

Chapter 4

Twin Beacons for the Judiciary^{*}

Upon assuming the chief justiceship of the Philippines on December 21, 2005, I immediately vowed to lead a judiciary characterized by four ***Ins***: **in**dependence, **in**tegrity, **in**dustry and **in**teelligence; one that would be morally courageous to stand its ground against the onslaughts of **in**fluence, **in**terference, **in**difference and **in**solence; and that is impervious to the plague of “ships” -- kin**ship**, relations**ship**, friend**ship** and fellow**ship**.

Jurisdiction Over Judges and Lawyers

The Supreme Court is mandated to watch over not only the entire judiciary, but also the Philippine bar -- the vineyard from which our judges take root. Accordingly, I look for legal professionals who courageously uphold truth and justice above everything else, above even their own and their clients' interests and causes. The renaissance of the legal profession should see the emergence of **competent** and **ethical** lawyers who would be willing and able to stand for their convictions against all odds; to carry on in spite of seemingly insurmountable opposition; and to be beacons for the weak, the oppressed and the marginalized.

At the same time, I also pledged to continue and revitalize the Supreme Court's ongoing Action Program for Judicial Reform (APJR), with special focus on what I call the four ACID problems that corrode justice in our country; namely, (1) limited **access** to justice by the poor; (2) **corruption**; (3) **incompetence**; and (4) **delay** in the delivery of quality judgments.

Internally, to the 26,000 judicial employees nationwide, I laid down a firm policy of granting **maximum financial and fringe benefits** allowed by law and within my discretion to give as the overall head of the Judicial Department of our government. In turn, I asked the employees for three things encapsulated by the code DHL: **dedication** to duty, **honesty** in every way, and full **loyalty** to the judiciary and to the Supreme Court.

Philosophical Foundations of Liberty and Prosperity

To my mind, what have been outlined so far are just means to an end. This is because I believe that we must aspire to attain two loftier end goals: (1) **safeguarding the liberty** and (2) **nurturing the prosperity** of our people. These twin beacons of LIBERTY and PROSPERITY constitute my core judicial philosophy.

The problem with a proposition such as this is that it lends itself to debate along areas that are often unintended. For instance, the first time this philosophy was broached before constitutionalists, I was deluged with questions on which should take precedence -- liberty or prosperity -- as though the two goals were mutually exclusive; hence, as if one had to choose one or the other. At another time, I was speaking before businessmen. Predictably, they were wont to place prosperity on a higher pedestal than liberty. I have also had initial discussions with academics, whose skills in dissecting issues and events have led me to believe, rightly or wrongly, that the philosophy was too complex and intriguing to be capable of being laid on solid jurisprudential grounds.

I have mentioned these differing views from diverse audiences, if only to acknowledge three streams of thought that surfaced. There were discussions on whether or not courts do, can and should contribute not just to safeguard liberty, but

also to nurture prosperity. For want of better terms, the first scheme that expresses the relation between liberty and prosperity I shall call “disjunctive”; the second, “causal”; and the third, “mutually inclusive.”

The **disjunctive** scheme would have us embrace the view that for prosperity to be achieved, the people’s freedom must be curtailed in some respects. This position is not new at all. Shades of this standpoint are strikingly extant in social-contract theories. These theories postulate the surrender of individual freedoms and liberties to the State or the collectivity, as a precondition for the protection and prosperity promised by life in an ordered society. We in the Philippines, for example, have been advised -- no doubt by well-meaning friends -- not to take our liberty “too seriously,” if we want to see the economy take off.

On the other hand, the second position sees a **causal** relationship between liberty and prosperity; it sees that fostering liberty is a precondition for the advent of prosperity. The fundamental idea is that persons are entitled to have certain wants satisfied and certain existing needs filled by the government, without any direct charge other than their payment of general taxes.

The third position, with which my philosophy is aligned, regards liberty and prosperity as **mutually inclusive**. It advances the view that liberty must include the freedoms that prosperity allows. In the same manner, prosperity must include liberty, especially the liberty to strive for the “good life” according to a person’s conception. Liberty becomes the guarantee that, free from all undue interference and suppression, we all can conceive of the good life and act according to those conceptions! I venture the proposition that a society marked by such liberty is prosperous.

Liberty and Prosperity,
Not Liberty or Prosperity

By situating this belief in our courts, I have taken it a notch higher. I believe that the judiciary can contribute to the advancement of liberty and prosperity by adopting two standards of judicial review, as follows:

1. In litigations involving civil liberties, the scales should weigh heavily against the government and in favor of the people -- particularly the poor, the oppressed, the marginalized, the dispossessed, and the weak. Laws and actions that restrict fundamental rights, like freedom of expression and of the press, come to courts with a heavy presumption against their validity. This policy is commonly referred to as “heightened” or “strict” scrutiny.

2. In conflicts affecting prosperity, development and the economy, deference must be accorded to the political branches of the government. This approach is more widely known as “deferential” interpretation of laws and executive actions.

Let me stress that the above standards do not intend a separatist or disjunctive approach like that which recognizes liberty or prosperity, or which requires a choice of one or the other only. Rather, this position espouses a fundamentally coexistent scheme, in which liberty and prosperity can live and blossom side by side, hand in hand.

In short, it is not liberty *or* prosperity but liberty *and* prosperity.

Let me explain further.

Safeguarding Liberty

Safeguarding liberty has long been a traditional expectation from our courts.

Their role is to be the great equalizers when individual freedoms -- whether civil, political or economic^[1] -- are buffeted by the awesome powers of the State and governmental institutions. These epic constitutional struggles between the government and its citizens are written in the annals of our nation's history, there to be invoked over and over, as often as challenges to individual liberty persist to this day.

Indeed, an individual becomes a majority of one when courts uphold that person's freedom, which may have been transgressed by an unconstitutional law passed by the people's representatives and approved by a President elected by a majority of the voters.

From the Magna Carta of the British to the Declaration of Independence of the Americans, to the struggle for nationhood of the Filipinos as codified in the Malolos Constitution, history rings for the people's right to participate in the political processes, including the freedom to vote and be voted for; as well as the freedoms of expression, of assembly and of religion.

A never-ending saga of trials and triumphs for the judiciary and for our people is the battle for civil liberties, especially the inviolability of our persons and our homes from arbitrary searches and seizures, those guaranteeing our freedoms of abode and travel, and the so-called Miranda rights of persons accused of crimes.

Emergence of New Rights

As technology advances and civilization prospers, new rights emerge. An example of a new freedom that has arisen from a new technology is the right to conduct public opinion polls and to publish their results. I am pleased to inform you

that our Supreme Court has become a world leader in upholding this new norm as an essential part of the traditional freedom of speech and expression.

In *ABS-CBN Broadcasting Corporation v. Commission on Elections*,^[2] a Decision I had the honor of writing in the year 2000, the Court emphatically explained that, “when faced with borderline situations in which the freedom of a candidate or a party to speak and the freedom of the electorate to know is invoked against actions allegedly made to assure clean and free elections, *this Court shall lean in favor of freedom.*”^[3] This new ruling recognizing public opinion polls as a species of the freedom of expression was echoed one year later in *Social Weather Stations v. Comelec*,^[4] and was thus ensconced as a judicial doctrine.

Rights of the Accused

Indeed, our Supreme Court is ever vigilant in safeguarding new rights. Just recently, it condemned the “[v]exatious, oppressive, unjustified and capricious delays in the arraignment” of the accused. The Court ruled that his detention for almost two years without having been arraigned, despite 14 attempts to do so, violated his constitutional right to speedy trial and speedy case disposition.^[5] This Decision, which I penned, stressed that the Court “safeguards liberty and will therefore always uphold the basic constitutional rights of the people, especially the weak and the marginalized.” For the transgression of his constitutional right to speedy trial, the accused was ordered freed and the criminal indictment against him dismissed.

Right to Life and to Liberty

Thus, the Philippine Supreme Court has invariably looked, with heightened scrutiny, at cases evincing restrictions of fundamental rights. As mentioned earlier, any law restricting these rights comes to the courts with a “heavy presumption against its

constitutional validity.”^[6]

Very recently, our Supreme Court promulgated three landmark decisions involving (1) the right of Congress to summon executive officials for investigations in aid of legislation, in conjunction with the people’s right to information on matters of public concern;^[7] (2) the right of the people to peaceful assembly for redress of grievances;^[8] and (2) the rights of the people under a “state of national emergency.”^[9] In all these cases, the Supreme Court upheld the primacy of civil liberties over governmental actions.

The struggle for civil liberties by other countries like the United States, France, Spain and the United Kingdom are, of course, just as long and difficult. The freedoms that they have won with so much sacrifice and suffering have become the bedrock of their democratic system and economic progress. Indeed, they have become so inextricably linked with each other that it seems unthinkable to conceive of liberty without prosperity, or prosperity without liberty.

Nurturing Prosperity

While safeguarding liberty is a fairly common task for the judiciary, nurturing prosperity is something even seasoned jurists and lawyers may not all readily understand and agree with. Some jurisdictions may even disagree with the position that the judiciary should exert conscious thought and effort to nurture progress. Nonetheless, I maintain that whatever the measure of a country’s economic progress, courts contribute to the achievement or nurturance of prosperity.

Recent events impel me to advocate a necessary -- nay, indispensable -- nexus between political **liberty** and economic **prosperity**. Some of these developments are

as follows:

Constitutional Mandate to Distribute Income and Wealth

First. Our 1987 Constitution^{[\[10\]](#)} commands the State to “promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty x x x.”

Equally significant is Article XII, which is devoted in its entirety to “National Economy and Patrimony,” the goals of which are set forth without equivocation: “a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.”^{[\[11\]](#)} We can truly say that in our country, Franklin Delano Roosevelt’s famous “freedom from want”^{[\[12\]](#)} has been constitutionalized. What we need is a responsive government to implement it and a prudent judiciary to enforce it.

That these provisions are not self-executory does not in any way diminish their legal significance. They nevertheless direct the legislature and provide the courts with a juridical context within which to interpret other constitutional provisions and laws.

It is also clear that the Constitution does not contemplate palliatives as the solution to our economic woes. Donations and dole-outs, while welcome, cannot constitute the promise of prosperity that the fundamental law holds out. What the spirit and the letter of the Constitution demand is the institutionalization of *social justice*. Thus, the Constitution expressly ordains as follows:

“The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

“To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments.”^[13]

But the Constitution does not end by merely directing that priority be given to social justice. It further decrees that “the promotion of social justice shall include the commitment to create *economic* opportunities based on freedom of initiative and self-reliance.”^[14] In so doing, it subscribes to the classical thought that social justice is a matter of distributive justice; *that is, all* social groups participate equitably in the resources, the patrimony and the progress of the nation. Hence, the systematic and systemic exclusion of any social group from the blessings of prosperity constitutes social injustice.

It is well to note that from the Universal Declaration of Human Rights, two solemn agreements emerged: (1) the Covenant on Civil and Political Rights; and (2) the Covenant on Economic, Social and Cultural Rights. Commentators on international law are wont to distinguish the two in terms of the *executory* character of civil and political rights as against the *ideal or developmental* character of economic and social rights.

In the Philippines, the same distinction has been applied by some authorities to the rights enumerated in Article III of the Constitution in relation to the economic and social rights found elsewhere in the Charter. Largely self-executory, civil and political liberties -- particularly those enshrined in Article III of the Constitution -- can normally be applied by the courts without difficulty. As a rule, however, the courts have applied and given effect to rights pertaining to social justice and economic prosperity only within the context of appropriate or enabling legislation or of policy

determinations made by the executive department as directed by the Constitution.

By no means am I suggesting that economic rights are inferior to civil and political rights. My point is that civil and political rights not only presuppose economic means and well-being, but also include political and economic freedom in equal measure. The distinction thus provides the judiciary with policy guidance. It is one basis for my dual approach in respect of liberty and prosperity.

Moreover, availability and access to information, which have traditionally been regarded as matters of liberty, have by now acquired economic value as commodities of power. Thus, it has been theorized that (1) the government's withholding of information, knowledge and data constitutes an infringement of a basic liberty; and that (2) prosperity is a matter of processing, acquiring, storing and using such information, knowledge and data.

As mentioned earlier, the right to conduct public opinion polls and to publish their results has also been debated fairly recently. On this issue, our Supreme Court upheld this relatively new right as an essential part of the traditional freedom of speech and expression.

Lasting Solutions to Economic Deprivation

Second. Some of the most learned minds in the world today have called attention to the abysmal gap between the haves and the have-nots. Thus, they propose ingenious solutions to economic deprivation and want. In his new book, *The End of Poverty*,^{[\[15\]](#)} Jeffrey D. Sachs holds that freedom and equality are meaningless to people who wallow in grinding poverty, debilitating disease and inexplicable hunger.

He argues that the United States spent \$450 billion in 2005 to sustain its military superiority, but would “never buy peace if it continues to spend only around one thirtieth of that [sum], just \$15 billion, to address the plight of the world’s poorest of the poor, whose societies are destabilized by extreme poverty and thereby become havens of unrest, violence, and even global terrorism.”^[16]

With the same fervor, *Time* magazine’s “Persons of the Year” for 2005 -- the world’s richest multi-billionaire couple, Bill and Melinda Gates; and rock star Bono -- have come down from their fabulous nests of luxurious living to save 700,000 lives through vaccinations and public health care.

“The Gateses, having built the world’s biggest charity with a \$29 billion endowment [an amount equal to what the World Health Organization disburses], spent the year [2005] giving more money away faster than anyone ever has, including nearly half a billion dollars for the Grand Challenges, in which they asked the very best brains in the world how they would solve a huge problem, like inventing a vaccine that needs no needles and no refrigeration, if they had the money to do it.”^[17] It seems to me that Bill Gates now devotes more of his time and genius to prudently spending his fortune than to feverishly earning it.^[18]

In turn, Bono, reports *Time*, “charmed and bullied and morally blackmailed the leaders of the world’s richest countries into forgiving \$40 billion in debt owed by the poorest. Now these countries can spend the money on health and schools rather than interest payments, and have no more excuse for not doing so.”^[19]

The Gateses’ and Bono’s redefinition of generosity “is not about pity. It is more about passion. Pity sees the suffering and wants to ease the pain; passion sees injustice and wants to settle the score. Pity implores the powerful to pay attention; passion warns about what will happen if they don’t. The risk of pity is that it kills with kindness; the promise of passion is that it builds on the hope that the poor are

fully capable of helping themselves if given the chance.”^[20]

The Gateses’ passion for philanthropy in alleviating the world’s poverty and diseases drew a mind-boggling \$30 billion worth of stocks in blue-chip Berkshire Hathaway, given by investment guru Warren Buffett.^[21]

Alleviation of Poverty

Requires a Stable Judiciary

Third. The world’s most important developmental institutions, like the United Nations Development Program (UNDP), the World Bank (WB) and the Asian Development Bank (ADB) have learned over the years that their goals of alleviating poverty and propelling economic growth cannot be attained, unless there is “a well-functioning judicial system [that] enables the State to regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments and other transactions.”

This stance explains why the UNDP is passionate about broadening the poor’s access to justice; why the WB wants “an effective and efficient judicial system that protects citizens from the abuses of government and safeguards the rights of the poor”;^[22] and why the ADB desires “to enhance the effectiveness and the accountability of the judiciary.”^[23]

Social Responsibility

of Philippine Business

Fourth. In our country, the imperatives of social responsibility in the systematic dispersal of private wealth to alleviate poverty has been pioneered by the Philippine Business for Social Progress (PBSP). Member-companies of PBSP contribute a fixed

percentage of their net incomes to a common fund to pursue humanitarian causes.

Along the same line, the big business conglomerates -- like Ayala, Metrobank, YGC, and those of Taipans Henry Sy, Lucio Tan, John Gokongwei,^[24] and Emilio Yap -- have formed their own philanthropic foundations to pursue educational, livelihood, and other social causes designed to minimize poverty and to help the people help themselves. As I speak, I know that more conglomerates are likewise realizing the need to spend their wealth prudently.^[25] I daresay to you, ladies and gentlemen of big business, that **the only justification for accumulating enormous wealth is the zeal and the ability to distribute it wisely to the needy and the hungry.**

These four developments among the many others convince me that political liberty, the clarion call of the past, must continuously be safeguarded in the present and in the future, if we must be true to Wendell Phillips' reminder that "eternal vigilance is the price of liberty."^[26] However, I am equally persuaded that the prosperity of our people requires as much nurturing in the present century as that accorded to liberty in the past. To be relevant, courts must be constantly attuned to the needs of the present and the vagaries of the future, so that they can respond timely and prudently to the people's ever-expanding well-being.

Ladies and gentlemen, how we cope with the stark realities of poverty -- the antithesis of prosperity -- has become the litmus test for the mandate of the courts to weigh the scales of justice in favor of the downtrodden and the neglected.^[27] Amid the paradigm shift in the role of the courts in economic development are welcome moves to redefine poverty as a "deprivation of essential assets and opportunities to which every human is entitled."^[28] Under this new definition, the right to prosperity is elevated to the level of a universal human right. Hence, it definitely needs attention, cultivation and protection by the courts and by everyone.

Courts and Progress

Perhaps, it is because of my background in both law and business that I have developed a philosophy of combining law and economics as the enduring bases of an egalitarian society. Indeed, the fortunate combination of these two disciplines has instilled my advocacy of justice and jobs, freedom and food, integrity and investments, ethics and economics, democracy and development; in short, **liberty** and **prosperity**.

Of course, recognizing that courts play a role in pushing progress forward is not enough. Equally essential is knowing how that role should be played, if courts are truly to contribute to economic growth.

I believe that as a rule courts should not pass upon the *merits* or *wisdom* of economic policies, for these matters have been left by the people to the President and Congress to evaluate and decide.^[29] An example of this deference to economic policies is heralded in *Tañada v. Angara*,^[30] a Decision I had the honor to write for the Court. In upholding the Senate's consent to the Philippines' ratification of the World Trade Organization (WTO) Agreement, the High Court ruled as follows:

"It is not impossible to surmise that this Court, or at least some of its members, may even agree with petitioners that it is more advantageous to the national interest to strike down Senate Resolution No. 97 [which embodied the Upper House's consent to the ratification of the WTO Treaty]. But that is not a legal reason to attribute grave abuse of discretion to the Senate and to nullify its decision. To do so would constitute grave abuse in the exercise of our own judicial power and duty. Ineludably, what the Senate did was a valid exercise of its authority. As to whether such exercise was wise, beneficial or viable is outside the realm of judicial inquiry and review. That is a matter between the elected policy makers and the people. As to whether the nation should join the worldwide march toward trade liberalization and economic globalization is a matter that our people should determine in electing their policy makers. Let the people, through their duly elected officials, make their free choice."

A recent reiteration of this laissez-faire judicial policy on economic issues is *La Bugal-B'laan Tribal Association v. Ramos*,^[31] which I also wrote. In affirming the constitutionality of the Mining Law allowing 100-percent foreign investments in *large-scale* mining, the Court held thus:

“x x x. The Constitution should be read in broad, life-giving strokes. It should not be used to strangle economic growth or to serve narrow, parochial interest. Rather, it should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to attract foreign investments and expertise, as well as to secure for our people and our posterity the blessings of prosperity and peace.”

La Bugal's doctrinal pronouncements were very recently reiterated this year in *Didipio Earth Savers Multi-Purpose Association v. Gozun*.^[32]

Issue of Justiciability

Am I saying that economic and business questions are not to be reviewed by our courts for being political or non-justiciable? No, it is not my intention in the least to advocate abandonment of this salutary doctrine of justiciability. I submit, though, that only on the clearest of grounds must judicial review result in a reversal of legislative or executive action in commercial and business matters. Any doubt must be resolved in favor of the political branches of government.

Although separation of powers is definitely also at work, it is more than separation of powers that supports my proposition. Insofar as rights guaranteeing civil and political liberties are phrased as executory, they are susceptible of direct application by the courts. But basically, economic, industrial and business policies are considerations of what is beneficial, advantageous, feasible and practicable. As such, they are policy considerations best left to politicians and economic managers.^[33]

One of the esteemed former members of the Court espouses a view similar to

mine. Amidst the dilemma posed by the constitutional “obligation” of judicial review and the counter-majoritarian objections to it, Justice Vicente V. Mendoza proposes a “double standard” of review: stringency in laws affecting civil liberty, on the one hand; and, on the other, benignity and deference in regard to laws on economic and social ventures or experiments.^[34] This double standard of review runs along the same lines as my own judicial philosophy of Liberty and Prosperity.

Grave Abuse of Discretion

This judicial no-interference rule on economic policy does not mean, though, that the courts will abdicate their duty of striking down (1) *gravely abusive* legislative or executive acts that *clearly* violate the Constitution, the laws, or settled jurisprudence;^[35] or (2) those that have been issued with arbitrariness, whim, caprice, bias or personal hostility.^[36]

Consistent with this exception to the no-interference rule, the Supreme Court has nullified contracts entered into by the government, like those for the reclamation of portions of Manila Bay,^[37] the construction and operation of the new Manila International Airport Terminal,^[38] and the automation of the 2004 national elections.^[39]

The courts have been chided for what businessmen and economists claim to be unwanted incursions upon the spheres of trade and investments. What these commentaries suggest is that economists and entrepreneurs insist on playing by their very own rules without interference from anyone, let alone the courts. But even the ways of the market and of merchants must adhere to society’s rules on fairness, equity and reasonability. In short, it is the function of law and of the courts to put these fundamental convictions in legal form and to make them direct economics. Not liberty *or* prosperity, then, but liberty *and* prosperity.

The fact is that the courts are the guardians not merely of civil and political liberties. They are protectors also of economic rights, including freedom from unwarranted impositions, from anomalous and disadvantageous arrangements, and from unconscionable contracts. These critics also disregard the fact that, under our Constitution, the courts have the duty not merely to settle actual controversies involving legally demandable and enforceable rights, but also to strike down contracts that violate our Constitution and laws or have otherwise been entered into “with grave abuse of discretion.”

While on this subject, may I point out that the foregoing voided contracts were entered into by the government in contravention of law. I should emphasize that the judiciary takes a more liberal view of private agreements, in which the subject matter is a strictly commercial transaction. In these agreements, “neither the law nor the courts will extricate a party from an unwise or undesirable contract he or she entered into with all the required formalities and with full awareness of its consequences.”^[40]

Search for a Model for Economic Development

On January 16, 2006, I had an interesting round-table discussion with Professor William Easterly, who had recently published a much-acclaimed book entitled *Elusive Quest for Growth*.^[41] Among the discussants were Finance Secretary Margarito Teves, former Prime Minister Cesar Virata, former National Economic and Development Authority Director-General Felipe Medalla, Senator (and Senate Ways and Means Committee Chair) Ralph Recto, Banker Vitaliano Nañagas, Economist Romeo Bernardo, business leader Jaime Augusto Zobel de Ayala II, Professor Alex Magno,

IMF Resident Representative Reza Baqir, and World Bank Country Director Joaquim von Amsberg (the dinner host).

Professor Easterly opined that most economically advanced countries -- like the United States^[42] and many states comprising the European Union -- had adopted liberal democracy, in which human rights were zealously protected.^[43] He added that under these benign regimes, entrepreneurs felt comfortable and thus invested their money for the long term.

When confronted with other models of economic prosperity like China,^[44] Singapore,^[45] and Chile, Professor Easterly conceded that there was no single formula for rapid economic growth. He theorized, though, that for the long term, liberty must still stand side by side with prosperity as the durable formula for lasting economic success.

To my mind, the peculiar facts and distinct circumstances of the Philippines make the formula **Liberty and Prosperity** still the most viable economic and judicial philosophy here. After all, during the years of Martial Law, authoritarian rule was proven to be incapable of producing meaningful long-term economic progress. Even more important, our people value their freedoms very dearly and will not exchange them for food. Indeed, the Filipinos may endure occasional hunger, but they will never tolerate injustice and indignity for long.

Closing

I have attempted, as best as I could, to (1) demonstrate that just as there is an emerging catharsis over the role of private wealth in alleviating poverty, disease and hunger in the world, there is also an ongoing renewal of the role that courts play in instilling both economic and political justice; and (2) present the twin beacons of my

judicial philosophy of Liberty and Prosperity in the context of our history, as well as of existing and emerging realities.

By no means is my philosophy of Liberty and Prosperity meant to be an absolute prescription that other jurisdictions must also espouse. They each have their own history, experience, economics, culture and politics, which should dictate whether this philosophy would be viable in their respective jurisdictions.

Nonetheless, I present **liberty and prosperity** as a possible framework within which judiciaries may define their missions and visions for the future.

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This article is a composite of six speeches I delivered to explain my judicial philosophy of Liberty and Prosperity to various audiences, including business leaders, jurists, lawyers, and members of the academe and private sector groups. Comprising this compendium are my speeches entitled (1) “Liberty and Prosperity,” which was delivered before the Joint Meeting of the Financial Executives Institute of the Philippines (FINEX), the Makati Business Club (MBC), the Management Association of the Philippines (MAP), the Philippine Chamber of Commerce and Industry (PCCI), the Federation of Filipino-Chinese Chambers of Commerce, and the Japanese and European Chambers of Commerce on February 15, 2006, at the Grand Ballroom of the Hotel Intercontinental in Makati City; (2) “Liberty and Prosperity: A Program for the Philippine Judiciary,” delivered during the round-table discussion on April 12, 2006, at the Plantation Bay Resort Hotel, Marigondon, Mactan Island, Cebu; (3) “An Enduring Egalitarian Society,” delivered before the World Presidents’ Organization on March 18, 2006, at the Red Restaurant, Shangri-la Makati; (4) “The Academic Foundations of Liberty and Prosperity,” which I delivered during the National Academic Forum on Liberty and Prosperity organized by the Philippine Judicial Academy on July 20, 2006, at the Abbot Lopez Hall, San Beda College, Mendiola, Manila; (5) “Economic Prosperity: A New Norm for the Philippine Judiciary”; and (6) “Twin Beacons for the Judiciary.” The last two speeches were delivered from May 10-28, 2006, before business leaders, the Filipino communities, lawyers, and members of the academe in New York and Washington DC in the United States of America, Spain, France and London, during my knowledge-sharing/lecture circuit on my judicial philosophy of Liberty and Prosperity.

[1]

Fr. Joaquin Bernas elucidated on the current Bill of Rights of our Constitution, as follows:

“It is customary to distinguish three concepts: civil liberties, political freedoms and economic freedoms. x x x.

“To civil liberties belong freedom from arbitrary confinement, inviolability of the domicile, freedom from arbitrary searches and seizures, privacy of correspondence, freedom of movement, free exercise of religion and free choices involving family relations.

“Political freedoms include the freedoms involving participation in the political

process -- freedom of assembly and association, the right to vote, the right of equal access to office, the freedom to participate in the formation of public opinion, and also non-establishment of religion or what is popularly called separation of church and state.

“Economic freedom covers everything that comes under the heading of ‘economic self-determination,’ free pursuit of economic activity; in general, free choice of profession, free competition and free disposal of property.” J. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS 164 (1995).

[2] 380 Phil. 780, January 28, 2000, per Panganiban, *J.*

[3] *Id.*, pp. 795-796. Emphasis supplied.

[4] 357 SCRA 496, 501, May 5, 2001, per Mendoza, *J.* In this case, the Court stressed that “because of the preferred status of the constitutional rights of speech, expression, and the press, a law prohibiting the publication of pre-election surveys is vitiated by a weighty presumption of invalidity.”

[5] *Lumanlaw v. Peralta*, GR No. 164963, February 13, 2006.

[6] *Ayer Productions v. Capulong*, 160 SCRA 861, April 29, 1988.

[7] *Senate v. Ermita*, GR No. 169777, April 20, 2006. More accurately, the Court invalidated the major provisions of Executive Order No. 464. In its simplest terms, the Decision held that Congress had the right to compel the appearance of executive officials in congressional investigations, because the power of legislative inquiry was as broad as the power to legislate. Hence, held to be unconstitutional were the provisions of EO 464, which allowed the executive branch to evade congressional requests for information without properly invoking executive privilege in recognized instances. Nonetheless, the Court directed Congress to indicate, in its invitation to executive officials, the subject matter of the inquiry and of related questions, so that the President or the Executive Secretary could properly invoke executive privilege, if warranted.

To the extent that investigations in aid of legislation were to be generally conducted in public, the Court held that “any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress --opinions which they can communicate to their representatives and other government officials through the various legal means allowed by their freedom of expression. x x x.”

[8] *Bayan v. Ermita*, GR No. 169838, April 25, 2006. This *ponencia*, penned by Justice Adolfo S. Azcuna, stated thus:

“x x x[T]his Court reiterates its basic policy of upholding the fundamental rights of our people, especially freedom of expresión and freedom of assembly. In several policy addresses, Chief Justice Artemio V. Panganiban has repeatedly vowed to uphold the liberty of our people and to nurture their prosperity. He said that ‘in cases involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak. Indeed, laws and actiions that restrict fundamental rights come to the courts with a heavy presumption against their validity. These laws and actions are subjected to **heightened** scrutiny.’”

[9] *David v. Arroyo*, GR No. 171396, May 3, 2006. Writing for the majority in this case, Justice Angelina Sandoval-Gutierrez ruled as follows:

“All powers need some restraint; practical adjustments rather than rigid formula are necessary. Superior strength –the use of force – cannot make wrongs

into rights. In this regard, the courts should be vigilant in safeguarding the constitutional rights of the citizens, specifically their liberty.

“Chief Justice Artemio V. Panganiban’s philosophy of liberty is thus most relevant. He said: ‘In cases involving involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak.’ Laws and actions that restrict fundamental rights come to the courts with a heavy presumption against their constitutional validity.”

[10] The following provisions of the Constitution, among others, mandate the State to promote economic prosperity:

Article II (Declaration of Principles and State Policies)

“Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”

“Sec. 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.”

Article XII (National Economy and Patrimony)

“Sec. 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

“The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

“In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.”

“Sec. 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.”

“Sec. 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.”

[11] Art. XII, Sec. 1.

[12] During his annual message to the US Congress on January 6, 1941, Roosevelt outlined, as his vision for the world, four freedoms: freedom of speech and expression, freedom of every person to worship God, freedom from want, and freedom from fear.

[13] Art. XIII, Sec. 1.

[14] Art. XIII, Sec. 2

[15] Penguin Press, New York, 2005. *See also* J. STIGLITZ AND A. CHARLTON, FAIR TRADE FOR ALL (2005). This book exhorts developed countries to modify World Trade Organization (WTO) rules to enable developing countries to cope with globalization as a means to reduce poverty.

[16] *Id.* at 1.

[17] *Time*, December 26, 2005/January 2, 2006, p. 26.

[18] Indeed, at 50, Bill Gates is relinquishing his day-to-day business responsibilities as Microsoft chair as of July 2008, in order “to focus more on philanthropic work.” *Time*, June 26, 2006, p. 14.

[19]

Id.

[20]

Id. at 27.

[21]

This sum will be given gradually beginning in July this year and continuing every year, for as long as one of the couple -- Bill, 50; or Melinda, 42 -- is active in the Bill and Melinda Gates Foundation. But each installment must be spent in the year it is given. For 2006, Buffett has donated 602,500 Berkshire B shares valued at about \$1.5 billion, which must be spent by the Gates Foundation within the year. Time, July 10, 2006, p. 13.

[22]

LEGAL AND JUDICIAL SECTOR MANUAL (2002), a World Bank publication.

[23]

Law and Policy Reform, ADB Report, January 2005, pp. 26-28.

[24]

To celebrate his 80th birthday on August 11, 2006, John Gokongwei donated all his personal holdings, amounting to P10.25 billion, in JG Summit to the Gokongwei Brothers Foundation, which in turn donated P50 million to the University of San Carlos in Cebu City. (Philippine Daily Inquirer, August 13, 2006, p. A1)

[25]

Some noteworthy causes include media outreaches like Bantay Bata of ABS-CBN and the Kapuso Foundation of GMA 7; pro-poor programs of religious groups like Catholic Charities and Pondong Pinoy; and civil society groups like Gawad Kalinga, led by Antonio Meloto who recently merited a Ramon Magsaysay Award.

[26]

This statement was made by Phillips (1811-1884) -- abolitionist, orator and columnist for The Liberator -- in a speech before the Massachusetts Antislavery Society in 1852 <<http://www.freedomkeys.com/vigil.htm>> (visited February 13, 2006).

[27]

The pro-poor bias of the Constitution is evident in these provisions, among others:

Article II (Declaration of Principles and State Policies)

"Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

Article XII (National Economy and Patrimony)

"Sec. 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

x x x x x x x x x

"Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."

x x x x x x x x x

Article XIII (Social Justice and Human Rights)

"Sec. 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

"To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

"Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. x x x.

"Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which

will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

“Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

“No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated. x x x.

“Sec. 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems. x x x.

“Sec. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”

[28] Office of the ADB General Counsel, *Report on the ADB's Law and Policy Reform Activities in Support of Poverty Reduction*, ADB Report, February 2004, 18 pp.

[29] In my book *LEVELING THE PLAYING FIELD* (2004), I underscored the balancing role of the judiciary in our government. I said that “[t]he Supreme Court safeguards not only food, but also freedom; not only jobs, but also justice; not only indulgences, but also integrity; not only development, but also democracy; not only prosperity, but also peace.”

[30] 338 Phil. 546, 604-605, May 2, 1997, per Panganiban, *J.*

[31] 445 SCRA 1, December 1, 2004, per Panganiban, *J.*

[32] GR No. 157882, March 30, 2006. per Nazario, *J.* The constitutionality of the Mining Law was raised anew in this case, insofar as this law allegedly ceded beneficial ownership of the mineral resources to a foreign contractor. Holding that this matter had already been settled in *La Bugal*, the Court emphasized that the FTAA contractor was not free to do whatever it pleased and get away with it; on the contrary, it would have to follow the government line if it wanted to stay in the enterprise. The law and its Implementing Rules and Regulations vest in the government more than a sufficient degree of control and supervision over the conduct of mining operations.

[33] John Rawls, undoubtedly one of the most influential theorists of justice in the latter part of the 20th century, proposes the reform of institutions. His theory is briefly presented here to fuel further discussions by the participants.

In his original volume [A *THEORY OF JUSTICE* (1971)], Rawls believes that when rational persons decide on the principles by which society is to be organized, they will, of their own, choose the principles of justice that will regulate all subsequent criticism and reform of institutions. He elucidated those principles in his re-statement of his theory [JUSTICE AS FAIRNESS: A RESTATEMENT (2000)], as follows:

(a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, a scheme that is compatible with that of liberties for all.

(b) Social and economic inequalities are to satisfy two conditions: *first*, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and *second*, they are to be of the greatest benefit to the least-advantaged members of society.

As to what “equal basic liberties” that each person must enjoy to the maximum, and that is compatible with a similar maximum for all others, Rawls writes:

“A second way of drawing up a list of basic rights and liberties is analytical: we consider

what liberties provide the political and social conditions essential for the adequate development and full exercise of the two moral powers of free and equal persons. Following this, we say: first, that the equal political liberties and freedom of thought enable citizens to develop and to exercise these powers in judging the justice of the basic structure of society and its social policies; and second, that liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and **in rationally pursuing (individually, or more often, in association with others) their conception of the good.**" (Emphasis supplied)

[34] *The Nature and Function of Judicial Review*, IBP Journal 31:1, 1st and 2nd Quarters (2005).

[35] *Republic v. COCOFED*, 423 Phil. 735, December 14, 2001.

[36] *Benito v. Comelec*, 349 SCRA 705, January 19, 2001; *Defensor-Santiago v. Guingona Jr.*, 359 Phil. 276, November 18, 1998; and *Philippine Airlines, Inc. v. Confesor*, 231 SCRA 41, March 10, 1994.

[37] *Chavez v. Public Estates Authority*, GR No. 133250, 384 SCRA 152, July 9, 2002; 451 Phil. 1, May 6, 2003; and 415 SCRA 403, November 11, 2003; per Carpio, J.

[38] *Agan v. PLATCO*, GR No. 155001, May 5, 2003 and January 21, 2004, per Puno, J.

[39] *Information Technology Foundation of the Philippines v. Commission on Elections*, GR No. 159139, 419 SCRA 141, January 13, 2004, per Panganiban, J.

[40] *Opulencia v. Court of Appeals*, 355 Phil. 124, 136, July 30, 1998, per Panganiban, J. (citing *Esguerra v. Court of Appeals*, 335 Phil. 58, 69, February 3, 1997).

[41] MIT Press, Cambridge and London. Romain Wacziarg of Stanford University describes Easterly's work as a "superb book [that] draws on what we have learned from almost two decades of cross-country growth comparisons" about "supposedly miracle growth policies [that] have proven disastrous or ineffective," but wisely "avoids proposing a new panacea x x x." Wacziarg, *Review of Easterly's THE ELUSIVE QUEST FOR GROWTH*, XL JOURNAL OF ECONOMIC LITERATURE 907-918, September 2002.

[42] The United States, with a per capita income of \$41,800 is considered the world's richest economy. It did not achieve this status overnight, however. The key to its economic success is consistency. Compared with China's staggering 9.6% growth per year from 1990 to 2003, US growth rates have been relatively modest at 3.3%. But, in a span of two centuries (1820-1998), the US has maintained a steady average growth rate of 1.7% per year of per capita GNP. Its sustained growth is attributed to a stable, transparent and independent government with credible and consistent economic policies. (Figures taken from CIA World Factbook 2005 <<http://www.cia.gov/cia/publications/factbook/rankorder/2004rank.html>> (visited January 10, 2006; and *Recent Economic Performance*, WORLD DEVELOPMENT INDICATORS (2005), an annual publication of the World Bank <<http://devdata.worldbank.org/wdi2005/Section4.htm>> (visited January 31, 2006).

[43] The discussion was summarized by Prof. Alex Magno, also a participant, in his column in the Philippine Star on January 19, 2006.

[44] The rapid growth of China has been unprecedented. Its average annual growth rate of 9.3% from 1990 to 2003 has been nothing short of phenomenal, and it shows no signs of slowing down in the near future. With a growth rate of 9.5% in 2004 and after the government announced robust economic growth of 9.9% in 2005, China has overtaken France and Britain to become fourth on the list of the world's biggest economies.

What makes the case of China more inspiring is the fact that in 1981, it was among the poorest countries with more than 60% of the population living on less than \$1 a day. This poverty level was cut in half by 1990 and again by 2001. And China was able to achieve all of this under a one-party

rule. (Data from *Recent Economic Performance*, WORLD DEVELOPMENT INDICATORS (2005), id.; Channel News Asia, International Business News <http://www.channelnewsasia.com/stories/afp_world_business/view/190006/1/.html> (visited January 31, 2006); and CIA World Factbook (2005) <<http://www.cia.gov/cia/publications/factbook/rankorder/2004rank.html>> (visited January 10, 2006)).

[45]

Singapore is yet another success story. With average annual growth rates of 6.7% from 1980 to 1990 and 6.3% from 1990 to 2003, it has grown -- in a short span of three decades -- from being among the world's poorest countries to one having per-capita income levels that match those of highly industrialized nations. The Singaporean government maintains a significant amount of control over the economy. Even then, Singapore has become a haven for international investors. [Figures culled from *Recent Economic Performance*, WORLD DEVELOPMENT INDICATORS (2005), an annual publication of the World Bank <<http://devdata.worldbank.org/wdi2005/Section4.htm>> (visited January 31, 2006); and the CIA WORLD FACTBOOK (2005), <<http://www.cia.gov/cia/publications/factbook/rankorder/2004rank.html>> (visited January 10, 2006)].