

FOREWORD*

*Paolo S. Tamase***

The publication of the second issue of Volume 93 of the PHILIPPINE LAW JOURNAL could not be more seemingly out of place, if not bizarre. In the middle of a fast-spreading global pandemic, entire industries have folded up, the global economy is in a tailspin, universities have migrated to cyberspace, and societies have ground to a halt. As I write this, police are manning checkpoints all over the country in the world's longest lockdown related to COVID-19, enforcing local quarantines and curfews of doubtful validity. Meanwhile, riots have raged in the United States, driven by anger at persistent racial injustice. Back in Asia, China openly flouts international law by laying its claim over the South China Sea, including the West Philippine Sea, and asserts full control over Hong Kong in an apparent breach of the 1984 Sino-British Joint Declaration.

All over the world, societies are confronted with the limitations of law as a means of regulating conduct and stabilizing expectations, particularly during emergencies and in light of effective factual realities. In many ways, laws and cases before 2020 read more like historical memorials to a life and society long gone. With the collapse of the rule of law particularly in the Philippines—the result of years of erosion of checks and balances but hastened by the public health emergency—it looks like this issue of the JOURNAL could not have come at a worse time. What is the point of writing about law when the law has lost its utility?

The point is that, notwithstanding the haziness of what lies ahead, society will emerge from these developments in one form or another. When it does, we cannot return to a situation where the law proved inadequate in governing society and regulating expectations. Therefore, the law must reflect lessons learned from our collective experience and be directed towards shaping a better reality.

Fortunately, this issue of the JOURNAL contains articles that not only document what the law *is* but also advance what the law *could be*.

* *Cite as* Paolo S. Tamase, *Foreword*, 93 PHIL. L.J. vi, [page cited] (2020).

** Lecturer, University of the Philippines College of Law (Legal History, Legal Theory, and Local Government). J.D., class valedictorian and *cum laude*, University of the Philippines (2016); B.S. Business Economics, *magna cum laude*, University of the Philippines (2012). Chair, Philippine Law Journal, Vol. 88.

In *Stealing Justice with Air Quotes*, Theodore O. Te reflects on the trial of the Maguindanao massacre, described as the single deadliest event for journalists in recent history, including details that may have escaped even the robust coverage of the media. Te then draws lessons from the decision of the lower court and proposes reforms in criminal law and criminal justice.

In *Origins and Outcomes: The Philippine Competition Act of 2015*, Andre Palacios traces the historical, foreign, and international origins of the Philippine Competition Act. While this landmark piece of legislation has seismic implications in Philippine business, much of the legal profession may hesitate at its interpretation just because no local precedent exists yet—the unhappy consequence of a jurisprudence-centric practice in what is supposed to be a civil law jurisdiction. By clarifying the origin of its provisions and comparing the Competition Act with its foreign influences, Palacios provides a useful guide to Philippine courts, competition authorities, and law enforcement agencies for the correct interpretation and effective enforcement of the law.

In *Cyberbullying in the Context of Balancing of Rights*, Sandra Marie Olaso-Coronel writes on the delicate balance between, on the one hand, keeping the Internet free as today’s dominant site for the marketplace of ideas and, on the other hand, the need to protect an ever-threatened right to privacy. Olaso-Coronel studies the developments on the law on cyberbullying in the United States, Europe, and the United Kingdom and concludes that governments must resist additional restrictive legislation, leaving to the “courts or other dispute resolution mechanisms the task of carefully balancing rights on a case-to-case basis.”

In *Legal Transfers as Colonization: Initial Thoughts on Decoloniality and the Constitution*, Dante B. Gatmaytan writes on legal transplantation and the varying experiences of third world countries in de-imperializing constitutional democracy. Focusing on the Philippine case, Gatmaytan concludes that the Philippines sets a good example in decolonizing its constitution by providing space for minority voices. At the same time, he traces the perplexing popular support for Rodrigo Duterte’s drug war on his finding that “Western concepts of rule of law and separation of powers still remain alien to both politicians and the public.” By considering rule of law issues as a function of the compatibility of foreign legal precepts with domestic legal culture, this article makes a significant contribution to the study of Philippine legal history and legal theory.

In *Farmer, Baron, Trader, Sugar: Competition and Industry Regulation of the Philippine Sugar Sector*, Michael B. Ocampo studies various competition and competition-enforcement issues in the sugar industry and proposes a framework to help lessen or avoid conflicts between sector regulators and competition laws.

With the agriculture sector identified as one of the main contributors to the recovery of the Philippine economy, Ocampo's article provides timely leads on potential anti-trust issues in an industry notorious for rent-seeking behavior.

A review of the history and development of Philippine legal scholarship will show its heavy reliance on the novel analyses of students on an assortment of legal problems, including those that may not necessarily be in vogue but are simply ahead of their time. The work towards a better legal system may thus benefit from the bold, interdisciplinary student works that complement the perceptive and nuanced articles of the academia and the legal profession in this issue.

In *(Re)locating the Concept of Sovereignty in the Philippines' International Law Compliance: Visualizing the Monistic Conundrum in the International Human Rights Regime*, Bernice Marie Violago and Kobe Joseph Lacsamana present a framework for evaluating two recent Philippine events in the international sphere, namely, the state's withdrawal from the Rome Statute creating the International Criminal Court and its reelection to the United Nations Human Rights Council. In a work they began as freshmen students in my legal theory class, Violago and Lacsamana aim to explain the importance of national actors in determining state concessions, which affect the applicability of international human rights law and legal principles in the Philippines, by dissecting the "monistic conundrum" that arises from the conflicting primacy of the state and that of international law.

In *Big Brother Casts his Shadow?: Proposing a Legal Privacy Framework for the Philippine Identification Systems Act*, Emir-Deogene Villafuerte Mendoza and Monique Banta Ang propose that, in light of the potential privacy issues that could arise with the impending introduction of a national ID system, the public will benefit from regulations and safeguards designed to protect the constitutional right to privacy. Mendoza and Ang particularly contend that the provisions of the PhilSys Act must be amended to comply with the landmark privacy framework laid out by the Supreme Court in *Ople v. Torres*.

In *Burying "National Trauma": Memory Laws and the Memory of the Marcos Regime*, Veronica Louise B. Jereza critiques the Supreme Court's ruling in *Ocampo v. Enriquez*, which effectively allowed the burial of dictator Ferdinand Marcos in the heroes' cemetery. Jereza writes that by highlighting themes of "forgiveness" and "national conciliation" in *Ocampo*, the Supreme Court has "legitimized a revisionist interpretation of Marcos and the Marcos regime" and, in effect, "violated the Philippines' obligation to recognize and to provide reparations to victims of human rights violations [...] for whom social acknowledgment is both a need and a right." This frank assessment provides future generations of legal

scholars with an appropriate context for *Ocampo*—the first of the Supreme Court’s *Javellana* moments under Rodrigo Duterte.

Finally, in *Vulnerability and Violence: The Dilemma of the Maria Clara Doctrine*, Michelle Anne P. Esquivias uses feminist legal theory to critique both the use and rejection of the Maria Clara doctrine (which presumes that due to Filipino women’s natural instinct to protect their honor, they would not admit that they have been abused unless such abuse had actually taken place). In the context of *People v. Amarela*, which is normally celebrated for overturning this doctrine, Esquivias forwards the alternative view that “using or ‘rejecting’ the doctrine” is itself “unproductive, because any rape discourse solely focused on examining the qualities of victims is dangerously forgetful of the patriarchal structures that enable the very cases these victims are expected to litigate.”

For over a hundred years, the JOURNAL has served as a stable repository of Philippine legal scholarship throughout turbulent changes in sovereignty, multiple constitutional regimes, the rise and fall of an autocrat, a revolution, and the restoration of freedom in Asia’s oldest democracy. It is in this sense that, contrary to what it may seem, the publication of this issue could not have come at a better time as there is a need for legal scholarship to guide our societal prospects, both near and far. While it may be difficult to see past the thick fog of uncertainty that envelopes society today, the JOURNAL, through this issue, fulfills the important role of providing a platform for legal scholars to write for and towards the future—one that is hopefully more just, secure, prosperous, and equitable.