

Law and Economic Development in the Philippines

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I. INTRODUCTION

The realm of the social sciences is so broad a scope that the interaction among its specialized fields has never been thoroughly and systematically studied or even appreciated. Of these fields, law and economics suffer a drought of resources, because the interplay between the two has scarcely been explored. But recent events have signaled the importance of such an analysis, particularly, the importance of the rule of law in attracting economic activity and not merely as a result of stable economic policies. In fact, the rule of law is a crucial factor that can either promote or hinder economic development as it seeks to reduce the level of poverty.

This paper attempts to present a general sketch of the economic theory of law, as it tries to identify the precise aspects by which the law directly promotes or hinders particular elements that contribute to economic development. An overview of the economic situation of the Philippines is also discussed to underscore the sheer necessity of encouraging economic development. Finally, the situation of the Judiciary and the legal profession is then appraised in terms of their impact on economic development in general.

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II. TRADITIONAL ECONOMIC THEORY OF LAW

Traditional economic theory regarding the role of law in economic development was formulated by the Economist Adam Smith,¹ who argued that civil government emerged mainly to protect private property. In the absence of property ownership, there is no need to establish any set of rules regarding the relations among human beings. Only when a minority begins to accumulate property does a need for societies to develop rules arise, regarding the acquisition, maintenance, disposition, and inheritance of property. This involves establishing rules to govern the relationships between persons for the protection of possible heirs, vendors, or purchasers of property. A system for the enforcement of these rules and settlement of disputes and conflicts would have to be developed. In our society, we see that this gave rise to the contemporary preoccupation on the importance of the rule of law, and its impact on protection of the rights of investors over property and enforcement of contracts, which served as basis for encouraging investment, thereby stimulating economic growth.²

In the long-term process of economic development, Smith proposed the classic argument that government had three basic and specialized functions: external defense, administration of justice, and provision of basic infrastructure.³ These three are essential and unique functions whose primary goal is the management and reduction of risk and uncertainty in the economy to encourage consumption and investment on a large scale.

The major theory of the determinants of economic development emphasizes on the role of consumption, especially investment. Consumption is the expenditure of households on goods and services, including durable goods such as housing, home furnishings, appliances and the like. Investment is the expenditure of firms on equipment, machinery, buildings, land improvements and the like, all directed towards increasing production for sale, to local consumers or to foreign buyers. Households and firms with surplus earnings can deposit the savings in financial institutions to realize reasonable rates of return on their savings. Financial institutions, on the other hand, earn revenue by providing credit to households and firms with inadequate resources to make purchases. Households normally borrow for major consumer items, usually durable goods, e.g., housing, cars, and home appliances. Firms borrow for short-term working capital requirements, trade credits to facilitate the movement of goods, or for long-term developmental projects, such as construction of a large manufacturing facility like a petrochemical plant or steel mill. Credit decisions are based on the banks'

1. ADAM SMITH, *THE WEALTH OF NATIONS* 232-235 (1967).

2. THE WORLD BANK, *FROM PLAN TO MARKET: WORLD DEVELOPMENT REPORT* 86-93 (1996).

3. SMITH, *supra* note 1, at 208-209.

judicious investigation of the applicant's ability to pay. On a social level, financial institutions perform the important task of attracting the savings of society from those with surplus to provide credit to those with deficit in the purchasing power. Those with savings earn interest while those with deficit pay the loan with interest out of future earnings.

Moreover, these initial activities create multiplier effects on the rest of the economy. Consumer spending creates markets for producers and sellers who are then encouraged to increase investments. Investment expenditure creates jobs that create new income, thus encouraging consumer spending. Credit provides added impetus to consumer and investment spending. The availability of savings facilities also acts as an incentive to households and firms to work harder to increase incomes to realize savings and thus build assets. In all, the cycle of consumption and investment spending is accelerated, and economic progress increases.

These economic activities are more intensified when risk and uncertainty are minimized in society. Given such uncertainty such as the current crisis over the possible invasion of Iraq and further terrorist attacks — the desire of consumers to purchase large items such as durable goods, of firms to invest in huge projects, or of financial institutions to provide credit is severely dampened. Economic activity, then, slows down. Large expenditures take more time to be recovered; for example, it will take longer for a firm to realize income to replace expenditure on a major item, to recover its initial investment, or to repay a huge loan. The absence of uncertainty encourages consumption and investment expenditures and credit, while its presence increase the risk that these expenditures and credit may not be recovered, thereby discouraging them. Any reduction in spending substantially decreases economic growth because of the negative multiplier effect that leads to long periods of stagnation. On the other hand, a steady increase in economic growth over time propels economic development.

The government can substantially manage uncertainty on a social level. External defense acts as a deterrent to external invasion. Invasion by itself destroys lives and property. What is especially problematic to economic development would be the loss of knowledge and skills when lives are lost. But uncertainty is not only a result of actual invasion but likewise, a result of mere threat of invasion. When a government provides a credible external defense capability, any external threat can be perceived by the economy as manageable. This would explain the spectacular long-term development and expansion of South Korea and Taiwan, both facing hostile neighbors but with a strong external defense capability bolstered by the United States of America.

The provision of basic infrastructure — transportation, communication, energy, water and sanitation — substantially reduces the cost of production and transactions throughout the economy. The availability of these facilities

again encourages investment in major projects, which in turn encourages financial institutions to provide the necessary credit. This spurs the multiplier effects on consumption and further investment. By the nature of infrastructure, the resources required are huge; as a result, to reduce the cost of production and transactions throughout the economy, facilities need to be provided at reasonable cost. This is the reason why governments tend to provide facilities, either by direct production as in road construction and installation of flood-control projects or by contracting private investors. Private investors are not only faced with regulation on pricing but also with some incentives for them to gain a reasonable profit as in water distribution in Metro Manila with Maynilad and Manila Water or the franchises for electricity distribution which are local monopolies, most famous being Meralco.

Lastly, the presence of an efficient administration of justice also reduces the uncertainty over conflicts in property. Given that the economy is based on the acceptance and respect for the principle of private ownership of property, society, therefore, needs some form of impartial arbitration to peacefully settle conflicts over property rights. Again, security in property rights encourages the very cycle of consumption, investment, and credit that underlies economic growth. This is the main function of the administration of justice for purposes of long-term economic growth: to act as an impartial arbiter in the peaceful settlement of disputes and in the effective enforcement of laws, rules, regulations, settlements, contracts, and penalties. For as long as the system is regarded as impartial, speedy, efficient, and just, the expenditure and credit activities will be encouraged with the full knowledge that any conflict along the way can be settled quickly and judiciously. Indeed, the World Bank has recognized the pivotal role that the rule of law plays in maintaining stable, strong, and reliable governance both in the public and private sectors.⁴ It arguably plays a more powerful stimulus to economic activity than economic policy itself. This was one of the original arguments for maintaining the independence of Hong Kong and its judiciary after the hand-over to China.

All three functions of government are, therefore, crucial in the attainment of long-term economic development. Although development is a consequence of a steady increase in expenditure by firms and households over time, this is made possible by government efficiently performing these three tasks. In the absence of government, the economy will, therefore, be left with chaos. Stagnation will lead to social disaster. Thus, the function of the government is crucial in the process of economic development.

4. THE WORLD BANK, FROM PLAN TO MARKET *supra* note 2, at 142; THE WORLD BANK, THE PHILIPPINES, GROWTH WITH EQUITY: THE REMAINING AGENDA 97-100 (2000).

It is in this crucial function of government that the role of government, in particular the law, is ambiguous. In the process of long-term economic development, aside from savings, three other factors are also crucially important: *capital accumulation*, *labor productivity* and *unproductive labor or activity*.⁵ Savings is the portion of national income not spent on consumption. Economic surplus is the difference between a society's gross product and the portion of the product necessary for the subsistence of the productive members. This product is the total product less the amount needed to replace the means of production or the produced inputs used up in a given period. Subsistence refers to a standard of living by which a class of productive members is able to maintain and reproduce itself. It could refer to a level of consumption by which families are able to support and expand their numbers — in other words, a standard of living. Surplus, therefore, covers a larger amount than savings itself. An economy's capability to produce a surplus determines its prospects for long-term growth.

This capability increases as the larger proportion of a society's surplus is utilized in capital accumulation and labor productivity. Capital accumulation translates to greater investments in machinery, equipment, building construction, land improvements, and the provision of infrastructure. Labor productivity increases from the increased expenditure on education, skills training, health care, and proper housing. Note that all these items require a combination of both private investment and government expenditure. But, the capability to produce a surplus also depends on whether a larger proportion of the labor force is engaged in productive activity.

There is much debate regarding sources of productive activity,⁶ but, a workable definition of productive activity is that which produces goods and services that satisfy real needs or wants broadly defined. Corollary to this is the notion that productive activity directly increases a society's actual capacity to produce goods and services. Unproductive activity is largely focused on the distribution of the set of rights to the output. Classic examples of unproductive labor are administrators, law enforcers, the religious, trade, advertising, finance and accountancy, historically considered the most prestigious professions. Tables 1 and 2 have a more detailed listing based on the standard industrial and occupational classification. Law and accountancy are included in business service, while the judiciary and penology are part of government administration.

5. FRANCOIS QUESNAY, *ECONOMICAL TABLE 12-20* (1968); EDWARD WOLFF, *GROWTH, ACCUMULATION AND UNPRODUCTIVE ACTIVITY: AN ANALYSIS OF THE POSTWAR U.S. ECONOMY 1-10* (1987).

6. E.K. HUNT, *The Categories of Productive and Unproductive Labor in the Marxist Economic Theory*, in *SCIENCE AND SOCIETY* 313-325 (1979); EDWARD WOLFF, *GROWTH, ACCUMULATION AND UNPRODUCTIVE ACTIVITY: AN ANALYSIS OF THE POSTWAR U.S. ECONOMY 36-41* (1987).

Smith had argued that a higher proportion of labor engaged in unproductive activity reduces the potential productive capacity of a society and thus its capability for sustained long-term growth.⁷ Development is accelerated when a larger proportion of the surplus is devoted to capital accumulation and improved labor productivity rather than to unproductive activity.

However, it must still be noted that although law, administration, defense, the judiciary, accountancy, management, trade, finance, real estate and the religious are unproductive, they are all socially necessary. Such social necessity is based on its ability to maintain order, otherwise, the economy and society will be in a state of chaos. It is precisely because they are socially necessary yet basically unproductive, that they have become the most prestigious professions in most societies and civilizations. Thus, the process of long-term economic development requires that a society devote a sufficient amount of its resources to maintain the necessary level of unproductive activity for the economy to function efficiently and for these resources to be utilized efficiently. The majority of labor and resources will, then, have to be devoted to productive activity and the capital accumulation and productivity improvements that they will require.

Unfortunately, until the economy is centrally planned, there is no straightforward method of determining this allocation. Entry to the professions and occupations will depend on the aptitudes and job requirements of job seekers and the pay offer that the market provides. This will, then, be the key to understanding the impact of a profession on long-term economic development. Wolff noted that Japan and former West Germany had higher rates of capital accumulation and increases in labor productivity, resulting to steadier long-term growth than the United States did in the 1950s-70s. During this period, the United States had a higher proportion of the labor force in the legal profession and a larger portion of government expenditure devoted to the judiciary and military expenditure than did Japan and West Germany.⁸ When one applies this lesson on a low-income country like the Philippines, the necessity for efficiency in the utilization of resources is, thus, more crucial as a larger proportion of the population is in a state of poverty. The legal profession and the judiciary, thus, need to perform more efficiently.

7. SMITH, *supra* note 1, at 352-53.

8. WOLFF, *supra* note 5, at 174-76.

III. RECENT DEVELOPMENTS IN THE THEORY OF LAW AND ECONOMIC DEVELOPMENT

Recent studies have begun to focus on the more immediate impact and effects of the legal and judicial system on poverty and the impoverished sectors. Novel ideas and notions of economic development have begun to go beyond the narrow definition of poverty as a lack of income. Rather, poverty is regarded as the experience of social exclusion and of vulnerability to various forms of stresses and difficulties.⁹ Exclusion results not just from the inadequacy of income but from a lack of access to important entitlements, such as health care, education, secured housing, security, and judicial protection. As a result, poverty becomes the means of vulnerability towards calamities, exploitation, displacement (as in warfare or demolition of shanties), and persistent job insecurity.

The correlation of poverty to law have become relevant as more recent studies have focused on the issues of inability of many governments in less developed countries to provide for physical safety, security of property, and quick and reliable settlements of disputes.¹⁰ The said studies specifically mention that the lack of access of low-income households to effective judicial systems results in four types of impoverishment. First, the justice system is unable to protect people from theft, violence, and physical abuse or enforce legitimate entitlements and legal rights, as for example, in wage claims or inheritance. Second, further cost and losses are incurred when low-income individuals experience police extortion, unjust imprisonment, and courtroom bribery. Third, as discussed in the previous section, this state of ineffective judicial enforcement can undermine confidence in the future. This discourages large-scale consumption, major investments, or risk-taking in credit transactions or new business ventures. And fourth, a substantial portion of incomes — even of low-income households — may be expended on self-protection (such as bribes or weapons). In terms of traditional theory, not only are consumption, investment and credit discouraged, but a substantial portion of income is set aside for unproductive expenditure. The ability, therefore, of the entire economy to produce a surplus for further capital accumulation is undermined.

Authors Stephen Golub and Kim McQuay reached some rather tentative conclusions about the significant role that legal empowerment plays in alleviating poverty.¹¹ They studied programs involving the work of non-government organizations and law schools in partnership with poor

9. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 3-6 (1999).

10. INSTITUTE OF DEVELOPMENT STUDIES, *INSIGHTS DEVELOPMENT RESEARCH* 1-2 (2002).

11. STEPHEN GOLUB AND KIM MCQUAY, *LEGAL EMPOWERMENT: ADVANCING GOOD GOVERNANCE AND POVERTY REDUCTION* 159-60 (2001).

communities to improve governance and reduce poverty in issues such as human rights, minority and gender rights, environment, agrarian reform, and labor. They have concluded that legal empowerment can enhance the material conditions and resources of low-income groups and reduce poverty in the sense of increasing their participation in decision-making, thus minimizing the degree of their social exclusion. The poor are, thus, able to understand how government operations and regulations influence policies regarding them. Golub and McQuay argue that legal empowerment is as much a crucial element in strengthening the rule of law for development because empowerment directly addresses the immediate legal needs of the poor.¹² Legal empowerment, therefore, needs to be integrated in the mainstream socio-economic development projects. This will be especially fruitful in areas such as women and children's health, rural development, land tenure, decentralization and other poverty reduction programs. For efficiency-given limited resources, Golub and McQuay suggest that legal empowerment should involve not just lawyers and judges but also law students, paralegals and development workers.

Nevertheless, the traditional justice system itself requires improvement in efficiency. Scholars have studied the Mexican system and found that the poor face a number of barriers in dealing with the formal judicial system. Courts were often located in urban areas far away from many of the rural folk.¹³ Even when free legal assistance was available, the poor still had to spend on attorney's fees, documents, "grease" money, bribes, transportation and time. Moreover, the justice system seemed foreign to the poor, both in terms of concept and even the language used; legal Spanish was not widely understood among the mainly Nahuatl-speaking rural poor of Mexico. Lastly, because of judicial prejudice against poor and ill-educated people and a general feeling of distrust in formal authority, the poor tended to avoid dealings with the justice system. In the course of the study, a number of strategies were experimented on to improve the access of the poor to judicial and justice services. Interestingly, initial results from a number of Latin American countries suggest that increased efficiency of the traditional justice system benefits traditional clients among the poor, but specialized services along legal empowerment lines more effectively reach excluded groups such as cultural and ethnic minorities and poor women and children.

In sum, these studies suggest that justice and legal services designed for specially vulnerable groups and legal empowerment programs usually undertaken by law schools and NGOs — can have significant impact in

12. *Id.* at 159-61.

13. LINN HAMMERGREN, ANA LAURA MAGALONI, LAYDA NEGRETE, ALFREDO RAMIREZ AND ROSARIO TELLEZ, *THE JUICIO EJECUTIVO MERCANTIL IN MEXICO'S FEDERAL DISTRICT COURTS* 3-4 (2002).

improving the general condition of the poor. These services aid in integrating them to the broader society and its norms, rules, and conduct, including notions of justice, judicial settlement, and agreements. Since programs that focus on job creation to increase the incomes of the poor can take some time and require investment by the business sector, the justice system can still alleviate poverty directly by targeting vulnerable groups and by minimizing the degree of social exclusion and vulnerability that poor communities experience.

To summarize, economic theory recognizes the importance of the rule of law in creating the stable atmosphere of clear and consistent rules on property, enforcement of contracts, impartial and expeditious settlement of disputes, and imposition of sanctions if necessary. This stability encourages consumption, investment, saving, and credit which generates jobs and income thus propelling economic growth. If sustained over a sufficiently long period of time, this process can generate the necessary social changes that characterize economic and social development. This will be a major precondition for the reduction of poverty. However even within this process, programs can already be designed to provide legal and judicial assistance to the poor and vulnerable groups as part of direct community development efforts of non-government organizations and law schools. Poverty is not simply the lack of income but also the experience of social exclusion and vulnerability to social changes. Direct assistance to the poor, particularly legal empowerment, can help improve the general condition of the poor and vulnerable groups. But above all, the processes underlying the legal and judicial systems and legal empowerment programs need to be undertaken efficiently because while the law itself is socially necessary, it is basically unproductive. Though development requires a larger portion of resources and labor dedicated to productive activities, law and justice, being socially necessary should be implemented efficiently. Otherwise, the law itself can be a hindrance to development.

IV. THE PHILIPPINE ECONOMY

Two salient characteristics of the Philippine economy are the inequitable distribution of income and the high degree of poverty incidence (See Tables 3 and 4). The income distribution profile does not show any significant change from 1961 to 1997. However, it is interesting to point out that there was a degree of improvement until 1988. The *Gini* ratio is the standard measure of equity in the distribution of income; a ratio approaching zero indicates equitable distribution while a ratio approaching one indicates inequitable distribution. From 1961 until 1985, during the last year of the Marcos administration and a recession year, the distribution was improving. This continued until 1988, when the highest growth rate was attained and the *Gini* ratio was at its lowest in 1988 at 0.445. But the ratio worsened to

0.468 in 1991, when the administration of Pres. Corazon Aquino was at its last year. It further worsened to 0.496 in 1997, the last year of the administration of Pres. Fidel Ramos. Inequitable distribution of income is indeed a persistent problem.

This confirms certain arguments that a number of policies were pursued at the expense of equity, principally the decision to continue the servicing of the national debt owed to foreign and domestic banks.¹⁴ Debt servicing accounted for 35-40% of the national budget during the entire term of President Aquino. The purpose of this policy was to maintain the country's creditworthiness in the international and domestic capital markets. Furthermore, the Philippines have been under International Monetary Fund monitoring since 1983 when the international debt crisis severely affected the Philippines along with many Latin American countries. Since the tax effort did not increase significantly during the 1980s, this debt policy meant reduction in government expenditures on social services. In addition, the administration did not pursue any policy at promoting employment by encouraging labor-intensive production processes. Thus, when the economy entered into a recession in 1990, unemployment increased substantially from 8.4% that year to 10.5% in 1991.¹⁵ A belated effort by the Ramos administration to launch the Social Agenda was derailed by the subsequent Asian Financial Crisis and the abbreviated Estrada administration.

The unemployment rate has remained quite high, hovering around 10% in the 1982-91 period. Equally high rates of under-employment that averaged about 25% were recorded during the same time period (See Table 5). The growth rate of the Gross National Product (GNP) and GNP per capita have not been as high compared to the rates that have been attained by the neighboring newly industrialized countries and China. The high growth rates sustained over a long period of time are necessary for long-term economic development. The high growth would suggest increased incomes, therefore, increased savings and tax collections. Savings can, then, be channeled to investment, and tax revenues could mean more funds for infrastructure and social services. In other words, higher growth would mean more resources that can be devoted to productive activity. This would be truly pivotal in a country with a substantial incidence of poverty and a rather inequitable distribution of income. It is the investment in productive activity and government expenditure on infrastructure and social services that create

14. MA. CYNTHIA BANTILAN AND PONCIANO INTAL, UNDERSTANDING POVERTY AND INEQUALITY IN THE PHILIPPINES: A COMPENDIUM OF POLICY AND METHODOLOGICAL RESEARCHES 5-20 (1994).

15. *Id.*

jobs and provide the necessary social services that improve the standard of living of the majority.

V. THE LAW IN THE PHILIPPINES

As suggested, the Philippines would need to devote a sufficient amount of resources directed towards judicial administration in order to be able to provide the necessary service to the economy. This would cover not just the traditional system of legal adjudication, judicial, and penal systems but special programs to provide service in the interest of justice and legal assistance to vulnerable groups and poor communities. This area of study is still exploratory so that one will have to rely on anecdotal evidence, case studies, and the application of conclusions of studies of other countries.

Available data suggest that the numbers of clients of the Public Attorney's Office (PAO) have increased steadily from 1995 to 1999 (Table 6). Rather encouragingly, there has been an increase in the number of clients for all types of legal services provided. The bulk of assistance tended to be devoted to non-legal services like legal documentation, legal counseling, and administration of oaths. However, quite a number also involved actual court cases where more than half were criminal cases and jail visitation.

Available data from the Supreme Court showed that the number of newly filed cases increased steadily by an average of 6.98% *per annum* from 1993 to 1999, but the number of cases decided or resolved increased during the same period by an average of only 6.08% *per annum*. Indeed, the number of pending cases increased by 14.26% *per annum* during that same period (Table 6). The rate of court-case disposition over-all has been quite low at about 0.6% (Table 7). Moreover, a substantial number of vacancies exist, about 32% of total positions as of 1999.

The *Shari'a* Courts, the Sandiganbayan, and the Court of Tax Appeals have the highest rates of disposition. Thus, they have the lowest shares in the total number of pending cases. But, they also the smallest number of cases handled. The Sandiganbayan and the Court of Tax Appeals did not have any vacancy during the time period, but the two *Shari'a* courts have the highest rates of vacancies. The Metropolitan Trial Courts had the lowest rate of court disposition in 1999 and the second highest number of cases filed and cases pending. They also have a high rate of vacancies. The Regional Trial Courts handle the largest number of cases and have the highest number of judicial positions, but also, a substantial rate of vacancy at 24.6% in 1999. Furthermore, women comprise 20% of the total number of judges only.

Initial assessment would suggest that the formal, traditional justice system has been expanding its service to the poor and needy as evidenced by the increase in the number of cases attended to by the PAO. Moreover, a substantial number of these cases involve criminal cases, which involve jail

visitation, assistance and/or counsel to prisoners, and basic non-legal service. These are significant when one considers the widespread perception that the poor, particularly those in prison, do not have the essential resources to deal with the necessary legal service in cases and other legal documentation. However, the data does not consider the many cases and situations in which potential litigants simply avoid the justice system, since they regard the system as too expensive, corrupt, or ineffective.

Moreover, the rate of disposition of actual cases is alarmingly low. No data is available on the average length of time for a dispute to be settled with finality. However, one may assume that this is lengthy when one considers, for example, the vast number of cases filed by the Presidential Commission on Good Government (PCGG) that have yet to be completely and finally settled nearly sixteen years since these were first filed. Furthermore, the author is aware of a series of cases involving intestate proceedings, which were first filed in 1968, and finally resolved by the Supreme Court only in 1988. The issues involved included the removal of a judge for perceived bias and extortion, arguments over who the rightful heirs are, and new disputes over the management of the property which has been taken over by illegal settlers. To this day, the property in such intestate proceedings has yet to be partitioned among the heirs because of the prolonged dispute over the appointment of an estate administrator.

In addition, a substantial number of vacancies, about 32%, remain in the courts. When one considers the low rate of disposition of cases and the length of time involved in the final resolution of a case, one begins to appreciate the massive delays in the delivery of justice in the society, particularly in the economy. As a result, in an economy anchored on private property, capitalism, and liberal external transactions, these massive delays hinder the country's progress.

On its face, the reason for the failure of the Judiciary in the Philippines to perform its basic function of delivery of justice is that it does not have the minimum necessary resources to complete its ranks, filling in the vacancies for judges. On the other hand, one may argue the same for other affiliated law enforcement and judicial agencies, such as the police, prosecutors and judicial personnel, thereby hampering the Judiciary from effectively enforcing justice. This inadequacy can very well be a major reason behind the rather low rate of disposition of cases and the arguably long delay in the resolution of cases. This clearly is a major problem with the rule of law in the Philippines.

In addition, the legal system may also be dealing with a wealth of laws, jurisprudence, and procedures that may also delay or confound the efficient delivery of justice. The Judiciary has shown that it can modify established policies and even contracts that have made investors uncertain about the general direction of economic policy. Examples include the re-bidding of

Manila Hotel that denied the original winning bidder, a Malaysian firm, the right to manage the enterprise¹⁶ and the ruling in 1997 that the law liberalizing the petroleum industry was unconstitutional.¹⁷ A more common practice is the issuance of temporary restraining orders that cause delays in various projects or in the implementation of existing contracts. These delays increase the cost of investment and create the climate of uncertainty that unsettle investors and creditors. Perhaps a situation of this sort requires a clarification of laws and jurisprudence that may have created conflicting decisions, interpretations, and rulings.

Legal procedures may also be contributing to the inefficiency in the delivery of justice. Examples include the practice of "forum shopping", the often liberal attitude towards motions for reconsideration, the lack of night courts and courts during weekends and holidays, and the requirement for decisions to be read in full.¹⁸ The requirement for decisions to be read in full, for instance, may take almost a whole day - especially, when one considers decisions that reach more than 100 pages. This implies that a substantial number of pending cases are not heard for one day.

However, there has been an encouraging growth in the number of non-governmental organizations that provide direct assistance and community development efforts for poor and vulnerable groups. A substantial number includes organizations of lawyers, law students, and paralegals. Moreover, several laws and international instruments passed during the years since the demise of the Marcos dictatorship were focused on the condition of the poor and vulnerable, such as the Comprehensive Agrarian Reform Law,¹⁹ Indigenous People's Rights Act,²⁰ and the Convention on the Rights of the Child. Indeed, there has been a more intense awareness of rights and obligations and of the importance of legal documentation among sectors, such as urban poor groups, labor groups, women and children's advocates, rural communities, and indigenous communities. Thus, this is a truly encouraging sign of greater citizen participation in the legal and judicial processes that are integral to a civil government and society — in contrast to the attraction that rebellion and subversion offered as means of redress during the 1970s and 1980s.

16. *Manila Prince Hotel v. Government Service Insurance System*, 267 SCRA 408 (1997).

17. *Tatad v. Secretary of Finance*, 281 SCRA 330 (1997).

18. Only decisions on criminal cases of Regional Trial Courts are read in full, as required by The Rules on Criminal Procedure Rule 120, Sec. 6 (2000).

19. R.A. No. 6657, as amended (1988).

20. R.A. No. 8371 (1997).

These, however, all the more underscore the necessity for the justice system to efficiently deliver on its functions. Many laws and jurisprudence might require codification and simplification, such as the need for a simplified tax code and stronger laws on bankruptcy and financial regulation. Procedures, also, need to be reviewed and possibly modified to encourage speedier resolution of cases in view of the fact that resources are insufficient. These involve the decrease of vacancies, the creation of new courts to deal with the case backlog, and a greater logistical support to prosecutors, police, and penal establishments.

VI. CONCLUSIONS

The rule of law is a powerful social mechanism to promote sustained economic growth and development. This is a serious consideration in the Philippines with its substantial rates of poverty and relatively inequitable distribution of income. With the rule of law, contracts can be enforced, disputes can be arbitrated speedily and impartially, and sanctions are imposed as a discouragement to irregularities and illegal activities. The rule of law is thus a necessary tool in creating the stable atmosphere that encourages consumption, investment, and credit. But poverty is more than the inadequacy of income. It is also the experience of social exclusion and vulnerability. Legal assistance to the poor and marginalized can, thus, also enhance their well-being.

But since the legal profession by itself is unproductive but socially necessary, it has to deliver justice efficiently, especially in a resource-poor economy. Available data and case studies suggest that the justice system of the Philippines is still inefficient. Nearly a third of judicial positions are vacant and the rate of case disposition is low. In spite of increasing numbers of assistance by the PAO, it is possible that a substantial number of disputes may not even be settled within the legal system itself. The average length of the final resolution of a case is also unknown.

Thus, to strengthen the rule of law, resources need to be devoted to the Judiciary, prosecution, police, and penal institutions. But, the laws and jurisprudence also need to be codified and simplified to minimize possible legal difficulties that may face investors, creditors, and households in their business and economic decisions and activities. Legal procedures may also need to be reviewed to expedite the resolution of cases.

In a country that highly regards the legal profession, this may well be the profession's own obligation to assist in the process of social and economic development.

— TABLES —

TABLE I

PRODUCTIVE AND UNPRODUCTIVE SECTORS (USA)

<u>PRODUCTIVE</u>	<u>UNPRODUCTIVE</u>
Agriculture	Wholesale and retail trade
Mining	Finance and insurance
Construction	Real estate rentals
Manufacturing	Business service
Transportation and warehousing	Government: defense and
Communications	general administration
Broadcasting	
Utilities	
Hotels, personal/repair service	
Research and development	
Automotive repairs	
Amusement	
Medical/educational service	
Non-profit institutions	
Federal government enterprises	
State/local government enterprises	
Allocated imports	
Business travel	
Scrap	
Government: non-defense, non-administration	
Household industry	

Source: WOLFF, EDWARD, GROWTH, ACCUMULATION AND UNPRODUCTIVE ACTIVITY: AN ANALYSIS OF POSTWAR US ECONOMY 43 (Cambridge: Cambridge University Press, 1987).

TABLE 2

SELECTED PRODUCTIVE AND UNPRODUCTIVE OCCUPATIONS (USA)

<u>PRODUCTIVE</u>	<u>UNPRODUCTIVE</u>
1) Professional and technical	1) Professional and technical
Architects	Accounting and auditors
Computer specialists	Lawyers and judges
Engineers	College deans and presidents
Farm management advisors	Personnel and labor relations workers
Foresters and conservationists	Religious workers
Home management advisors	Vocational counselors
Librarians, archivists, curators	Public relations personnel and publicity writers
Mathematical specialists	
Life and physical scientists	
Physicians, dentists, nurses, health specialists, health technicians	
Social scientists	
Social and recreation workers	
Teachers	
Engineering, science and other technicians	
Writers, artists, athletes, entertainers	
All other professional, technical and kindred workers (except unproductive)	
2) Clerical	2) Clerical
Vehicle dispatchers and starters	Bank tellers
Expeditors and production controllers	Billing clerks
Library attendants and assistants	Bookkeepers
Mail carriers and handlers	Cashiers

Office machine operators (except bookkeeping and billing machine operators)	Bill and account collectors
Proofreaders	Counter clerks
Medical secretaries	File clerks
Statistical clerks	Insurance adjusters, examiners, investigators
Teacher aides	Messengers and office boys
Telegraph and telephone operators	Meter readers
	Bookkeeping and billing machine operators
	Payroll and timekeeping clerks
	Postal clerks
	Real estate appraisers
	Receptionists, secretaries (except medical), stenographers, typists
	Shipping and receiving clerks
	Stock clerks and storekeepers
	Ticket, station, express agents
	Weighers
	All other clerical workers (except productive)
3) Craftsmen and kindred workers	3) Managers and administrators (except farm)
4) Operatives	4) Sales workers
5) Service workers, including firemen and excluding all other protective service workers	5) Protective service workers
6) Non-farm laborers	Guards and watchmen
7) Farmers and farm managers	Marshals and constables
8) Farm laborers and farm foremen	Policemen, detectives, sheriffs, bailiffs

Source: WOLFF, EDWARD, GROWTH, ACCUMULATION AND UNPRODUCTIVE ACTIVITY: AN ANALYSIS OF POSTWAR US ECONOMY 51-53 (Cambridge: Cambridge University Press, 1987).

TABLE 3
INCOME DISTRIBUTION OF FAMILIES IN THE PHILIPPINES (%)

DECILE GROUP	1961	1965	1971	1985	1988	1991	1994	1997
FIRST	1.5	1.1	1.2	2.0	2.0	1.8	1.9	1.7
SECOND	2.7	2.4	2.4	3.2	3.2	2.9	3.0	2.7
THIRD	3.4	3.5	3.5	4.1	4.1	3.7	3.9	3.4
FOURTH	4.5	4.6	4.6	5.0	5.0	4.6	4.9	4.3
FIFTH	5.5	5.7	5.9	6.0	6.0	5.6	6.0	5.3
SIXTH	6.6	7.1	7.4	7.3	7.3	6.9	7.4	6.7
SEVENTH	8.3	8.9	9.9	8.9	9.1	8.7	9.1	8.6
EIGHTH	11.0	11.2	11.1	11.4	11.6	11.3	11.8	11.4
NINTH	15.5	15.4	16.9	15.7	16.0	16.0	16.4	16.1
TENTH	41.0	40.1	37.1	36.4	35.8	38.6	35.5	39.7
GINI COEFFICIENT				0.447	0.445	0.468	0.451	0.496

Source: National Statistics Office for the income distribution data. For the Gini coefficients of 1985-91, Ponciano Intal and Ma. Cynthia Bantilan, *Understanding Poverty and Inequality in the Philippines: A Compendium of Policy and Methodological Researches* (Manila: NEDA 1994).

TABLE 4
GROWTH RATES OF GNP, RATES OF UNEMPLOYMENT AND UNDEREMPLOYMENT (%)

YEAR	GNP	GNP PER CAPITA	UNEMPLOYMENT	UNDEREMPLOYMENT
1973	9.76	6.77	4.9	11.8
1974	4.20	1.39	4.0	9.8
1975	4.88	2.51	3.9	11.2
1976	8.17	4.83	5.2	10.1
1977	5.79	3.01	5.1	18.9
1978	5.46	2.67	4.9	15.2
1979	6.38	3.55	a	a

1980	4.63	1.86	7.9	20.7
1981	3.24	0.70	8.8	22.8
1982	2.84	0.33	9.6	25.8
1983	1.44	-1.06	10.4	29.1
1984	-8.72	-10.92	10.4	30.5
1985	-7.06	-9.31	12.5	20.4
1986	4.15	1.68	11.8	23.0
1987	5.10	2.61	11.2	23.1
1988	7.16	4.67	8.3	23.3
1989	5.73	3.31	8.4	23.3
1990	4.53	2.19	8.1	22.1
1991	0.23	-1.99	9.0	22.1
1992	0.62	-1.54	8.6	19.9
1993	2.12	-0.38	8.9	21.4
1994	5.25	2.74	8.4	20.9
1995	4.88	2.43	8.4	19.8
1996	7.24	4.81	7.4	19.4
1997	5.3	2.97	7.9	20.8
1998	0.4	-1.63	10.1	21.8
1999	3.7	1.67	9.7	22.3
2000	4.5	2.47	11.1	21.9
2001	3.7	1.67	11.2	17.2

Source: National Statistics Office. Unemployment data for 1956-75 and 1980 onward use "past week" reference period, while for 1976-78 use "past quarter" reference period. Prior to 1987, underemployed was defined as the number of employed persons wanting additional work. From 1987 onwards, the concept was redefined to number of employed persons wanting more hours of work. No labor force survey was conducted in 1979.

TABLE 5

CLIENTELE ASSISTED BY THE PUBLIC ATTORNEY'S OFFICE

TYPE OF SERVICE	1995	1996	1997	1998	1999
INDIGENT PERSONS SERVED	1,975,467	3,477,753	2,826,640	2,857,599	3,988,029
JUDICIAL CASES HANDLED	289,893	325,974	344,509	354,874	355,651
QUASI-JUDICIAL CASES HANDLED	45,149	52,580	54,350	59,701	54,180
LIMITED SERVICES	453,401	501,564	546,406	582,317	624,223
NON-JUDICIAL SERVICES	816,983	2,201,561	1,444,638	1,408,498	2,482,220
OUTREACH ACTIVITIES	151,964	154,509	165,204	166,605	162,990
JAIL VISITATION PROGRAM	218,077	241,625	271,533	285,604	308,765

Source of Basic Data: PHILIPPINE STATISTICAL YEARBOOK 17 (2000).

TABLE 6

CASE OUTFLOW AND INFLOW AND PENDING CASES

YEAR	INFLOW	OUTFLOW	PENDING
1993	414,813	257,629	370,473
1994	469,586	308,785	460,510
1995	472,302	289,986	498,094
1996	553,899	289,225	629,729
1997	697,249	353,827	769,190
1998	607,246	346,816	795,892
1999	621,887	367,071	824,360
GROWTH RATE (%)	6.98	6.08	14.26

Source of Basic Data: PHILIPPINE STATISTICAL YEARBOOK 17-19 (2000).

TABLE 7

RATE OF COURT CASE DISPOSITION (IN PERCENT)

COURT	1993	1994	1995	1996	1997	1998	1999
TOTAL	0.62	0.66	0.61	0.52	0.51	0.57	0.59
SUPREME COURT	0.71	0.68	0.74	0.72	0.85	0.83	N.A.
COURT OF APPEALS	0.93	0.89	0.97	0.96	0.93	1.00	0.81
SANDIGANBAYAN	0.88	1.11	2.00	0.54	0.49	0.91	0.77
COURT OF TAX APPEALS	0.93	1.42	1.45	1.24	1.35	1.42	0.81
REGIONAL TRIAL COURT	0.59	0.87	0.88	0.77	0.74	0.73	0.69
METROPOLITAN TRIAL COURT	0.57	0.40	0.40	0.32	0.30	0.36	0.43
MUNICIPAL TRIAL COURT IN CITIES	0.69	0.56	0.49	0.44	0.48	0.57	0.59
MUNICIPAL TRIAL COURT	0.62	0.60	0.57	0.52	0.50	0.58	0.61
MUNICIPAL CIRCUIT TRIAL COURT	0.67	0.70	0.66	0.63	0.64	0.63	0.64
SHARI'A DISTRICT COURT	0.73	0.75	0.78	1.37	1.00	0.52	1.02
SHARI'A CIRCUIT COURT	1.13	0.94	0.91	0.75	0.83	0.98	0.83

Source: PHILIPPINE STATISTICAL YEARBOOK 17-19 (2000).

TABLE 8

NUMBER OF JUDGES BY TYPE OF COURT AND BY GENDER, 1999

COURT	MEN	WOMEN	INCUMBENTS	VACANCIES	TOTAL POSITIONS
TOTAL	1,224	279	1,503	711	2,214
SUPREME COURT	12	2	14	1	15
COURT OF APPEALS	41	10	51	-	51
SANDIGANBAYAN	11	3	14	1	15
COURT OF TAX APPEALS	3	-	3	-	3
REGIONAL TRIAL COURT	605	111	716	234	950
METROPOLITAN TRIAL COURT	37	30	67	15	82
MUNICIPAL TRIAL COURT IN CITIES	78	25	103	38	141
MUNICIPAL TRIAL COURT	209	60	269	156	425
MUNICIPAL CIRCUIT TRIAL COURT	207	38	245	231	476
SHARI'A DISTRICT COURT	2	-	2	3	5
SHARI'A CIRCUIT COURT	19	-	19	32	51

Source: PHILIPPINE STATISTICAL YEARBOOK (2000) 17-20.