# Ethics with Politics? Universal Legal Ethics for the Philippine Lawyer

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## I. INTRODUCTION

The Code of Professional Responsibility and Accountability (CPRA) took effect on 29 May 2023 or 15 days after its publication in newspapers of general circulation.[1] This new Code of legal ethics begins with a preamble which

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1. Supreme Court PH, Post, FACEBOOK, May 23, 2023: 11:36 a.m., *available at* https://www.facebook.com/SupremeCourtPhilippines/posts/icymi-the-code-

defines ethics as "the experiential manifestation of moral standards."[2] These standards are clarified to be a function of formal compulsion because, as a member of the legal profession, Philippine lawyers are bound by its ethical standards in both private and professional matters.[3] Further, "[a]s a guardian of the rule of law, every lawyer, as a citizen, owes allegiance to the Constitution and the laws of the land."[4] However, a lawyer is also "ideally ethical by personal choice," which means that ethics is also "a function of personal choice."[5]

These moral standards characterize the Philippine "lawyer as an amalgamation of influences and moorings, i.e., familial, cultural, religious, academic, political, and philosophical," and as an "inherently [...] social being [that] inherently develops and cultivates relations, preferences[,] and biases."[6] The CPRA also spells out the roles of the Philippine lawyer as: (1) a guardian of the rule of law who owes allegiance to the Constitution and the laws of the land; (2) a member of the legal profession who is bound by its ethical standards in both private and professional matters; (3) an officer of the court who assists in the administration of justice; and (4) a client's representative who acts responsibly upon a fiduciary trust.[7]

The CPRA was enacted for noble reasons — "as an institutional imperative, [it] is meant to foster an environment where ethical conduct performs a dedicated role in the administration of justice."[8] Thus, the particular definition of a Philippine lawyer discussed above and the conscious adoption of ethical standards that accounts for such relationships and personal

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of-professional-responsibility-and-accountability-cpra-was-publis/256164033741765 (last accessed Apr. 30, 2023) [https://perma.cc/9BKB-ANPB].

2. Supreme Court, Code of Professional Responsibility and Accountability, Administrative Matter No. 22-09-01-SC [SC A.M. No. 22-09-01], pmbl. (Apr. 11, 2023) [hereinafter CPRA].

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. CPRA, pmbl.

choices on one hand, are balanced against the demands of right and justice on the other.[9]

This search for a balance is meant to govern and regulate personal choices and make them consistent with the institutional objectives.[10] In effect, the CPRA expressly adopted represents society's consensus and dictates to conform to a chosen norm of behavior that sustains the community's survival and growth.[11] As a reflection of this consensus, the CPRA is the culmination of the Ethics Caravan, a series of consultative discussions held in the cities of Cebu, Davao, Naga, Baguio, and Manila from September 2002 to January 2023 in which over 2,000 legal practitioners nationwide took part.[12]

Thus, the overarching principle is that an ethical lawyer is a lawyer possessed of integrity, which is the sum total of all the ethical values that every lawyer must embody and exhibit.[13] Operationalized into rules, the CPRA follows a values-based framework, divided into canons on independence, propriety, fidelity, competence, diligence, equality, and accountability, similar to the New Code of Judicial Conduct.[14] These are welcome changes, as they are the result of initiatives to make a code of ethics which all can identify with. The result is a shift from the previous Code of Professional Responsibility (CPR) which was a duty and relationship-based code of ethics to one that is value-based. Instead of merely imposing rules on how the lawyer should interact with others, the CPRA attempts to liberalize this by reconceptualizing the rules as a reflection of values that represent the consensus of society. The CPRA integrates in the law values that are taken for granted, noticing the unnoticeable and articulating the unarticulated.

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9. *Id.*

10. *Id.*

11. *Id.*

12. Kristine Joy Patag, *No Dissent: Supreme Court OKs New Code of Conduct for Lawyers*, PHIL. STAR, Apr. 12, 2023, *available at* https://www.philstar.com/headlines/2023/04/12/2258363/no-dissent-supreme-court-oks-new-code-conduct-lawyers (last accessed Apr. 30, 2023) [https://perma.cc/X5RK-6GZE].

13. CPRA, pmbl.

14. Patag, *supra* note 12.

In effect, the values in the CPRA necessarily operate on the universal level, because it is supposed to apply to all. However, the "Universal," also called truth or essence, is an elusive term,[15] so this Article investigates different interpretations in relation to ethics.

Thus, this Article focuses on this universal aspect of the CPRA, albeit on its other potentialities as a values-based code. This Article claims that the advent of the CPRA is the perfect opportunity to interrogate the concepts of universal law, norm, and values. There is a great body of philosophy, specifically that of Slavoj Žižek and Alenca Zupančič, whose basic claim is that the "Universal" is "the result of shared antagonisms rather than identities."[16] Specifically, different people who may respond in unique ways to the traumatic inequalities wrought by the system have in common, not their particular identities, but precisely their shared trauma.[17] The Universal is about an antagonistic struggle which does not take place between particular communities, but splits from within each community, so that the "trans-cultural link" between communities is that of a shared struggle.[18] Therefore, the Universal is not about finding a common positive element, but is about a shared excluded element so that solidarity around the world is to be forged on the basis of shared experiences of exploitation and marginalization.[19]

Critical universalism neither pretends to transcend the particular nor imposes a positive universalized norm;[20] instead, it "works in and through the particular and the [U]niversal negatively to bring out the antagonistic elements in both."[21] Thus, there are no transcendent principles that every society shares, but there is a constitutive failure that marks every society.[22] This constructive

15. *See generally* H.A. Weissmann, The Essence of Universals, 11 SYNTHESE 277, 281 (1959).

16. Ilan Kapoor, *Žižek, Antagonism and Politics Now: Three Recent Controversies*, INT'L J. OF ŽIŽEK STUD., Volume No. 12, Issue No. 1, at 5.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 5-6.

22. Kapoor, *supra* note 16, at 6.

failure then, is the only way the Philippine lawyer can identify with the CPRA on the universal level. Identification can only be found in emancipation.

Accordingly, the extent that the Philippine lawyer may identify with the CPRA is inquired into. Can the CPRA's value-based approach, as currently formulated, be applied on the universal level? This Article claims that the CPRA still runs the risk of being interpreted as "operating according to universal principles without consideration of the complex circumstances and the particular conditions."[23] Therefore, to be a code that everyone can identify with, the CPRA's values-based approach must be reconceptualized from one that solely identifies or characterizes the Philippine lawyer to one that also emphasizes emancipating them. In other words, universal identification can only be found in emancipation.

This Article is devoted to elucidating this claim. At the outset, however, it is clarified that this Article does not serve to discredit the CRPA in any way. Instead, to show the support for the CPRA, possibilities of achieving its full potential are presented by adding the crucial principle of critical universalism to its theoretical underpinnings. The CPRA can humanize the law by reflecting the individual freedom of the Philippine lawyer.

## II. UNDERSTANDING ETHICS

Ethics refers to the ideals that a person strives to reach.[24] Similar to the CPRA, this concept of ethics has traditionally been about morals, about good and bad. On the other hand, the law consists of the norms of society, and politics comprises actions, both guided by and geared toward the good. People strive to reach the good by making laws and politics reflect what is good. If there were a horizontal line, the good would be above it, while people, along with their laws and politics, would be below it. People try to go above the line and become good by making good laws and acting in accordance with these laws.

This framework assumes that people can know what is "good," when it cannot be properly accessed because it is above the line, while people are

23. Geoff Boucher, *An Inversion of Radical Democracy: The Republic of Virtue in Žižek's Revolutionary Politics*, INT'L J. OF ŽIŽEK STUD., Volume No. 4, Issue No. 2, at 18 & 21.

24. *See generally* Manuel Velasquez, et al., What is Ethics?, *available at* https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics (last accessed Apr. 30, 2023) [https://perma.cc/K4XT-4CNU].

below. There is a distinction between the objective and subjective. There is a split between ethics and ontology, between knowledge and belief, and between truth or essence and human reason.[25] Thus, there is no objective, pure, true, absolute, correct, fixed, natural, neutral, and right concept of goodness.

Three variants of ethics dubbed as the "Hegelian triad"[26] attempt to address this assumption. The *first* involves the "immediacy of the substantive good," which "[a]ttempts to provide a direct ontological foundation for ethics via some substantial notion of supreme good."[27] This variant "collapses any distinction between the real and the good, or founds being on the good, as in Plato," still as though it could be properly accessed.[28]

The *second* deviates from the universalist assumption by substituting it with the formalism of proceduralist ethics.[29] This position "annuls the reality of the good and the good of reality, by situating value in abstract forms, procedures, or regulative norms, constituting quietistic acceptance of being in proclaiming the normative demand."[30] Hence, this variant nonetheless "attempts to save ethical universalism by sacrificing its substantial content and giving universalism a procedural twist."[31] Take John Rawls, for example, who posited that "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others," and thus "each person [...] [may] engage in activities, as long as he or she does not infringe on the rights of others."[32]

The *third* attempts to break free of ethical universalism by simply not criticizing the truths of others; anyone can have their own truth. This is the

25. Joshua Rayman, *Žižek's Ethics*, INT'L J. OF ŽIŽEK STUD., Volume No. 11, Issue No. 2, at 3.

26. *Id.* at 9.

27. *Id.* at 8.

28. *Id.* at 9.

29. *Id.*

30. *Id.*

31. Rayman, *supra* note 25, at 8.

32. STEVE MCCARTNEY & RICK PARENT, ETHICS IN LAW ENFORCEMENT 33 (2015).

postmodern attitude advocated by the likes of Michel Foucault and Judith Butler, where the only rule is to be aware that what people perceive as "truth," and the symbolic universe is merely one in a multitude of fictions.[33] Thus, people should not "impose the rules of [their] game on the games of others; in other words, ... [they] should maintain the plurality of narrative games."[34] This third variant "ultimately collapses into the formalistic acceptance of being in proclaiming the normative demand that [people] disengage [themselves] from substantive claims."[35]

While efforts to address the problematic assumption that one can know the good are certainly laudable, it must be pointed out that the abovementioned variants of ethics ultimately end up reinforcing the same assumption. People's efforts still follow the premise that there is a good above the line that one can access. People assume that their norms can reflect the objective good, whether substantially or formalistically. These efforts, in one way or another, end up reinforcing an absolute morality of good versus bad, thereby giving the appearance of an absolute symbolic order.

Thus, the principles underpinning the critique of ethics must be revisited. To recall, there is a split between the objective and the subjective. There is a fundamental distinction between subjective human reason and objective truth. One cannot access objective truth because of their subjective human reason. Hence, the only truth for humans is subjectivity. This necessarily implies that there is no objective, pure, true, absolute, correct, fixed, natural, neutral, and right concept of goodness. If such goodness does not exist, then it follows that one can make their own concept of goodness. Everything that one tries to pass as objective good is, in reality, subjective. Yet, the fact that one can make their own concept of goodness makes it all the more real. People make things real. Paper bills are never just sheets of paper — it is precisely because its meaning is indeterminate and empty that people get to fill it in with their subjective ideas such as economic value.

This is how people keep control over others, by using ethics to legitimize their own subjective positions as objectively more virtuous. Other people are supposed to be raised to their level of goodness above the line, when they can never be raised above the line because one cannot know what is above the

33. Rayman, *supra* note 25, at 8.

34. *Id.*

35. *Id.* at 9.

line in the first place. People are perpetually "othered" and completely defined, when they are unfolding beings: incomplete, indeterminate, lacking. As currently conceptualized, ethics is not an objective framework that can tell people how to lead a virtuous life; it is a subjective imposition that limits individual subjectivity, thereby making them suffer.

So, what does this all mean for ethics? Are people simply to scrap ethics altogether, considering that there is no such thing as objective ethics? Or is there a way to conceptualize ethics as an expression of individual subjectivity?

The answer is in the affirmative. Žižekian ideology "reassert[s] the absolute split between the real and the good."[36] Unlike the three variants previously discussed, "[h]owever, ... there can be such a separation only in a certain paradoxical sense where the split is itself constitutive of reality and the ethical sphere, so that it is not reality is here and the normative there, but each is permeated by the lack in its other."[37] Simply put, the real or subjective on one hand, and the good or the objective on the other, are dialectical.

To unpack this, objectivity and subjectivity must be split, such that because one cannot achieve objectivity, truth or essence is subjectivity. This subjectivity means people are unfolding beings: incomplete, indeterminate, unfolding. People are unfolding not just in the logic of sequential or linear time, which people use to justify false objective progress. People are also unfolding in the sense that they are subjectively destitute, that as time progresses, the only constant variable is that they will never reach a sort of objective truth. Even the concept of sequential or linear time itself is a subjective construct. It can be concluded then, that subjective destitution precedes sequential or linear time. To unfold means to be subjectively destitute. The only constant variable is this logic of "not-All,"[38] this perpetual imperfection, of being "all-too-human,"[39] of not knowing, of being fallen

36. *Id.*

37. *Id.*

38. Roque Farrán, *The Concept of Political Subject. The Real, the Partial, the Not-All and Retroaction in Žižek, Laclau and Badiou*, INT'L J. OF ŽIŽEK STUD., Volume No. 3, Issue No. 3, at 1.

39. Barret Weber, *Laclau and Žižek on Democracy and Populist Reason*, INT'L J. OF ŽIŽEK STUD., Volume No. 5, Issue No. 1, at 10.

from nature. Hence, all one's concepts, constructs, ideas, objects, and things will always have this element of subjectivity.

This means that there is no neutral or objective starting point that can guide or tell one how they should live their lives, that can give them meaning or purpose. People make their own meaning, purpose, and ideas, which make them all the more real. The object-subject split means that people cannot access objectivity, and thus they make their own objects, making them all the more real. Ideas, when presented to one as objective truths, are actually subjective positions that if one accepts as objective truth, make them all the more real.

It follows that true politics, that the true political act, is deciding for themselves how people should live their lives. People get to commit to their ideas. Subjectivity is not just about being able to do everything, because it gives the illusion that there is an everything, that there is this sequential, linear, progressive movement towards an everything when there is no everything. There is only subjective destitution. Truth is subjectivity. Thus, people "must act in conformity with [...] [their] desire; to desire something other than [...] [their] continued social existence,' and thus to fall 'into some kind of death,' to risk a gesture by means of which death is 'courted or pursued.'"[40] "[T]he main point of any authentic act is to gain "free action," and in so doing, to renounce the "transgressive fantasmic supplement that attaches [people] to any given social reality."[41] This involves a "radical break with the entire socio-symbolic system in order to reinstitute a fundamentally new ground."[42]

Consequently, there is a levelling of all ideas. Instead of putting them above the line to the level of the "Thing," the "Big Other," or something people make objective, they expose that ideas are actually below the line within subjectivity. In other words, people can very well commit to their conception of how they should live their lives for no reason because there is no reason or justification to life; people make their own. This naivety is crucial to the political act.

To clarify, this Article is not against raising ideas above the line to the level of objectivity. It is not against people treating ideas as objective ways that can

40. Daniel Tutt, *Radical Love and Žižek's Ethics of Singularity*, INT'L J. OF ŽIŽEK STUD., Volume No. 6, Issue No. 2, at 10.

41. *Id.*

42. *Id.*

dictate to them how to live their lives as long as it is their choice. Yet, it must be open to critique. People should understand that they do it out of their own subjectivity; they subjectively limit their own subjectivity. One should critique all the more a totalitarian imposition of objectivity. If there were such a thing as evil, this totalitarian regime would probably be it because it imposes subjective positions as objective truth against people's will.

Note however, that this is not mere subjectivism or irrationality.[43] People simply recognize the "need to make [their] history, to intervene 'in social reality [in a way that] changes the very coordinates of what is perceived as "possible"' and desirable[.]"[44]

So, individual subjectivity entails a fundamental deadlock in people's beings and between each other; this deadlock is ontological. Given that people get to decide and commit to how they should live their lives, there is really no completely defining the self to sustain the illusion of a perfect, seamless, unified, consistent world. People are perpetually unfolding, lacking, subjectively destitute. Individual subjectivity is irreconcilable. This entails that there will always be struggle and conflict.

Hence, there are no perfect solutions, and reflexivity or intersubjectivity is the "paradoxical condition of naivety."[45] People must situate their commitment to their ideas "within a world in which human beings may not be able to sustain the impossible demands of such ethics or, even if they can, in which such acts may not effectively bear upon that world's complexities and ambiguities."[46] This requires "a further reflexive moment [...] to establish or stabilize the meaningfulness of one's blind acts," "a modeling which would mitigate the problem of ethical 'blindness' without sacrificing Žižek's conception of the cold spontaneity of [decisive and political] act[s]."[47] This is "a question of elaborating an ethics of 'failing again, failing better.'"[48] People are always going to fail at reconciling everyone's subjectivity because it is

43. Rayman, *supra* note 25, at 7.

44. *Id.*

45. John McSweeney, *The Cold Cruelty of Ethics: Žižek, Kristof and Reflexive Subjectivization*, INT'L J. OF ŽIŽEK STUD., Volume No. 5, Issue No. 4, at 10.

46. *Id.* at 11.

47. *Id.*

48. *Id.* at 2.

irreconcilable. Yet, they must commit to reconciliation anyway because this is only how they commit to their individual subjectivity.

In other words, even if subjectivity is irreconcilable and thus people will always fail at solving it, they nonetheless keep at it. They are all just groping in the dark. They find solidarity in this darkness, in their subjective destitution. So, they should acknowledge that there really is no reason or justification for society, that there is no justification for democracy, that there is no justification for their leaders. Yet, they serve as reminders that there really is no reconciling individual subjectivity, which is why people elect their leaders to help them mediate and hash out their conflicts.

This is where love comes in. Love acknowledges and comes to terms with individual subjectivity. People recognize the other's subjectivity and that there is no reconciling each other's subjectivity, which is why people think of novel, creative, and surprising ways of making compromises. Falling in love embraces the same insights. Falling in love not in the sense of infatuation or ideation of another, but in the sense that one makes themself subject to another; one literally plunges into subjective destitution with another. Despite the bitter truth that they do not complete each other and that their subjectivities are irreconcilable, they choose to be with each other every day. They commit to each other and remain loyal to each other for no reason or justification, unlike how love is commodified today as being in relationships with as many people for convenient reasons, such as fulfilling one's needs. In the sense that romantic love commits to the idea of being subject to each other and can stand on its own devoid of any economic value, it also serves as a testament to individual subjectivity.

In sum, to describe the naïve yet reflexive subjectivity collectively articulated, it is "emancipatory, excessive in generosity and forgiveness, severe in recognizing material determination by social circumstances, and characterized by community, solidarity, and collective rationality."[49]

In this wise, the dialectics of the object-subject split is seen. Absolute truth for a person is one's irreconcilable subjectivity. And the world, in all its glorious messiness, contradictions, and inconsistencies, is a testament to objectivity, which is that one cannot know absolute truth above the line. Each side affirms the other, meaning they cannot exist without each other.

49. Rayman, *supra* note 25, at 11.

The Article circles back to the Hegelian triad, which attempted to address the problem that one cannot know what is good. These critiques merely reclaim the concept of good and replaces it with others. People replace it with their own universal truths. In this sense then, the problem and the proposed solutions are merely two sides of the same coin. In failing to address the problem, the Hegelian triad is not Hegelian enough.

To illustrate, in an unexpected turn of events in the 2011 Egyptian revolution, both Christians and Muslims came together and revolted in Tahrir Square against Mubarak's totalitarian rule.[50] Surprising the world even more, they also rejected Western organizations' "postmodern" intervention which has been critiqued for promoting absolute truth and relativism.[51] They claim that Christians and Muslims can have their own absolute truths in a neutral space with the promise universal peace and harmony.

> In a Foucauldian form of governmentality that promotes a wholesale collaboration between the state, NGOs, and private citizens, these tolerance promotion projects, for example in Palestine, bring together Muslims and Jews into dialogues to de-fuse this presupposed cross-religious hatred. By participation in a neutralized space regulated by the liberal state's 'value-less' sphere, where all absolute truths can co-exist, the participants in the dialogue recognize a kind of relativism of their culture and its truths to the Other's are taken out of their fundamental dimension and the Other is over time humanized, thereby repairing the divisions that stem from ongoing ethno-religious conflict, and thus a pacifying of the ugly *jouissance* that colors the subjects of pre-tolerant societies is slowly integrated back into society with an enlightened respect for the Other.[52]

However, because of human subjectivity, there is no such neutral, objective space. So, what actually happens is people naively think of their ideas as absolute truths, while the norms stay the same. In other words, the Thing or the Big Other is sustained in every way. This is why

> Egyptian Muslims and Christians in Tahrir Square came together despite their supposed hatred and animosity towards one another in solidarity during the revolution. This solidarity invoked a certain shrugging off of the dual fantasy as described above, that of neoliberal western multiculturalism and oppressive totalitarianism as evidenced in one of the most iconic images over

50. Tutt, *supra* note 40, at 11.

51. *Id.* at 11-12.

52. *Id.* at 11.

> the course of the entire protests; that of Coptic Christians protecting fellow Muslim revolutionaries by forming a human chain around the Muslims during their prayer time to fend off the military police. What this image showed to a western audience under the proviso that unruly Muslim mobs are prone to violence is the sheer effectiveness of the ethical act. Their act was not dependent on either of the big Other systems, bringing the revolutionaries into confrontation with a new relation to their very being, a true facing of the radical love that comes with passing through the 'night of the world,' and thus entering into a totally new zone of possibility.[53]

Drawing lessons from this political event, people should stop elevating their conceptions of the good to the level of the Universal. People should stop putting ethics above the line because they cannot reach above the line. Anything that they try to put above the line is still below the line, which makes it very limiting and thus makes them suffer. Ethics is subjectively destitute with all of people, with politics and law. This is what Zupančič means when she says that an ethics of the Real is not an ethics orientated towards the Real, but an attempt to rethink ethics by recognizing and acknowledging the dimension of the Real (in the Lacanian sense of the term) as it is already operative in ethics.[54] It is not that there is an objective truth one can access through one's subjectivity; it is that whatever one considers as truth is always already sourced from subjectivity. Truth is subjectivity.

The ethical act therefore is synonymous to the political act. The "ethical act proper is a *transgression* of the legal norm[;] ... it changes (re-creates) the very criteria by which it should be judged — there are no *antecedent* universal rational criteria that one 'applies' when one accomplishes an act."[55] Ethical and political acts do "not subscribe to the norms, but establishes them to deal with the predicaments concerning our lives."[56] In effect, "ethics becomes grounded only on itself, on pure contingency, no longer to a kind of necessary *a priori* guarantor of rightness and wrongness."[57]

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53. *Id.* at 13.

54. ALENKA ZUPANČIČ, ETHICS OF THE REAL 4 (2000).

55. Rayman, *supra* note 25, at 8.

56. Ricardo Gutierrez, *Reinventing the Notion of Ethics: Žižek on the Invisible Violence of Capitalism*, INT'L J. OF ŽIŽEK STUD., Volume No. 8, Issue No. 2, at 7.

57. *Id.*

Therefore, the ethical does not exist without the political act of acknowledging one's subjectivity. The political is a constant critique of the legal-ethical order, such that the legal-ethical order becomes a reminder of its propensity to fall short of subjectivity. The ethical is not absolute; it does not transcend the particular. One must bring it out of supposed objectivity and acknowledge that it works at the level of subjectivity. The legal, in consonance with the ethical and political, should strive to reach subjectivity, not moralistic notions of good and bad.

So, instead of simply replacing what one puts above the line, one should be asking why things are being put "above the line" in the first place. The concept of norm, how norms and values come to be, and how things become real in the first place must be interrogated. Why are norms a thing? Why is reality accepted as a given? One should always be asking "why?" to uncover limiting ideas and to be free from them. At the same time, one also asks "why?" to avoid the absolutist trap of stripping down the symbolic order altogether, as though one can escape ideology and human subjectivity. This need to constantly ask "why?" highlights the significance of education.

Ultimately, the only thing one can put above the line is a reminder that one does not know what is above the line and therefore, the legal-ethical symbolic order is prone to falling short of subjectivity. People should stop thinking in terms of sides, the supposed binary opposites of "us against them," "good against bad," and "right against wrong," because all categories and sides have the same roots — subjectivity. People find solidarity, love, and ethics only in subjectivity.

## III. OVERVIEW OF THE CPRA

To recall, the CPRA follows a values-based framework, divided into canons on independence, propriety, fidelity, competence, diligence, equality, and accountability.[58]

### *A. Independence*

On the first canon, a lawyer is considered independent in the discharge of professional duties when they ensure effective legal representation without any improper influence, restriction, pressure or interference, whether direct or

58. *See generally* CPRA.

indirect.[59] The Canon comprises of provisions on independent legal service,[60] merit-based practice,[61] freedom from improper consideration and external influences,[62] and non-interference in specific circumstances.[63] A lawyer shall render independent legal service and deliver justice efficiently and effectively.[64] As for merit-based practice, "a lawyer shall rely solely on the merits of a cause and not exert, or give the appearance of, any influence on, nor undermine the authority or proceedings of ... [any] government agency."[65] Similarly, a lawyer shall not assist or cause any government officer to interfere in any matter before any government agency.[66] The Canon also prohibits lawyers from being influenced by dishonest or immoral considerations, external influences, or pressure when advocating for a client's cause.[67] Lastly, the Code provides that a lawyer shall not allow the client to determine the strategy in handling a case, but shall respect the client's decision to settle or compromise the case after explaining its consequences to the client.[68]

*B. Propriety*

Secondly, "[a] lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal profession consistent with the highest standards of ethical behavior."[69] This directive on propriety entails the observance of proper and dignified conduct. Specifically, the Code mandates that a lawyer shall respect the law, the courts, tribunals and other

59. *Id.* canon I.

60. *Id.* canon I, § 1.

61. *Id.* canon I, § 2.

62. *Id.* canon I, § 3.

63. *Id.* canon I, § 4.

64. CPRA, canon I, § 1.

65. *Id.* canon I, § 2.

66. *Id.* canon I, § 4.

67. *Id.* canon I, § 3.

68. *Id.* canon I, § 5.

69. *Id.* canon II.

government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar.[70] Propriety also entails fostering a safe environment, which compels lawyers to use only "dignified, gender-fair, child-[,] and culturally-sensitive language in all personal and professional dealings."[71] On proper decorum and appearance, a lawyer should observe formal decorum before all government agencies.[72] A lawyer's attire shall be consistent with the dignity of government agencies, with due respect to the person's sexual orientation, gender identity, and gender expression."[73] There are also provisions on propriety in solo practice,[74] law firms and associated partners,[75] dignified government service,[76] lawyers in the academe,[77] and paralegal services,[78] among others.

To this end, Canon II mandates several prohibitions on the lawyer. Generally, a lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.[79] Several provisions draw from this principle. For example, "[a] lawyer shall not create or promote an unsafe or hostile environment, both in private and public settings, whether online, in work-places, educational or training institutions, or in recreational areas."[80] As such, a lawyer shall not commit any form of physical, sexual, psychological, or economic abuse or violence against another person.[81] The Code also emphasizes that "a lawyer is ... prohibited from engaging in any gender-based harassment or

70. CPRA, canon II, § 2.

71. *Id.* canon II, § 4.

72. *Id.* canon II, § 7.

73. *Id.* canon II, § 7.

74. *Id.* canon II, § 25.

75. *Id.* canon II, § 26.

76. CPRA, canon II, § 28.

77. *Id.* canon II, § 32.

78. *Id.* canon II, § 34.

79. *Id.* canon II, § 1.

80. *Id.* canon II, § 3.

81. *Id.*

discrimination."[82] On gender-fair language, a lawyer shall not use language which is abusive, offensive, or otherwise improper, even in social media.[83] Also, "[a] lawyer shall not harass or threaten a fellow lawyer, the latter's client or principal, a witness, or any official or employee of a ... government agency."[84]

Lawyers in government specifically, "shall not directly or indirectly, promote or advance his or her private or financial interest or that of another, in any transaction requiring the approval of his or her office."[85] Also, he or she shall not solicit gifts or receive anything of value in relation to such office, nor shall he or she give anything of value to, or otherwise unduly for any person transacting with his or her office, with expectation of any benefit in return.[86]

Canon II also provides provisions on responsible use of social media, stating that "[a] lawyer shall uphold the dignity of the legal profession in all social media interactions in a manner that enhances the people's confidence in the legal system, as well as promote its responsible use."[87]

### *C. Fidelity*

Canon III pertains to fidelity, which is the "lawyer's duty to uphold the Constitution and the laws of the land, to assist in the administration of justice, and to advance and defend the client's cause."[88] While it did not matter before if lawyers were not inclined to accept to establish a lawyer-client relationship, the CPRA now requires the lawyer to agree "expressly or impliedly," while the client "consciously, voluntarily and in good faith vests confidence on the lawyer" to render legal services.[89] This relationship is of the highest fiduciary

82. CPRA, canon II, § 3.

83. *Id.* canon II, § 4.

84. *Id.* canon II, § 6.

85. *Id.* canon II, § 30.

86. *Id.*

87. *Id.* canon II.

88. CPRA, canon III.

89. *Id.* canon III, § 3.

character, founded on the confidence reposed by the client to the lawyer.[90] This means that a lawyer must be mindful of the trust and confidence reposed on him or her by the client, and should thus not abuse or exploit the relationship with the client.[91] A legal engagement must also be put in writing to bind a client.[92] The canon then goes on to enumerate several duties of the lawyer while in a lawyer-client relationship, primarily revolving around the duty of confidentiality.[93] Under the CPRA, the duty of confidentiality shall continue even after termination.[94] Even discussing legal matters with family members is prohibited.[95]

The lawyer also has responsibilities over a subordinate lawyer, paralegal or employee; as well as with a supervisory lawyer over supervised lawyers.[96] Supervised lawyers are also bound by the rules set forth in the CPRA.[97] Legal matters can no longer be delegated to undiagnostic, non-advising, and non-decision-making staff, including paralegals and legal researchers. Non-lawyers also cannot appear for resetting.

Canon III also sets forth several prohibitions primarily against conflicts-of-interest, such as with former, current and prospective clients,[98] lawyers

90. *Id.*

91. *Id.* canon III, § 6.

92. *Id.* canon III, § 4.

93. *Id.* canon III, §§ 27-30 & 37.

94. CPRA, canon III, § 18.

95. *Id.* canon III, § 3.

96. *Id.* canon III, §§ 10-11.

97. *Id.* canon III, § 12.

98. *Id.* canon III, §§ 14 & 17-18.

hired by a law firm,[99] corporate lawyers,[100] legal services organizations,[101] lawyers in government,[102] and the Public Attorney's Office.[103]

This Canon also added a provision on Limited Legal Services (LLS) referring to a specific legal incident only, meaning that both the lawyer and the client expect "that the lawyer will not provide continuing legal services in the matter."[104] This provision covers appointments as counsel *de officio* only for arraignment purposes, special appearances to make any court submission, giving advice, drafting legal documents, providing legal assistance before courts or administrative bodies, and the like.[105] However, in all instances, the lawyer shall state that the service being rendered is LLS.[106] Lawyers who render LLS shall be entitled to compensation as may be agreed upon or provided by the Rules of Court (ROC).[107] On pro bono LLS, "[a] lawyer appointed by the court as counsel *de officio* shall not refuse because of conflict of interest," but must "disclose to all affected parties such conflict."[108] However, "[i]n any case, the lawyer may not refuse to render such *pro bono* legal services to the person if only to the extent necessary to safeguard the person's fundamental rights."[109] Even government lawyers shall not be exempt from *pro bono* service, which means that they may still be appointed by any court, except when prohibited by law or when there is conflict of interest with the government.[110]

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99. *Id.* canon III, § 15.

100. CPRA, canon III, § 19.

101. *Id.* canon III, § 20.

102. *Id.* canon III, § 21.

103. *Id.* canon III, § 22.

104. *Id.* canon III, § 35.

105. *Id.*

106. CPRA, canon III, § 35.

107. *Id.*

108. *Id.* canon III, § 36.

109. *Id.*

110. *Id.*

*D. Competence and Diligence*

The fourth canon requires lawyers handling a client's cause to observe competence, diligence, commitment and skill.[111] A lawyer must deliver competent, efficient and conscientious legal service, employing thorough research, preparation, and application of legal knowledge and skills.[112] Accordingly, a lawyer should undertake only legal services he or she can deliver.[113] A lawyer can secure services of a collaborating counsel if there is prior written consent of the client.[114]

A lawyer must also be diligent[115] and punctual[116] in all undertakings, including legal matters entrusted by the client, before any government agency, and matters referred by the client. When appearing in trial, a lawyer must be adequately familiar with the law, the facts of the case, and the evidence to be presented, ready with object and documentary evidence, as well as judicial affidavits of the witnesses.[117]

A lawyer should make a prompt objective assessment of the merits and probable results of the client's case.[118] Afterwards, the lawyer should explain the viable options available to the client to enable an informed decision regarding the matter.[119] The lawyer also has the duty to update the client regularly on the status and the result of the legal matter and any connected action."[120] The lawyer should avoid asking for an extension of time to file any court submission, except when allowed by the ROC for good cause.[121]

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111. *Id.* canon IV.

112. CPRA, canon IV, § 1.

113. *Id.* canon IV, § 2.

114. *Id.*

115. *Id.* canon IV, § 3.

116. *Id.* canon IV, § 4.

117. *Id.*

118. CPRA, canon IV, § 5.

119. *Id.* canon IV, § 5.

120. *Id.* canon IV, § 6.

121. *Id.* canon IV, § 7.

This canon also provides for provisions on lifelong learning,[122] as well as practice of law concurrent with another profession[123] and non-legal activities.[124] Taken together, these provisions highlight the life-work balance of lawyers, where covers matters such as mental health.

*E. Equality*

Fifth, equality entails that every person, regardless of nationality or ethnicity, color, sexual orientation or gender identity, religion, disability, age, marital status, social or economic status, political beliefs, and other circumstances, has the fundamental right to equal treatment and representation.[125] Accordingly, a lawyer shall accord equal respect, attention, dedication, and zeal in advancing a client's cause,[126] and thus shall not decline to represent a person regardless of beliefs pertaining to personal circumstances of the client, except for justifiable reasons.[127] Lawyers must also accord the highest standard of service to vulnerable people or those at a higher risk of harm than others, such as children, the elderly, the homeless, persons with disabilities, persons deprived of liberty, victims of human rights, domestic violence and armed conflict, those socio-economically disadvantaged, racial or ethnic minorities, and those with physical or mental conditions.[128] Lawyers must be sensitive in their treatment of these persons, and they should consider the client's special circumstances in accordance with applicable laws.[129]

The same goes for indigent persons, or those with "no money or property sufficient for food, shelter and basic necessities for themselves and their family."[130] Lawyers should "not refuse representation of an indigent person," except: (1) when they are "not in a position to carry out the work effectively

122. *Id.* canon IV, § 8.

123. *Id.* canon IV, § 9.

124. CPRA, canon IV, § 10.

125. *Id.* canon V.

126. *Id.*

127. *Id.* canon V, § 1.

128. *Id.* canon V, § 2.

129. *Id.*

130. CPRA, canon V, § 3.

or competently;" (2) there is "conflict-of-interest;" or (3) they are related to the adverse party within the sixth degree or to the adverse counsel within the fourth degree, whether by affinity or consanguinity.[131] The "standard of service for all clients: should be the same "regardless of renumeration, except for" vulnerable persons in which case lawyers must give the highest standard of service.[132]

*F. Accountability*

Lastly, under the definition of accountability in the CPRA, a lawyer shall observe the highest degree of morality, adhere to rigid standards of mental fitness, and faithfully comply with the rules of the legal profession; failure to honor this covenant makes the lawyer unfit to continue in the practice of law.[133] Accordingly, the CPRA mainly provides in this canon a walkthrough of the disciplinary proceedings instituted against errant lawyers, together with the corresponding penalties.[134]

In sum, all the canons of the CPRA apply equally to all lawyers, except this canon on accountability, as the procedure for disciplinary action is different depending on the type of lawyer.

## IV. ANALYSIS OF THE CPRA

Some might say that CPRA is moralistic to a fault, that its provisions are overarching to a fault. However, it should be clarified that the CPRA simply follows what society dictates as norms. Jurisprudence evolves in terms of the CPRA. The CPRA must be analyzed in this regard.

Previously, practically nobody can talk about any case with the media because Canon 13, Rule 13.02 of the CPR forbade lawyers from "mak[ing] public statements in the media regarding a pending case tending to arouse public opinion for or against a party."[135] The sub-judice rule "restricts comments and disclosures pertaining to the judicial proceedings to avoid

131. *Id.* canon V, § 3.

132. *Id.* canon V, § 4.

133. *Id.* canon VI.

134. *Id.*

135. 1988 CODE OF PROFESSIONAL RESPONSIBILITY, canon 13, rule 13.02.

prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Section 3 (d), Rule 71 of the ROC."[136]

The Supreme Court in *Marantan v. Diokno* however, attempted to balance this absolute prohibition

> [f]or a comment to be considered as contempt of court 'it must really appear' that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all-important duty of the court to administer justice in the decision of a pending case. The specific rationale for the *sub judice* rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies. [ ] The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice.[137]

The CPRA encoded this balancing act in Canon II by enumerating four instances that would warrant the application of the *sub judice* rule:

> A lawyer shall not use any forum or medium to comment or publicize opinion pertaining to a pending proceeding before any court, tribunal, or other government agency that may:
>
> (a) cause a pre-judgment;
>
> (b) sway public perception so as to impede, obstruct, or influence the decision of such court, tribunal, or other government agency, or which tends to tarnish the court's or tribunal's integrity;
>
> (c) impute improper motives against any of its members; or
>
> (d) create a widespread perception of guilt or innocence before a final decision.[138]

The rules in the CPRA then, are rules based on ongoing norms and evolving concepts that dictate what is acceptable and constitute as good.

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136. Marantan v. Diokno, 726 Phil. 642, 648 (2014) (citing Romero v. Estrada, 602 Phil. 312, 319 (2009)).

137. *Id.* at 648-49.

138. CPRA, canon II, § 19.

These evolving concepts can also be seen in the CPRA on gender-fair language and proper attire. To recall, Canon II dictates that a lawyer shall use only dignified, gender-fair, child-, and culturally-sensitive language in all personal and professional dealings.[139] Also, on proper attire, Canon II gives "due respect with to the person's sexual orientation, gender identity, and gender expression."[140] However, a lawyer's attire must still be consistent with the dignity of government agencies and observe formal decorum before all agencies.[141] In *Falcis III v. Civil Registrar General*,[142] the Supreme Court directed a lawyer to show cause why he should not be cited in direct contempt for his failure to observe the required decorum during the preliminary conference, a formal session of the Court, considering that he was attired with a casual jacket, cropped jeans, and loafers without socks.[143] The Court in effect, considered this attire beyond the norm and falling outside the ambit of good values.[144]

In consonance with R.A. No. 11313, otherwise known as the Safe Spaces Act,[145] Canon II also mandates a safe environment through the avoidance of all forms of abuse or harassment, reading thus —

> A lawyer shall not create or promote an unsafe or hostile environment, both in private and public settings, whether online, in workplaces, educational or training institutions, or in recreational areas.
>
> To this end, a lawyer shall not commit any form of physical, sexual, psychological, or economic abuse or violence against another person. A

139. *Id.* canon II, § 4.

140. *Id.* canon II, § 7.

141. *Id.*

142. Falcis v. Civil Registrar General, 861 Phil. 388 (2019).

143. *Id.* at 423.

144. *Id.*

145. An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor [Safe Spaces Act], Republic Act No. 11313 (2018).

lawyer is also prohibited from engaging in any gender-based harassment or discrimination.[146]

This is why the Supreme Court suspended a lawyer for committing sexual advances on a colleague at the workplace.[147] The Court said that the lawyer performed "sexually-[laced] acts ... ranging from dirty jokes, innuendos, inappropriate personal intimate questions about her romantic relationships, and sharing about his extramarital sexual acts/conquests, to actual sexual advances."[148] Thus, considering "the nature or character of respondent's complained acts, the frequency of occurrence of the said acts throughout the two-year period he worked with complainant, the degree of his moral influence or ascendancy, and the effect of his acts on her," the Court meted out a two-year suspension.[149] The Court considered the lawyer's actions beyond the norm and good values already.

This consideration of what falls within and without the norm of good values is why a disbarred lawyer may no longer teach law. While the case of *Cayetano v. Monsod*[150] previously gave a broad definition of "practice of law," the CPRA narrows it down by requiring a lawyer-client relationship.[151] To recall, this relationship requires lawyers to agree expressly or impliedly, while the client consciously, voluntarily and in good faith vests confidence on the lawyer to render legal services.[152] Giving legal information grounded on hypothetical scenarios does not create this relationship, but giving actual legal

146. CPRA, canon II, § 3.

147. GMA Integrated News, *SC Suspends Lawyer for Two Years for Sexual Harassment at Work*, GMA NEWS, May 3, 2023, *available at* https://www.gmanetwork.com/news/topstories/nation/868843/sc-suspends-lawyer-for-two-years-for-sexual-harassment-at-work/story (last accessed Apr. 30, 2023) [https://perma.cc/XS7Q-JPS3].

148. AAA v. Atty. Jon Michael P. Alamis, A.C. No. 13426, Apr. 12, 2023, at 2, *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2024/07/13426.pdf (last accessed Apr. 30, 2023).

149. *Id.*

150. Cayetano v. Monsod, 201 SCRA 210, 214 (1991).

151. CPRA, canon III, § 1.

152. *Id.* canon III, § 3.

advice does. Therefore, teaching law falls outside the definition of practice of law. Nonetheless, a disbarred lawyer is still not allowed to teach law even if it were their sole means of earning a living because once a lawyer is disbarred, the assumption is they no longer embody good values enshrined in the CPRA. Clearly, the emphasis is on good values.[153]

However, the previous discussion on assuming what is good must be emphasized. In the case of the CPRA, what is perceived as the consensus of society above the line is elevated to the level of the good, the Thing, or the Big Other. For the most part of history, the law has functioned in this manner; the law strives to reach a good elevated above the line, when there is no above the line. For this reason, the law has always "short-circuited" or showed cracks or signs of subjectivity behind its mask of supposed objectivity.

To illustrate, the CPRA makes some prohibitions absolute. For example, Canon II prohibits gift-giving and donations.[154] It states that "[a] lawyer shall not, directly or indirectly, give gifts, donations, contributions of any value or sort, on any occasion, to any court, tribunal or government agency or any of its officers and personnel."[155]

However, other provisions of law may serve as loopholes to this absolute prohibition. For one, Section 14 of R.A. No. 3019 states that "unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act."[156] Another example would be under Section 7 (d) of R.A. No. 6713, which states that "public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office."[157] Would such provisions be considered a violation of the CPRA?

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153. *Id.* canon VI, § 52.

154. *Id.* canon II, § 21.

155. *Id.*

156. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 14 (1960).

157. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office being

Another example, the Supreme Court admonished and sternly warned a judge for posting on his Facebook account images of himself, half-dressed and revealing tattoos on his upper body that were used as cover photos and profile pictures in his profile page.[158] Citing *Vivares v. St. Theresa's College* on the risks involved when sharing content in cyberspace, the Court found no merit in the judge's explanation that the subject pictures were exclusively meant for his own viewing pleasure and for his Facebook friends only and never posted for public consumption."[159] In this case, the judge had a "sizable number of Facebook friends who can access his daily posts, and even share content on his account profile page" which can be viewed by the public.[160] Thus, his Facebook account could not be deemed to be truly private.[161] The Court also cited a previous case where a judge posted pictures of herself wearing an off-shouldered suggestive dress on a social networking site and made it available for public viewing.[162] The Court restated the rule

> in communicating and socializing through social networks, judges must bear in mind that what they communicate [—] regardless of whether it is a personal matter or part of his or her judicial duties [—] creates and contributes to the people's opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public.[163]

Thus, while these acts by the judges would no doubt seem harmless and inoffensive if they were done by an ordinary member of the public, as the visible personification of law and justice, judges are held to higher standards

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> a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [Code of Conduct and Ethical Standards for Public Officials and Employees], Republic Act No. 6713, § 7 (d) (1989).

158. Office of the Court Administrator v. Atillo, 910 Phil. 217, 222 (2021).

159. *Id.* at 223 (citing Vivares v. St. Theresa's College, 744 Phil. 451 (2014)).

160. *Id.* at 224.

161. *Id.*

162. *Id.* (citing Lorenzana v. Austria 731 Phil. 82 (2014)).

163. *Lorenzana*, 731 Phil. at 103-05.

of conduct and thus must accordingly comport themselves.[164] Specifically, the act of posting the subject pictures on Facebook fails to adhere to the standard of propriety required of judges and court personnel under OCA Circular No. 173-2017, which mandates all members of the Judiciary who participate in social media to be cautious and circumspect in posting photographs liking posts and making comments in public on social networking sites.[165]

The Court clarified that the impropriety in this case relates solely on the judge's act of posting the subject pictures on social media, and it has absolutely nothing to do with his choice to have tattoos on his body.[166] The judge "should have known better than to post *highly personal content* on his Facebook account that was viewable ... [by] members of the general public."[167] He "placed himself in a situation where he, and the status he holds as a sitting judge, became the object of the public's criticism and ridicule."[168]

However, "highly personal content" is a vague term. In addition, criticism and ridicule from the public can come from anywhere. Thus, any content posted by judges and lawyers may be the object of the public's criticism and ridicule. The Court further assumes what is considered highly personal content without giving any basis. Applied to other instances, what if a judge or court personnel who happens to be a fitness enthusiast posts their workout photos in which they are half-dressed with tattoos, even knowingly adjusting the privacy setting of their account to public? Would posting a picture of a party where one's outfit happens to include off-shoulder clothing be considered a violation of legal ethics? Would attending physical fitness events and going to parties with such attires be already considered a violation? Besides, does not calling an off-shouldered dress "suggestive"[169] constitute gender stereotyping? Answers to these questions would seem to be impositions of what one assumes to be the norm and could well be employing stereotypes. Resultantly, one creates, arbitrarily imposes, and thus legitimizes assumed norms. As previously discussed, these norms can be very limiting.

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164. *Atillo*, 910 Phil. at 224 (citing *Lorenzana*, 731 Phil. at 105).

165. *Id.* at 224.

166. *Id.* at 222.

167. *Id.* at 225.

168. *Id.* at 222.

169. *See Lorenzana*, 731 Phil. at 104.

This is what is meant by a short circuit in the law. Norms and laws, which are thought to be objective, are actually subjective or all-too-human objects. As such, what is projected as a perfect or seamless norm or law will always show "cracks," inconsistencies or contradictions.

This short circuit accounts for possible loopholes in evolving concepts and ongoing norms. Recall that it may be possible to raise R.A. No. 3019, Section 14 and R.A. No. 6713, Section 7 (d) as defenses against the absolute prohibition on gift-giving and donations.[170] Also, Canon II, Section 20 of the CPRA requires lawyers to disclose their relationship or connection to any presiding officer of the court before raffle, which would also include membership in the same fraternity or sorority.[171] However, as this is an ongoing norm, there may be loopholes to circumvent this rule on merit-based practice.

Thus, it is not enough to say that values are evolving concepts and ongoing norms, because while values change all the time, it would be illusory to say that they are evolving towards an objective good. One's values are subjectively destitute together with all of us. If one were to deny subjective destitution, the result would be transgression of norms, or more precisely, that transgression *is* the norm.

> Žižek claims 'an ideological identification exerts a true hold on us precisely when we maintain an awareness that we are not fully identical to it.' The paradox here emphasized by Žižek is that 'the subject is actually 'in' (caught in the web of) power only and precisely in so far as he does not fully identify with it but maintains a kind of distance towards it.' Žižek explains this paradox through reference to the concepts of inherent transgression and the superego which help us to understand the way that power not only encourages us to break its explicit rules, thereby keeping us at a distance to it, but also how power itself does not take its own rules seriously. That is, in addition to the explicitly sanctioned rules of power, the latter is sustained by a series of unwritten or hidden rules which are transgressions of these explicit ones. The concept of inherent transgression enables Žižek to argue, for example, that issues such as corruption, torture, or spying on citizens, far from undermining liberal democracy, serve as its ultimate support. That is, while the explicit message of liberal democracy is adherence to a set of formal democratic rules and procedures (parliaments, free and fair elections[,] etc.),

170. Anti-Graft and Corrupt Practices Act, § 14 & Code of Conduct and Ethical Standards for Public Officials and Employees, § 7 (d).

171. CPRA, canon II, § 20.

> the functioning of liberal democracy is sustained by a series of hidden, unwritten rules that undermine these explicit rules. These hidden rules help ensure that, 'even when democratic legitimacy seems healthy, our votes merely sanction the existence of an order whose framework has already been decided and imposed on us.' Or to be blunt, the liberal rules only allow us to choose what does not interfere with the sovereign interests of Capital.[172]

## V. TOWARDS CRITICAL UNIVERSALISM

What, then, should be the focus of subsequent revisions of the CPRA, if not the identification of lawyers? This is as an opportunity to introduce and advocate for supplemental principles to the jurisprudential theory of legal ethics — specifically, the primacy of client-centered legal ethics — to finally set it apart from its morally-oriented counterpart.

One of the legal bases of Philippine legal ethics is the Canons of Professional Ethics "framed by the American Bar Association in 1908," which the Philippines adopted in 1917.[173] The Philippines also adopted the revised American canons in 1946.[174] Thus, these American canons may be consulted for legal guidance in tackling the Philippine jurisdiction's legal ethics.

In relation to these American canons, the moral theory of legal ethics was developed to address the shortcomings of the legal realist conception of the bounds of law, which "committed [lawyers] to the aggressive and single-minded pursuit of the client's objectives" not only *within* the law, but "all the way *up to*[ ] the limits of the law."[175] In response, the moral theory:

(1) "conceived a robust role for lawyers' morality in legal representation" which "tolerated only "the most minor deviations from common morality" by lawyers in civil cases;"

(2) gave lawyers "the prerogative to withhold legal services to persons whose projects they found morally objectionable;" and

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172. Timothy Bryar, *A Return to a Politics of Over-Identification?*, INT'L J. OF ŽIŽEK STUD., Volume No. 12, Issue No. 2, at 10.

173. ERNEST L. PINEDA, LEGAL ETHICS ANNOTATED 2 (2009).

174. *Id.*

175. Katherine R. Kruse, *The Jurisprudential Turn in Legal Ethics*, 53 ARIZ. L. REV. 493, 502 (2011).

(3) gave lawyers "[…] [the prerogative to] judge and shape client projects" and actively "steer [their] clients in the direction of the public good."[176]

However, this moral theory also brought about its own set of complications, namely:

(1) "the lawyers advocating for and criticizing the legal realist conception theory "ended up debating the proper boundary between law and morality in legal representation within the same theoretical structure;"

(2) we "run[ ] the risk of substituting the rule of law with the "rule of an oligarchy of lawyers";

(3) "attempts to fashion a professional duty to incorporate moral judgment into legal representation strain against the nature and purpose of the lawyer-client relationship;"

(4) "problems of lack of moral expertise, risk of moral overreaching and threat to rule-of-law values arise;" and

(5) the "premise that the public would benefit from the moral guidance that lawyers have to offer is also debatable."[177]

Thus, an alternative theory — the "jurisprudential turn of legal ethics"[178] — was introduced. This jurisprudential theory was intended to "provide[ ] limits on lawyers' no-holds-barred partisanship that spring directly from lawyers' professional duties rather than from appeals to personal morality that compete with professional duty."[179] The theory "promise[d] to remain consonant with the rule of law values by limiting lawyers' partisan pursuit of client interests based on correct or legitimate interpretation of the law."[180] These "jurisprudential theories deliver determinate answers to questions of legal interpretation because of its "reference to [...] [a] normative

176. *Id.*

177. *Id.* at 503-04.

178. *Id.* at 505.

179. *Id.*

180. *Id.*

substructure."[181] Under this view, "[b]ecause the interpretation of law [...] falls squarely within the scope of lawyers' expertise and authority within the lawyer-client relationship," [...] a "lawyer who interprets the law to set limits on client objectives [...] avoids the dangers of moral overreaching with vulnerable clients and gains traction with more powerful clients."[182]

There are two permutations of this theory. First is "William Simon's theory that lawyers should interpret the 'bounds of the law' according to underlying principles of justice in the style of a [Simon] Dworkian judge"[183] that "both fit with past interpretations of law and justify its continued legitimacy."[184] Second are the positivist theories of Bradley Wendel and Tim Dare which state "that in interpreting the 'bounds of the law' lawyers should respect the authority of law as society's resolution of contested moral and political disagreement and not seek to unsettle that resolution by stretching legal interpretation to meet either their clients' interests or their own conceptions of morality of justice."[185]

Yet, these jurisprudential variations are not without their own shortcomings. Simon's theory "rides on the questionable ability of his Dworkian conception of law to determine true or correct answers to lawyers' contextual judgment of legal merit"[186] and thus "provides substantial leeway for lawyers to exercise private and unreviewable judgment about the merits of substantive justice and do so under the imprimatur of legal expertise."[187] In other words, "unlike Dworkian judges, whose decisions about which interpretations best fit and justify the law are discipled by exposure to adversary advocacy and public scrutiny, lawyers' judgments about the best interpretation of law would be shielded from public review and cloaked in a mantle of legal expertise that their clients might well lack the professional education and

181. Kruse, *supra* note 174, at 508.

182. *Id.* at 505.

183. *Id.* at 506.

184. *Id.* at 509.

185. *Id.* at 506.

186. *Id.* at 511.

187. Kruse, *supra* note 174, at 514.

training to challenge or second-guess."[188] Hence, the "Dworkian ideal of integrating the underlying principles of law into a coherent narrative is unattainable."[189]

As for Wendel and Dare's positivist theories, "the need for flexibility and openness in a morally pluralistic society" is undervalued,[190] and "moderately fair legal systems must in the end simply tolerate the localized injustice suffered by discrete groups."[191]

In a nutshell, then, the problem with the moral theory is that it "undermine[s] rule-of-law values, strains against the role that lawyers play as client agents and fiduciaries, and is questionable in terms of its public benefit."[192] This effect may be attributed to "lawyers hav[ing] no special expertise in moral reasoning vis-à-vis their clients and the likelihood of structural constraints of practice to make such moral advice ineffectual in the situations where it is most needed."[193] In a similar vein, Simon's jurisprudential theory depends "on the fulfillment of certain conditions, and it is questionable whether law has the capacity to deliver what [...] [they] demand,"[194] while the positivist theories "depend on the capacity of law to transcend normative controversy in society through shared understanding of legality."[195]

Professor Ted Schneyer, distinguished American Professor of Law at the University of Arizona, "has long noted the[se] perils and problems of assigning primary responsibility to lawyers for carrying out public duties, and his work provides a template of considerations that those embarking on a jurisprudence

188. *Id.* at 515.

189. *Id.*

190. *Id.* at 520.

191. *Id.* at 521.

192. *Id.*

193. Kruse, *supra* note 174, at 521.

194. *Id.* at 522.

195. *Id.*

of lawyering ought to take into account."[196] The problem with lawyers holding only public values "is that the lack of widespread public consensus on what counts as morally right or substantively just makes adherence to those norms difficult to enforce."[197] The risk here is the self-dealing of lawyers who may be "biased by strong financial pressures or personal bonds and unconstrained by role, who would misapply their own conceptions of justice or all-things-considered morality."[198] As for the jurisprudential theories, lawyers' primary duties have been commodified as "public goods: substantive justice or legal entitlement." In these theories, "the lawyers owe primary fidelity to the law and only secondary duties to their clients."[199] While lawyers' tasks of interpreting the law are "grounded in [...] [their] expertise rather than their personal moral judgments" and thus discipline lawyers "to look beyond their personal or political views," nonetheless, they "must exercise judgment about how to implement the public duties that the jurisprudence of lawyering assigns directly to them."[200] Thus, "to the extent that the law is indeterminate, lawyers' judgments about its underlying purpose pose some of the same risks that the moral theories [...] face:" inappropriate impositions of personal views on the client instead of being their agent and unreviewable interpretations that undermine rule-of-law values.[201] In sum, lawyers get to impose their subjective positions on their clients, and in this way, the moral and jurisprudential theories are two sides of the same coin.

It follows that in both the moral and jurisprudential theories, the lawyer acts as the lawmaker. The jurisprudential theories of lawyering [were meant to] ground lawyers' interpretive duties in analysis of the role lawyers play in the legal system and the role that law plays in society."[202] Ironically, the current jurisprudential theories fail to meet their purpose. A comprehensive

196. *See* Ted Schneyer, *Some Sympathy for the Hired Gun*, 41 J. LEGAL EDUC. 11 (1991) & Ted Schneyer, *Reforming Law Practice in the Pursuit of Justice: The Perils of Privileging Public over Professional Values*, 70 FORDHAM L. REV. 1831 (2002).

197. Kruse, *supra* note 174, at 522.

198. *Id.* at 522–23.

199. *Id.* at 522.

200. *Id.* at 523.

201. *Id.* at 523.

202. *Id.* at 505–06.

reading of Jean-Jacques Rousseau's *Social Contract*, particularly Book I, Chapter 6 on the social contract proper and Book II, Chapter 7 on the lawmaker, reveals that there is a lawmaker who creates and imposes the contract on the people.[203] In applying the current jurisprudential theories, lawyers become the lawmakers in legal ethics because they get to impose their personal interpretations of the law on their clients without public scrutiny. Thus, lawyers' duties are not grounded on their role in government, but on their own subjective positions. Resultantly, flexibility, openness and solidarity grounded on clients' positions are sacrificed. The lawyer reinforces the view of a monolithic and immovable law that ignores the specific circumstances of the people.

In general terms, the lawyer needs to be reminded that their duty is not to act as the lawmaker who imposes their personal views, but to assist their clients in getting their positions heard so that society may closer reflect a coming together of each free individual with their respective positions to hash out compromises and settle conflicts. Hence, "the solution to this problem is not to turnover moral control of the representation to the lawyer."[204] Rather, "it is to get lawyers to bring their clients' other interests and concerns back into the picture so that legal representation can be directed toward objectives that put the pursuit of legal interests into the context of the other values, relationships, and concerns that are important to clients."[205]

This "client-centered representation" addresses legal objectification by making lawyers focus on the "interrelationship between a client's legal and non-legal concerns and to re-configure authority and expertise in the lawyer-client relationship in ways that recognized a broader and more participatory role for clients in legal representation."[206] In essence, this client-centered jurisprudential theory revolves around "problem-solving that puts the client — rather than the client's legal issues — at the center of legal representation."[207] Since the 1970s, this theory has branched out to "include

203. JEAN-JACQUES ROUSSEAU, *OEUVRES COMPLÈTES DE JEAN-JACQUES ROUSSEAU* 359-60 & 381-84 (1964).

204. Kruse, *supra* note 174, at 525.

205. *Id.*

206. *Id.*

207. *Id.*

ideals of holistic representation, cross-cultural competence, problem-solving lawyering, lawyering as empowerment, and lawyering for social change."[208] Yet all these ideas have in common and consequently the "blur[ring] [of] the boundaries between lawyer and client expertise about law and legal strategies and promote more collaborative and interdisciplinary methods of lawyering."[209] All this for respect of client "autonomy grounded in the [...] liberty[ ] to live one's life according to values that one has chosen and affirmed over time."[210]

Lawyers' duties to their client may be harmonized with their duties to the public because "representation [...] creates space within and around the law for clients to experiment with and test the legitimacy of the norms enacted into law, so that individuals can both pursue the projects that will enable them to lead autonomous lives, and so that law can adjust itself to the needs of its citizenry."[211] These duties may also be taken together with the call for a more robust pluralism by Isaiah Berlin, "one of the most prominent political philosophers to endorse a premise of moral pluralism."[212] Berlin posited that "the aim of decent societies" is "to promote and preserve an uneasy equilibrium which is constantly threatened and in constant need of repair," and "to unsettle majoritarian control as well as to stabilize it."[213]

Circling back to Philippine legal ethics, the previous Code of Professional Responsibility promulgated on 21 June 1988 "provided the legal profession an *impression of identity* and sense of independence attuned to the local traditions, practices and customs in the country."[214] The CPRA adds emphasis on values to legal ethics. In addition, the Philippines may gain invaluable insight from the developments in the discourse occurring in American jurisdiction from which the CPRA was derived. Identity and values should be taken together with relevance by considering the specific circumstances of the people, lest they betray the principles in which society is founded. Lawyers play a

208. *Id.*

209. *Id.*

210. Kruse, *supra* note 174, at 527 (2011).

211. *Id.* at 528.

212. *Id.* at 520.

213. *Id.*

214. PINEDA, *supra* note 172, at 3.

fundamental role in maintaining this relevance by assuring that their clients are heard. Lawyers have no other duties with more public character than this duty to their clients.

## VI. CONCLUSION

It is concluded that values comprising ethics are not ongoing norms and evolving concepts, much less representations of good morals. If they were, people make them so. People make them real, not in a way that they are just pretending that values are something that they are not, and that if they stop pretending, they can uncover what they really are. It is precisely because the concept of value has no meaning that people get to fill it with their own. There is no objective, neutral or natural starting point that can give a pre-conceived set of good values. There is no Big Other that could tell one what to do.

There is nothing wrong with conceiving of values as ongoing norms and evolving concepts. Yet, one must acknowledge that if there is no objective point to conceive of societal values, then they are subjective positions. Therefore, imposing on the universal level the claim that values are ongoing norms and evolving concepts would mean sustaining the Big Other. This entails predetermining people's lives on their behalf, which would be very limiting.

To interrogate these limitations, the implications of the concept of a subjective position must be revisited. Again, if there is no Big Other that could tell one what to do, people could make it for themselves. People get to make their own ideas. Each person gets to decide how one should live their lives.

The emancipating idea then, is precisely this political act of choosing, committing to, and asserting how people should live their lives. The political allows individuals to act in such a way that informs the legal-ethical order that subjectivity should be acknowledged.

Yet, this political act is also why individual subjective positions are fundamentally irreconcilable, which is where antagonisms come from.

Aligned with this politics, the law represents the very notion that one's subjective positions are irreconcilable, and so people come together in solidarity to tackle their antagonisms and hash out compromises to best reflect individual subjectivity. It can be seen why the law must account for and adopt to the specific circumstances. One should acknowledge what the law really is: compromises that strive to reflect individual subjectivity as much as possible.

This re-orientation of the theoretical underpinnings of the law is essential to changing one's mindset on norms as moral impositions. If one's politics comprising of subjective positions and ideas are a "not-All," then to reflect this politics, our law should also be conceived as a "not-All."

This conception of politics and law constitute an ethics of the "not-All," or as Zupančič would call it, an "ethics of the Real."[215] It is an ethics that embraces one's subjectivity. It recognizes that truth is subjectivity. It is an ethics of groping in the dark together. It is an ethics that interrogates the concept of norm. It is an ethics that "institutionalizes the non-existence of the Big Other." It is an ethics that is "grounded only on itself, on pure contingency, no longer to a kind of necessary *a priori* guarantor of rightness and wrongness."[216]

Therefore, to align the CPRA with this theoretical framework, one should view their values as the collection of compromises they make in consideration of individual subjectivity, rather than impositions of how they should live their lives. This is how values "do not subscribe to the norms, but establishes them to deal with the predicaments concerning our lives."[217] To this extent, legal ethics joins democracy and even love as all-too-human objects that people come to terms with yet nonetheless serve as testaments to individual subjectivity.

Ethics then, is not about forcing on each other moralistic notions of good and bad, right and wrong. It is about acknowledging everyone's subjectivity and showing each other that people can live without denying their subjectivity.

This is critical Universalism. The Universal is not about universal positive ideas of how the world should be; it is about a negative critique of how ideas come about in the first place. The Hegelian negative critique should be taken all the way. People should critique their current conceptions of ethics, ideas, objectivity, and norms themselves. People subject their values to this universal negative dimension.

In so doing, the Philippine lawyer does not reinforce moral impositions but instead serves as reflections of people's subjectivity. Other people may

215. Zupančič, *supra* note 54.

216. Gutierrez, *supra* note 56, at 7.

217. *Id.*

recognize their own subjectivity through lawyers. The lawyer should not be ideated and thus dehumanized; they should not be made to suffer by limiting their subjectivity. The lawyer sets the bar for the general public's subjectivity.

At the same time, the Philippine lawyer is compelled to think of novel, creative and surprising ways at resolving conflicts. The lawyer should be up to the task of creating a legal-ethical symbolic order that is the result of genuine efforts to reach individual subjectivity, including mediating conflicts. The Philippine lawyer keeps in mind that the legal-ethical order has a propensity to fall short of subjectivity.

This Article ends with great zeal and fervor, as the CPRA is in the best position to effectuate what has previously been overlooked — a focus on values that reflect societal compromises in consideration of individual freedom, opening the law to new zones of possibilities.