

FOREWORD: DEMOCRATIZING LEGAL DISCOURSE*

Jhosep Y. Lopez**

Law is envisioned as a process of active discourse.¹ However, with the inauguration of formal processes, doctrines, and institutions—such as the legislative mill, the judicial system with its principles of *stare decisis* and *res judicata*, and the executive machinery—the space for such discourse may appear constricted, participation limited, and the debates ultimately entombed with finality. Only, such rigidities were put in place for practicality, in order that juridical commands may emanate from clear sources, and legal interpretation and law enforcement be imprinted with authority. Such institutions tend to draw a borderline that sets apart direct participants from unintended stakeholders, and even the elite from the marginalized.² Maintaining active legal discourse consists, therefore, of breaching that borderline. The PHILIPPINE LAW JOURNAL does precisely that.

The four corners of the JOURNAL expand the space for critical discourse, providing opportunities to examine the intersection between law and other fields like economics, as my law clerk Atty. Russell Stanley Geronimo and his co-author Atty. Francis Paul Baclay did in *2021 LIBOR Phaseout and Negative Interest Rates: Some Legal and Contractual Considerations*. Atty. Geronimo and Baclay anticipate that the abandonment of the London Interbank Offered Rate will affect financial arrangements pegged thereon, and consider the efficacy of fallback clauses in addressing such contingencies. They also examine whether negative interest rates will lead to a role-reversal, obligating lenders to pay borrowers. This article portends imminent legal and economic repercussions, especially with the Supreme Court's latest affirmation of the floating interest rate system in *Vasquez v. Philippine National Bank*.³

In *Presidential Succession and Its Constitutional Dilemma: Averting A Crisis in Democratic Legitimacy*, Mr. Juan Paolo Artiaga exhausts the permutations in the rules on Presidential succession to identify fundamental gaps in the

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** Associate Justice, Supreme Court of the Philippines (2021-present). LL.B., University of the Philippines College of Law (1988).

¹ Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 814, 839 (1987).

² *Id.* at 828.

³ G.R. No. 228355, Aug. 28, 2019.

Constitutional design, some of which may lead to a “constitutional crisis,” as formulated therein by Mr. Artiaga. Ultimately, in a bid to harmonize the competing policy considerations relative to Presidential succession, *e.g.*, separation of powers, expediency, party continuity, Mr. Artiaga proposes Constitutional amendments and statutory enactments alike in order to plug the gaps and avert the “worst case scenario.”

From a formalistic standpoint, the Supreme Court has the final say on legal interpretation. Yet, Mr. Fidel Rico Nini loosens the grip of *stare decisis* and *res judicata* by scrutinizing accumulated jurisprudence on the exceptions to “primary jurisdiction” and the “exhaustion of administrative remedies” in *Killing Me Softly: Examination of the Court’s Emasculation of Its Own Doctrines of Primary Jurisdiction and Exhaustion of Administrative Remedies*. To realign these doctrines and exceptions with their intended functions, Mr. Nini economizes the list of exceptions to the said doctrines, condenses the exceptions into two broad categories, and proposes a five-step analytical framework for the courts. Mr. Nini’s note is timely, considering the Supreme Court’s recommitment to a decongestion plan, as operationalized in its *Resolution* dated May 4, 2021, adopting amendments to the Internal Rules of the Supreme Court.⁴

For Justice Oliver Wendell Holmes, “the blackletter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.”⁵ In the same spirit, and enriching the techniques of law and economics, is Ms. Marcella Maria Karaan’s *An Empirical Study of Comprehensive Agrarian Reform Program (CARP) Cases*. Ms. Karaan surveyed agrarian reform jurisprudence, abstracting the characteristics of the litigants, dissecting the issues involved and the geographical origin of these cases, in order to perform logistic retrogression analysis and ascribe numerical significance to these factors. Far from unsympathetic number-crunching, Ms. Karaan’s note exposes the contentious areas of agrarian reform laws and assesses the success of their implementation.

Finally, Ms. Bianca Isabella Ortiz’s *An Ounce of Prevention: Applying the Framework Governing the Duty to Prevent Transboundary Harm to the COVID-19 Pandemic* draws from international environmental law, particularly the concept of transboundary harm, to build a framework for regulating wildlife trade activities and stemming the risk of spreading zoonotic diseases. In the absence of a multilateral treaty regulating wildlife trade, Ms. Ortiz’s proposal culminates in requests for legal advisory opinions banning certain activities

⁴ A.M. No. 10-4-20-SC.

⁵ Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

and requiring reparations. Ms. Ortiz manages to harness international law, often perceived as esoteric, into practical solutions.

The very existence of the JOURNAL attests that “[c]ritique has always been and remains not simply an intellectual exercise but a political and moral act.”⁶ Critical accounts of social reform models must contribute to the collective ability to produce constructive scholarship and, more importantly, action.⁷ Indeed, “the law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at one end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off.”⁸ On such enterprise, the ideas distilled in this Issue hold much promise. By extracting the law’s moral, epistemological, and empirical assumptions,⁹ so as to expand the sphere of legal discourse, and promote a plurality of voices therein, the JOURNAL reasserts the law as an optimistic discipline.¹⁰

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⁶ Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 987 (2007).

⁷ *Id.*

⁸ OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 32 (1963).

⁹ Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1517 (1991).

¹⁰ Lobel, *supra* note 6, at 988.