

# ATENEO LAW JOURNAL

## NEW PROBLEMS OF AN OLD PROFESSION

*Jeremias U. Montemayor\**

**A** BOGADO — the letters on the bronze shingle were shiny, as shiny as the white *de hilo* suit, as the big, flat table top, as the shoe tips of Don Pepito, who sat in his swivel chair imprisoned on all directions by shelves and shelves of thick, big books. There was something forbidding about Don Pepito. But when you were in trouble — say, you and your relatives were at each other's throats over the inheritance, or you had been swindled, or you had killed someone, you went to Don Pepito. He would solve the problem, he would put the criminal in jail, and he would make the charge against you somehow to vanish into thin air. Not only you but also the important government officials, the rich businessmen and the priests went to him when they were in trouble.

Thus did we, the younger lawyers of today, see the successful lawyer in those days when we were in Grade School. Upon our graduation from High School, most of us decided to become like Don Pepito. If we did not, our elders persuaded us. Your path is clear: take up Law in this exclusive institution, top the Bar examinations, excel in practice, then enter politics — someday you will become an important person like your father, and your grandfather before him, and your uncle Don Protacio.

We did take up Law. So did many thousands of our young countrymen. But when we took the lawyer's oath many years later, we found out that there were already too many Don Pepitos. So much so, that Don Pepito did not seem to be very important anymore. Furthermore, now almost every other person we meet is an attorney, and some of them we see loitering or playing chess in the barber shops, wearing wooden shoes instead of shiny leather shoes like those of Don Pepito. The law profession has definitely lost the glamour that it used to have.

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**Homicide** — Where there is multiplicity of offenders, and one is proved to have inflicted the fatal wound, the others only blows and incised wounds, in the absence of conspiracy, the latter should be made to answer for physical injuries only. **People v. Carillo**, CA-GR No. 17601-R, December 22, 1958. .... 402

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But has the law profession lost its *importance*?

Our portrayal of Don Pepito is not at all meant to belittle him and those other successful lawyers of his time. They had done great service to our people and without them we could not have become lawyers ourselves. But since we saw them in the peak of their professional prestige some twenty years or so ago, great and rapid changes have swept our country, our people, and the whole world, bringing in their wake new problems and new horizons, requiring new concepts, a broader outlook and a more dynamic approach on the part of the members of the law profession.

The reputation of lawyers cannot always be the measure of the importance of law. As long as men continue to be men — intelligent, born to freedom and to a life in society with other men — law will always be important. As a matter of fact, the more man progresses, the more complicated society grows, the more important law becomes. Someone invents the radio — we need law to regulate the air waves; otherwise, broadcasts will overlap each other. Man flies through space — again, we need law to regulate space flights; otherwise, missiles will fly into each other or endanger the security of nations. From this we see that law will always be needed and that it is never a dead or static thing. Law is as warm and pulsating as life itself, and like life, it must grow, it must move and progress. While its final ends, like those of life, are unchanging, it must nevertheless adapt its forms and means constantly with the ever-changing conditions of life and the world. So it is that the lawyers of our country today, particularly the younger ones, must take a closer look at the current conditions and new problems of our people, and accordingly reexamine and adapt our legal concepts, legal attitudes and legal institutions, in order that they will better serve their proper ends.

The reexamination of our legal concepts and legal institutions may be made in relation to two important developments of recent and contemporary history: the fact of our political independence and the world-wide struggle between freedom in democracy and slavery under communism.

Let us first take the matter of our political independence. In the past, when we lived under Spanish rule, the Spaniards introduced into our country a legal system developed in continental Europe. Many of the laws therein contained supplanted our native traditional concepts and norms of conduct. Subsequently, under American rule, many laws that were developed in America were transplanted in our society. It is not surprising that, after such a process, we find some of our laws, legal concepts and legal institutions not suited to the needs and situation of our people.

After attaining our political independence in 1946, we made attempts to improve our laws to make them more suited to our traditions, tempera-

ment and peculiar development. We have, among other things, set up a Code Commission, which has revised our Civil Code and is now revising the other codes. Nevertheless, very much more have to be done. Even in our present or recent attempts to improve our laws, we have not been completely innocent of blind copying or hodge-podge mixing. Specially is there need of further studying and understanding our people, their ways, conditions, problems, mentality and habits, as distinguished from studying and copying the latest trends in other countries who are more advanced than we are, who have wholly different backgrounds, traditions and situations, and whose patterns, solutions and institutions will frequently not properly apply to our people.

Let us consider a few relatively minor examples. Let us take the case of the ordinary *affidavit*. What does the affidavit mean to the Filipino? Ask any city or provincial fiscal and he will break into laughter. Filipinos sign affidavits even without reading them. An affidavit is a sworn statement. One is supposed to sign it in order to disclose and uphold the truth. But too many Filipinos sign it merely as a formality to get backpay.

What is wrong with the affidavit? In the first place, the ordinary Filipino cannot *pronounce* affidavit, much less does he understand what the term means. Even if he did, he would not be sufficiently motivated to tell the truth. What will motivate the Filipino to tell the truth? By tradition, the Filipino is strongly motivated by the fear of God and respect for parents. Would not the sworn statement serve its purpose better if we entitled it, say, *Pinatotohanan Ko Sa Harap Ng Diyos At Ayon Sa Kaugalian Ng Aking Mga Magulang*, instead of giving it a name as meaningless to the Filipino as the chirp of a cicada?

Then let us consider our Corporation Law. This law is a combination of the corporation laws of various states of the American Union, which have had a much longer and much more extensive commercial development than we. How fitting is this law for our people? We Filipinos have such customary arrangements like the *bayanihan*. Then many of us have shown preference for the family corporation and the close corporation. Yet there is nothing in our statute books to recognize, promote and regulate these local preferences and traditional arrangements.

Then, too, we can consider so many provisions in our commercial law and political law. Some of them most of us Filipinos can never hope to understand. Others, like some provisions of our Election Law, are, like Dracula, neither truly dead nor really alive.

We can discover other similar gaps, between what our laws provide and what our actual life, habits and traditions are, by looking closely at our laws on procedure, on crimes, on taxation, on civil relations, in fact, in almost every branch of law.

On the other hand, these problems should not unduly surprise us during these formative years of our history, when our nation is in the slow and painful process of rediscovering itself, seeking a harmony with

itself, finding its own personality. They are at the core of the problem of Filipino nationalism. For while the problem of nationalism has its economic and cultural aspects, it also has its legal aspect.

And just as culture needs the enrichment of foreign influences, so does law. But care must be taken that our law be really enriched by a process of careful and consistent *assimilation* rather than that it be transformed into a strange monstrosity thru indiscriminate imitation. And while new cells and tissues may be developed, the soul and the personality must not be other than Filipino, and should manifest, embody and serve the ideals, the good customs and noble traditions of the Filipino people.

While we have all the respect for the great jurisprudence and legal genius of Spain and America, while the universal concepts and principles which their legal thinkers have conceived and enunciated must perforce be recognized by us and by all men of reason and justice, yet Filipino jurists and lawyers cannot attain real greatness by merely hanging on to the apron strings of such works as the *Corpus Juris Secundum* or by being contented to be mere tape recorders of the mighty pronouncements of Manresa and Justice Cardoso. We have a long way to go, it is true. But we must make a start now.

Another important fact of recent and contemporary history is the emergence of the titanic struggle between democracy and communism. Although the conflict is philosophical and ideological, it is most decisively fought on the socio-political field. So sharp has the contest come to be that it underlies practically all international relations among nations today and threatens the very peace and security of all mankind. On one side we have ruthless, atheistic, materialistic communism. On the other side, we have democracy which recognizes human freedom, the basic rights of the individual, the existence of God and the spiritual dignity of man. Our nation, steeped in the traditions of Christianity and democracy, is on the latter side. How have our laws and our social and legal institutions strengthened or weakened our position on the side of human freedom and dignity?

We have a very good Constitution which establishes a republican form of government, has a strong article on the bill of rights, and provisions for social justice. But in the practical implementation of our constitution, in the conduct of partisan political activities, in the administration of justice, in the management of executive functions, in the lopsided pattern of economic, social and political forces — we find our nation in an extremely weak and precarious situation.

In spite of the fact that we have produced so many lawyers who could draft such a wonderful document as the Philippine Constitution, who could deliver such speeches here and abroad as would grace any legislative assembly, court, or audience, who are singularly adept in procedure court strategy and legal argument, and who could with eminent profundity explore such topics as the separation of powers, maritime juris-

diction, double jeopardy and *reserva troncal*, yet day after day we see irrefutable evidence of the reign of injustice, oppression, government graft and corruption, and misery among our people. So much so, that our political and social set-up has on more than one occasion been threatened with violent collapse. We seem to have forgotten the *ends* of law. We were obsessed more with its *techniques*, which, for all their fineness and complexity and the temporary glamour that they gave to our reputation, failed to lead us to our lasting goals.

What are the reasons for this? We shall find some of the reasons by examining the mind and the attitudes of our people respecting law and lawyers, and by studying the concept many men of the law have of their own profession.

Most often, people notice the form more readily than they comprehend the substance. They are, for instance, sooner impressed by the complexion than by the character of a person. In the same way, people may easily become familiar with the letter, the external manifestation, the expression, of law. But they find it difficult to understand the real spirit and the substance of law. To them law is just a printed collection of technical verbiage, containing numerous prohibitions, penalties, tax assessments and complicated canons of procedure, all of which are vexatious and undesirable but unfortunately unavoidable.

Likewise, people have had a superficial and, therefore, negative concept of the lawyer and his profession. The lawyer stays in his law office and people come to him only when they foresee, or are actually involved in, some legal controversy. They never go to him when things went well. He is very nice to have on one's side in case of trouble, but rather unnecessary in a normal situation.

Unfortunately, many lawyers have had the same superficial and negative concept of their own profession. They think their function is mostly remedial, not constructive and promotional. Consequently, they have not been able to keep pace with the ever-increasing problems and aspirations of their people. As a matter of fact, their capacity to respond to the people's needs has remained practically constant even as those needs have increased a hundredfold. So much so, that not only has the lawyer lost much of his prestige, but many people have even developed a positive distaste for them. Some people even consider lawyers as necessary evils that should be avoided as much as possible.

On the other hand, there has been of late a gradual "broadening" of the concept of the law profession. Young people now go to law schools not merely nor necessarily in order to prepare themselves for law practice. Many of them aspire to become future politicians, lawmakers, government administrators, business executives, industrial entrepreneurs, labor leaders, writers, researchers, etc. This is as it should be. For the field of law is not limited to controversies and suits. It is as wide as the human spirit, as multi-faceted as human society, and as dynamic as life itself.

In substance, law is practically identical with order. Order is the adaptation of many things for the production of a certain effect. Law directs human actions and relations to their proper end: the common good. And since law is based on justice, one of its fruits is peace. This is the substance and spirit of law. What we read in the thick statute books are just the various fragmentary manifestations and applications of this substance and this spirit in the countless variations and situations of human acts and human relations, from traffic to taxes, from birth certificates to franchises, to litigations, corporate organizations, crimes, punishment, etc.

Viewed in this light, law is as indispensable to human society as order, as desirable as the common good that it aims to bring about. And it is the specific and grave responsibility of the men of the law to see to it that law accomplish for our people its proper end of promoting order, justice, peace and prosperity.

But we have earlier pointed out that law has fallen far short of its aims in our country, and for this reason has not helped much to alleviate the misery of our people, nor sufficiently strengthened our position in the world-wide conflict between the free nations and the communist conspiracy. For sure, the causes of this failure are many. But we shall consider some of the most basic of them.

One is in the moral aspect of law, which springs from the moral nature of man. Until now we have been speaking specifically of the civil law, the law of the state. Civil law has no logical, stable basis, no sufficient effectiveness, except upon and from the moral law. Civil law is directed principally to the physical behavior of man — for instance, to keep him from driving a vehicle dangerously, or from disturbing the physical quiet of a community. It deals mainly with the tangible, material acts of man or his intangible acts insofar as they can be discerned physically. But inasmuch as the physical faculties, inasmuch as the body, of man is moved and directed by his soul, and his soul is intelligent and free, no external force can adequately control his physical acts unless that force operates with a power that can influence his soul. No amount of anti-graft laws can bring about honesty in government unless men's souls are disposed to be honest. We can pass the most severe legislation against mashing, but unless we do away with the scandalous display of immodest pictures and indecent contests and dispose the soul to be chaste, any anti-mashing law will only be a mockery.

It is futile to fill the stomach with food unless the soul, as the principle of life, is able to give it the proper vitality to digest the food. On the other hand, a healthy stomach helps the soul to develop and live with the body on this earth.

Thus, in order to be effective, civil law must also carry the force of the moral law, just as a man's body, in order to function properly, must have a soul, the principle of life, to vivify it; and conversely, civil law

makes possible, or helps for a better, observance of the moral law, just like a healthy body helps in the proper functioning and development of the soul.

One of the most basic causes of the failure of law in our country is the separation and isolation of *law* from *morality*. This has the same effect as that of separating the body from the soul, with the result that the body becomes a dislocated, lifeless, mechanical and ineffective contraption. And inasmuch as we are a Christian and deeply religious people, this kind of *unmoral* concept or background of law tends to make many of us Filipinos hypocrites. Hence, many of us go to Mass in the morning and thru a legal technicality swindle our neighbor in the afternoon; many of us believe in God's justice but hire the most clever lawyers against our tenants and laborers who demand their share under the tenancy and wage laws; we win an election by undetected cheating and vote-buying and unveil a religious statute immediately after our inauguration. We extralegally collect "tong" from businessmen whose papers we have to approve, and part of that "tong" we contribute to the building of a church. The National Bureau of Investigation, has its hand full, the courts are clogged with cases. We have the Presidential Committee on Administration Performance Efficiency and the Presidential Fact Finding Committee. Even our Congressmen and Senators have tried to outdo each other in their newly found role of crime detection in aid of legislation. But law violation remains almost as widespread and popular as our superstitions. These are the practical effects of divorcing law from morality.

How can we establish a working harmony between morality and law? This is principally a function of education. The home, the church and the school must work together. But a special portion of the task belongs to the law schools.

Our law schools must produce lawyers who will have not only legal competence but also moral character. While a missile must have an adequate propellant and a reliable guidance mechanism in order to accomplish its purpose, so also, the lawyer must have competence to give him propulsion and character to give him the right direction. Without the first he cannot be effective, without the second he is as dangerous as a stray bomb.

Once law is properly integrated with morality, its operation becomes organic rather than perfunctory, positive rather than negative. People will observe the law not so much out of fear as out of conviction. The law will not only control action. It will also, and principally, stimulate life and promote growth and activity.

This is indeed what our lawyers should have more of today: a positive and dynamic attitude towards their profession. Under this positive concept, the lawyer is not merely an advocate or a defender. He is mainly an organizer. His basic function is to help establish and maintain such order in various, and perhaps divergent, human acts and relations as to

produce one single result — the common good. He is like the inventor who combines the numerous and varying parts of a machine in such a manner as to make them move harmoniously, each one performing a different function, but actually helping one another, and altogether producing a thing of utility and beauty. The only difference is that the lawyer deals with men and human relations instead of inanimate, physical objects and physical laws.

The world-wide conflict between democracy and communism has brought to the limelight the importance of social problems. The social problems in our country have started to assume critical proportions. For their solutions the men of the law are indispensable. To solve these problems, the lawyers should not wait until social disorders manifest themselves in legal suits and explosive conflicts. In this missile era, a country will no longer wait until the invader begins to pound on its shores. Rather, its armed forces will send rocket missiles from launching pads, and with a speed faster than sound and across the barrier of oceans, these missiles will seek out the factories and installations and blow out the enemy before he can even launch an invading fleet. In the same manner, the lawyers of today, propelled by Christian and patriotic zeal and guided by an unerring sense of justice and order, should seek out the sources and agents of social injustice, of exploitation and oppression, and destroy them long before they can disrupt the social order.

More specifically, lawyers should ceaselessly study ways and means of stopping or minimizing graft and corruption which has plagued our government. They should reexamine our social and economic patterns and, if necessary, revise them in order to insure sufficient opportunity for all. As lawmakers, the lawyers of today should have closer contact with the masses, must familiarize themselves more accurately with the needs, the problems, and the aspirations of the farmers, the laborers, the capitalists, the jeepney drivers, the squatters, the common people, so that they can enact the most responsive and most practical legislation. Instead of just thinking of the security of their clients, lawyers in business must help to establish among tradesmen, producers, industrialists, and entrepreneurs such relationships, through contracts, corporation papers, constitutions, by-laws, and other means, as would promote their continued cooperation, the stability of their enterprise, the efficiency and productiveness of their operations, and insure fairness in the distribution of profits. Lawyers must constantly study our laws and legal institutions and work to make them more and more suited and more responsive to the needs, the good sense of values and the noble traditions of the Filipino people. To do all of these, our lawyers must have not only competence in law but also culture, philosophy, character, nationalism and Christian zeal. They must look at the law not only from the viewpoint of the judge but also from the viewpoint of the lawmaker, the executive and the reformer. They must not be mere *professionals*. They must also be *leaders* and *crusaders*.

Lawyers need not fear that in this way they will be throwing themselves out of job. Such fear would come only from a narrow mind. The reason why so many lawyers today are without jobs and find it hard to get employment is because they have failed to help society become more productive. In fact, in many cases, lawyers by their opportunistic manipulation, promoting feuds and multiplying and prolonging suits, have destroyed the productive capacity of their fellowmen and deprived them of the means to hire legal help. It is to the ultimate advantage of lawyers to prevent controversies, promote harmony and greater production, for the richer society is, the more capacity it will have to use and pay for legal services. And as long as society exists lawyers will always be needed.

Above all, by being more positive and dynamic in their attitude, our lawyers will help tremendously in solving our national problems and strengthen the position of our country among the free nations of the world. If our country should lose to communism, much of the fault would be in our lawyers. But if our lawyers should take up the present challenge with vision and courage, they could save our people from the grave dangers that imperil them and guide our nation to a life of peace, freedom, prosperity and contentment — a life which, more than any other, the whole world needs today.