected no more, no less from his students in his courses in Constitutional Law and Labor Law. More often than not, a student whose bad luck it was to be called upon to recite, would suddenly be afflicted with paralysis and get tongue-tied as he sought to avert his gaze from the shooting darts of fire emanating from under the professor's spectacles. One student who stood head and shoulders above the rest of the studentry in Malcolm Hall at the time was the fair and intellectually astute Emma Quisumbing who caught the eye of the terror professor who turned out to be as human and vulnerable as the other gentlemen in the College. To no one's surprise, she soon became Atty. Emma Quisumbing-Fernando.

For my part, I did my very best to deserve the exemption from final examinations that he invariably bestowed on me. To be sure, I found his subjects so interesting that without half trying, I could always expect a grade in the higher bracket. Incidentally, at Indiana University School of Law, when asked what field of specialization I would choose in enrolling for my Master of Laws, I opted for the course on Labor and Industrial Relations instead of

some other area where I could look forward to a lucrative practice, for here is where one could undoubtedly render service to the uneducated and the deprived.

The law students rejoiced when Prof. Fernando was appointed Chief Justice of the Supreme Court during the Martial Law regime (1979-85) by his contemporary, Pres. Ferdinand E. Marcos (Class '39), but not for the usual reasons.

Likewise graduating as *cum laude* of Class '39 was Ramon Aquino, my Professor in Legal History, which was offered in the freshman year. I can never forget our first class under him when he assigned topics for us to research on for the entire semester. I had only a layman's knowledge of legal concepts and so was nonplussed when I was assigned the topic "The Presumption of the Innocence of the Accused." I decided to seek his advice as he ambled along the corridor hugging the wall. In his usual soft-spoken manner, he kindly gave me tips on how to do legal research.

What impressed the male gentry was, not so much his brilliance, for that was a given for a U.P. Law Professor (he placed sixth in the bar examinations), but the coup he accomplished when he managed to win the hand (and heart) of "brains and beauty" Carolina Griño who transferred to the U.P. College of Law only in the last two years of her Law studies, but emerged bar topnotcher with an average of 92.05% in the 1950 bar examinations. The consensus was that this was more than ample proof that the golden pen of Prof. Aquino was wielded to win jousts other than in book-writing. This rare skill came to public notice in the form of the decisions he penned when he became Chief Justice of the Supreme Court in 1985-86. The Aquino spouses set a record in the annals of the Court as the only Justice husband-and-wife team.

One professor whose advice we did not take kindly to was that of Vicente Abad Santos, former College Secretary and Professor who rose to become the Dean of the College of Law. Whenever a

student stuttered in his recitations, Professor Abad Santos would hoot and order him to "transfer to the Conservatory of Music" or to "go home to the province and plant *camote*." I unfailingly studied extra hard in the so-called "heavyweight" subject of Obligations and Contracts under him which carried a load of five units. And well I did that for when the time came for me to do the mentoring, this was one of the subjects which I handled for more than 20 years.

Incidentally, it was Dean Vicente Abad Santos who recruited me as an Associate Professor in my alma mater on August 1, 1964, twelve years after my graduation. By this time, he had endeared himself to Class '52. A *cum laude* when he obtained his Ll. B. from the U.P. College of Law in 1940, he was one of the fortunate faculty members who received a U.P. fellowship to work for his Ll.M. under a scholarship grant at the Harvard University Law School. Later, he served the government as Secretary of Justice and as Associate Justice of the Supreme Court in 1979-86.

It was an expert in Criminal Law and in Public and Private International Law who taught us Roman Law. Professor Bienvenido C. Ambion, like Prof. Abad Santos, finished *cum laude* when he obtained his Ll. B from the U.P. College of Law in 1940. He likewise pursued his Ll.M. from Harvard Law School under a faculty scholarship grant in 1953. The students teased him behind his back for the ubiquitous paper bag he carried all the way from San Pablo City. Maybe it was the distance he traversed all the way to Quezon City for his daily classes that caused him to be habitually tardy. Anyhow, through the generations of classes he taught, he came to be known as "the late Prof. Ambion."

Upon entrance into the U.P. College of Law, one of our bright mentors was Prof. Emiliano Navarro who finished his Ll.M. at Michigan University. He taught our first Civil Law subject, Persons and Family Relations. It was the College's great loss when he met his sudden death in a car accident.

Quite unforgettable was Professor Francisco Ventura who practically had a monopoly teaching the subject of Land Registration and Mortgages in the different law schools. Equally adept on the dance floor, he was regularly invited by the boys to their nocturnal activities, probably to make sure he was sleepy during the day. We girls, on the other hand, kept him at arm's length.

From the younger members of the faculty, we had Professor Alberto Meer who taught Commercial Law subjects and Professor Norberto Quisumbing who handled Trial Techniques.

On hindsight, I realize that I had the best legal education under brilliant, well-trained and highly-skilled professors who, regardless of Justice Holmes' injunction, helped us reach the farthest star in the legal firmament.

FROM LAW STUDENT TO LAW PROFESSOR

Being lonely and homesick—in Bloomington, Indiana where I assiduously worked for my Master of Laws degree under a fellowship grant from Indiana University School of Law (1953 -54)—was the best motivation that propelled me to reach my goal in the shortest time possible. I graciously declined the offer of the school officials to extend my grant and obtain a Doctor of Laws degree.

Once home, I found a job suited to my qualifications in the Labor Education Center, a pilot project between the Philippine and U.S. governments aimed at training management and trade union leaders in the science and art of democratic, free and responsible relationship in a post -World War II context. When I joined the mainstream of the U.P. system 10 years later as Associate Professor, my Professor and Dean in the College of Law, Vicente Abad Santos, assigned me to teach Labor Law, as well as Jurisprudence and Transportation. Eventually, I took over the Civil Law subjects of Persons and Family Relations and Obligations and Contracts.

To my consternation, Dean Abad Santos gave me the assignment of supervising the renovation of the Law Theater to a more spacious, presentable auditorium. I had never in my life I wielded any carpentry tool, nor did I know that nails and boards came in different sizes. And, by the way, what was a door jamb? I wanted to remonstrate to my Dean: "But these construction skills were not part of the law curriculum—then and now!" How I wiggled out of what I regarded as a preposterous assignment is one for the books. An assignment to investigate an immorality charge against a student was more tolerable.

Right in the same room where, years ago, our class endured the glares and hoots of our "tor-mentors," I now ascended the platform in the novel role of Professor. Where before, we always stood up even before the Professor cast his shadow at the doorway, this time, my students honored me by rising from their seats as soon as they heard the clicking of my heels.

I found it natural to teach on my feet. It gave me freedom of movement and spontaneity in speaking. As my students who have now made names for themselves in their respective fields can attest, I never raised my voice nor threw dagger looks at them. I had had enough of terror professors during my time and I vowed not to follow in their footsteps. This term included those who gave assignments impossible for the students to finish overnight and who, at the end of the semester gave "killing fields grades" or eventually flunked even those who did not deserve to fail.

Just like my predecessors, I used the Socratic method and asked them to recite the assigned cases, after which I lectured and asked them questions. Not a single day passed that I did not religiously prepare for the day's lessons.

How was it like to stand in front of the class instead of being

seated all the time, transfixed and immobilized in one's seat? After handling sundry Law subjects, I finally became comfortable with the Civil Law subjects assigned to me. I got the neophytes as soon as they came in as callow freshmen. One of the things I drummed into their heads incessantly was the need to improve their penmanship in preparation for the Bar Examinations four years hence. It was much harder to train and mold them from the start.

They carried over from pre-law classes their preconceived notions of law—or none at all—and undesirable study habits. It fell to the Professor to define legal terms and concepts first before plunging into the substantive aspects of the subject. One had to come down from the stratosphere of law to their level; to start from where they were coming from; in other words, to proceed from the known to the unknown.

To accomplish this challenging task, I liberally used the chalkboard and drew diagrams and sketches, for PowerPoint presentations were yet to come into existence with computers. Later, I was told by the successful bar examinees that, while answering questions covered in my courses, they visualized my drawings which had been indelibly printed in their minds.

Because of the heavily legalistic nature of the subjects I taught, there were times when we would hold classes continuously for two hours. To relieve their physical and mental tension, I would call a break and ask them to render some musical numbers related to the matter under discussion. For instance, in connection with the topic of Parental Authority, I would ask them to sing Freddie Aguilar's "*Anak.*" On the topic of Family Home, they would volunteer to sing "A House is not a Home." Thus, so many talents were discovered from these impromptu musical sessions that they soon organized a singing group which they called "Charivari" under the leadership of songbird Dot Balasbas, later on assisted by her brother, Fortune.

As we established rapport with each other, my students, who used their research savvy to find out my birthday, would unilaterally declare a holiday and set up a party and program. Unlike during my student days, there were more girls in my classes who, therefore, used their social and artistic skills to rouse their minds from the somnolence of the classroom atmosphere.

After final examinations at the end of each semester, I took extra efforts to meet the inexorable deadline in the submission of grades. I was aware that one of the major complaints of the students against their professors was the habit of some of submitting grades well into the next semester, such that they never knew if they had to enroll all over again in a subject they might have flunked.

To meet my goal, I figuratively burnt the midnight oil lest I be asked to pay the Php 50.00 fine for every day of delay. I was no mathematical wizard, so I labored over columns of figures past midnight. And to be doubly sure, I asked my husband, who had taken up a college course called "Rapid Calculation," to review my mathematical operations. Then came the calculator which rendered the abacus obsolete and my sleepless nights a thing of the past. Suddenly what took several days adding up grades became an overnight accomplishment. What a relief it was to avail of such a technological gadget!

The library seems to occupy a dominant spot in the memory of students. During our time, it was situated on the third floor. Students practically stayed days and nights there when they were not in their classrooms, despite the cold temperature that forced them to bring jackets. Because online and digital copies of cases were not yet to be had, freshmen photocopied such cases, like the *Javellana* decision, including dissents, which were in one entire volume of Supreme Court Reports Annotated (SCRA). Everyone scrambled for the limited copies of SCRA. Like the students under me, when I was one myself, I stayed in the library up to closing time, making and typing case digests. Necessity is the mother of invention. So in due

time, the students were forced to form case groups or "corporations" in a cooperative effort to beat inexorable deadlines.

Because of the limited seats available, even in the two-floor Library that was located in the Law Center, the users took to reserving seating space early in the morning. It was a relief for all when the library was transferred to more spacious quarters now called Espiritu Hall. Many remember having been part of the (bucket) book brigade composed of students, faculty, and staff who queued up passing each publication from one hand to another. Others cannot forget the deadly rumble that occurred right in front of a professor inside the Library.

From the pen of former student Lourdes Aranal-Sereno, now Chief Justice of the Supreme Court, comes these reminiscences of her freshman professor, entitled *The Inspiration That She Is*:

> Imagine your first month in the U.P. College of Law. You have just been miraculously accepted and allowed to enter through the portals of this hall… You are awed by the possibilities of your future. Yet, inwardly, you are cringing and shaking, a fear brought on by nasty stories you have heard about the professors of the College; it sounds like they are worse than a toothache that won't go away!
>
> That is how it was with me nineteen years ago. My young mind was confused at the idea that the greatness of a law professor could be related to the degree of fear that he or she generated in my class. I remember the nervous stomach disorder I suffered every morning, and the visible shaking of my body every time a professor walked into the classroom. Little did I realize how precious that period of my

life would be.

… Yes, she brought much pleasure to us, her young audience, when she walked into the classroom. Then again, she could speak so well. I also remember being completely enthralled by her whenever she displayed that photographic memory of hers. No classmate of mine ever got away with error in the recitation of case facts or legal texts. It was as if she had the book or cases right before her eyes. And yet, she bore nothing in her hand except our classcards and her fan!

Her mind was so sharp. She demanded a firm demonstration of logic in class discussions; she demanded common sense and sadly observed the cliché that it was 'not so common, especially among law school freshmen.' Of course, we could but nod in agreement, surprised at our own stupidity. Well, at least that was how we viewed ourselves then. And then bringing her skills to bear on our learning process, how could we not respond with the right answers, when, after a short explanation from her, the answers would turn out to be self-evident? On reflection, it was her gift that accounted for how she was able to make the law look all too simple and straightforward. For she was a gifted teacher, one of the most endowed that I have known.

It was to her credit that my classmates and I could remember all the lessons gleaned four years earlier in our freshman class, when we were reviewing for the bar examination. It is to her credit that we have, even today, an almost visual outline of the law on Persons and Family Relations in our minds. I ascribe to her gift of teaching the confidence that I

carried when, seven years later after she first taught me this birds-and-bees subject in law, I would in turn teach my first freshman class in Persons and Family Relations – in the same school, even the very first classroom where I first encountered this remarkable person who would touch my life even in the future. For unknowingly, I was following in her footsteps. I was imitating her in so many ways – from the way I structured my course outline, to the basic approach I adopted in designing written examinations. Perhaps, there was an unexpressed allure that was drawing me into her circle.

You see, there was something unfailingly attractive about the way she seemed to have ordered her life, or, the way God ordered it for her. She became an excellent legal scholar, a law professor par excellence, a research administrator, a policy expert, a trusted Presidential advisor, and to cap it all, a highly regarded jurist in the highest court of the land.

…She was never the cold and detached professor of law, the icon depicted in western movies. Rather, she was the eastern guru who taught her students not only the law but more important, Life. Her birthday was an event the entire class looked forward to every year; aside from enjoying specially prepared songs, our class would enjoy exchanging pleasantries with our much-loved professor whose genuine concern for each of us was keenly felt. This birthday celebration with Professor Romero served as the model teacher-student relations approach; students hoped aloud, that somehow the good feelings generated with Professor Romero, could also be duplicated in other classes, with other

> professors. Our professional respect for her could only increase over time, and gradually, our class warmed up to her, enough to embolden us to ask her advice on many things. In my case, it would be a continuing relationship as I sought her advice on some of the most important decisions in my life.
>
> Her success at balancing the sacred role of nurturing a family with a blazing legal career convinced me that there is such a thing as a happy balance for a career mother, and I was determined to learn from her. She paved the way for women similarly situated, and it was in recognition of her unique contribution to the development of the Filipino that she was named as one of The Outstanding Women in the Nation's Service in the Field of Law in 1974.
>
> It is recorded in the Bible that thousands lined the streets of Jerusalem to receive the healing that would come when Peter's shadow fell on them. Together with the story of the woman who touched the hem of Jesus' garment, I have not found any story more beautiful to illustrate the deep and lasting effect that a life lived radiantly can have on other lives. In a sense, this is the kind of effect that Justice Flerida Ruth Romero has had on others. I am privileged to have had her shadow fall on me."[3]

Of her former teacher, Professor Patricia R.P. Salvador-Daway, until recently Associate Dean and Director of the U.P. Law Center, wrote under the title, *HON. JUSTICE FLERIDA RUTH P.*

---

[3] Excerpts from the retirement book of Justice Romero published by the Supreme Court entitled "Flerida Ruth P. Romero, A Life Justly Lived" by Orlando D. Romero, Alvin Jules P. Romero and Charlton Jules P. Romero,1999, pp. 20 – 23.

ROMERO: The Professor, the Boss, the Friend… A Shining Example thus:

> The shock of going through one's very first semester in the U.P. College of Law was, to say the least, minimized because of Prof. Flerida Ruth P. Romero (now Supreme Court Senior Associate Justice). If only for this reason, I feel deeply grateful to Justice Romero.
>
> A teacher in the true sense of the word, she not only made us, her students, approach the subject matter in a scholarly manner but she likewise helped us internalize by concrete examples, complete with visual aids, legal concepts which otherwise would have sounded abstract to freshmen students.
>
> Approachable and concerned with her students' welfare, Prof. Romero kept her office open to students who came for consultation or advice. Missing no such opportunity, I gained so much from Prof. Romero's insights and of experience.
>
> Even after Law School, she kept tab of her students' line of work and made use of every opportunity to recommend them when she thought their expertise could be put to good use."[4]

FROM MALCOLM TO BOCOBO HALL: TRAILBLAZING AT THE LAW CENTER

> "The business of a law school is not sufficiently described when you merely say that it is to teach law or to make lawyers. It is to teach law in the

[4] *Id.*, at 25

grand manner and to make great lawyers."

In 1925, Dean James Parker Hall of the University of Chicago said: "Until very lately, (the university law school) was conceived almost wholly as a high-grade professional training school, employing, it was true, scholarly method and exacting standards of study and achievement, but only indirectly seeking to improve the substance and administration of our law." He continues: "In almost every branch of our law the last thirty years have witnessed a rapidly increasing complexity and uncertainty, often accompanied by a rigidity unresponsive to changing social needs." At the same time, he acknowledged the "new spirit stirring among lawyers today. A change is taking place in the conception of the proper function of a university law school."

He concluded: " (As) we stand on the threshold of a fine and worthy adventure for the betterment [of] our ancient profession… it will labor to simplify and clarify the law, to fashion it to our changing needs, and to keep it the flexible instrument of social progress that is the difficult and crowning achievement of human institutions."[5]

The dean of the U.P. College of Law in the 1960s,Vicente Abad Santos, himself mindful of the swirling developments in society calling for corresponding changes in the law, saw these as an "opportunity and challenge," to use his own words, for his Law School to spread its wings and soar to the heights. Here, indeed, was an "opportunity and challenge" within his capabilities "to teach law in the grand manner and to make great lawyers."

The U.P. Board of Regents, after having appointed Professor Crisolito Pascual as Director of Continuing Legal Education and Research on September 6, 1963, approved the institution of a

[5] Excerpts from an address read at the dedication of the Lawyers' Club by Dean James Parker Hall of the Law School of University of Chicago in 1925 entitled "The Next Task of the Law School."

'Continuing Legal Education and Research Program' two months later. It was a non-degree-granting program designed, among others, to serve the many professionals who desired to undergo continuing training in a program of law studies. It delineated its area of activities, thus: (a) Research and Publication Program; (b) Faculty Lecture Program and (c) Continuing Legal Education Program.

Seven months later, specifically on June 12, 1964, the above-mentioned program was institutionalized into a U.P. Law Center with the passage of Republic Act No. 3870 which defined its functions and provided for its financing. The avowed purpose of the University in establishing the unit was "the advancement of legal scholarship, the protection of human rights with emphasis on the improvement of the legal system and the administration of justice and the assumption of leadership in overcoming the criticism directed at professional competence and responsibility."

A new recruit to the law faculty as Associate Professor, I was appointed barely a year later as concurrent Head of the U. P. Law Center's Division of Continuing Legal Education and held this office from 1965-79. I occupied a corner office in the spanking new building behind the College of Law which came to be known as Bocobo Hall after Dean and later President Jorge Bocobo. (To this day, he is "enthroned" in the large mural painting in the U.P. Law Center done by Glenn Bautista.)

I was now wearing two hats—as a law professor and as an official of the U.P. Law Center in charge of conducting its legal education program. I gave up my office in Malcolm Hall and from then on, stayed in Bocobo Hall, my fourth venue and quarters in the U.P. College of Law.

Having conducted numerous seminars and training programs for ranking local and ASEAN labor leaders for some 10 years in the Asian Labor Education Center (ALEC), I was tapped to lead one of the major activities of the Law Center, namely, undertaking law

institutes or study programs for continuing legal education. It was like throwing a turtle into the river and with hardly any fuss or extended preparation. I immersed myself in my new task. However, unlike my labor education stint, this time my clientele were members of the Bench and Bar.

With a lean staff, we sallied forth to major cities to hold various kinds of *fora* in different fields of law—corporate practice, administrative law, trial technique and procedures, legal aspects of business and others—for both lawyers and judges. Soon we branched out to conduct judicial conferences and advanced courses for Judges of Courts of First Instance, municipal and city courts. As a service to the graduates of the U.P. College of Law, we started holding bar review classes. But so great was the demand that we had to likewise accommodate those coming from other law schools.

Travelling all over the country with our core of law professors and well-known private law practitioners, we easily drummed up support from the voluntary bar organizations of the time, since the Integrated Bar of the Philippines (IBP) was yet to be formed in the early 1970s as a compulsory organization of all lawyers under the Martial Law regime.

Soon enough, we were drawn into the law schools and spearheaded the organization of the Philippine Association of Law Schools (PALS) and the Philippine Association of Law Professors (PALP). We were invited to organize legal conferences for them.

In 1970, an Advisory Council was created by the Board of Regents to formulate general policies and lay down guidelines to govern the operations of the Law Center.

After pioneering in continuing legal education programs for lawyers, judges, law professors and government officials involved in legal work, it was evident that we would have to expand our work and educate people from different sectors on their rights and

responsibilities under the law. When, after 14 years of such continuing legal education work, I was promoted to the Directorship of the U.P. Law Center in 1979. I realized that I had a freer hand in designing programs for other sectors of society.

Who would have thought that the U.P. College of Law would eventually go into "extension work"? During my stint as Director, I led in the organization of programs designed to familiarize the people on the law—their rights and responsibilities and more importantly, the remedies available to them in case of violation of their rights. Mostly conducted in Filipino, we brought our teach-ins to high school students and teachers, to government employees, to members of non-governmental organizations and the barangays. For such "Popularizing the Law (POPLAW)" programs, the U.P. Law Center received an award from the U.P. for "Outstanding Community Project".

In order to reach out to the people in the remote areas, I decided to utilize the radio to disseminate legal information to the end that the people may not be victims of injustice. I accepted an invitation to hold radio programs in Filipino. Called *Ikaw at ang Batas*, this innovative program utilized a question-and-answer format. I was grateful for this opportunity to hone and master my spoken Filipino as I made use of it when, in the Office of the President, I had to write speeches in the native language and, much later, when I wrote some decisions in the Supreme Court in Filipino. A parallel activity in our training programs was the distribution of basic literature on the law in Filipino.

Subsequently, I turned to print media as effective instruments to keep the general public abreast of legal developments, primarily through my columns: *Legally Speaking* in The Manila Journal from 1986-88 and *Take It Or Live It* in the Philippine Star from 1989-1991.

In the area of research and law reform, a substantial project

which Dean Froilan M. Bacuñgan himself closely monitored was the compilation of all the laws of the Philippines with the help of our colleagues in the academe to produce the voluminous "Philippine General and Specific Statutes." At the height of Martial Law, President Marcos would seek the help of the Law Center in drafting Presidential Decrees, Proclamations and other issuances.

Backing up the Law Center, President Marcos promulgated Presidential Decree No. 1856 on December 26, 1982, expanding it into a Law Complex. U.P. President Edgardo J. Angara then signed Executive Order No. 8 in 1983 adding the following as components to the Complex: an Academy of ASEAN Law and Jurisprudence; an International Studies Institute of the Philippines; an Academy for the Administration of Justice and a Legal Resources Center with the Law Library as its core. A unique source of financing was included in the decree to ensure the viability of the project.

Simultaneously, the research arm of the Law Center was engaged in several codification projects. We formed links with several government agencies and in collaboration with them, drafted such Codes as: the Administrative Code, Local Government Code, Consumer's Code, Transportation Code, and Maritime Code. Valuable links were also established with foreign embassies and such organizations as the Asia Foundation and U.S. AID.

Having taught Persons and Family Relations for several years, I was quite familiar with the provisions of the Spanish Civil Code relegating women to a position inferior to men. These were all premised on the system of family law from the Napoleonic Code down to Roman Law which was transplanted to the Philippines by our Spanish colonial masters. I had the feeling that with my position in the Law Center, we could probably bring some relief to Filipino women by amending the law at the time and through the larger framework of law reform.

In 1975, I eagerly accepted an invitation to attend the first

International Women's Year Conference in Mexico as adviser of the Philippine delegation with Secretary Estefania Aldaba-Lim as its Head. I would certainly learn much in the company of such distinguished women leaders as Justice Cecilia Munoz-Palma, Ambassador Leticia Ramos Shahani, Dean Irene R. Cortes, Dr. Leticia Perez de Guzman, Dr. Mona D. Valisno, Bai Matabay Plang and others. True enough, the Conference Plenary and Workshop sessions were immersion experiences and, with the documents on problems of women the world over, I felt more than amply prepared to apply what I imbibed to our domestic situation here in the Philippines.

The feminist movement was on the rise then. To concretize the gains we hoped to achieve, the Law Center drafted a Presidential Decree in 1975 through a Special Committee of the Women and the Law Project. Atty. Yolanda Javellana was the Chairman with the following as her members: Dean Irene R. Cortes, Atty. Ma. Luisa Tuazon, Atty. Estelita Cordero and myself as *ex-officio* member. It sought to accord women full equality before the law. With the articulated challenges of Mexico ringing in my ears, I became an ardent advocate of women's rights. Aside from speaking from various platforms, I wrote articles and monographs and participated in debates in our crusade to improve the social, economic, and legal status of our women. Collaborating and joining forces with us in our numerous public hearings were the Integrated Bar of the Philippines (IBP), U.P. Women Lawyers' Circle (WILOCI), *Federacion Internacional de Abogadas* (FIDA), Women Lawyers Association of the Philippines (WLAP) and the National Commission on the Role of Filipino Women (NCRFW). They were only too eager to follow the standard of the U.P. Law Center where it led them.

After I was appointed Director in 1979, the Law Center and the Integrated Bar of the Philippines (IBP) launched what was to be a formidable and long-awaited project to revise the anachronistic provisions of the Spanish Civil Code in Book I on Family Relations. As the Director at the time, I was designated Chairperson of the Family Law Revision Committee whose task it was to prepare a draft

of the revised Book I. For over four years, we held regular meetings in Bocobo Hall. When the financial resources of the IBP ran low, the Law Center took over. With renowned civilist Justice J.B.L.Reyes as Chairperson, the expanded Civil Code Revision Committee resolutely labored for three more years until 1987.

By the time the draft was completed and took shape as the Family Code on May 4, 1987, a lady had ascended to the Presidency. Sympathetic to the plight of Filipino women, President Corazon C. Aquino did not need much convincing to sign the draft into law as Executive Order No. 209 on July 6, 1987 in her capacity as Legislator. I was privileged, as then Special Assistant to the President, to be able to explain to her all the changes which would effectively liberate the Filipino women from the strictures that tradition and culture had imposed on them.

After I was appointed for another term as Director of the Law Center, I was ready to step down in 1986—unaware that remarkable changes in my career path awaited me—all under Divine Guidance and Mandate. The chapter in my life with the College of Law of the University of the Philippines where I played diverse roles spanned some thirty-eight years. When I made the decision to join the "Grand Exodus" from Padre Faura to Diliman in 1948, I could not have anticipated what awaited me at the turn of the road. Suffice it to say, that I did not regret that momentous decision of mine to step through the open door. There has been no looking back since.

Irreverence

DANTE GATMAYTAN*

I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. Where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it.

- Chief Justice Harlan Fiske Stone[1]

1. TEACHERS

ON TEACHER'S DAY in 2010, former students greet me on Facebook and thank me for having been one of their mentors. It is a special day as only teachers can know, when one receives thanks for an otherwise thankless job. One former student, Jae de la Cruz, thanked a number of her former teachers "[f]or teaching me irreverence (to ideas, systems, governments, world-views)."

These are important moments in the life of a teacher. I do not receive thanks from students for helping make them become lawyers. Rather, I get thanks for pushing them to be the best they can possibly be. I never set out to train students simply to master

* I am indebted as usual to Ms. Sopfia Guira for her research assistance.

[1] Quoted in Philip B. Kurland, *The Supreme Court and its Judicial Critics*, 6 UTAH L. REV. 457, 459 (1959).

the law. Professors are not needed to master the law; that is a task that can be competently performed by drill sergeants. Professors perform a more profound task. Underlying the very exacting standards in all my classes is an ever more important goal of making great lawyers—not drones who spew pertinent sections of the law or the rules of court (although these are important to some degree). Good lawyers are critical thinkers and think outside the ideology of laws—they see through the interests that shape them. They are not blind followers of the institutions that represent the law, such as lawmakers and executives, not even the Supreme Court. Good lawyers cast a suspicious eye on acts of those in power and do not hesitate to challenge these acts when they make light of the law.

I suppose this is often perceived as irreverence. I do not apologize for it, however. Distrust of government and its officials is inherent in our government. It is a value that we built into our system of governance. This is the reason we have divided the functions of government among its three branches because we do not trust the concentration of power in a single person. We delegated the power to legislate to Congress but reserved the power to make laws directly. We also set out to make Congress more representative with the introduction of the party-list system—because we do not trust traditional politicians to legislate beyond their own interests. Our representatives, both elected and appointed can be held accountable for their actions, through a variety of ways including impeachment. Our Constitution reeks of distrust, as all constitutions should. Public officials are not venerated like saints; they are viewed with suspicion because they are humans tempted at every waking moment with the abuse or misuse of power.

Still, it seems improper that a professor of law should even be so casually associated with irreverence. Irreverent is synonymous with "blasphemous, impious, profane, sacrilegious, unholy, ungodly, godless, irreligious, disrespectful, contemptuous, insulting, insolent, rude discourteous, uncivil,

offensive, derisive, imprudent, impertinent" among others. Any one of these words implies an attitude that scarcely befits an officer of the court. But I do not teach irreverence; I do not teach students to disrespect the law or our public officials. I teach intolerance for unjust laws and officials who breach the public trust. This is the way we were trained in the College of Law, and this is the way I train my own students.

Becoming a lawyer does not mean we surrender the ability to criticize our officials, especially those who inflict injustice. Respect for the law does not mean blind submission to authority. If anything, being a lawyer heightens our responsibility to point out injustices.

This irreverence is not a disposition drawn from books or generated in class discussions. It is not the product of an unhappy childhood. It is not espoused for fun or out of spite. It is a lesson learned from practice; from working for years with the most marginalized sectors of society.

Before I joined the academe, I worked for non-profit organizations that served the interests of rural poor communities. I worked with indigenous peoples as they defended their ancestral domains and peasant communities who were fighting to own land. These organizations worked with communities that opposed large-scale mining operations and energy-generating plants that had unacceptable social and environmental consequences. Not infrequently, these communities have had to fight laws to preserve not only their lands but also their communities.

From their perspective, the law can be a tool of oppression. How else can indigenous peoples regard a legal system implemented by colonizers to dispossess them of their lands? On the surface, land registration laws seem like necessary components of an orderly land administration regime. But these laws carry presumptions that contradict deep-rooted cultural beliefs. The idea of individual ownership of land is not completely foreign to many indigenous cultures. How could they

be expected to comply with these laws when these laws violate their own cherished beliefs or spiritual moorings?

The implementation of these seemingly benign alien laws had the effect, which some say is intentional, of divesting peoples of their rights over land.[2] Yet Filipinos who supposedly drove off the colonizers continue to implement the same laws without the slightest hesitation and without a care for their consequences for their fellow Filipinos. Lawyers recite doctrines and pledge blind loyalty to archaic rules regardless of intent and effects on our peoples. Most lawyers purport to know the Regalian Doctrine, and are quick to defend it.[3] Few ever question whether the bases of these laws are just, or have the courage to challenge these laws.

The creation of new laws can be equally harmful. When policy-makers under the Ramos Administration used the energy crisis as a basis for suspending all our environmental laws, we did not sit quietly while generations of Filipinos were placed at risk. We challenged these proposals and wore down its proponents. A good measure of irreverence fueled our efforts; we certainly believed that there is no monopoly on correct policy. The best policies are not necessarily proposed by our elected officials; they are, in my experience, the ones crafted when stakeholders' participate in the process. When Congress finally came out with a law, the provisions attempting to suspend our environmental laws were deleted.[4]

It is not uncommon to find peoples seething with anger when one speaks of, "the law." Enacted miles away without their

---

[2] This thesis is developed by Dr. Owen Lynch in a series of articles that appeared in the Philippine Law Journal. *See* Owen Lynch, Jr., *Land Rights, Land Laws, and Land Usurpation: The Spanish Era*, 63 PHIL. L. J. 82 (1988); id., *The Philippine Colonial Dichotomy: Attraction and Disenfranchisement*, 63 PHIL. L. J. 112 (1988); and id., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws,* 63 PHIL. L. J. 249-320 (1988).

[3] *See* Cruz v. Secretary of the Environment, G.R. No. 135385, 347 S.C.R.A. 128 (Dec. 06, 2000) (Phil.).

[4] *See* Republic Act No. 7648 (1993).

participation, rural communities often regard law with disdain. Laws are viewed as highhanded—demanding unconditional respect regardless of their effects. The solution for the legal profession in our view was to articulate popular sentiments and to translate them into more responsive laws. Lawyers who work in this field understand, if not imbibe, these attitudes toward the law.

We bring these stories into the classroom because they can scarcely be gleaned from the texts of Republic Acts, Executive Orders, or Supreme Court opinions. If carelessly done, the study of the law can be drained of all emotion. But law is not confined to the realm of ideas. It has the potential to affect the lives of every Filipino. Stories from the field are therefore, infinitely more important than most government documents. A law is not the product of seamless cooperation of people's representatives. They are the fruits of heated battles that resonate in the remotest corners of the country. The branches of government—the Executive, the Legislative, and the Judicial Branches are only theaters where these battles can take place. They are almost entirely exclusive clubs that have limited membership and promote specific interests. The point of our practice is to include other perspectives in the policy debate. When the real world challenges exclusive official processes, the challenge appears as irreverence.

Professors, in my view, are not neutral players. In the study of law, particular interests are promoted or preserved in the enactment of laws. The mechanisms for lawmaking are captured to further these interests. In the classroom, we speak of larger issues than just law. We can speak of justice. When law and justice collide our work appears as irreverence.

When Supreme Court decisions are erroneous, law professors have a field day with them, exposing the flaws in legal reasoning and their irrelevance and impact on ordinary citizens. This is a privileged position we hold and a duty no less. The professors' function is to take these decisions apart because it is

their duty to do so. We were never trained to swallow decisions simply because they emanated from the highest court of the land. Supreme Court decisions were wrong because they violated the Court's own doctrines or rules, or because they violated common sense or were clearly intended to favor certain parties.

I had no idea on Teacher's Day 2010 that my most crucial lesson—irreverence—would be taught on a national and international stage.

2. *VINUYA* AND THE UNTHINKABLE

When a Supreme Court decision is wrong, our duty to criticize is heightened. When it is attended by irregularities, it is heightened exponentially. *Vinuya v. Executive Secretary*,[5] is a significant case that sought to correct a historical injustice. The case was filed by surviving *comfort women*—women abducted to become sex slaves of Japanese soldiers During World War II.[6] They were seeking the assistance of the Supreme Court to compel the President to seek an official apology from the Japanese government for acts committed against them. The Supreme Court denied their petition. It appears, however, that several portions of the decision were lifted almost verbatim from three different law review articles.

Worse, and this is the part that was not sufficiently covered by the media, was that the Supreme Court decision had misrepresented the theses of these works to show that they supported the view that the women had no valid recourse under international law. Surely, the Supreme Court would not tolerate such abomination. Surely, it was concerned that not one of their decisions should ever be tainted by plagiarism and surely it would act quickly to distance itself from the *Vinuya* decision—to

---

[5] G.R. No. 162230 (April 28, 2010) (Phil.).

6 Suzanne M. Sable, *Pride, Prejudice, and Japan's Unified State*, 11 U. D.C. L. REV. 71, 78 (2008).

cleanse its ranks. Surely, if the legal bases of *Vinuya* were spurious, it would warrant a reexamination of the Court's decision.

While the Court examined the allegations of plagiarism, I thought it could not resolve the issue without demanding the resignation of the author of the opinion, Associate Justice Mariano del Castillo. With the international legal community looking on, it was clear to me that the Supreme Court could not sweep this issue aside and say there was no plagiarism—there clearly was. I thought the Court could not say that the U.S. sources used in the decision were incorrectly applied—because they were. The authors—Evan Criddle, Evan Fox-Decent, Mark Ellis, and Christian Tams—had in fact protested the misuse of their scholarship to further ends that they did not support.[7]

It was inconceivable that the Supreme Court could sanction these shortcomings. If it did, it would inform the world that the victims of Japanese occupation during World War II had no legal recourse according to plagiarized and misinterpreted sources. Nothing could be so appalling and dishonorable. Many of us were so enraged that it took extraordinary effort to temper our language. If there was ever a best time for irreverence—to speak out, this surely was it. I believe that the College of Law was justified in acting because the potential damage to the Court's reputation was incalculable.

I thought that the Supreme Court would take steps to avoid the appalling spectacle. Its failure to address the issue properly would have consequences not only on the integrity of the Court, but also on the dignity of every member of the bar. The obvious step is not to dismiss the charges as baseless, but to call

[7] *Third author plagiarized by SC justice complains*, August 20, 2010, available at http://www.newsbreak.ph/2010/08/20/third-author-plagiarized-by-sc-justice-complains, last accessed November 7, 2010.

out those who did wrong and mete out the proper penalties. It should then reexamine the *Vinuya* if only because the bases for that decision now appear to be based on a misunderstanding of its sources.

Justice Del Castillo's resignation will show that the Philippine Judiciary does not tolerate intellectual dishonesty and the misuse of sources in writing decisions. The misuse of these sources, clearly, has produced a work of great injustice in the continuing plight of *comfort women* in the country.

The Supreme Court must take the steps, however painful they might be, that will restore its credibility not only before the eyes of the international legal community, but before the petitioners in *Vinuya* who had placed their faith in the Court as an impartial and competent tribunal.

The faculty of the College of Law issued a statement[8] condemning the plagiarism and calling on the author of the opinion, Justice Mariano Del Castillo to resign in order to save the Court from impending criticism, and to protect its image in the national and international legal circles.

We believed that there was no other way to save the Court from the scandal short of Justice Del Castillo's departure from the Court. Presidents are called on to resign for their failure to abide by the law. Why should Justices be governed by another rule? In fact the resignation of Justices is not without precedent. In 1982, twelve of the Supreme Court's 14 justices submitted their resignations after it appeared that the Court fixed the bar-

[8] Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court, available at http://law.upd.edu.ph/index.php?option=com_content&view=article&id=166:restoring-integrity-a-statement-by-the-faculty-of-the-up-college-of-law&catid=52:faculty-news&Itemid=369.

examination score of one bar examinee so he would pass. The examinee was the son of one of the Justices. The other two Justices were abroad and not tainted by the scandal. Lawyers and citizens demanded that at least the justices involved in the scandal should resign or face impeachment.[9] After, President Ferdinand E. Marcos swore in a new 15-member Supreme Court, including 12 justices who had earlier resigned.[10] I think plagiarism is just as offensive as fixing bar exam scores, if not more offensive. Both acts constituted acts of dishonesty on the part of the Justices. I thought that the obvious recourse for Justice Del Castillo was to follow in the footsteps of his predecessors.

Justice Del Castillo, however, did not resign, and incredibly, the Court exonerated him by ruling that there was no plagiarism in *Vinuya*.[11]

The Supreme Court promulgated the unthinkable. In exonerating Justice Del Castillo, it ruled that "plagiarism presupposes intent, and a deliberate, conscious effort to steal another's work and pass it off as one's own."[12] The repeated, verbatim, unattributed reproduction of others' works in *Vinuya* somehow did not constitute a conscious effort to steal, but explained away as a technical glitch. Beyond the implications on *Vinuya*, the Court's new standard would now allow students to incorporate texts from their sources and claim inadvertence—oversight, not intent—in neglecting to cite such sources. Under Philippine law, there can scarcely be a case of plagiarism when anyone can claim that they did not intend to plagiarize.

Instead of salvaging its credibility, the Court saved one of

---

[9] *12 Philippine Justices Resign in Scandal*, THE NEW YORK TIMES, May 7, 1982, available at http://query.nytimes.com/gst/fullpage.html?res=9901E1DF1438F934A35756C0A964948260, last accessed November 7, 2010.

[10] *Marcos Renames 12 Judges*, THE WASHINGTON POST, May 15, 1982, p. A24.

[11] In the Matter of the Charges of Plagiarism, Etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC (October 12, 2010) (Phil.).

12 *Ibid.*

their own. The impact of this ruling on the Court's reputation is taking its toll. For starters, the decision is already criticized as a possible violation of international law.[13] At the time of this writing, the Ateneo de Manila University Loyola Schools rejected the Court's definition of plagiarism and insisted in implementing its own.[14] The public's current commentary is not generating respect for the Court, but contempt.[15]

Even more appalling is that shortly thereafter, the Supreme Court issued a "Notice of Judgment" giving the faculty members at the U.P. College of Law who signed the statement ten days to explain why we should not be punished for its issuance.[16] It appears to have already concluded that we are guilty without giving us a chance to prove otherwise. Our statement, it seems,

---

[13] Reinir Padua, *SC ruling on plagiarism issue a violation of international convention on copyright*, THE PHILIPPINE STAR, October 23, 2010.

[14] The Vice President for the Loyola Schools issued a Memo dated November 4, 2010 entitled *Treatment of Plagiarism Cases in the Loyola Schools in Light of the Recent Supreme Court Decision*, available at http://www.admu.edu.ph/index.php?p=120&type=2&sec=29&aid=9149, last accessed November 6, 2010.
According to the Memo, "The objective act of falsely attributing to one's self what is not one's work, whether intentional or out of neglect, is sufficient to conclude that plagiarism has occurred. Students who plead ignorance or appeal to lack of malice are not excused." It added that despite the Supreme Court's pronouncements in *Vinuya* "the Loyola Schools' understanding and definition of what constitutes plagiarism has not changed. Cases of plagiarism will continue to be handled in the same manner, and with the same regard for due process, as stipulated in the Student Handbook."

[15] Two of Conrado de Quiros' columns in the Philippine Daily Inquirer are particularly scathing. See *Malice in Wonderland*, October 25, 2010, available at http://opinion.inquirer.net/inquireropinion/columns/view/20101025-299586/Malice-in-Wonderland, and *Embarrassments*, dated November 2, 2010, available at http://opinion.inquirer.net/inquireropinion/columns/view/20101102-301000/Embarrassments.

[16] Re: Letter of the U.P. Law Faculty entitled "Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court, A.M. No. 10-10-4-SC (October 19, 2010) (Phil.).

had been unfortunately misconstrued as an assault on the Court.

We issued the statement in good faith to express outrage for the harm done to women who had already suffered so much. We also believed that as part of the academe we should take a strong stand against plagiarism, especially if committed by fellow academics. The presence of Justice Del Castillo on the Court was an affront to the Court's integrity. We felt it was also our duty to make the statement as educators and members of the bar who have sworn by oath not to sanction any falsehood.

On a personal level, I cringe at the thought that at some point in the future, when the works of the judiciaries of the world will be compiled and examined to see what States did to vindicate the rights of their citizens, the Philippines will offer a Supreme Court decision saying that *comfort women,* who were raped by invading Japanese soldiers during the Second World War, "appear to be without a remedy to challenge those that have offended them before appropriate fora."[17] It will become evident that the decision was founded on plagiarized works that, in fact, argued the exact opposite: that these victims do have remedies under international law.

Fewer causes, I imagine, are as noble as correcting this injustice. The Supreme Court had plagiarized works of academics, twisted them to support conclusions they were never meant to support, and denied victims of sexual violence any remedies under international law. Worse, the Supreme Court absolved itself of any wrongdoing and then set out to punish those who pointed out these egregious mistakes; those of us who sought to save the Court's reputation.

Despite my certainty of the morality of my actions, and perhaps because of it, the threat of sanctions from the Supreme Court rattled me. Perhaps if I had consciously done something wrong, I would have been psychologically prepared for the

[17] *Vinuya v. Executive Secretary*, G.R. No. 162230 (April 28, 2010) (Phil.).

Supreme Court's actions. We meant to save the Court by asking it to sever a malfunctioning component. How that could be construed as disrespectful still astounds me.

When I explained the situation to my wife and specified that the faculty could even end up in jail, she said excitedly said, "That's good!" She saw instantly that this was one of those rare events in history we should happily embrace and that it is one battle that we could not possibly lose. While she did not want to see me carted away, she envied the position I was in because I had an opportunity not only to stand up for something I believed in, but to do so under circumstances that could have tremendous impact upon the legal profession. At a later point she said, "If I could trade places with you, I would." Even when the possibility of disbarment loomed, she calmly said that life would go on. In her mind this was too important a fight, as it provided an opportunity to inject reforms into the judiciary. She prays that the Supreme Court would not soften its stand—*quem deus vult perdere, dementat prius*[18] -"Whom the gods would destroy, they first make mad," according to the ancient Greeks. There is no way the Court can survive if it decides to sanction the few who were honest enough to point to the emperor's "new clothes." Perhaps there will be such uproar that it will lead to the Court's demise, which, in turn, could lead to a new beginning.

There were moments in this entire affair that the rest of the world was never privy to but were also great sources of inspiration. When the faculty met on this issue, there was never a doubt in our minds that we had done the right thing. We never second-guessed ourselves. No one withdrew his or her signature. In fact, since the threat for sanctions reached Malcolm Hall, even more members of the faculty signed on.

I think many of us believe that this is the biggest most important lesson we can ever teach our students: that those who

---

[18] *See* Fred W. Householder, Jr., *Quem deus vult perdere dementat prius*, 29(21) THE CLASSICAL WEEKLY, 165-7 (1963).

are in power have a duty to abide by the rule of law. Lawyers come to the point where they need to invoke this duty to criticize members of the Supreme Court even in the face of sanctions. There are issues so big and acts so wrong that we cannot let them pass without comment or criticism. Our first duty is to the truth and there are necessary consequences we must endure in fulfilling this duty.

I write this chapter while the case against the 37 faculty members is still pending. I write it now so that I can capture the emotions that I am feeling at this moment in the midst of this battle; I do not want these emotions muddled by hindsight. I also write it now because it does not matter what the outcome of the case will be, or what actions the Supreme Court will take. We were right to be outraged and right to have acted on that outrage. We could not have been true to our oaths as lawyers and our roles as educators had we decided to ignore this issue. We acted on a duty to protect the Supreme Court from embarrassment.

The only thing that can be worse than whatever punishment the court seeks to mete out to us is the thought that students past and present may be disappointed that we stayed silent or caved under the threat of punishment. The alternative would have been nothing less than failure to live up to my billing as a lawyer, and more importantly, as a teacher.

There was an outpouring of support for the faculty from various sectors—journalists, lawyers, bar associations, schools, academics, students, parents both in the Philippines and all throughout the world. I take comfort in the fact that these supporters saw our statement as a statement of support for the Supreme Court. Other statements followed suit, stronger than ours, some of which used language I would not personally sanction. We are grateful for this support. It is helping us through this ordeal.

3. TAKING STOCK

Is our public intervention necessary?

Had the case involved less sensitive an issue, one that did not involve violence and indignities foisted upon women during the war, and had the mistakes not been so blatant and dishonest, perhaps our criticisms would have been better confined to our classrooms and law journals. But *Vinuya* involved an attempt to vindicate women who were forced into prostitution by an invading army. Plagiarism too strikes at the heart of our profession as educators. This case diminished the women who sought relief, as it did the authors whose works were twisted to deprive these women relief. To be silent at this point is to be an accomplice to an injustice, and to be on the wrong side of history.

If we suffer sanctions as a result of our outrage then so be it. At least we shall have the honor of being penalized for speaking the truth. No doubt we would sign that statement again especially now that the Supreme Court has provided the best possible stage for our lesson in irreverence—the world.

4. TRADITION

This chapter in the history of the UP College of Law is nothing new. It is part of a tradition of speaking out when warranted. Our training and our culture made our public intervention inevitable. We have a history of expressing our outrage not only through our scholarship, but because our role as educators goes beyond the college grounds. We always speak out when an injustice is committed as all citizens should. This is the responsibility of every citizen and not a special role that we arrogated unto ourselves. I marvel at the fact that we can still be outraged and that we can express this outrage collectively. I revel in the realization that we have not become desensitized to wrongdoing or immobilized by indifference. I cherish the scrutiny and vigorous criticism that we practice. This "irreverence," as provocative as it can be, is the distinctive mark

of U.P. Law education. It is the hallmark of leadership that we have borne with pride for a century, and will continue to do so in the next.