

## FOREWORD\*

*Danton Remoto\*\**

It does my gray hair proud to introduce this sheaf of essays in the PHILIPPINE LAW JOURNAL whose special issue deals with Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Filipinos. It has been a long and exciting journey for the Philippine LGBTQI movement, for a movement it is for me, even if there was no manifesto and no umbrella organization to set direction and set things into motion.

Philippine LGBTQI organizations are as varied and colorful as the rainbow that is the core image of the groups. Some are into HIV-AIDS advocacy, while others are into sexual orientation and gender identity issues. We in Ang Ladlad have chosen to take the political path—the passage of the Anti-Discrimination Bill in Congress and the Senate. But all of us are focused on that brave, bright hope that one day soon, things will change for the better. Things have changed since 20 years ago, when as a reporter covering the first LGBT Pride March in Asia held at the Quezon Memorial Circle, Fr. Richard Mickley, OSA, called me to speak in front of journalists and around 30 gay activists.

We have published newspapers, magazines, newsletters and three installments of the ground-breaking *Ladlad* anthology of Philippine gay writing. We have held seminars, workshops, forums and round-table discussions. We have formed neighborhood LGBTQI organizations and even dared the impossible—a national LGBT party that CNN has hailed as "the only gay [LGBTQI] political party in the world."

Ladlad, the national party that I organized and which the Commission on Elections has demonized thrice—in the 2007, 2010 and 2013 elections—may have lost in the congressional elections. But it has shown the nation how a national political party could be formed based on common convictions, specifically the real desire to be treated equally by fellow citizens and taxpayers and to take our respective places under the sun.

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And now comes this special issue, which contains some of the latest academic writing on the issue. *The Universal Human Right to Marry and to Found a Family* by Maria Jamina Ann Bordon (a former student of mine at Ateneo) uses the Yogyakarta Principles and international trends against LGBTQ discrimination in her framework for the fight for marriage equality.

Ranged against these are the twin titans of the Constitution and the Family Code, which restricts marriage to (presumably heterosexual) men and women; if they are found out later to be lesbian or gay, their married partners can then file a case for legal separation or even annulment of the marriage.

But the winds of change have blown, and are blowing hard even in Asia's only predominantly Catholic country. They have begun to chip, albeit slowly, at the walls of "oppressive hetero-normative practices, structures, and institutions." These are seen in the twin poles of love and hate.

Atty. Bordon sees the developing global trend that gives a window of opportunity to LGBTQ marriage—as well as the rise of the Yogyakarta Principles as "a soft law"—as human-rights frameworks that could help push for LGBTQ marriage here. Using an interdisciplinary approach, she picks the issue clean, like a bird's beak at the carcass of tradition, to arrive at the endpoint: a future that supports LGBTQ's rights "to identity, to found a family, to personal happiness, and most importantly, [...] to love."

On the other hand, Raoul Angelo de Fiesta Atadero's paper is called *A Mandate Against Hate: Finding and Founding a Philippine Law on LGBT Hate Crimes*. Like a scalpel, it cuts through the core and surveys the statutes that are related to the issue at hand. "While a few scattered local ordinances exist touching on the issue, notably protecting LGBT persons from forced medical examinations as well as ridicule, domestic law is totally silent on Hate Crimes." Hate crimes are motivated by bias or hatred, leaving LGBTs in emotional and psychological turmoil, and are therefore forms of discrimination.

What does he propose? That "a bias motive in crimes should be treated as an aggravating circumstance to enhance penalties for offenders and serve as a deterrent against similar acts. Likewise, providing for civil actions for such crimes [...] [would] provide relief and remedy to the victims. Finally, a mandate for law-enforcement agencies to recognize, record and report bias-motivated crimes is recommended [...] [so] the various organs of the State may craft a more tailored response to these acts."

These are the two major articles in this issue, swinging perilously from the pendulum of love and hate, feelings and reactions that are most felt by LGBTQIs in conservative, Catholic, and closeted Philippines.

The case review is a whirlwind tour, a snapshot, as it were, of our legal odyssey in the last seven years. The three landmark cases discussed are *Silverio v. Republic of the Philippines*, *Republic of the Philippines v. Cagandahan*, and *Ang Ladlad LGBT Party v. Commission on Elections*.

In *Silverio v. Republic*, the transgender Mely Silverio petitioned the court for a change in name and sex as indicated in her birth certificate. She has already undergone sexual-reassignment surgery so that her body would finally be in harmony with her internal state of mind, verily her psychic self. The Regional Trial Court granted the petition for a change of name from "Rommel" to "Mely Silverio," and the change of sex from "male" to "female" in her birth certificate. The ruling was not based on substantive law (for let us face it, there was none to begin with) but on justice and equity.

But the Supreme Court, speaking through Justice Corona, reversed the decision of the trial court. The Court decided on the pinhead belief that it cannot sustain such petition on equity alone. Justice Corona even started the text with an epigraph from the Book of Genesis of the Christian Bible. And all along, we thought that there was separation of Church and State in the Philippines, and that the Philippines adheres to no official religion!

The second case at hand is *Republic v. Cagandahan*. The Court, speaking through Justice Quisumbing, granted the petition of Jennifer Cagandahan for a change in the entries in her birth certificate that used to read as "Jennifer Cagandahan" and indicated her sex as "female" to "Jeff Cagandahan" and "male." Cagandahan had a medical condition called Congenital Adrenal Hyperplasia (CAH), which means that she has both male and female characteristics.

As in the *Silverio* case, the Court said it cannot grant the petition absent any explicit law on the matter. Its decision rested solely on the presence of CAH and the welter of medical testimonies presented by petitioner.

The third case involves the Ang Ladlad Party List, which I founded on September 1, 2003 to re-file and gather support for the passage of an Anti-Discrimination Bill in Congress. *Ang Ladlad LGBT Party v. Commission on Elections* ("COMELEC") raised for the first time in a legal arena the advocacies of the LGBT community. We applied for registration as a party-list organization and had complied with all the guidelines laid down by the Supreme Court in *Ang*

*Bagong Bayani-OFW Labor Party v. Commission on Elections*. Our arguments ran thus: (1) the LGBT community is a marginalized and under-represented sector, as shown by the fact that there is no senator or congressman who has admitted his or her homosexuality, or if indeed there are, nobody among them has taken up our advocacy for equal rights; and (2) our platform of governance could lead to the filing and enactment of sound legislation.

We cited documented cases of exclusion, discrimination and violence among our ranks, including the hate crimes done on members of the community. The Second Division of the COMELEC dismissed our petition on moral and religious grounds, even citing passages from the Bible and the Koran to prove their point. When I received a copy of their decision, my laughter could be heard on all the four floors of the condominium building where I lived; I knew that their argument was like a golf course (full of holes) and the quality of their logic below sea level.

And so I formed a group of volunteer lawyers who worked mightily and hard during the Christmas break to produce our petition that ran to almost 300 pages. I told the group to focus on the case as a human-rights issue and not on other important but subsidiary issues like feminism and the reproductive-health bill. I did the final editing of the petition before I filed it in the Supreme Court.

Happily, the Court speaking through Justice del Castillo, ruled in favor of Ang Ladlad based on our compliance with constitutional requirements and Republic Act No. 7941. It also upheld our right to exercise our freedom of expression and association.

But the decision was handed down less than a month before the elections of May 10, 2010. While the other party-list organizations had been campaigning since January 10, we only had a month to campaign. We ran on sheer adrenaline, barnstorming beauty parlors, bisexual-clan parties, campuses and the major cities nationwide. At the end of the counting, we lost by only 10,000 votes. Our campaigns were grueling but fun, covered by CNN and *The Guardian*, as well as a slew of other foreign and local publications. We might have lost the counting, yes, but we had kicked open a door and put one foot firmly inside a room where we used to be invisible.

One day soon, as the case review said, the Supreme Court will finally weigh in on LGBT rights. While we are awaiting that golden day, let us remember the clear clarion call of then Chief Justice Puno, who said in his concurring opinion in the case of *Ang Ladlad*: “A person's sexual orientation is an integral aspect of one's identity.”

Indeed it is, and so we invite you to read this feast of words, a testament to LGBT history in the process of being and becoming.

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