

JUSTICE
AND
HUMAN RIGHTS
UNDER THE
PRESENT
DISPENSATION

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- Beautiful country, but ugly cities.
- Rich in natural resources, but mired in poverty.
- Kind and honest people, but a corrupt bureaucracy.
- Endured a lot of suffering, but have a great sense of humor.
- Nice places to eat, shop, and live, but terrible traffic.

Our legal system is no exception.

- One of the highest number of lawyers and law schools, and one of the hardest bar examinations, but lack accountability:
 - Very low conviction rates;
 - No system for ensuring that those convicted actually serve their time;
 - Our courts are clogged, and cases take forever;
 - Perennial problem with vacancies in the trial courts and prosecution service;
 - Our judiciary gets a very thin slice of the national budget;
 - Our justice system has very little credibility in the eyes of lawyers and the public at large.

To understand why our legal system is in such a deplorable state, we have to go back in time...

- **The Philippines was a colony of Spain and the United States.**
- **Our legal system is a hybrid of Spanish civil law and American common law:**
 - **Our substantive laws are of Spanish origin**
 - e.g., Civil Code, Revised Penal Code;
 - **Our procedural laws are of American origin**
 - e.g., Rules of Civil and Criminal Procedure and Evidence.

The rules of court procedure and evidence we inherited from the United States were designed for a jury system, where the judge decides the law and the jury decides the facts.

But the Philippines has never had a jury system.

- **In other words, for the last 120 years we have been using rules of procedure and evidence designed for juries,**
- **When all our cases are decided by judges who are lawyers.**

ANALYSIS OF THE RULES OF EVIDENCE AND THE ELECTRONIC RULES OF
EVIDENCE FOR THE REPUBLIC OF THE PHILIPPINES
ABA-Asia Legal Assessment Series April 9, 2006

- **“The Philippines does not have a jury system, thus, experts would query as to why the PRE replicates all the complexities of this and other evidence rules.”**

But that's not all.

- **Our legal system was also emasculated by a 14-year dictatorship that stripped the judiciary of its independence and weakened its moral fiber.**
- **And a succession of administrations that failed to strengthen its weakened pillars and foundations.**
- **It is under siege again today, by a regime that appears bent on supplanting justice from the courts with justice from the barrels of guns.**

Letter of Instruction No. 11, September 29, 1972:

- [T]o facilitate the reorganization of the Executive Branch of the national government...and in order that the **Judicial Branch** may also be reorganized so as to meet the necessities of the present national emergency ... **! hereby direct...that all officers of the national government whose appointments are vested in the President of the Philippines submit their resignations from office**, thru their Department Heads, **not later than October 15, 1972.**

1973 Constitution, Transitory Provisions, Sec. 9 & 10:

- All officials and employees in the existing Government ...shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines....
- The incumbent members of the Judiciary may continue in office until they reach the age of seventy years, unless sooner replaced in accordance with the preceding section hereof.

What was the impact of LOI No. 11 and the 1973 Constitution on our justice system?

- **JUDICIAL CAPTURE!**

- From 1972 until 1986, **Ferdinand Marcos owned every single judge in the country.**
- For 14 years, he could remove any judge at any time, for any cause – or even without cause.
- And he did.

From “The State Of The Nation After Three Years Of Martial Law”
Civil Liberties Union of the Philippines, September 21, 1975:

- “[A]ll judges, from the highest to the lowest, work under the threat of dismissal at any time.”
- “Mr. Marcos can replace any judge any time he is disposed to do so, and in fact, has repeatedly done so.”
- “Veteran judges of long service have been dismissed through court notices of acceptance of their compulsory resignations.”

- **Can we now view the judiciary as independent, able to protect the litigants and those accused of crimes, with no other end in view but truth, justice, and fair play?**

- The State of the Nation After Three Years of Martial Law issued by the Civil Liberties Union on September 21, 1975

By capturing the judiciary, the Marcos Dictatorship held the entire legal profession hostage:

- **He created a new breed of lawyers – glorified fixers who cultivated their closeness to the Palace.**
- **Glorified fixers who established networks among law enforcers, prosecutors, judges, and prison officials.**
- **Networks that outlasted the Marcos Dictatorship.**
- **Networks that still operate today.**

Marcos was an astute lawyer.

- **He knew that he needed to control the justice system, not only to maintain his hold on power, but also to ensure that he and his relatives and cronies would escape punishment should his regime end.**
- **And they did.**

- **After EDSA (1986), the Aquino Government tried to go after these lawyers—but failed to dismantle their corrupt networks.**
- **They tried to purge the judiciary—but many of the purged judges somehow managed to get their posts back later.**
- **They tried to depoliticize the appointment of judges by creating the Judicial and Bar Council—but it was infiltrated by those corrupt networks, and is still highly politicized.**
- **And while the 1987 Constitution restored the independence of judges, the post-EDSA administrations failed to strengthen the justice system that martial law had weakened and corrupted.**

But martial law also gave rise to a band of courageous lawyers who took up the cause of human rights.

- Lawyers who realized that, just as the law could be used to oppress, so could it also be used to liberate people from oppression.**
- Who saw that the law needed to be grounded on a foundation of humanity to attain actual justice.**

But it was not an easy struggle.

Branded as communists, subversives and “enemies of the state”, human rights lawyers and advocates were harassed, threatened, arrested, detained, tortured, and killed.

And yet, against all odds and despite the prevalent fear, they fought on, and ultimately prevailed.

**If not for them,
the freedoms we enjoy today
would not exist.**

But now, these freedoms are again under attack.

And human rights are being blamed as the cause of the problem.

But are human rights really the reason why crime and corruption have become so rampant?

Or is it our weak legal system that is to blame?

The reason why crime and corruption are so rampant in the Philippines has NOTHING to do with human rights and EVERYTHING to do with our weak justice system.

Instead of strengthening
the justice system, however, the present
dispensation has been waging a War on
Drugs that has supplanted justice from the
courts
with justice from the barrels of guns.

A War on Drugs that has created
a mutant police force that compiles names
of alleged drug personalities instead of
gathering evidence for prosecution and
conviction.

In the last 15 months—

- At least 3,850 Filipinos have been killed in police operations, allegedly because they resisted the police;**
- Thousands more have been killed by death squads who roam the streets with impunity.**
- Dispensing justice from the barrels of their guns.**
- Deciding who are guilty and who are not, who deserves to die and who deserves to live.**
- Using fear and violence to enforce the law.**

**The very same fear and violence
that the Marcos Dictatorship used
so effectively four decades ago.**

**The labels have changed, but the
tactics are the same.**

Jose W. Diokno, A NATION FOR OUR CHILDREN (1987):

- **“Fear need not be of communists: it may be of terrorists, gangsters or mere non-conformists. *Whatever its cause, fear—carefully nurtured by the establishment—hardens into the belief that communists, terrorists, dissenters... [or even drug addicts and pushers]—call them what you will— have forfeited their humanity, and so have forfeited their rights.*”**

Jose W. Diokno, A NATION FOR OUR CHILDREN (1987):

- **“...Fear is a powerful motive, but an unreliable guide. It can create evils more monstrous than those it seeks to avoid. It can kill freedom while trying to preserve it.”**

**It can even kill the legal system while
claiming to preserve it.**

And when the legal system
suffocates and dies,
as it did during the Marcos dictatorship,
the only form of government capable
of maintaining order is
an authoritarian government.

- **That is why I am deeply disturbed, not only by the government's War on Drugs but also its anti-human rights rhetoric.**

- **By supplanting justice from the courts with justice from the barrels of guns, and denigrating human rights, is the government setting the stage for a return to an authoritarian form of government?**

In conclusion—

- The rule of law and human rights are vital in building accountable leadership.
- There can be no genuine accountability without respect for the rule of law and human rights.
- Like it or not, the country appears to be moving in the direction of lesser accountability and greater authoritarianism.

- There is still time, however, to stop the train and put it back on the right track.
- But we have to act, and to act now.