

## **SAFEGUARDING THE LIBERTY AND NURTURING THE PROSPERITY OF THE PEOPLES OF THE WORLD <sup>1</sup>**

*Chief Justice Artemio V. Panganiban*

Good afternoon and *Mabuhay* to all of you. I am deeply honored to deliver this keynote address before so many distinguished jurists, lawyers, diplomats, business heads, civil society leaders, academics, and high government officials from different parts of the world gathered here today for this three-day Global Forum on Liberty and Prosperity.

In this keynote address, it is my purpose (1) to follow up and explain in greater breadth and depth my twin concepts of liberty and prosperity; (2) to expound on how the Global Forum was organized and structured; (3) to illustrate how the speakers and delegates may meaningfully participate; and (4) to discuss how the beneficent effects of these twin beacons of justice, as I am apt to call them, may be extended far and wide to the peoples of the world.

May I also say, at the outset, that it has been my personal crusade since joining the Philippine Supreme Court more than 11 years ago to actively espouse and propagate these twin beacons of justice. Upon assuming the chief justiceship of the Philippines last year, I publicly pursued them even more fervently. Indeed, they have become the cornerstones of my magistracy.

For that reason exactly, I embarked on a knowledge-sharing-cum-lecture circuit in May and June of this year. My aim was to broach and carry forward these twin beacons to jurists, legal practitioners, business heads, civil society leaders, diplomats, academics, and developmental agencies in several countries – especially the United States, Spain, France, the Netherlands and the United Kingdom. In all my meetings with the various personalities and sectors mentioned, I was delighted to note the very warm reception given to Liberty and Prosperity. It was during those meetings that the format of this Forum was ironed out and initial invitations were extended.

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<sup>1</sup> Keynote address delivered by Supreme Court Chief Justice Artemio V. Panganiban during the opening ceremonies on October 18, 2006, of the three-day Global Forum on Liberty and Prosperity, Shangri-La Makati Hotel, Metro Manila, Philippines.

I am grateful to, among others, World Bank (WB) President Paul Wolfowitz and Asian Development Bank (ADB) President Haruhiko Kuroda. Due to their inability to be physically present, both have graciously agreed to send video messages, which we will hear on Friday, October 20; US Supreme Court Justice Anthony Kennedy and US Court of Appeals Judge Clifford Wallace who, despite their unavoidable physical absence, have ensured their participation through video conferencing from their location in San Diego, California. I am grateful as well to Chief Justice Guy Canivet of France and International Bar Association President Fernando Pombo Garcia, both of whom will personally present their views and experiences on these twin beacons.

I also thank those who have encouraged me to pursue my advocacy despite their inability to participate personally because of conflicts in schedule and other reasons. Among them are President Rosalyn Higgins of the International Court of Justice, based in the Hague; Chief Justice Willibord Davids of the Netherlands; President Francisco Jose Hernando Santiago of the Spanish Supreme Court; the Chief Justice of England and Wales, Lord Philipps of Worth Matravers; and Ms Karen Mathis, President of the American Bar Association.

On the same theme, several fora have also been conducted in my country over the past months. In these gatherings were discussed not only the theoretical foundations of these twin beacons of justice but, more important, concrete ways of implementing them locally.

The first of these domestic fora was the National Academic Forum attended by distinguished and renowned scholars of the law in our country on July 20, 2006. The National Forum on Liberty and Prosperity followed this conference shortly on August 24-25, 2006. It was participated in not just by justices and judges, but also by representatives of our legislative and executive branches of government; also in attendance were law practitioners, business leaders, and civil society advocates. The resolutions passed during the forum outlined several plans of action on how to implement the twin beacons in our courts, in the legal profession, the academe, the government and society in general.

On top of these efforts, I wrote a book entitled *Liberty and Prosperity*. This book, together with its searchable compact disc (CD) version, will be circulated for the first time today to all delegates.

The lecture circuit and fora, as well as the book, have encouraged the members of our Supreme Court to sponsor this Global Forum to give the world community an opportunity to discuss Liberty and Prosperity. Fortunately, our aspirations drew the support of the United Nations Development Program (UNDP); the World Bank, the ADB, the Canadian International Development Agency (CIDA); and the US Agency for International Development (USAID) through The Asia Foundation (TAF), the American Bar Association (ABA), and the Rule of Law Effectiveness (ROLE).

In the next three days, we will share our national and sectoral experiences; mutually discuss the challenges confronting Liberty and Prosperity in various parts of the world, and draw lessons from them. As you may have noted from the program, we have invited a cross section of the global society to discuss the country experiences of Canada, Benin, Singapore, France, Argentina, Nepal, Russia, Guatemala, China, Egypt; and those of the bar associations, academic and judicial institutes, development institutions, other branches of government, and civil society.

I hope then that at the end of this 3-day forum, we shall have come to a mutual understanding of the principles of Liberty and Prosperity and mapped out common courses of action to carry them out globally. An example of a possible project is a global foundation for Liberty and Prosperity, which will serve as a venue for a continuing discussion and sharing of ideas, experiences, and best practices by the various sectors represented in this Forum. In this search, the foundation could also bestow international awards to outstanding personalities and programs advocating the twin beacons.

Let me now briefly go through various events that have given impetus to Liberty and Prosperity as twin beacons of justice.

### I. SAFEGUARDING LIBERTY

The history of the world shows a long and arduous road to freedom. From the Magna Carta of the British to the French Revolution, and from the Declaration of Independence of the Americans to the struggle for nationhood of the Filipinos, calls for civil and political liberties reverberated in the annals of our past. *Liberté, égalité, fraternité, ou la mort! Tierra y libertad! Mabuhay ang Republika ng Pilipinas!* These were some of the battle cries for nationhood and freedom.

Indeed, history rings for peoples' right to be free -- free to live peacefully, to earn a living, to participate in political processes, to vote and to be voted for; as well as to speak, to assemble peaceably for redress of grievances, and to worship one's Creator the way one deigns, among others.

In these battles to uphold freedom throughout the past centuries, the judiciaries of the world have had to cope and innovate with a never-ending saga of fortitude and forthrightness. So, too, must they now face up to new challenges brought about by the advances in technology and the demands of our global community. Thus, even now, laws and judicial doctrines safeguarding liberty are continuously tested to the limits.

Indeed, traditional conceptions of liberty have paved the way to new freedoms. In the Philippines, for example, the right to conduct public opinion polls and to publish their results, a right born recently of the information age, is now considered an essential part of the traditional freedom of speech and expression.<sup>2</sup> I am sure that many, if not most, of the countries represented in this Forum have had to face similar questions in the past; and that they have given wise counsel, as well as guidance, on the legality of exit polls as part of the freedom of speech.<sup>3</sup>

Furthermore, recent money-laundering activities and threats of terror have become new objects of calibration in the defense of human freedom.

## II. RECENT DECISIONS UPHOLDING LIBERTY

Very recently, our Supreme Court promulgated three landmark Decisions involving (1) the right of Congress to summon executive officials for investigations in aid of legislation, in conjunction with the people's right to information on matters of public concern;<sup>4</sup> (2) the right of citizens to peaceful assembly for redress

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<sup>2</sup> *ABS-CBN Broadcasting Corporation v. Commission on Elections*, G.R. No. 133486, 380 Phil. 780, Jan. 28, 2000, Per Panganiban, J. In this case, the Court emphatically explained that, "when faced with borderline situations in which the freedom of a candidate or a party to speak and the freedom of the electorate to know are invoked against actions allegedly made to assure clean and free elections, *this Court shall lean in favor of freedom*." This ruling recognizing public opinion polls as a species of the freedom of expression was echoed one year later in *Social Weather Stations v. Comelec* (G.R. No. 147571, 357 SCRA 496, 501, May 5, 2001, per Mendoza, J.). In this case, the Court stressed that "because of the preferred status of the constitutional rights of speech, expression, and the press, a law prohibiting the publication of pre-election surveys is vitiated by a weighty presumption of invalidity."

<sup>3</sup> For a sampling of how other countries have construed exit polls, please see ARTEMIO V. PANGANIBAN, *REFORMING THE JUDICIARY* 154-169 (2000).

<sup>4</sup> *Senate of the Philippines v. Ermita*, GR No. 169777, Apr. 20, 2006. More accurately, the Court invalidated the major provisions of Executive Order No. 464. In simplest terms, the Decision held that Congress had the right to compel the appearance of executive officials in congressional investigations, because the power of legislative inquiry was as broad as the power to legislate. Hence, deemed unconstitutional were the provisions of EO 464. This executive order allowed the executive branch to evade congressional requests for information without properly invoking executive privilege in recognized instances. Nonetheless, the Court directed Congress to indicate, in its invitation to executive officials, the subject matter of the inquiry and of related questions, so that the President or the executive secretary could properly invoke executive privilege, if warranted. To the extent that investigations in aid of legislation were to be generally conducted in public, the Court held that "any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information, which they can use in formulating their own opinions on the matter before Congress --opinions that they can communicate to their

of grievances;<sup>5</sup> and (3) the rights of the people under a declaration of a “state of national emergency.”<sup>6</sup> In all these cases, our Supreme Court upheld the primacy of civil liberties over governmental actions.

The struggles for civil and political liberties by other judiciaries are, of course, just as long and difficult. An example is the Cour de Cassation (the highest court of France). In a case involving a former official whose employment had been terminated by the African Development Bank, the French court ruled on January 25, 2005, that the right to a hearing before an impartial tribunal prevailed over the jurisdictional immunity granted by a State to international organizations.<sup>7</sup> It explained that a party’s inability to refer its claim to a competent judge constituted a denial of justice and thus established the competence of the French judiciary to acquire jurisdiction. Thus, it upheld the former bank official’s fundamental right to a day in court.

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representatives and other government officials through the various legal means allowed by their freedom of expression. x x x.”

<sup>5</sup> *Bayan v. Ermita*, GR No. 169838, Apr. 25, 2006. This *ponencia*, penned by Justice Adolfo S. Azcuna, stated thus:

“x x x[I]his Court reiterates its basic policy of upholding the fundamental rights of our people, especially freedom of expresión and freedom of assembly. In several policy addresses, Chief Justice Artemio V. Panganiban has repeatedly vowed to uphold the liberty of our people and to nurture their prosperity. He said that ‘in cases involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak. Indeed, laws and actions that restrict fundamental rights come to the courts with a heavy presumption against their validity. These laws and actions are subjected to **heightened** scrutiny.’”

<sup>6</sup> *David v. Arroyo*, GR No. 171396, May 3, 2006. Writing for the majority in this case, Justice Angelina Sandoval-Gutierrez ruled as follows:

“All powers need some restraint; practical adjustments rather than rigid formula are necessary. Superior strength —the use of force — cannot make wrongs into rights. In this regard, the courts should be vigilant in safeguarding the constitutional rights of the citizens, specifically their liberty. Chief Justice Artemio V. Panganiban’s philosophy of liberty is thus most relevant. He said: ‘In cases involving involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak.’ Laws and actions that restrict fundamental rights come to the courts ‘with a heavy presumption against their constitutional validity.’”

<sup>7</sup> Bull n°16, Chambre sociale at <http://www.courdecassation.fr/jurisprudence> (last visited Oct. 16, 2006).

*Jameel v. Wall Street Journal Europe Sprl*<sup>8</sup> (promulgated on October 11, 2006), which echoes the landmark *Reynolds v. Times Newspapers Ltd.*,<sup>9</sup> has been hailed as a triumph of the freedom of expression and of the press. The Lords of Appeal of the House of Lords, the court of last resort in the United Kingdom, upheld the right to publish allegations about public figures on matters of public interest, as long as the journalist acted responsibly.

Further, on April 26, 2005, the Spanish Supreme Court ruled in favor of a Complaint filed by three nongovernmental organizations on the regulation and management of detention centers for foreigners. The ruling annulled certain provisions of a ministerial Order, particularly with respect to stringent discipline measures (such as the isolation and the regulation of the behavior of detainees, as well as the rules on visits and communications).<sup>10</sup>

Indeed, courts have the duty to safeguard the liberty of all peoples. Very recently, in *Hamdan v. Rumsfeld*<sup>11</sup> (decided on June 29, 2006), the United States Supreme Court held that a military commission convened to try a Yemeni national captured in Afghanistan lacked the power to proceed, "because its structure and procedures violate both the Uniform Code of Military Justice and the Geneva Conventions" on the matter. Holding that the military commission afforded less protection than that guaranteed under those laws, the US Supreme Court noted substantial deviations from the fundamental rights accorded to the accused, such as those precluding defendants and their counsel from learning what evidence was to be presented against them during any part of the proceeding; and those involving the admission of any evidence, such as hearsay testimony that had not been sworn to and statements gathered through coercion.

In *Rasul v. Bush*<sup>12</sup> (decided on June 28, 2004), a case also originating from the hostilities in Afghanistan, the US Supreme Court ruled that its district courts had jurisdiction to consider challenges to the legality of the detention of aliens (who in this case were Australians and Kuwaitis) captured abroad and incarcerated at Guantanamo Bay.

For sure, many other jurisdictions must have ruled on matters similar to those I have mentioned. Hence, we ask for your active participation, so that we may all learn from one another's experiences, decisions and advocacies.

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<sup>8</sup> [2006] UKHL 44.

<sup>9</sup> [1999] UKHL 45

<sup>10</sup> Recurso De Casacion Num. 1888/2001, Tribunal Supremo, Sala de Lo Contencioso-Administrativo, D. Enrique Lecumberri Marti, ponente.

<sup>11</sup> 126 S.Ct. 2749 (June 29, 2006)

<sup>12</sup> 124 S.Ct. 2686, 542 U.S. 466 (June 28, 2004).

### III. NURTURING PROSPERITY

While safeguarding liberty is a traditional and fairly common task for the judiciary, the nurturing of prosperity may not be too familiar to the courts. Some jurisdictions may even take the view that the judiciary need not exert conscious thought and effort to nurture progress. Nonetheless, I maintain that whatever the status of a country's economic progress, courts must contribute to the achievement or nurturance of prosperity; or, at the very least, to the alleviation of poverty, disease and disability.

Important world events impel me to advocate a necessary – nay, indispensable – nexus between political liberty and economic prosperity, which I will explain shortly.

#### A. MANDATE TO UPHOLD ECONOMIC RIGHTS

The Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly of the United Nations on December 10, 1948, has emerged as the fundamental law of human rights. The UDHR recognizes the entitlement of the common people to liberty and prosperity. This fact is evident in the following provisions of its Preamble:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

x x x

x x x

x x x

“Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,”

The UDHR also recognizes -- aside from the basic right to life, liberty and security of persons (Articles 3 to 21) -- their right to economic, cultural and social rights (Articles 22 to 27).<sup>13</sup>

In the Philippines, our 1987 Constitution<sup>14</sup> commands the State to "promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty x x x."

Equally significant, Article XII on the National Economy and Patrimony mandates "a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for

<sup>13</sup> It is well to note that from the Universal Declaration of Human Rights, two solemn agreements emerged: (1) the Covenant on Civil and Political Rights; and (2) the Covenant on Economic, Social and Cultural Rights. Commentators on international law are wont to distinguish the two in terms of the *executory* character of civil and political rights as against the *ideal or developmental* character of economic and social rights

<sup>14</sup> The following provisions of the Constitution, among others, mandate the State to promote economic prosperity:

#### Article II (Declaration of Principles and State Policies)

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

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

#### Article XII (National Economy and Patrimony)

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

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

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

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

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

the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.”<sup>15</sup> Our Constitution likewise demands the institutionalization of social justice.<sup>16</sup>

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

## B. GLOBAL EFFORTS TO SOLVE ECONOMIC DEPRIVATION

Another impetus to my twin advocacies pertains to developments in the private sector. More and more people around the world are realizing the need to fight poverty and deprivation and are pooling enormous resources and talents to combat this common menace.

For starters, *Time* magazine’s “Persons of the Year” for 2005 -- the world’s richest multi-billionaire couple, Bill and Melinda Gates -- have staged their own campaign for vaccinations and public health care. Their target: to save 700,000 lives.<sup>17</sup>

Billionaire investment guru Warren Buffett has joined the crusade with a mind-boggling \$30 billion donation of blue-chip Berkshire Hathaway stocks to the Gates Foundation.<sup>18</sup>

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<sup>15</sup> CONST. art. XII, §1.

<sup>16</sup> CONST. art. XIII, §1:

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

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

<sup>17</sup> Bono, the other *Time* “Person of the Year”, on the other hand, “charmed and bullied and morally blackmailed the leaders of the world’s richest countries into forgiving \$40 billion in debt owed by the poorest.” He believes that money saved from debt relief can be spent, instead, on health and schools rather than interest payments.

<sup>18</sup> This sum will be given gradually, beginning in July this year and continuing every year for as long as one of the couple -- Bill, 50; or Melinda, 42 -- is active in the Gates Foundation. But

Just last September of this year, billionaire financier George Soros announced that he was contributing \$50 million to the Millenium Villages Project. This nongovernmental initiative seeks to show that closely focused development projects can alleviate severe poverty within a few years.<sup>19</sup>

Even the famed Nobel Peace Foundation has veered its lenses to poverty alleviation, as it has awarded the Nobel Peace Prize to Bangladeshi Muhammad Yunus a few days ago, on October 14, 2006. He and his Grameen Bank had pioneered micro credit and proved that the poor's misfortunes could be transformed by helping them become self-employed. Over 6.6 million impoverished Bangladeshis have availed themselves of micro loans.<sup>20</sup>

Philanthropic endeavors in Asia have likewise brought back hope to the homeless, the blind, the poor, and the neglected. This year, six exceptional Asians and one exemplary organization were awarded the Ramon Magsaysay Awards<sup>21</sup> -- Asia's equivalent of the Nobel Prize. Later, one of these awardees, Mr. Antonio Meloto, will share with us civil society's experience in arousing civic consciousness through the Gawad Kalinga Community Development Foundation. It has been largely instrumental in building private mass housing projects for slum dwellers in the Philippines.

### C. NEED FOR A STABLE JUDICIARY

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each installment must be spent in the year it is given. For 2006, Buffett has given 602,500 Berkshire B shares valued at about \$1.5 billion, which must be spent by the Gates Foundation within the year.

<sup>19</sup> [http://AllAfrica.com/%20East/%20Four/%20Villages/%20Reccive/%20\\$100%2](http://AllAfrica.com/%20East/%20Four/%20Villages/%20Reccive/%20$100%2) (last visited Oct. 6, 2006).

<sup>20</sup> PHIL. DAILY INQUIRER, Oct. 16, 2006, at 1

<sup>21</sup> The 2006 Ramon Magsaysay Awardees are: **Eugenia Duran Apostol**, who was cited for her unrelentingly espousal of truth, independence and integrity in Philippine media; **Ek Sonn Chan**, who found fulfillment in providing safe, clean, and cheap drinking water for millions of Phnom Penh's poor residents; **Arvind Kejriwal**, who made it his relentless crusade to educate New Delhi's poorest citizens on their right to information and to empower them to fight corruption; **Antonio Meloto** who, together with the **Gawad Kalinga Community Development Foundation**, has demonstrated the meaning of deep commitment by building homes for slum dwellers in the Philippines; **Dr. Sanduk Ruit** who, by his abiding love, has bestowed munificent gifts of sight to the poverty-stricken people of Nepal; and **Park Won Soon**, who has fostered social justice, fair business practices, clean government, and a generous spirit in South Korea's young democracy.

Still another factor behind the call for both liberty and prosperity is the growing consensus among developmental institutions that a stable judiciary and a firmly established rule-of-law system are necessary means to achieve liberty and prosperity. Institutions, like the United Nations Development Program (UNDP), the World Bank (WB), and the Asian Development Bank (ADB) have realized that poverty alleviation and economic growth cannot be attained, unless there is "a well-functioning judicial system [that] enables the State to regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments and other transactions."

This stance explains why the UNDP is passionate about broadening the poor's access to justice; why the WB wants "an effective and efficient judicial system that protects citizens from the abuses of government and safeguards the rights of the poor";<sup>22</sup> and why the ADB desires "to enhance the effectiveness and the accountability of the judiciary."<sup>23</sup>

In the audio-visual presentation we have witnessed, ADB President Kuroda and WB's Joachim von Amsberg discussed the necessary nexus between progress and a stable rule-of-law environment. Both agree that the rule of law forms the foundation of sustained economic development.

If I may paraphrase Mr. Amsberg, law and justice are basic ingredients of development. Thus, it is his submission that there is no choice to be made between liberty and prosperity. Both are imperative paradigms in society. For the same reason, President Kuroda observed that the People's Republic of China is undergoing a massive law reform program, so that it may continue to play a critical role in the world economy.

In the light of these three developments, among several others, I am convinced that the prosperity of the peoples of the world requires as much nurturing in the present century as that accorded to liberty in the past. These developments have instilled in me my advocacy of justice and jobs, freedom and food, integrity and investments, ethics and economics, democracy and development; in short, liberty and prosperity.

#### IV. LIBERTY AND PROSPERITY AS A PHILIPPINE JUDICIAL POLICY

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<sup>22</sup> See WORLD BANK, *LEGAL AND JUDICIAL SECTOR MANUAL* (2002).

<sup>23</sup> ASIAN DEVELOPMENT BANK, *Law and Policy Reform*, ADB REPORT 26-28 (January 2005).

Pursuant to this effort to protect liberty and to promote prosperity, our Philippine judiciary has leaned towards a dual standard of judicial review. First, in cases involving liberty, the scales of justice weigh heavily against government and in favor of the people -- especially the poor, the oppressed, the marginalized, the dispossessed and the weak. Laws and actions of government and its instrumentalities restricting the fundamental rights of our people come to the courts highly suspect in their constitutional validity. Second, in cases involving prosperity and development issues, deference is generally accorded to the political branches of our government; namely, the Presidency and Congress.

Let me add that, as a rule, Philippine courts do not pass upon the merits or wisdom of economic policies. These are matters that have been left by our people to the President and Congress to evaluate and decide.<sup>24</sup>

This judicial no-interference rule on economic policy does not mean, though, that our courts in the Philippines will abdicate their duty of striking down "grave abuse of discretion." As you may know, our judiciary has been vested by our Constitution with a unique duty to nullify not just legislative or executive acts that clearly violate the Constitution, the laws, or settled jurisprudence;<sup>25</sup> but also those that have been issued with arbitrariness, whim, caprice, bias or personal hostility.<sup>26</sup>

To the first set of acts -- those contrary to the Constitution and the law -- courts in general claim an inherent mandate flowing from judicial power. I suppose, though, that the second category is peculiarly Filipino. It traces its origin to the previous dictatorial regime, the magnitude and monstrosity of which were described

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<sup>24</sup> An example of this deference to economic policies can be found in *Tañada v. Angara* (G.R. No. 118295, 338 Phil. 546, 604-605, May 2, 1997, per Panganiban, J.). In this case, the Philippine Supreme Court upheld the Senate's consent to the Philippines ratification of the World Trade Organization (WTO) Agreement. This laissez-faire judicial policy on economic issues was reiterated in *La Bugal-B'laan Tribal Association v. Ramos* (G.R. No. 127882, 445 SCRA 1, Dec. 1, 2004, per Panganiban, J.). In affirming the constitutionality of the Mining Law allowing 100-percent foreign investments in *large-scale* mining, the Court held thus:

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

<sup>25</sup> *Republic v. COCOFED*, G.R. No. 147062, 423 Phil. 735, Dec. 14, 2001

<sup>26</sup> *Benito v. Comelec*, G.R. No. 134913, 349 SCRA 705, Jan. 19, 2001; *Defensor-Santiago v. Guingona Jr.*, G.R. No. 134577, 359 Phil. 276, Nov. 18, 1998; and *Philippine Airlines, Inc. v. Confesor*, G.R. No. 111480, 231 SCRA 41, Mar. 10, 1994.

earlier by our former President Corazon C. Aquino in our audiovisual presentation.<sup>27</sup>

Concretely, there have indeed been instances when courts had to perform a delicate balancing act between the demands of liberty and the needs of prosperity. In *British Columbia Securities Commission v. Branch*,<sup>28</sup> the Supreme Court of Canada had to choose between the freedom from testimonial compulsion and the right of the government to compel a company's officers to attend an examination under oath and to produce all pieces of information and records in their possession as provided under that country's Securities Act. Ruling in favor of the securities commission, the Canadian Court noted that the "effective implementation of securities legislation, which has obvious implications on the nation's material prosperity, depends on the willingness of those who choose to engage in the securities trade to comply with the defined standards of conduct."

## V. SEARCH FOR A MODEL FOR ECONOMIC DEVELOPMENT

As the world searches for the proper balance between liberty and prosperity and a model for economic development, various theories are being proposed. For instance, Professor William Easterly, who has recently published a book entitled *Elusive Quest for Growth*,<sup>29</sup> opined that most economically advanced countries had adopted liberal democracy, in which human rights were zealously

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<sup>27</sup> Consistent with this "grave abuse" exception to the no-interference rule, the Supreme Court has nullified many contracts entered into by our government. Some of these contracts involved the reclamation of portions of Manila Bay, the construction and operation of the new Manila International Airport Terminal, and the automation of the 2004 national elections. (*Chavez v. Public Estates Authority*, G.R. No. 133250, 384 SCRA 152, Jul. 9, 2002; 451 Phil. 1, May 6, 2003; and 415 SCRA 403, Nov. 11, 2003; per Carpio, J.; *Agan v. PLATCO*, GR No. 155001, May 5, 2003 and Jan. 21, 2004, per Puno, J.; *Information Technology Foundation of the Philippines v. Commission on Elections*, GR No. 159139, 419 SCRA 141, Jan. 13, 2004, per Panganiban, J.) Because of these decisions, our courts have been pilloried as unduly interfering in business and economic matters. Our critics, however, conveniently overlook the fact that, under our Constitution, our courts have the *duty* not merely to settle actual controversies involving legally demandable and enforceable rights. They must also strike down acts of any instrumentality of government whenever those acts have been entered into "with grave abuse of discretion."

<sup>28</sup> 2 S.C.R. 3, Apr. 13, 1995.

<sup>29</sup> MIT Press, Cambridge and London. Romain Wacziarg of Stanford University describes Easterly's work as a "superb book [that] draws on what we have learned from almost two decades of cross-country growth comparisons" about "supposedly miracle growth policies [that] have proven disastrous or ineffective," but wisely "avoids proposing a new panacea x x x." Wacziarg, *Review of Easterly's THE ELUSIVE QUEST FOR GROWTH*, XL JOURNAL OF ECONOMIC LITERATURE 907-918 (Sep. 2002).

protected.<sup>30</sup> He added that under those benign regimes, entrepreneurs felt comfortable and thus invested their money for the long term, thereby propelling stable economies. But when confronted with the other models of economic prosperity in Asia, Latin America and Eastern Europe, he conceded that there was no single formula for rapid economic growth.

Another theory proposed to explain how progress has been made possible in some countries of the world relates a country's stability and progress to the degree to which it is "open," both within its borders and to the outside world.<sup>31</sup> What is interesting about this theory is that it attempts to provide a framework both for countries that owe their stability and progress to their success in isolating themselves from the outside world,<sup>32</sup> on the one hand; and, on the other, those whose stability may be traced to their openness to social, political, and economic change.<sup>33</sup>

A group of four economists have tried to find an explanation of progress in various countries' legal systems -- whether common law or civil law. They are Rafael La Porta, an Argentinian; Florencio López-de-Silanes, a Mexican; Andrei Sheifler, a Russian who immigrated to the US when he was 15; and Robert Vishny. Their theory has given rise to what is now known as "law and finance."<sup>34</sup> According to this school of thought, common-law countries are more economically advanced than those subscribing to civil law. The former allegedly tend to be less corrupt and purport to protect both shareholders and creditors better than civil-law countries do.<sup>35</sup> The evidence supporting this theory, however, is hardly absolute.

Earlier, in the audiovisual presentation, Mr. Amsberg of the World Bank described how various countries dealt with the issues of liberty and prosperity within their social, cultural, economic and political milieus. According to him, historically, the United States placed greater emphasis on individual freedoms; European societies, on equality; while some Asian countries with flourishing economies, on strong states.

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<sup>30</sup> The discussion was summarized by Prof. Alex Magno, a participant in a relevant roundtable discussion, in his column in the *Philippine Star* on January 19, 2006.

<sup>31</sup> J. H. BREMER, *THE I-CURVE: A GUIDE TO ECONOMIC FREEDOM, OPENNESS AND PROSPERITY* (2006). The I-curve is represented by an inverted U-shape. The vertical axis of the curve measures a state's stability; the horizontal axis represents openness. Nations higher on the graph are more stable; those lower are less stable. Nations to the right of the curve are more open; those to the left are less open. <http://www.freedom.com> and [http://en.wikipedia.org/wiki/I-curve\\_\(liberty\\_index\)](http://en.wikipedia.org/wiki/I-curve_(liberty_index)) (last visited Feb. 10, 2016).

<sup>32</sup> Among these countries are North Korea, Iran, and Cuba.

<sup>33</sup> France, the United States, and Japan have been identified to be among these countries.

<sup>34</sup> "Law and Finance," *Journal of Political Economy*, Vol. 106, No. 6, 1113-1155 (December 1998).

<sup>35</sup> According to research published by the scholars beginning in 1998, countries that come from a French civil-law tradition struggle to create effective financial markets, while countries having a British common-law tradition succeed far more frequently.

Our own experience in the Philippines demonstrates that Liberty and Prosperity must go hand and hand. One cannot be sacrificed for the other. After all, during the years of Martial Law, authoritarian rule was proven to be incapable of producing meaningful long-term economic progress. Even more important, our people value their freedoms very dearly and will not exchange them for food. Indeed, the Filipinos may endure occasional hunger, but they will never tolerate injustice and indignity for long.

## VI. CLOSING

I have attempted, as best as I could, to present the twin beacons of Liberty and Prosperity in the context of history, as well as of existing and emerging realities in many countries.

How to find the right balance between these two paradigms may be found in each country's unique circumstances. By no means is the perception of balance in one country to be taken as an absolute prescription for others. I hope, though, that through an exchange of ideas, information, and best practices during this Forum, all countries and sectors represented may be able to evaluate the value of the shared experiences and to imbibe these as they may deem appropriate under their unique environmental circumstances.

Senator Angara, one of the leaders of our legislative branch, made an incisive point in the audiovisual presentation prior to my speech. He said that the matter of how best to calibrate the balance between liberty and prosperity must be left to the people of a particular country. Indeed, each country and each sector of society<sup>36</sup> has its own history, experience, temperament, economics, culture and politics, which should determine how viable Liberty and Prosperity would be in its jurisdiction.

Nonetheless, I present Liberty and Prosperity as a framework within which the various countries' courts, congresses, parliaments, cabinets, bar associations, judicial institutes, academes, business communities, and civil society may formulate their missions and visions for the future. They may do well to rally around the commonalities of our countries' experiences, rather than our differences.

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<sup>36</sup> The religious sector, too, has genuine concerns about the alleviation of poverty and the sharing of resources. Thus, in the gospel last Sunday, October 15, 2006, Catholics throughout the world were reminded of the young rich man's question, "What must I do to inherit eternal life?" and of the Lord Jesus' answer, "Go, sell what you have and give to the poor, and you will have treasures in heaven; then, come follow me." (MK 10:17-30)

I believe that should this Forum be able to discuss these varying approaches to balancing liberty and prosperity and later find some common areas from which some understanding may be culled and a program of action drawn, our gathering together during these three significant days in October 2006 would have been fruitful and successful.

*Maraming salamat po.*

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# PHILIPPINE LAW JOURNAL

Published by the College of Law, University of the Philippines  
Diliman, Quezon City, Philippines

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VOLUME 82

MARCH 2008

NO. 3

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