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FOREWORD

Question marks hang over many laws, even those that have already passed the test of time. From these concerns and challenges, inspiration is drawn to create legal articles and essays published in the USLS Law Journal.

But before diving into the pieces in this volume, I present a question to ponder: does the word “ambitious” give a positive or negative connotation?

We may be all too familiar with this adjective being used pejoratively by some—especially those who are content with living in the *status quo*—but I am not among those who subscribe to such a notion. I strongly believe that being ambitious is a badge of honor that must be carried with courage, persistence, and—even though it seems contradictory—humility. It is a badge of honor that embodies trust in one’s capabilities and willingness to take leaps of faith. It is this ambition that takes one far from square one.

In the same way, in the legal field, legislators are expected to embody an ambitious spirit that aims to bring meaningful changes to the country. There is still so much that may be improved and changed in the Philippines’ legal landscape, and a big part of that rests on what ambitions the legislators have for the country and their fellowmen. They are challenged to make laws that will not just serve as a quick fix to the nation’s problems, but will make positive and lasting changes. From proposals, to bills, to acts—they all begin with a legislator’s ambition for a better world.

This school year, I proudly present Volume 14 of the USLS Law Journal, wherein contributors ruminate on how several pieces of legislation have impacted members of our society, from powerful landowners, average social media users, to municipal fisherfolk.

This issue begins with an article written by *Atty. Jose Fernando B. Cuenca*, entitled “Forever Sitting in the ‘*Mirador de su Casa*.’ Republic Act 11573 and its Changes to the Judicial Confirmation of Imperfect Titles.” This piece discusses how R.A. 11573—a curative law that simplifies and harmonizes land laws—concurrently seems to disempower owners of bigger landholdings from confirming ownership of land acquired through acquisitive prescription. This poses the irony of the law with the supposed benefit of the Torrens System to have an incontestable title to one’s land, since landowners would still remain at their “*mirador de su casa*” while waiting for the Supreme Court’s interpretation of certain parts of the law.

This is followed by the essay “Cheap Speech in the Marketplace of Echo Chambers” by *Jarre V. Gromea*, which examines a critical dilemma: the glut in information (and disinformation) in the digital age versus the freedom of expression and exchange of ideas.

The third piece, “*La Cosa Nostra: An Endless War Against Organized Crime and Gang Violence and the Significance of the RICO Law in the Philippines*” by *Jose Adrian Miguel P. Maestral*, explores how the implementation of an all-encompassing law similar to the RICO Act in the U.S. would be instrumental in combatting organized crime in the Philippines.

The next essay, “The Tragedy of the Commoners” by *Jeremiah I. Diaz*, talks about how the declaration of relevant provisions in the Philippine Fisheries Code as unconstitutional counters the preferential rights of subsistence fisherfolk, simultaneously putting multiple sectors and critical marine ecosystems in peril.

The final essay, “Impeachment: Constitutional Alarm Bell or Just Another Tactic in the Partisan Playbook?” by *Fercy Lyn N. Almaiz* discusses the legal mechanisms, as well as the collective responsibility of citizens, needed to hold public officials responsible for their misconduct.

Like in the previous academic journal issues, these articles are published with the hope of encouraging educational dialogue and food for thought. This would not have been possible without the writers mentioned above who willingly shared their time, effort, and passion for legal discourse. Thank you, our dear contributors, for sharing interesting, unique, and thought-provoking articles in this issue.

The past year is a testament to how ambition and dreaming big are strong driving forces for one to take action and actually make things happen. From the symposium with bar topnotcher *Atty. Mark John Simondo*, the revival of *The Advocate*, the USLS Law Journal magazine, to the publication of Volume 14 of the academic journal—all these happened because of the spark of ambition ignited by the Dean of the College of Law, *Atty. Ralph A. Sarmiento*, to inspire the USLS Law Journal team. Thank you, Dean Ralph, for your trust, guidance, and encouragement, which supported the team in reaching new heights this school year.

Finally, to our readers—especially my fellow students and aspiring future members of the legal field—I embolden you to dream big, both for yourself and your community. The future of the Philippines and its legal system rests in you: today’s dreamers and future Lasallian lawyers and legislators. May your ambition be the catalyst to take you far in your journey.

Animo, La Salle!



MA. BEA PATRICIA P. SANTIANO
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**FOREVER SITTING IN THE “*MIRADOR DE SU CASA*:”
REPUBLIC ACT 11573 AND ITS CHANGES TO THE
JUDICIAL CONFIRMATION OF IMPERFECT TITLES**

*Atty. Jose Fernando B. Cuenca*¹

“That being the purpose of the law, it would seem that once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting in the ‘mirador de su casa,’ to avoid the possibility of losing his land.”

- Justice Johnson in
*Legarda vs. Saleeby*²

I. INTRODUCTION

Antonio Vera³ is a planter with vast landholdings in the mountainous plains of Negros Occidental. The farm sits at the foot of Mt. Kanlaon, and like any old family on the island, the plantation is dedicated to sugarcane. Within the said plantation is a 15-hectare hill called “Paeng’s Fist,” named after his grandfather, which resembles exactly what it is called.

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² *Consuelo Legarda v. N.M. Saleeby*, G.R. Number L-8936, 2 October 1915.

³ Fictional Character.

“Paeng’s Fist” is the highest point over the property and overlooks the whole plantation, even the town’s población. Different telecommunications providers would approach Antonio offering to rent a portion of the hill to build their towers for nearby towns. Antonio is happy to rent it out; however, “Paeng’s Fist” is untitled, a requisite needed by the providers.

Additionally, Antonio is trying to fight cases left and right against his claim of Paeng’s Fist. Different individuals would approach him and claim that they own or try to prove that “Paeng’s Fist” belongs to them. Hence, Antonio Vera had to literally set up a table on the porch and leave photocopies of different proofs of ownership to his land to shoo away these individuals.

Not only is Antonio Vera losing business opportunities from infrastructure, he is literally working or sitting in his “*mirador de su casa*,”⁴ insecure of the possibility that he would lose his land.

II. THE REGALIAN DOCTRINE AND ITS EFFECTS

“There is no case known (neither, indeed, is it possible) in which a thing is found to be the efficient cause of itself; for so it would be prior to itself, which would be impossible.”⁵ Borrowing these words from St. Thomas Aquinas, things have to come from somewhere first, including land ownership.

Land ownership follows the Regalian Doctrine to determine when and where land occupation starts. Due to the conquest of

⁴ Mirador: a balcony, turret, etc. that affords a fine view; Casa: House; Collins Dictionary, <<https://www.collinsdictionary.com/>> (visited 4 December 2024).

⁵ St. Thomas Aquinas in Aquinas First and Second Way: Jeff Speaks <<https://www3.nd.edu/~jspeaks/courses/mcgill/201/aquinas-cosmological-argument.html#:~:text=2%20The%20second%20way%3A%20from%20the%20nature%20of%20efficient%20cause,-A%20second%2C%20formally&text=Aquinas%20writes%3A,itself%2C%20which%20would%20be%20impossible>> (visited 9 December 2024).

Spain, our territories, possessions, and lands, whether agricultural, mineral, or forest land, became the exclusive patrimony and dominion of the Spanish Crown⁶ in which the Philippines passed to Spain by virtue of “discovery” and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown.⁷ This is best explained in Law 14, Title 12, Book 4 of the *Novisima Recopilacion de Leyes de las Indias*:⁸

“We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant **be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase**, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.” (emphasis supplied)

When the Philippines became a Republic, the Constitution adopted the Regalian Doctrine, substituting, however, the State, in lieu of the King, as the owner of all lands of the Public Domain⁹

⁶ E.B. Palabrica, & M.A. Saño-Palabrica (2017), Land Titles and Deeds, p. 1.

⁷ *Cruz v. Secretary of DENR*, G.R. No. 135385, 6 December 2000.

⁸ *Id.*

⁹ *Id.* note 6, p.8.

excluding those of Native Titles that are exempt from the said Doctrine.¹⁰ Through the years, the State has disposed of land or some possession thereof to different entities, subject to different laws promulgated through time.

III. THE PUBLIC LAND ACT AND PROPERTY REGISTRATION DECREE: THE CASE OF THE HEIRS OF MARIO MALABANAN

On November 7, 1946, Commonwealth Act (C.A.) 141 or “An Act to Amend and Compile the Laws Relative to Lands of the Public Domain,” popularly known as the “Public Land Act”¹¹ (PLA), was passed in order to govern public lands, including their disposition. It remains to this day the existing general law governing the classification and disposition of lands of the public domain, other than timber and mineral lands.¹² Although the law had undergone numerous changes over the years, it still exists to determine the rights and status of lands owned by the state in relation to its disposition provided they are Agricultural Lands.¹³ These concessions are Homestead Patents, Sales, Lease, Free Patents, and most importantly, Confirmation of Imperfect or Incomplete Titles through Judicial Legalization.¹⁴ If we discuss the different modes of concession, it would take more than this Article to describe every mode. For purposes of the same, we focus on the Judicial Legalization mode of acquiring Agricultural Lands.

The PLA provides a venue where a person can acquire title over land through a confirmation of his ownership through a Judicial Decree to perfect or complete a person’s title¹⁵ as long as the land is possessed and occupied for a certain period and

¹⁰ *Id.* note 7.

¹¹ Commonwealth Act No. 141 (1936).

¹² *Republic of the Philippines v. Muñoz*, G.R. No. 151910, 15 October 2007.

¹³ 1987 Constitution, Art. XII, Sec. 2; Commonwealth Act No. 141 (1936).

¹⁴ *Id.* note 11, Chapter III, Sec. 11.

¹⁵ *Id.* note 11, Chapter VIII.

classified as alienable and disposable agricultural land of the Public Domain.¹⁶ Hence, the Supreme Court stated:

“Where all the necessary requirements for a grant by the Government are complied with through actual physical, open, continuous, exclusive and public possession of an alienable and disposable land of the public domain, the **possessor is deemed to have acquired by operation of law not only a right to a grant, but a grant by the Government, because it is not necessary that a certificate of title be issued in order that such a grant be sanctioned by the courts.**”¹⁷ (emphasis supplied)

This is encapsulated specifically in the then Section 48(b) of the PLA, which states:

“x x x

(b) Those who by themselves or through their predecessors-in-interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure x x x”

¹⁶ *Cruz v. Navarro*, No. L-27644, 29 November 1973, 54 SCRA 109, 115; *Santos v. Court of Appeals*, G.R. No. 90380, 13 September 1990; *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987 (2013), citing *Susi v. Razon and Director of Lands*, G.R. No. L-24066, 9 December 1925, 48 Phil. 424, 428. Note: This case is a Motion for Reconsideration of the original case as stated in note 24.”

¹⁷ *Id.*

This provision has changed through the years and as summarized:¹⁸

On June 22, 1957, Republic Act (R.A.) No. 1942 amended Section 48(b) of the PLA by providing a thirty (30)-year prescriptive period for judicial confirmation of imperfect title instead of the possession since 1894.¹⁹

On January 25, 1977, Presidential Decree (P.D.) No. 1073 was issued, changing the requirement for possession and occupation for a period of thirty (30) years to possession and occupation since June 12, 1945 or earlier.²⁰

The P.D. No. 1073²¹ (prior to R.A. 11573) version was, for the longest time, the controlling version of Section 48 (b)²² that provides the required period of possession to confirm a landowner's title.

In 1978, P.D. 1529²³ was promulgated, which codified the various laws relative to the registration of property, including lands of the public domain under the PLA.²⁴ Section 14²⁵ of P.D. 1529 states:

¹⁸ *Id.* note 16.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Commonwealth Act No. 141 (1936), Chapter VII and Chapter VIII as amended by P.D. 1073.

²² Presidential Decree No. 1073 (1977).

²³ Presidential Decree No. 1529 (1978).

²⁴ *Heirs of Mario Malaban v. Republic of the Philippines*, G.R. No. 179987, 29 April 2009.

²⁵ *Id.* note 23.

“Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) **Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.**

(2) Those who have acquired ownership of **private lands by prescription under the provision of existing laws.**

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

x x x” (emphasis supplied)

The Supreme Court exhaustively explained the correlation between C.A. 141 and P.D. 1529. In the case of *Heirs of Mario Malaban vs. Republic of the Philippines*,²⁶ the said Court stated that a landowner can confirm title using either paragraphs (1) or (2) of Section 14 of P.D. 1529.

²⁶ *Id.* note 24.

At first glance it would seem that Section 48(b) of C.A. 141 and Section 14 (1) of P.D. 1529 are virtually similar. Both sections are in the nature of judicial proceedings, and both refer to the same type of land, although C.A. 141 speaks of agricultural lands while P.D. No. 1529 refers specifically to “alienable and disposable” agricultural lands.²⁷ In the said case, the Supreme Court disagreed and discussed that Section 14(1) of P.D. 1529 is derived from the right emanated from Section 48 (b) of C.A. 141, thus:

“Section 48 of the Public Land Act is more descriptive of the nature of the right enjoyed by the possessor than Section 14 of the Property Registration Decree, which seems to presume the pre-existence of the right, rather than establishing the right itself for the first time. **It is proper to assert that it is the Public Land Act, as amended by P.D. No. 1073 effective 25 January 1977, that has primarily established the right of a Filipino citizen who has been “in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945” to perfect or complete his title by applying with the proper court for the confirmation of his ownership claim** and the issuance of the corresponding certificate of title.” (emphasis supplied)

It seems the Supreme Court surmises that a landowner’s right to own the land would be derived from C.A. 141, and the issuance of its title is through P.D. 1529. Both provisions then must be read in harmony with each other.²⁸ If a landowner utilizes Section 14 (1) of P.D. 1529, one only needs to confirm that the

²⁷ *Id.* note 6.

²⁸ *Id.* note 24.

property is alienable and disposable upon petition and possession since June 12, 1945. The law does not require that the lands should have been alienable and disposable during the entire period of possession, but instead requires secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable.²⁹

In the same case, the Supreme Court also recognized that a landowner can utilize Section 14 (2) of P.D. 1529 to confirm its title. A landowner can already claim ownership through prescription, and comparing the same to acquiring private lands:

“In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, **prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code.** And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.” (emphasis supplied)

Therefore, a landowner can confirm his title through Section 14 (2) if the property has been declared as patrimonial property, which can be shown by an express indication of the government, and the period for acquisitive prescription must start therein.

In relation to lands that are already private and owned by citizens of the Philippines, the same Section 14 (2) can also be

²⁹ *Id.*

utilized to confirm the landowner's title thereto. In the case of *Republic of the Philippines vs. Rosario Nicolas*,³⁰ the Supreme Court stated that only *private* lands that have been acquired by prescription under existing laws may be the subject of applications for registration under Section 14(2). The Supreme Court reasoned that this is found under the Civil Code in which all things within human commerce are generally susceptible of prescription.

Therefore, P.D. 1529 would seem to cover all types modes of confirmation of all types of properties, may it be patrimonial property or even private property. However, things drastically changed in 2021.

IV. REPUBLIC ACT NO. 11573: THE CASE OF PASIG RIZAL CO., INC.

Last July 16, 2021, R.A. 11573³¹ was signed into law. The law aims to simplify, update, and harmonize similar and related provisions of land laws to remove the ambiguity in their interpretation and implementation.³² According to Congress, the said law also tackles the key issues concerning C.A. 141 and P.D. 1529 by specifically harmonizing the provisions of both laws by removing the incongruity in the interpretation of the provisions relative to the confirmation process of imperfect titles and authorizing the DENR Secretary to delegate authority to certify the land being applied as alienable and disposable land to other officials of the department.³³

With the enactment of R.A. 11573, Section 48 (b) of C.A. 141 and Section 14 of P.D. 1529 were substantially amended as follows:

³⁰ *Republic of the Philippines v. Nicolas*, G.R. No. 181435, 2 October 2017.

³¹ Republic Act No. 11573 (2021).

³² *Id.* note 31, Sec. 1.

³³ House Bill 7440 Committee Fact Sheet.

“Section 5. Section 48 of Commonwealth Act No. 141, as amended, is hereby further amended to read as follows:

SEC. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have perfected or completed, may file a petition at any time, whether personally or through their duly authorized representatives, in the Regional Trial Court of the province where the land is located, for confirmation of their claims and **the issuance of a certificate of title to land not exceeding twelve (12) hectares:**

(a) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a bona fide claim of ownership, **for at least twenty (20) years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. They shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this Chapter.**

(b) Those who have acquired ownership of private lands or abandoned riverbeds by right of accession or accretion under the provision of existing laws; and

(c) Those who have acquired ownership of land in any other manner provided by law.

Section 6. Section 14 of Presidential Decree No. 1529 is hereby amended to read as follows:

“SECTION 14. *Who may apply.* The following persons may file at any time, in the proper Regional Trial Court in the province where the land is located, an application for registration of title to land, **not exceeding twelve (12) hectares**, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain not covered by existing certificates of title or patents **under a bona fide claim of ownership for at least twenty (20) years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. They shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under this section.**

(2) **Those who have acquired ownership of private lands or abandoned riverbeds by right of accession or accretion under the provisions of existing laws.**

(3) Those who have acquired ownership of land in any other manner provided for by law.” (emphasis supplied)

A glaring change is the removal of the former Section 14 (2) of PD 1529 that allows titling for landowners who acquired ownership of lands by prescription under the provision of existing laws. In addition to the substantive aspect, an important evidentiary aspect was added wherein the DENR is now allowed to declare land as Alienable and Disposable Land:

“Section 7. Proof that the Land is Alienable and Disposable. For purposes of judicial confirmation of imperfect titles filed under Presidential Decree No. 1529, a duly signed certification by a duly designated DENR geodetic engineer that the land is part of alienable and disposable agricultural lands of the public domain is sufficient proof that the land is alienable. Said certification shall be imprinted in the approved survey plan submitted by the applicant in the land registration court. The imprinted certification in the plan shall contain a sworn statement by the geodetic engineer that the land is within the alienable and disposable lands of the public domain and shall state the applicable Forestry Administrative Order, DENR Administrative Order, Executive Order, Proclamations and the Land Classification Project Map Number covering the subject land.

Should there be no available copy of the Forestry Administrative Order, Executive Order or Proclamation, it is sufficient that the Land Classification (LC) Map Number, Project Number, and date of release indicated in the land classification map be stated in the sworn statement declaring that said land classification map is existing in the inventory of LC Map records of the National Mapping and Resource Information Authority (NAMRIA) and is being used by the DENR as land classification map.”

Luckily, R.A. 11573 was already explained and utilized in the case of *Republic of the Philippines vs. Pasig Rizal Co.*³⁴ The Supreme Court indicated and compared the new provisions brought about by the amendment and sees the law as a curative effect to the confusion that can be brought about by the interplay of C.A. 141 and P.D. 1529.

R.A. 11573 harmonizes the language of P.D. 1529 with the body of principles governing property of public dominion and patrimonial property in the Civil Code.³⁵ Through the final *proviso*, the confusion which may have resulted from the wholesale adoption of the second *Heirs of Malabanan* requirement of an express government manifestation of the land as no longer intended for public service or the development of the national wealth has been removed.³⁶ The final *proviso* that the Supreme Court indicated here is the provision that an individual is conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under these sections.

What is more important, the Supreme Court had the chance to discuss the effect of the passage of the said law on pending and future confirmation cases. R.A. 11573 shall be applied retroactively since it is a curative law that simplifies and harmonizes similar and related provisions on land laws.³⁷ Additionally, by shortening the period of adverse possession required for confirmation of title to twenty (20) years prior to filing (as opposed to possession since June 12, 1945 or earlier), the amendment effectively created a new right in favor of those who have been in possession of alienable and disposable land for the shortened period.³⁸ Hence, the Supreme Court provided guidelines in the application of R.A. 11573 to guide lawyers and the Bench, thus:

³⁴ *Republic of the Philippines v. Pasig Rizal Co., Inc.*, G.R. No. 213207, 15 February 2022.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

“1. RA 11573 shall apply retroactively to all applications for judicial confirmation of title which remain pending as of September 1, 2021, or the date when RA 11573 took effect. These include all applications pending resolution at the first instance before all Regional Trial Courts, and applications pending appeal before the Court of Appeals.

2. Applications for judicial confirmation of title filed on the basis of the old Section 14(1) and 14(2) of PD 1529 and which remain pending before the Regional Trial Court or Court of Appeals as of September 1, 2021 shall be resolved following the period and manner of possession required under the new Section 14(1). Thus, beginning September 1, 2021, proof of “open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain not covered by existing certificates of title or patents under a bona fide claim of ownership for at least twenty (20) years immediately preceding the filing of the application for confirmation” shall be sufficient for purposes of judicial confirmation of title, and shall entitle the applicant to a decree of registration.

3. In the interest of substantial justice, the Regional Trial Courts and Court of Appeals are hereby directed, upon proper motion or *motu proprio*, to permit the presentation of additional evidence on land classification status based on the parameters set forth in Section 7 of RA 11573.

a. Such additional evidence shall consist of a certification issued by the DENR geodetic engineer which (i) states that the land subject of the application for registration has been classified as alienable and disposable land

of the public domain; (ii) bears reference to the applicable Forestry Administrative Order, DENR Administrative Order, Executive Order, or proclamation classifying the land as such; and (iii) indicates the number of the LC Map covering the land.

b. In the absence of a copy of the relevant issuance classifying the land as alienable and disposable, the certification must additionally state (i) the release date of the LC Map; and (ii) the Project Number. Further, the certification must confirm that the LC Map forms part of the records of NAMRIA and is precisely being used by the DENR as a land classification map.

c. The DENR geodetic engineer must be presented as witness for proper authentication of the certification in accordance with the Rules of Court.”

Looking at the case at hand and its effect on the titling process of imperfect titles, it would seem easier to have lands that are currently untitled be titled under the umbrella of the Torrens System to be incontestable.³⁹

What was not expressively discussed in the case, however, is that R.A. 11537 only applies to properties that are 12 hectares or below. It would seem to show that landowners who own more than 12 hectares were removed from the right to have their properties titled, especially if they base their claim on acquisitive prescription of private lands.

V. SITTING AT THE “*MIRADOR DE SU CASA*:” REMOVAL OF A BIG LANDOWNER’S REMEDY TO TITLE HIS LANDS THROUGH ACQUISITIVE PRESCRIPTION

³⁹ O.D. Agcaoili (2018), Property Registration Decree and Related Laws, p. 57.

As recalled from the *Rosario Nicolas* case,⁴⁰ the Supreme Court recognized that a landowner can still acquire private land and title the same through acquisitive prescription following Civil Code provisions in relation to Section 14(2) of P.D. 1529. With the enactment of R.A. 11573, the Supreme Court stated that the same section was already deleted and already covered by the new Section 14(1) in which in turn shortens the period of possession from thirty (30) years to twenty (20) years.⁴¹ However, it should be noted that this provision only covers landowners in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain. It did not cover landowners whose basis for ownership is prescription of private lands—although all is not lost since R.A. 11573 retained a catch-all provision in paragraph (3) wherein landowners who acquired ownership of land in any other manner provided for by law should still be respected. However, the same theory has still to be tested, and property practitioners are no doubt eager to await how the Supreme Court would interpret the same.

What is more glaring is that R.A. 11573 imposed a hard area limitation of 12 hectares for an individual to confirm its imperfect title over its land. Considering that R.A. 11573 simplified similar and related provisions on land laws, it seems Congress adopted the limits found in Republic Act 9176,⁴² which amended Section 45 of C.A. 141, limiting the area to be acquired to 12 hectares in addition to extending the period when the petition should be filed.⁴³

In *Republic vs. T.A.N. Properties, Inc.*,⁴⁴ the Supreme Court briefly explained that R.A. 9176 was crafted to harmonize provisions found in Section 3, Article XII of the 1987 Constitution in relation to C.A. 141, stating that a private individual may only

⁴⁰ *Republic of the Philippines v. Rosario L. Nicolas*, G.R. No. 181435, 2 October 2017.

⁴¹ *Id.* note 34.

⁴² The Public Land Act (1992).

⁴³ Republic Act No. 9176 (2002). Note: Petitioners can file only up to December 31, 2020.

⁴⁴ *Republic v. T.A.N. Properties, Inc.*, G.R. No. 154953, 26 June 2008.

acquire not more than 12 hectares of alienable and disposable land. However, it should be noted that Section 3, Article XII applies only to lands of the public domain. Private lands are outside of the prohibitions and limitations stated therein.⁴⁵

With this, it seems that R.A. 11573 disenfranchised certain big landowners who trace their title from private lands. Since most big landowners can trace their possession before the 1987 Constitution, which placed the 12-hectare limit, it would be unfair and counterproductive for R.A. 11573 to remove the vehicle to confirm their ownership over their land.

R.A. 11573 then needs to be examined and tested in relation to bigger landholdings, which usually involve sugar or fruit plantations. If retained, this would run counter to the sentiments of Justice Caguioa in *Pasig Rizal Co.* when he said:

“In line with this, PD 1529 provides for the judicial confirmation of imperfect title to land so as to bring the latter within the coverage of the Torrens system. The protection afforded by the Torrens system provides the necessary security to encourage [landowners] to make the investments needed to make productive use of their landholdings. Through this process, the law functions to aid [landowners] in becoming productive members of society in a manner that is consistent with the principles enshrined in the Constitution.”

Until then, some landowners would be forced to sit at their “*mirador de su casa*,” defending and preventing any claims to their land.

⁴⁵ *Republic v. Rovency Realty and Development Corporation*, G.R. No. 190817, 10 January 2018.

CHEAP SPEECH IN THE MARKETPLACE OF ECHO CHAMBERS

Jarre V. Gromea¹

The unchecked spread of misinformation and harmful rhetoric on social media platforms is a significant threat to our democratic discourse. Echo chambers, where individuals are primarily exposed to viewpoints that confirm their own, contribute to the devaluation of speech. This environment allows malicious actors to exploit these platforms to sow distrust, foment chaos, and manipulate vulnerable individuals using deceptive tactics and disinformation.

Outdated legal frameworks and the rapid evolution of technology have created a gap that enables this abuse. The long-standing principle of the “free marketplace of ideas” may no longer be sufficient to safeguard public discourse in the face of these new challenges. The principle of “*salus populi est suprema lex*”—*the welfare of the people is the supreme law*—demands a re-evaluation of our approach to freedom of expression.

This essay aims to discuss the rise of cheap speech, the harms of echo chambers, and the necessary legal and regulatory response.

I. THE RISE OF CHEAP SPEECH

The term “cheap speech” was first used by legal scholar Eugene Volokh to argue against restrictions on foreign funding of political campaigns.² Volokh argues that while the rise of new media presents challenges like the spread of misinformation and the influence of extremists, these issues should not lead us to fundamentally alter our understanding of free speech. He believes that the risks associated with government censorship of speech are far greater than the risks posed by harmful content online.

¹ A fourth-year Juris Doctor (JD4) student currently pursuing a degree in law at the University of St. La Salle.

² E. Volokh (1995), Cheap Speech and What It Will Do, 104 YALE L.J. 1805.

Furthermore, Volokh emphasizes the danger of effectively regulating online content, particularly when it comes to addressing issues like the public's preference for entertainment over informative news.

However, in the landmark case *Re: Statements Made by Lorraine Marie T. Badoy*,³ Senior Associate Justice Marvic Leonen adopted the term “cheap speech” and opined that it has led to abuses of the freedoms of speech, expression, and the press. He argued:

“By merely having access to social media, private individuals could publish their thoughts without need of self-policing or adhering to the ethical standards required of the press. As a result, content could be created and shared with abandon, purely for clout or for ‘likes,’ and even in disregard of the truth. Worse, its audience is so wide, certainly way above that of traditional media, unconstrained by physical reach. This has inevitably led to a glut in disseminated information, a large part of which is disinformation—the ‘verifiably false or misleading information that is created, presented, and disseminated for economic gain or to intentionally deceive the public, and may cause public harm’ on the internet.”

We face a critical dilemma: the need to foster the free exchange of ideas clashes with the rampant spread of disinformation. Truth emerges from the shared experiences of living, working, and interacting within a community, but the rise of “cheap speech” has made the pursuit of truth more challenging. Social media algorithms⁴ often prioritize sensational and emotionally charged content, which frequently includes harmful

³ *Re: Statements made by Lorraine Marie T. Badoy allegedly threatening Judge Marlo A. Magdoza-Malagar/Atty. Rico V. Domingo, Dean Antonio Gabriel M. La Viña, Dean Ma. Soledad Deriquito-Mavis, Dean Anna Maria D. Abad, Dean Rodel A. Taton, Atty. Artemio P. Calumpong, Atty. Christianne Grace F. Salonga, Atty. Ray Paolo J. Santiago, and Atty. Ayn Ruth Z. Tolentino-Azarcon Vs. Lorraine Marie T. Badoy-Partosa*, A.M. No. 22-09-16-SC, 15 August 2023.

⁴ E. Pariser (2011), *The Filter Bubble: What the Internet Is Hiding from You*.

or misleading information.⁵ The algorithms tend to isolate users within echo chambers, hindering the free exchange of diverse viewpoints.

II. THE HARMS OF ECHO CHAMBERS

Polarization and Extremism.

Imagine a room where only one voice ever echoes. No other sounds intrude, no dissenting opinions dare to break the monotony. This is the chilling reality of an echo chamber.

In the digital age, these chambers are built not of stone, but of algorithms and biases. Social media platforms, designed to cater to our preferences, curate our feeds, showing us only content with which we already agree. We're surrounded by a comforting chorus of like-minded voices, reinforcing our beliefs, however flawed they may be.

This creates a comfortable, yet dangerous,⁶ cocoon where dissenting voices are systematically filtered out, reinforcing existing worldviews and limiting exposure to diverse perspectives.

Erosion of Truth and Fact-checking.

Algorithms can exploit the echo chamber effect in insidious ways, effectively “hijacking” a human brain. By meticulously tracking user interactions—likes, shares, comments, time spent on content—algorithms on platforms like social media predict user preferences with remarkable accuracy.⁷

⁵ R.A. Lanham (2006), *The Economics of Attention: Style and Substance in the Age of Information*.

⁶ C. R. Sunstein (2009), *Going to Extremes: How Like Minds Unite and Divide*.

⁷ S. Zuboff (2018), *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*.

This data fuels a personalized feed, meticulously curated to present users with a steady stream of information that confirms their existing beliefs.

Within an echo chamber, the search for truth ceases to exist. Instead of engaging with different perspectives, individuals are left with a distorted reality that reinforces their existing biases and prejudices.

Undermining Democratic Discourse.

This directly contradicts Justice Holmes's view that truth emerges from the free marketplace of ideas.

In his dissenting opinion in *Abrams v. United States*, Holmes argued that:

The ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.⁸

How can the truth emerge if dissenting opinions are systematically filtered out?

Echo chambers have contributed to the spread and realization of harmful ideologies, including the denial of climate

⁸ Dissenting Opinion of Justice Holmes in *Abrams v. United States*, 250 U.S. 616, 10 November 1919.

change,⁹ anti-vaccination movements,¹⁰ the promotion of violence,¹¹ and the rise of authoritarianism.¹²

III. LEGAL AND REGULATORY RESPONSE

Rights, like laws, are not static; they evolve alongside society. The harms caused by “cheap speech” necessitate a careful balancing act. Online platforms must promote meaningful discourse while mitigating the risks of misinformation. Similarly, our legal and regulatory responses must adapt to this evolving landscape.

An analysis of Philippine law and jurisprudence on speech acts reveals that there is a hierarchy of protection in regulating speech acts. The highest level of protection is for political speech, followed by commercial speech, and lastly, cheap speech, which the author suggests may be subdivided into libel, hate speech, and disinformation.

Political Speech.

Political speech is to be afforded the highest level of protection and must remain unfettered unless otherwise justified by a compelling state interest.¹³ In the Landmark case, *Diocese of Bacolod v. COMELEC*, the Court, citing Justice Carpio, held:

Political speech enjoys preferred
protection within our constitutional order. In

⁹ N. Oreskes & E. M. Conway (2010), *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming*.

¹⁰ A. Hussain, S. Ali, M. Ahmed, and S. Hussain (2018), *The Anti-vaccination Movement: A Regression in Modern Medicine*.

¹¹ Amnesty International (2022), *Myanmar: Facebook’s Systems Promoted Violence Against Rohingya; Meta Owes Reparations*.

¹² A. Shahbaz (2019), *The Rise of Digital Authoritarianism*.

¹³ *GMA Network, Inc. v. Commission on Elections*. G.R. No. 205357, 2 September 2014.

Chavez v. Gonzales, Justice Carpio, in a separate opinion, emphasized:

“[i]f ever there is a hierarchy of protected expressions, **political expression would occupy the highest rank**, and among different kinds of political expression, the subject of fair and honest elections would be at the top.”

Emphasis supplied.

Sovereignty resides in the people. Political speech is a direct exercise of the sovereignty. The principle of exhaustion of administrative remedies yields in order to protect this fundamental right.

Commercial Speech.

Commercial speech has a lower level of protection but is still protected under the Constitution. In the case of *Disini v. Secretary of Justice*, the court held that unsolicited advertisements are legitimate forms of expression.¹⁴

Cheap Speech.

Cheap speech is entitled to the lowest level of protection as it lacks social value or is intended to disrupt social order. It includes: Libel, Hate Speech, and Disinformation.

1. Libel and Cyberlibel.

¹⁴ *Disini, Jr., et al. v. The Secretary of Justice, et al.* G.R. No. 203335, 18 February 2014.

The discussion in *Disini v. Secretary of Justice* delineates the parameters by which libel and cyberlibel are to be criminalized. The Court held that libel is not constitutionally protected speech and that the government has an obligation to protect private individuals from defamation.

But where cyberlibel is concerned, a question arises about the criminal liability, for aiding and abetting, by a social media user who merely likes, comments, or shares libelous content.

To this issue, the Court held that in the absence of legislation tracing the interaction of netizens and their level of responsibility, the criminal liability for aiding and abetting cannot stand scrutiny. Making users criminally liable for aiding and abetting the act of libel has a chilling effect on the freedom of expression. Furthermore, formal crimes such as libel are not punishable unless consummated.

2. Hate Speech.

United States jurisprudence has oftentimes been cited for the regulation of hate speech. In *Chaplinsky v. New Hampshire*,¹⁵ the U.S. Supreme Court held that words heaping extreme profanity, intended merely to incite hostility, hatred, or violence, have no social value and do not enjoy constitutional protection. In *Beauharnais v. Illinois*,¹⁶ the U.S. Court held that hate speech, which denigrates a group of persons identified by their religion, race, or ethnic origin, defames that group, and the law may validly prohibit such speech on the same ground as defamation of an individual.

The Rabat Threshold test by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is also instructive for determining the criteria

¹⁵ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 9 March 1942.

¹⁶ *Beauharnais v. Illinois*, 343 U.S. 250, 28 April 1952.

if a speech act constitutes hate speech. The Rabat Plan of Action suggests:

i. Context – Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated.

ii. Speaker – The speaker’s position or status in society should be considered, specifically the individual’s or organization’s standing in the context of the audience to whom the speech is directed.

iii. Intent – Article 20 of the ICCPR anticipates intent as it provides for “advocacy” and “incitement” rather than the mere distribution or circulation of material.

iv. Content and Form – The content of the speech constitutes one of the key foci of the court’s deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech, or the balance struck between arguments deployed.

v. Extent of Speech Act – Extent includes such elements as the reach of the speech act, its public nature, its magnitude, and [the] size of its audience.

vi. Likelihood, including Imminence – the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

To date, the Philippines does not have a law defining and criminalizing hate speech.

3. Disinformation.

The regulation of speech to punish disinformation is one of the greatest challenges to modern democracy. There is no law defining disinformation and the extent to which it is to be regulated.

In our jurisdiction, three notable cases address the issue of disinformation. Firstly, we have *ABS-CBN Corporation v. Datu Andal Ampatuan Jr.*,¹⁷ where ABS-CBN was cited in contempt for violating the sub judice rule when it aired a documentary about the Ampatuan massacre while the case was still pending.

Here, the discussion on disinformation emerged when the Court explained that it can punish lawyers for using social media to commit an act of disinformation. They went on to discuss the rationale behind the prohibition of disinformation. To wit:

While there is no universally accepted definition of disinformation, the rapporteur referred to the European Commission's description of **disinformation** as “**verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm.**” The special rapporteur noted the information disorder in cyberspace, namely misinformation, disinformation, and malinformation. These are based on two primary dimensions: the information's falsity and the intent to cause harm. Disinformation lies in the intersection of these factors, where **false information is**

¹⁷ *ABS-CBN v. Ampatuan*, G.R. No. 227004, 25 April 2023.

shared with [the] intent to cause harm to its audience.

On January 10, 2022, the United Nations General Assembly adopted a Resolution countering disinformation for the promotion and protection of human rights and fundamental freedoms. The Resolution expressed the concern of the General Assembly on the spread of disinformation on the internet and **affirmed the responsibility of states to counter the spread of disinformation through various policy measures.**

In social media, disinformation is created, shared, and amplified organically through the use of technology, such as bots and algorithms, which are programmed to exploit the attentional and confirmation bias of its users. These mechanisms make it appear that the information disorder is widely shared in the same or similar social networks. **The age of disinformation has corrupted the marketplace of ideas “by denying facts and maintaining division.”** It appears that **“more speech” is not the remedy against false information.** John Stuart Mill’s assumption that contrary ideas will be vigorously and earnestly contested to attain the truth is no longer true, especially in social media.

Emphasis Supplied.

Secondly, we have the administrative matter concerning the request of the PAO to delete Sec. 22 Canon III of the CPRA.¹⁸ In this case, the issue of disinformation was discussed when the Court addressed Atty. Acosta’s

¹⁸ *Request of the Public Attorney’s Office to Delete Section 22, Canon III of the Proposed Code of Professional Responsibility and Accountability*, A.M. No. 23-05-05-SC, 11 July 2023.

irresponsible use of social media by appealing to the public's opinion.

The Court held:

Here, Atty. Acosta, despite spending decades in the government service and as a member of the Bar, including her more than 22 years as Chief of PAO, failed to take into account the risks and ethical implications associated with the use of social media when she publicized the PAO's request to delete Section 22, Canon III of the CPRA. By appealing to the public opinion, **she maliciously insinuated that the Court intends to destroy the tranquility and credibility** of the justice and legal aid systems. **By dishonestly ascribing such improper motives to the Members of the Court**, particularly in approving Section 22, Canon III, and by accusing the Court of grave abuse of authority and contravention of the Constitution, **she committed gross disinformation and misrepresentation**, and showed utter disrespect for the Court and the rule of law.

Emphasis supplied.

Thirdly, we have the administrative matter concerning the statements of Lorraine Badoy¹⁹ allegedly threatening a sitting Judge of the judiciary by red-tagging. The discussion on disinformation once again emerged when the Court explained how its power of contempt over private individuals is used to prevent disinformation.

¹⁹ *Re: Statements made by Lorraine Marie T. Badoy allegedly threatening Judge Marlo A. Magdoza-Malagar/Atty. Rico V. Domingo, Dean Antonio Gabriel M. La Viña, Dean Ma. Soledad Deriquito-Mavis, Dean Anna Maria D. Abad, Dean Rodel A. Taton, Atty. Artemio P. Calumpong, Atty. Christianne Grace F. Salonga, Atty. Ray Paolo J. Santiago, and Atty. Ayn Ruth Z. Tolentino-Azarcon Vs. Lorraine Marie T. Badoy-Partosa, A.M. No. 22-09-16-SC, 15 August 2023.*

The Court clarified that speech made through social media is another class of regulated speech, recognizing the effect of fake news spread through social media on the public's confidence in the Judiciary and its administration of justice:

Internet publicity and the danger it presents in the administration of justice cannot be discounted. A social media post can be shared infinitely and become viral in a matter of minutes. Organized networks of disinformation thrive in anonymity and the lack of effective regulatory mechanism[s] in social media. **The proliferation of fake news is a very significant threat [to] the courts' legitimacy**, which is anchored on the public's confidence in our administration of justice. The internet may be weaponized by those who desire to defeat public confidence against a particular target, which may include the Judiciary.

We must recognize **the dangers of unregulated speech against the Judiciary on the internet and in various social media where truth suffers from decay**, where facts and objective analysis are inundated by false information. This is a huge threat to democracy as it hampers the ability of citizens to make informed decisions based on facts.

IV. CONCLUSION

In our jurisdiction, the judiciary stands as a lone beacon against the encroaching tide of “cheap speech” and the echo chambers that threaten to drown our democracy. While the legislature remains dormant, leaving the public vulnerable to the manipulation of malicious actors, it is upon us—the people—to rise to the challenge. We must exercise self-regulation, actively combat disinformation, and join the judiciary in its critical mission to safeguard the integrity of our discourse.

LA COSA NOSTRA: AN ENDLESS WAR AGAINST ORGANIZED CRIME AND GANG VIOLENCE AND THE SIGNIFICANCE OF THE RICO LAW IN THE PHILIPPINES

Jose Adrian Miguel P. Maestral¹

I. BACKGROUND

Organized crime has been a global and historical phenomenon. Its origins can be traced back to the year 1612 during the Edo Period (1603–1868) in feudal Japan, when the Japanese criminal organization known as the Yakuza was first documented. At the time, Japan was ruled by the Tokugawa shogunate, a feudal government that enforced strict social hierarchies. Consequently, various criminal organizations emerged, often consisting of rebels and outcasts who defied the established social order. Over the years, the Yakuza has been involved in numerous criminal activities, including drug trafficking, extortion, gambling, and prostitution. Despite government efforts to crack down on their operations, the Yakuza remains a significant part of Japanese society, with over 300,000 members and billions of dollars in annual revenue.

Next is China, notorious for its organized crime group known as the Triad, which originated in the 1760s in Hong Kong, Macau, and Taiwan. The Triad engages in criminal enterprises such as drug trafficking, human trafficking, extortion, and money laundering. This organization operates with a strict hierarchical structure, comprising three levels: the leaders or “dragon heads,” the enforcers or “red poles,” and the foot soldiers, known as “associates.” The Triad is infamous for its initiation rituals and blood oaths, which make it challenging for law enforcement to infiltrate the group.

Finally, we have the *La Cosa Nostra*, also known as the Sicilian Mafia, which originated in Sicily, Italy, in the early 1800s. Over time, it expanded globally, particularly to the United States,

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where New York became its major hub for criminal activities.² These notorious criminals have become so iconic that they inspired numerous Hollywood films and series, such as *The Godfather*, *Goodfellas*, *Sexy Beast*, *Pulp Fiction*, *Eastern Promises*, and the Netflix series *Peaky Blinders*.³

II. THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (UNTOC)

The United Nations Convention Against Transnational Organized Crime, otherwise known as the Palermo Convention, took place in Palermo in Italy, the very birthplace of the Italian Mafia. The Palermo Convention is a key international legal instrument aimed at combating transnational organized crime. Adopted by the UN General Assembly on November 15, 2000, it provides a framework for the prevention, investigation, and prosecution of serious organized crime, as well as for promoting international cooperation in these areas.

The Palermo Convention is supplemented by three protocols that focus on specific aspects of transnational organized crime.⁴ The first protocol is “The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,” which aims to make a clear and agreed definition of trafficking in persons that is globally binding among the party states, as human trafficking has become a profitable venture for organized crime.⁵ The second protocol is “The Protocol against the Smuggling of Migrants by Land, Sea and Air,” which aims to deal with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and great profit for the offenders. This protocol aims at preventing and combating the

² S. Neil (2023), 12 Oldest Gangs in the World <<https://www.oldest.org/people/gangsin-the-world/>>.

³ B. Rosenstock (2024), The Best Gangster Movies and TV Shows <https://time.com/6899892/best-gangster-movies-tv-shows/>.

⁴ United Nations Convention against Transnational Organized Crime (2003).

⁵ United Nations (2003), Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

smuggling of migrants, as well as promoting cooperation among state parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation, which often characterize the smuggling process.⁶ The third protocol is “The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.” By ratifying the protocol, states commit to adopt a series of crime-control measures and implement in their domestic legal order three sets of normative provisions: the first one relates to the establishment of criminal offenses related to illegal manufacturing of, and trafficking of, firearms based on the protocol requirements and definitions; the second to a system of government authorizations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms; and the third one to the marking and tracing of firearms.⁷

The convention has 192 parties and 147 signatories, with the Philippines being a state party to the Palermo Convention.

III. WHAT IS THE RICO LAW?

The Racketeer Influenced and Corrupt Organizations Act, or the RICO Act, is a United States federal law that provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization. Several States have adopted similar laws. This was a law passed in the year 1970. Prior to the RICO Act, prosecutors could only try mob-related crimes individually. Since different mobsters committed each crime, the government could only prosecute individual criminals rather than dismantling an entire criminal organization. Today, the government rarely uses RICO against the Mafia. Instead, due to the broad scope of the law, both governmental and civil parties employ it against various enterprises, both legal and illegal.⁸

⁶ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Organized Crime (2004).

⁷ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Organized Crime (2005).

⁸ J. Atkinson (1978), Racketeer Influenced and Corrupt Organizations, 18 U.S.C. 1961-68: Broadest of the Federal Criminal Statutes.

IV. ORGANIZED CRIME IN THE PHILIPPINES

The Philippines faces pervasive crimes across the islands of the archipelago. Gang warfare and gang-related violence are equally prevalent. Despite the existence of numerous laws, orders, and task forces designed to address organized crime, implementation remains insufficient to dismantle entire organizations. Similar to the United States before the RICO Act took effect, Philippine laws are currently limited to prosecuting individual “soldiers” for specific crimes.

In a recent article, Surigao 2nd District Representative Robert Ace Barbers emphasized the need for a comprehensive law to combat both existing and potential criminal enterprises—akin to the United States’ Racketeering Influenced and Corrupt Organizations (RICO) Act. Representative Barbers explained that the RICO Act has been extensively and successfully used to prosecute thousands of individuals and organizations in the U.S. The RICO law prohibits acquiring, operating, or receiving income from an enterprise through a pattern of racketeering activity. Focused on combating ongoing organized criminal activities, the law hinges on proving and prohibiting a “pattern of crimes” conducted through an “enterprise,” which the U.S. statute defines as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”⁹

A similar, all-encompassing law in the Philippines would be pivotal in convicting leaders and members of syndicates, especially given the continued operations of Philippine Offshore Gaming Operators (POGOs) and the drug-smuggling activities of the Triads. Such a law could target ongoing organized criminal activities by establishing and addressing a “pattern of crimes” committed through an “enterprise,” as defined under the U.S. statute.

In the Philippines, gangs operate both outside and inside prisons, maintaining well-established hierarchies and territorial divisions to avoid turf wars. One notorious street gang is the True

⁹ E. Quismorio (2024), Barbers: Philippines should have its own RICO law as quad-comm digs deeper into POGO controversy.

Brown Styles (T.B.S.), which has affiliations with the Bloods in the United States. In *Inside the Gangsters' Code*, Lou Ferrante interviewed a gang leader named “Moja” in Valenzuela. According to Moja, their group engages in various illicit activities, including selling guns, drugs, kidnapping, and murder. He claimed that their gang possesses firearms such as .38 caliber revolvers, shotguns, Uzis, .40 caliber, .45 caliber pistols, and 9mm handguns. While the source of these weapons is unknown, their intent is explicitly violent.

Within the largest prison in the Philippines, the New Bilibid Prison, several gangs have existed for decades in its maximum-security facilities. These include the *Genuine Ilocano Gang*, *Sigue Sigue Commando*, *Batang City Jail Gang*, *Bahala na Gang*, *Sigue Sigue Sputnik*, and many others.¹⁰

V. CURRENT LAWS, EXECUTIVE ORDERS, AND JURISPRUDENCE IN THE PHILIPPINES AGAINST ORGANIZED CRIME

Former President of the Republic of the Philippines, Gloria Macapagal-Arroyo, through her Executive Secretary Alberto G. Romulo, signed Executive Order No. 265, emphasizing the need for a comprehensive approach to combat organized crime. The aforementioned order has been enacted by the President, in accordance with the United Nations Convention against Transnational Organized Crime.¹¹

Subsequently, in 2011, then-President Benigno Aquino III signed Executive Order No. 46, which amended Executive Order No. 799 issued by former President Arroyo. This further strengthened the Presidential Anti-Organized Crime Commission (PAOCC) to address and eliminate corrupt practices in the country. The order grants the PAOCC jurisdiction over the following crimes:

¹⁰ L. Fishburg (2013), *Inside the Gangster's Code: The Commandos* (Season 1 Episode 2) <https://www.youtube.com/watch?v=d5_6Ec4oE70>.

¹¹ Executive Order No. 265 (2004).

- a. Those committed by organized/syndicated crime groups, including but not limited to drug trafficking, human trafficking, carnapping, gunrunning, robbery/hold-up, kidnapping for ransom, smuggling, and transnational crimes;
- b. Those considered and punished as heinous crimes under Republic Act No. 7659 (Heinous Crime Law);
- c. Those committed by the members of the PNP and/or the AFP;
- d. Those committed by any government official or employee, including those from government offices, agencies, and/or instrumentalities, and government-owned and controlled corporations;
- e. Such other criminal offenses as the President may determine from time to time.

Under this Executive Order, an organized crime group or syndicate is defined as a group of two or more persons collaborating, confederating, or mutually helping one another in the commission of any crime.¹²

VI. STATUS OF THE RICO LAW IN THE PHILIPPINES

The RICO Act is not a stranger to the Philippine Congress, as there have been attempts to introduce similar legislation in the Senate, particularly during the 14th Congress of the Republic of the Philippines. The late Senator Miriam Defensor Santiago authored Senate Bill No. 2030, known as the “Anti-Racketeer Influenced and Corrupt Organizations Act of 2008.” The Senate Bill was modeled after the American RICO Act, using it as a framework to address criminal organizations.

¹² Executive Order No. 46 (2011).

Section 3(D) of Senate Bill No. 2030 stipulates that at least two of the prohibited acts enumerated in Section 3(C) must be committed for the act to be punishable under the said bill.¹³ In her explanatory note, Senator Santiago cited a constitutional provision as the basis for her proposal, which states: “The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.”¹⁴ She further elaborated that the bill aims to prevent organized crime from infiltrating businesses and other economic entities by prohibiting syndicated gambling, racketeering, and similar activities. It also seeks to halt the pattern of organized crime’s infiltration into businesses through the imposition of penalties and the forfeiture of proceeds derived from racketeering activities.

Despite its introduction, the bill has remained a Senate proposal and has not been enacted into law. To progress, it requires the signatures of the Senate President, the Speaker of the House of Representatives, and the President of the Philippines. Alternatively, it can automatically become a law within 30 days if left unsigned, unless the President vetoes it—a veto that can still be overturned by a two-thirds vote from all members of Congress approving its enactment.¹⁵

¹³ Senate Bill No. 2030, 14th Congress of the Republic <<https://issuances-library.senate.gov.ph/subject/racketeeringrico-law>>.

¹⁴ Constitution, Art. II, Sec. 5.

¹⁵ Constitution (1987), Art. VI, Sec. 27, par. 1.

THE TRAGEDY OF THE COMMONERS

Jeremiah I. Diaz¹

Introduction

“Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons.”² Garrett Hardin wrote this in his famous work *The Tragedy of the Commons* in 1968. More than fifty years later, self-interest remains the driving force behind many great evils. What is common is exploited by those who have, leaving little to nothing to those who have not.

On August 19, 2024, the Supreme Court, through its First Division, issued a resolution declaring certain provisions of the Fisheries Code, Republic Act No. 8550, as amended by Republic Act No. 10654, unconstitutional. These key provisions limit access to commercial fishing within municipal waters and give preferential rights to municipal fisherfolk. These provisions are innovative legislative solutions to the declining fish stock within Philippine waters by controlling and limiting fishing efforts exerted within critical marine ecosystems. They also follow constitutional mandates such as the Right to a Balanced and Healthful Ecology,³ Duty to Protect Marine Wealth and Priority to Subsistence Fishers,⁴ and Preferential Access to Communal Fishing Grounds.⁵ Declaring these critical provisions unconstitutional is a massive step away from sustainable fisheries and ecology, and its ripple effect will bring a tidal wave of ruin.

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² Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243 (1968).

³ Constitution, Art. II, Sec. 16.

⁴ Constitution, Art. II, Sec. 9.

⁵ Constitution, Art. XIII, Sec. 7.

Section 4 of R.A. No. 8550 defines Commercial Fishing, Municipal Fisherfolk, Municipal Fishing, and Municipal Waters:

10. Commercial Fishing - the taking of fishery species by passive or active gear for trade, business & profit beyond subsistence or sports fishing, to be further classified as:

(1) Small-scale commercial fishing - fishing with passive or active gear utilizing fishing vessels of 3.1 gross tons (GT) up to twenty (20) GT;

(2) Medium scale commercial fishing - fishing utilizing active gears and vessels of 20.1 GT up to one hundred fifty (150) GT; and

(3) Large commercial fishing - fishing utilizing active gears and vessels of more than one hundred fifty (150) GT.

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56. Municipal fisherfolk - persons who are directly or indirectly engaged in municipal fishing and other related fishing activities.

57. Municipal fishing - refers to fishing within municipal waters using fishing vessels of three (3) gross tons or less, or fishing not requiring the use of fishing vessels.

58. Municipal waters - include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points

where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from [the] opposite shore of the respective municipalities.

As a general rule of the Fisheries Code, only registered municipal fisherfolk and their cooperatives using fishing vessels of 3 gross tons or less, or those fishing without using fishing vessels, are allowed to conduct fishery activities within municipal waters, that is, within fifteen (15) kilometers from the coastline. The only instance where commercial fishing is allowed within the municipal waters of a city/municipality is provided in Section 18 of the R.A. No. 8550. The jurisdiction of Municipal/City Government, Grant of Fishing Privileges in Municipal Waters, and Users of Municipal Waters are provided by the following Sections:

Section 16. *Jurisdiction of Municipal/City Government.* - The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the FARMC, shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province, which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules, and regulations as well as valid fishery ordinances enacted by the municipal/city council.

The management of contiguous fishery resources such as bays which straddle several municipalities, cities, or provinces, shall be done in an integrated manner, and shall not be based on political subdivisions of municipal waters in order to facilitate their management as single resource systems. The LGUs which share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management. The Integrated Fisheries and Aquatic Resources Management Councils (FARMCs) established under Section 76 of this Code shall serve as the venues for close collaboration among LGUs in the management of contiguous resources.

Section 17. *Grant of Fishing Privileges in Municipal Waters.* - The duly registered fisherfolk organizations/cooperatives shall have preference in the grant of fishery rights by the Municipal/City Council pursuant to Section 149 of the Local Government Code: Provided, That in areas where there are special agencies or offices vested with jurisdiction over municipal waters by virtue of special laws creating these agencies such as, but not limited to, the Laguna Lake Development Authority and the Palawan Council for Sustainable Development, said offices and agencies shall continue to grant permits for proper management and implementation of the aforementioned structures.

Section 18. *Users of Municipal Waters.* - All fishery-related activities in municipal waters, as defined in this Code, shall be utilized by municipal fisherfolk and their cooperatives/organizations who are listed as such in the registry of municipal fisherfolk.

The municipal or city government, however, may, through its local chief executive and acting pursuant to an appropriate ordinance, authorize or permit small and medium commercial fishing vessels to operate within the ten point one (10.1) to fifteen (15) kilometer area from the shoreline in municipal waters as defined herein, provided, that all the following are met:

(a) no commercial fishing in municipal waters with depth less than seven (7) fathoms as certified by the appropriate agency;

(b) fishing activities utilizing methods and gears that are determined to be consistent with national policies set by the Department;

(c) prior consultation, through public hearing, with the M/CFARMC has been conducted; and

(d) the applicant vessel, as well as the shipowner, employer, captain, and crew, have been certified by the appropriate agency as not having violated this Code, environmental laws, and related laws.

In no case shall the authorization or permit mentioned above be granted for fishing in bays as determined by the Department to be in an environmentally critical condition and during closed season as provided for in Section 9 of this Code.

However, as of January 2025, no city/municipality has yet to comply with all the requirements allowing commercial fishing within the 10.1 to 15-kilometer area from the shoreline in municipal waters. A mere city/municipal ordinance without compliance with the other requirements set by the Fisheries Code is insufficient.

The preferential rights of municipal fisherfolk to perform municipal fishing activities within municipal waters,

together with the stringent requirement to allow commercial fishing, are not arbitrary policies. These provisions are in line with the 1987 Constitution, particularly Article XIII, Section 7, which provides:

Section 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

Municipal waters are known to be highly productive areas. It hosts critical marine ecosystems such as mangrove forests, seagrass beds, and coral reefs. These critical coastal and marine ecosystems are home to a variety of marine species, including fish. These habitats provide shelter that serves as a breeding and nursery ground for fish. Therefore, protecting these habitats from the stress of overfishing is crucial in the recovery of fish stocks and maintaining a sustainable level of fishing effort.

The general rule of the Fisheries Code, limiting the access of commercial fishing to municipal waters, is a science-based approach to sustainable fisheries and marine ecology. Scientific investigations done since the 1980s have found that most of our traditional coastal fishing grounds are overfished, needing a 40-60% reduction in fishing effort levels to attain maximum sustainable yield (MSY).⁶ Maximum sustainable yield is the theoretical amount of fish catch that allows fisheries to remain sustainable. Limiting the access of

⁶ DA-BFAR (Department of Agriculture-Bureau of Fisheries and Aquatic Resources). 2004. *In turbulent seas: The status of Philippine marine fisheries*. Coastal Resource Management Project of the Department of Environment and Natural Resources, Cebu City, Philippines, 378 p.

commercial fishing to municipal waters significantly reduces the stress on the fish stocks by creating a “sanctuary” for fish to recover.

According to fisheries scientist Dr. Wilfredo Campos, in his statement on the Supreme Court ruling, allowing commercial fishing within critical municipal waters would only speed up the potential collapse of fish stocks. This would result in irreversible loss of the resource base and loss of livelihoods for both commercial and municipal sectors.

The Mercidar Case

Mercidar Fishing Corporation (Mercidar) is a domestic corporation licensed by the national government to undertake commercial fishing operations in the Philippine waters. By general rule, large commercial fishing operators are prohibited from fishing within the 15-kilometer municipal waters, and municipal fisherfolk are given preferential rights to access these waters.

Mercidar filed a Petition for Declaratory Relief and raised the issues of invalidity and unconstitutionality of certain provisions of the Fisheries Code, through its Internal Rules and Regulations envisaged in Department of Agriculture Administrative Order No. 10, series of 2015, for being violative of the Constitution. On December 11, 2023, the Regional Trial Court of Malabon City ruled in favor of Mercidar and held that the subject statute “disregarded the doctrine of constitutional supremacy because the Constitution provides that municipal water is a natural resource that is owned by the State, and the authority over such country’s natural resources is vested and delegated by the Constitution to the concerned national government agency, not with the LGUs.”

The Supreme Court, through its First Division, affirmed the Regional Trial Court’s decision declaring the key provisions of the Fisheries Code, as amended,⁷ allowing

⁷ *Bureau of Fisheries and Aquatic Resources vs. Mercidar Fishing Corporation*, G.R. No. 270929, 19 August 2024.

Mercidar Fishing Corporation to conduct its commercial fishing activities within municipal waters.

Fishy Irregularities

There are several issues involved in this decision. Firstly, there are **procedural irregularities** throughout the case. The Constitution mandates that all cases involving the constitutionality of laws be heard by the Supreme Court *en banc*.⁸ This procedural requirement was not met as this case was decided through the First Division's resolution, without substantive deliberation on constitutional issues by all Supreme Court justices. Furthermore, the unconstitutionality of the provisions was not deliberated by the Supreme Court but only affirmed the decision of the Regional Trial Court. Lastly, stakeholders affected by this case were not given due notice, nor were they given an opportunity to raise their concerns before the Court. The stakeholders involved would be municipal fisherfolk and Local Government Units. The rights of many individuals were severely affected by the lapses in the procedure followed.

Secondly, there are **constitutional merits** to the relevant provisions that were not considered. The Constitution provides (1) the State's responsibility to protect and advance the right of the people to a balanced and healthful ecology,⁹ (2) the State's duty to protect its marine wealth in archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens,¹⁰ and (3) the State shall protect the rights of subsistence fisherfolk, especially of local communities, to the preferential use of the communal marine and fishing resources.¹¹

⁸ Constitution, Art. VIII, Sec. 4(2).

⁹ Constitution, Art. II, Sec. 16.

¹⁰ Constitution, Art. XII, Sec. 2.

¹¹ Constitution, Art. XIII, Sec. 7.

The very rationale of the relevant provisions of the Fisheries Code was to institute these constitutional mandates. Section 18 of R.A. No. 8550 regulates the use of municipal waters, limiting the fishing effort applied to these critical marine ecosystems, pursuing the constitutional mandate to protect the right of the people to a balanced and healthful ecology. Furthermore, by allowing the replenishment of fish stock within municipal waters, the Fisheries Code safeguards the marine wealth in archipelagic waters, territorial sea, and exclusive economic zone. Lastly, the relevant provisions of this Code explicitly follow the responsibility of the State to protect the rights of subsistence fisherfolk by giving them preferential rights over the use of municipal waters for municipal fishing.

The Supreme Court resolution on this case reads:

Citing Articles XII and XIII of the Constitution, the trial court further held that the preferential treatment to subsistence fisherfolk did not expressly limit the utilization of marine and fishing resources exclusively to them to the exclusion of large commercial fishing operations.

This interpretation of the Constitutional provisions is superficial. Deregulation of the use of municipal waters is prejudicial to the preferential rights of subsistence fisherfolk and local communities, who would then be displaced from their share of the common fish stock. This preferential treatment was declared as a state policy by Congress in the Philippine Fisheries Code of 1998 that seeks “to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters.”¹² The Court’s interpretation is contrary to what Art. XIII, Sec. 7 of the 1987 Philippine Constitution enshrines. Furthermore, the Court has overlooked the drastic effects of overfishing within municipal waters, which constitutes a failure to protect marine resources. Therefore, the relevant provisions of the Fisheries Code follow

¹² Fisheries Code, Sec. 2(d).

constitutional mandates, and declaring such as unconstitutional is a grave oversight.

Lastly, Mercidar also contested the vested authority in the Local Government Units (LGUs) over municipal waters. The Supreme Court, in affirming the decision of the RTC, also ruled in favor of Mercidar, indirectly declaring provisions of the Republic Act No. 7160 or the Local Government Code unconstitutional:

In its December 11, 2023 Decision, the RTC ruled in favor of Mercidar and held that the subject statute “disregarded the doctrine of constitutional supremacy because the Constitution provides that municipal water is a natural resource that is owned by the State, and the authority over such country’s natural resources is vested and delegated by the Constitution to the concerned national government agency, not with the LGUs.”¹³

The legal and social justice context of the municipal waters must be reviewed. The term “municipal waters” was defined in the Local Government Code, transferring control and responsibility of delivering basic services to the local government units all over the country.¹⁴ The definition of municipal waters as the marine waters zone drawn perpendicularly to the general coastline at low tide until fifteen (15) kilometers from it was reiterated by the Fisheries Code, as amended. These provisions have a historical significance in protecting municipal waters for small-scale fisherfolk, rooted in the 1987 Constitution’s social justice provision: “those who have less in life should have more in law.”¹⁵ However, this decision undermines the local autonomy enshrined under Article X of the 1987 Philippine Constitution and community-based governance models that have proven to be effective in balancing resource use and conservation, a step back in sustainable governance.

¹³ *Supra* note 6.

¹⁴ Local Government Code, Sec. 131(23).

¹⁵ Constitution, Art. XII, Sec. 2.

The Oceanic Ripple Effect

Multiple sectors are negatively affected by the Court's decision. First, the **socio-economically vulnerable marginal fishers**. Without legislative protection for the preferential rights of municipal fisherfolk to the municipal waters, thousands of livelihoods will be displaced and families starved. Municipal fisherfolk are protected by the law because they lack the capacity and resources to compete with large commercial operators. Oceana Philippines provided the following Geographic Information System (data) analysis:

...municipal waters within the 15 km allotted for municipal fishers is at about 2 million square kilometers or only 15% of the Philippine waters. If commercial fishers were allowed unimpeded access to operate inside municipal waters of at least 7 fathoms deep, the area reserved for around 1.1 million Filipino artisanal fishers would shrink to only 2%, while 98% of the country's waters [would] be open to 5,000 registered commercial fishing vessels. This would lead to inequity in fisheries resources, not to mention aggravation of overfishing inside municipal waters where many fish species reproduce.¹⁶

Second, **marine ecology and sustainability**. A nationwide application of this ruling will have devastating effects on critical habitats and breeding grounds of marine life. Limiting the fishing effort within municipal waters reduces pressure on these fragile ecosystems and promotes the recovery of overexploited fish stocks. Scientific studies have found that most fish stocks in the Philippines are overfished, and increasing the pressure on fish stocks would be detrimental to their recovery. Permitting commercial fishing in municipal waters may further contribute to environmental degradation, such as habitat destruction and bycatch of non-target species. Weaker enforcement by the exclusion of LGUs and fisherfolk may also jeopardize marine biodiversity and increase its vulnerability.

¹⁶ Memorandum of Petitioners, *Oceana Philippines International, et al. Vs. Royale Corporation, et al.*, G.R. No. 257049, 10 October 2023.

Lastly, **food security**. Marine capture fisheries have been in steady decline for years due to overfishing and habitat degradation. Further stress would potentially lead to long-term resource collapse. Furthermore, the displacement of local fishers may diminish their contribution to local food supplies, and the loss of fish catches available will deepen food insecurity within the country, especially in rural areas. Also, it may lead to dependence on imports to meet domestic seafood demand, destabilizing prices of supplies.

As of now, multiple groups representing fisherfolk and other sectors drastically affected by the Court's ruling, including the Department of Agriculture–Bureau of Fisheries and Aquatic Resources (DA-BFAR), have filed their petition to the Supreme Court. Many are hopeful that justice and equity shall prevail.

Conclusion

The decision of the Supreme Court defeating the preferential rights of municipal fishers within municipal waters, along with other relevant provisions of the Fisheries Code, as amended, does injustice to the very people the Constitution protects. It undermines the progress in enacting reforms and conservation measures, weakens the enforcement of fisheries policies, and hastens the decline of marine biodiversity.

Furthermore, the procedure followed in this case was irregular and was adverse to the rights of the stakeholders involved. The Supreme Court risks its reputation as the chief arbiter of the nation by overlooking several procedural flaws and a trial on the merits of this case. This might create confusion among all government agencies, especially enforcers and local government units.

Several sectors involved are negatively impacted by this ruling and must be afforded the opportunity to raise the merits of their petitions to the Court. The ruling would contribute to the decline of fish stocks, eventually leading to a collapse. Small-scale fishers are directly affected by this

ruling, having their livelihoods displaced by bigger players who would share the same fish stock. Lastly, the socio-economic impacts are yet to be realized as capture fishery weakens further, threatening food and economic security.

We can only hope for justice from the Court to reverse this decision and restore equity and sustainability within the Philippine seas.

IMPEACHMENT: CONSTITUTIONAL ALARM BELL OR JUST ANOTHER TACTIC IN THE PARTISAN PLAYBOOK?

Fercy Lyn N. Almaiz¹

The “Public Office is a Public Trust” Doctrine also needs robust civil society participation.

Inherent in every government position, whether elected or appointed, is the expectation that public officials and institutions will only act in the best interest of the constituency they serve. “Public office is a public trust,” is an overarching reminder that every instrumentality of government should exercise its official functions only in accordance with the principles of the Constitution, which embodies the parameters of the people’s trust. The notion of a public trust connotes accountability.² It means that public officials should always be open to scrutiny by citizens or oversight bodies. Despite these requirements, the Ombudsman would still point out the reality that the most corrupt acts by public officers are shrouded in secrecy and concealed from the public,³ making it difficult for voters to make informed decisions during elections.

The accountability of public officers is grounded in the Constitution and expanded by laws such as R.A. 3019 (Anti-Graft Law), R.A. 6713 (Ethical Standards Law), and R.A. 6770 (Ombudsman Act). Impeachment, administrative disciplinary actions, and criminal prosecution via the Ombudsman and Sandiganbayan are some of the mechanisms that would ensure that public officials are held responsible for any misconduct.⁴

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² *Belgica v. Ochoa*, G.R. No. 208566, 19 November 2013.

³ Ombudsman’s Memorandum, rollo, Vol. 11, p. 716, citing *Silos, Miguel U., A Re-examination of the Doctrine of Condonation of Public Officers*, 84, Phil. LJ 22, 69 (2009), p. 67.

⁴ *Respicio & Co. (2024), Accountability of Public Officers | LAW ON PUBLIC OFFICERS* <<https://www.respicio.ph/bar/2025/political-law-and-public->

But none of these mechanisms compares to the understanding that civil society participation is crucial for building a national anti-corruption capacity and in supporting institutional reforms.⁵ The people have to know that they too are partly accountable, and they have to understand that society must protect itself.⁶ It is a collective responsibility to actively engage with and utilize all structural mechanisms granted by the Constitution to safeguard the country from social and economic threats posed by the misdemeanors of government officials. The electorate, while holding the bar high when electing their representatives, must also initiate anti-corruption reforms and promote policies that will ensure that the government serves the best interest of the people, not their own.

What is impeachment?

“A corrupt political actor would either purposely ignore or forget the public good as he used the reins of power.”⁷ Hence, the framers erected safeguards against abuse. Most famously, they divided the power among three branches of government that had the means and motive to balance each other—executive, legislative, and judiciary, because “Ambition,” Madison reasoned, “must be made to counteract ambition.”⁸

Impeachment is both quasi-judicial and quasi-political. It is not a civil case nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance. The purpose of impeachment is not personal punishment, but rather to maintain constitutional government, through the removal of an unfit official from a

international-law/law-on-public-officers/accountability-of-public-officers>
(visited 5 December 2024).

⁵ V. Škorić (2015), Civil society participation: An essential element in anti-corruption efforts <<https://uncaccoalition.org/civil-society-participation-an-essential-element-in-anti-corruption-efforts/>> (visited 6 December 2024).

⁶ F. Dostoevsky (1872), *The Possessed*.

⁷ Z. Teachout (2016), *Corruption in America*.

⁸ J. Madison (1788), *Federalist* 51.

position of public trust.⁹ It serves as a crucial mechanism which reinforces the existing edicts, decrees, and laws, safeguarding the checks and balances among all instrumentalities of government, holding the public officials accountable to their sworn oath of “faithfully and conscientiously fulfilling (their) duties,” to “do justice,” “preserve and defend the Constitution,” and “execute laws.”¹⁰ The consequences of impeachment were limited to “removal from Office” and “disqualification” from future officeholding.¹¹ This speaks to the very nature of impeachment: it exists not to inflict personal punishment for past wrongdoing, but rather to protect against future Presidential misconduct that would endanger democracy and the rule of law.¹²

Impeachment is a double-edged sword for democracy and human rights.

“The power to do good meant also the power to do harm, the power to serve the republic also meant the power to demean and defile it.”¹³

The Philippines has a long history of human rights abuses perpetrated by government officials, including fatal police brutality, hacienda massacres, extrajudicial killings, and widespread human rights abuses associated with the war on drugs campaign. These atrocities raise a pressing question: why is justice so elusive for ordinary Filipinos who are victims of such brutality, while those in power often evade accountability for their misconduct?

⁹ M.D. Santiago (2012), The Nature of an Impeachment Trial <https://legacy.senate.gov.ph/press_release/2012/0208_santiago1.asp> (visited 4 December 2024).

¹⁰ Constitution, Art. VII, Sec. 5, par. 2.

¹¹ Constitution, Art. XI, Sec. 7.

¹² L. H. Tribe (2000), American Constitutional Law, 3rd Edition.

¹³ A.M. Schlesinger, Jr. (1973), The Imperial Presidency.

The persistence of impunity can be attributed to the following:

(1) legal systems lacking the necessary independence in holding the powerful individuals accountable: Reports show that since Marcos Jr. assumed the Office of the President, accountability for serious human rights violations remains unchanged. For instance, there have only been three convictions related to the anti-drug campaign despite numerous pending investigations.¹⁴

(2) deeply entrenched culture of violence within the police without fear of repercussions.

Testimonies from Congressional hearings and other local police abuse cases reveal the systemic culture of violence within the Philippine National Police (PNP). PNP has been implicated in numerous killings¹⁵ and an alleged “quota reward system.”¹⁶ This perception discourages the victims from seeking justice, as they are confronted by a government institution that has historically protected its own.

Impeachment can only vindicate human rights¹⁷ through the removal of public officials who condone, support, and assist in the implementation of these atrocities, those who act against the

¹⁴ AMP Press Release: human rights crisis in the Philippines still ongoing, 10 April 2024 <<https://www.asienhaus.de/aktuelles/amp-2024-report-human-rights-crisis-in-the-philippines-still-ongoing>> (visited 8 December 2024).

¹⁵ Human Rights Watch (2024), Philippines: Adopt Police Reforms, Accountability Measures <<https://www.hrw.org/news/2024/10/18/philippines-adopt-police-reforms-accountability-measures>> (visited 7 December 2024).

¹⁶ GMA Integrated News (2024), Marbil: PNP to probe alleged ‘quota, reward’ system during Duterte drug war <<https://www.gmanetwork.com/news/topstories/nation/918945/marbil-pnp-to-probe-alleged-quota-reward-system-during-duterte-drug-war/story/>> (visited 8 December 2024).

¹⁷ G. L. Neuman (2023), Impeachment, Disqualification, and Human Rights, 54.2 Colum. Hum. Rts. L. Rev.

interests of the public so that the constituents can restore their faith in democratic institutions. Freedom must not be taken for granted. It demands constant protection from leaders whose taste of power sparks a voracious need for more.¹⁸

The Risk of Partisan Abuse

The fundamental question in an impeachment trial is always whether the defendant has acted in ways that are incompatible with continuing to hold the office,¹⁹ violating any of the impeachable offenses, namely: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.²⁰

Conversely, impeachment can also be wielded abusively for partisan purposes, transforming it into a weapon of political maneuvering rather than a genuine tool for justice. In recent years, impeachment threats have been used to mobilize partisan bases, often without substantive evidence of the misconduct. It is perceived as merely another weapon of partisan politics rather than a serious constitutional remedy.²¹

The case of former Chief Justice (CJ) Maria Lourdes Sereno best exemplifies how *quo warranto* proceedings can be abused, and how it was used to undermine judicial independence. In 2018, CJ Sereno was removed through a *quo warranto* petition filed by Solicitor General Jose Calida, which questioned the

¹⁸ REPORT BY THE MAJORITY STAFF OF THE HOUSE COMMITTEE ON THE JUDICIARY (2019), CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT, H.R. REP. NO. 116-179.

¹⁹ R. Primus (2021), Unbundling the First Amendment: Lessons from an Impeachment <<https://harvardlawreview.org/blog/2021/03/unbundling-the-first-amendment-lessons-from-an-impeachment/>> (visited 7 December 2024).

²⁰ Constitution, Art. XI, Sec. 2.

²¹ J. Yang and H. Zahn (2024), Expert analyzes the rise of impeachment as a weapon of partisan politics <<https://www.pbs.org/newshour/show/expert-analyzes-the-rise-of-impeachment-as-a-weapon-of-partisan-politics>> (visited 6 December 2024).

validity of her appointment based on her alleged failure to file her Statement of Assets, Liabilities, and Net Worth (SALN).²²

Critics of Former President Rodrigo Duterte accused him of having authoritarian tendencies. He had a reputation for attacking the media, judiciary, and his political opponents. He was most known for his aggressive campaign against illegal drugs, which led to thousands of deaths in police operations and vigilante killings. CJ Sereno was a vocal critic of the former president's policies, most notably on the war on drugs. Her ouster was widely viewed as politically motivated, given the former president's public declarations labelling her an "enemy."²³

If impeachment is easily used as an alternative to arbitrarily punish political adversaries, one may assume that this mechanism may also open the door for wanton removal of members of other constitutional bodies based on political considerations, ultimately disregarding the constitutional checks and balances.

VP Sara's unliquidated Confidential and Intelligence Funds (CIF)

The essence of impeachment is to hold public officials accountable for betrayal of public trust and violations of constitutional principles. Impeachment is the recourse against officials who engage in "culpable violation of the Constitution, graft and corruption, or betrayal of public trust."²⁴

²² I. Deinla, V. Taylor, and S. Rood (2018), Philippines: justice removed, justice denied <<https://www.lowyinstitute.org/the-interpreter/philippines-justice-removed-justice-denied>> (visited 3 December 2024).

²³ C. H. Conde (2018), Philippine Chief Justice Ouster an Assault on Rights, Democracy <<https://www.hrw.org/news/2018/05/11/philippine-chief-justice-ouster-assault-rights-democracy>> (visited 7 December 2024).

²⁴ Constitution, Art. XI, Sec. 2.

The recent Congress deliberations confronting Vice President Sara Duterte's failure to properly liquidate ₱125,000,000 in confidential and intelligence funds (CIF) is a patent breach of this oath, raising questions of accountability, governance, and integrity that lie at the heart of every impeachment proceeding.

The vice president's handling of the CIF in 2022 reflects an alarming administrative oversight and potential misuse of public funds. There was no CIF allocation under the General Appropriations Act (GAA) in 2022, yet the vice president requested, and thereafter was granted a staggering amount of ₱125,000,000. The disbursement report showed that the amount was disbursed within 11 days only. Such spending translates to an average daily expenditure of ₱11,363,636.36—an amount that demands scrupulous justification. However, the subsequent liquidation reports exhibited several deficiencies such as undated accomplishment reports and incomplete explanation of how the funds were utilized.

Although the private and public sectors would differ in terms of accounting processes, the highest ethical standard should be observed by those working in the government. There is an even greater need for accuracy and transparency in accounting for public expenditures, namely so that citizens would know how their tax pesos are being spent. This glaring mismanagement of funds not only undermines fiscal responsibility but also constitutes betrayal of public trust.

Moreover, the vice president's actions in refusing to address the issues concerning the disbursement of CIF exacerbate this breach. Every senate hearing is like a snippet from a movie where a petulant, spoiled brat would throw tantrums if she did not get what she wanted. The vice president would often refuse to answer the inquiries substantively, and would instead resort to *ad hominem* attacks. The senate hearings that are supposedly done in aid of legislation are becoming performative acts—almost like a hit film series.

Impeachment is valuable for the broader message it sends—to future presidents and other government actors—about the costs of engaging in wrongful activity.²⁵ However, while the ideal theoretical framework suggests deterrence of official misconduct and reinforcement of the principle that “no one is above the law,”²⁶ Tribe and Matz, in their book “To End A Presidency: The Power Of Impeachment,” argued that this rationale is weak in practice. Tribe and Matz explained that punishment theorists would place this argument under the guise of “general deterrence,” but impeachment makes little sense as a tool of specific deterrence—after all, a president who is removed from office is unlikely to be president again²⁷—or to hold any other public office—so the need to deter him from further abuses of the public trust becomes a futile exercise.

Furthermore, impeachment can only be realized with a competent and impartial Congress. If Congress fails to act on credible allegations of highly impeachable offenses, it could embolden other officials to engage in corrupt acts, as they might think, “If the president can do this, why can’t I?” The incompetence and partiality of Congress can taint its decisions to overlook offenses that warrant impeachment proceedings. This failure sends a troubling message to future presidents and government officials, suggesting that with the right numbers and strong political alliances, they too can evade accountability for their misconduct, especially if their predecessor faced no repercussions.

Impeachment, while often a complex, contentious, and highly political process, is a safeguard against tyranny in a functioning democracy that remains indispensable. “Perhaps an impeachment, however disruptive, will ultimately trigger

²⁵ Gillian Metzger, *Impeachment: Partisan Warfare or Defending the Constitutional Order?*, Take Care, 19 June 2018 <<https://takecareblog.com/blog/impeachment-partisanwarfare-or-defending-the-constitutional-order> [<https://perma.cc/4FKD-EQ78>] > (visited 2 December 2024).

²⁶ A. Crespo (2019), *Impeachment as Punishment*, 13 Harv. L. Pol’y Rev.

²⁷ Constitution, Art. VII, Sec. 4.

productive dialogue about reform and reformation, catalyzing the very political reconstruction x x x or perhaps the forces of decay, disinformation, and disunion, have already produced a 'rot in our political system' beyond any power of punishment to repair."²⁸

²⁸ *Supra* note 26.



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