

Presidential Immunity: A Local Superstition

Senator Renato V. Saguisag

Eminent Compañero Bryan Dennie Gabito Tiojanco wrote an interesting Commentary (“What lawyers don’t get about Duterte”,¹ in dispraise of critics of President Duterte, our fellow Bedan.

He has had the most bloodsoaked presidential start of 6,000 killed in one semester; the figure may hardly remind us of Hitler’s 6,000,000 Jews murdered in the Holocaust. His wet dream of six executions daily after the anti-poor eye-for-an-eye-tooth-for-a-tooth-rape-the-rapist death penalty returns should suit Hitler fans just fine.

Digong and his arguably puppet House will bring back the anti-poor death penalty, by public hanging at that. The elite pass the laws, which represent their bias. But, there may be hope in the Senate, where I once led the opposition to the anti-poor measure, in 1987-92.

Never so few

Only a handful of lawyers protested when martial law was inflicted in 1972. “What lawyers [didn’t] get about” Marcos, I didn’t. I was one uhugin who decided to join the few lawyers who chose the less travelled road (Frost), sailed against the wind (Kennedys), and marched to the beat of a different drummer (Thoreau), as it were. Some see things that are and ask why? I dream things that never were and ask - why not? (Shaw)

I did not give Macoy’s “constitutional authoritarianism” the benefit of the doubt. Neither can I, to a new police state which ended its first semester with a thousand predominantly poor people killed every month, indicating a corps of Pulis Patolas who could not prevent nor solve such extrajudicial killings. The numbers, a hard-to-please Palace Butcher wants enhanced by at least six judicial murders daily, hanged by the neck, publicly, till dead. Again, of the poor, going by the record.

For attorneys then, we should again recall, in particular “[t]he German lawyer [who] was . . . particularly prepared to accept as law anything that called itself by that name [and], was printed at government expense . . .”² “Hitler did not come to power by a violent revolution. . . . The exploitation of legal forms started cautiously and became bolder as power was consolidated. The first attacks on the established order were on ramparts which, if they were manned by anyone, were manned by lawyers and judges. These ramparts fell almost without a struggle.”³

What Mussolini did in 1925, Hitler, in 1933, and Macoy, in 1972, the people acquiesced in, maybe even cheered, and the lawyers and judges let the ramparts fall with hardly a struggle.

“The first thing we do, let’s kill all the lawyers,” Shakespeare said.⁴ Yes, anyone who

¹ Philippine Daily Inquirer, Jan. 5, 2017, p. A8, col. 2

² L. Fuller, *Positivism and Fidelity to Law - A Reply to Professor Hart*, 71 Harv. L. Rev. 630, 659 (1958).

³ *Id.*

⁴ *Henry VI*, Part II, Act IV, Scene II.

would take over would have to get rid of the lawyers. Thus, the Bard's praise, not dispraise, of the members of the profession, correctly understood.

Never again!

Thus Never-Again! for my part. I remain granitic and adamantine in my opposition to a bloodthirsty policy of a Prez who even leads in misusing the clenched-fist-human-rights-salute. If I am among the naive alluded to in “[w]hat lawyers don’t get about Duterte,” so be it. As in the case of Digong’s idol, Macoy.

I will just have to keep asking the foolish questions of the day, in the classroom, the courtroom, and the streets, in hopes of seeing a transformation, not transmogrification, to give our people a better life.

Point for the Prez

I am glad though that our fellow Bedan Prez tolerates our rallies (where I have not seen our fellow Bedan Veep Leni Robredo, contrary to what his misspeaking Bulong Brigade tells him), without our getting shot at, teargassed, water-cannoned, truncheoned, chased, and arrested. In this limited respect, may the Prez stay as sweet as he is.

I marched with his mother, Soledad, in Davao, after Ninoy was “salvaged,” a Pinoy contronym, in 1983.

A failed bloody policy

But, no place on earth has a bloody hardline policy against drugs succeeded. Not in Thailand, not in Mexico, not in Colombia. All drugs have been decriminalized in Portugal. Marijuana, in many jurisdictions.

Police out to extort here are known to raid with a member from the Bureau of PLANT Industry. One’s word against the police, good night. Regularity presumed heavily.

Other problems

Digong should not, in his maleficent monochromatic obsession, neglect other problems like traffic (with a reported 25% growth sales in vehicles, and 500,000 new vehicles to be sold in 2018), raising the pay not only of cops and soldiers, improving the state of our education, setting a good example in language, by widening his vocabulary, and enhancing family values, by marrying Partner Honeylet, etc.

What about better pay not only for cops and soldiers, cum health care and pensions? What programs does Digong have to improve working conditions in government, not only of cops and soldiers?

Operation Tokhang illegal and unconstitutional

Operation Tokhang is one manifestation of blatant human and constitutional rights abuse. The flagship is inquisitorial and represents the best thinking of centuries back. Not even Marcos, the criminal genius, had thought of anything Tokhang-like, correctly declared by the Senate as illegal.

It openly violates R.A. No. 7438, which says the police may not even “invite” anyone.

We in the Senate, in approving Sen. Bobby Tanada's laudable bill, knew how coercive and intimidating a police invite is; it cannot be refused. One's right not to speak is not honored and there's always some under-the-mango-tree shyster to allow his name to be misused as one provided by the cops. It facilitates the entry of scalawags for planting drugs.

The perils of visiting the U.S.

It is all right to improve ties with Russia and China but why needlessly offend the U.S., the U.N., Australia, and the European Union? No respect for human rights. None for human dignity. What happens to national honor?

Prez Digong, PNP chief Bato de la Rosa and Justice Secretary Vit Aguirre should be careful about visiting the U.S., where they have the Alien Tort Claim Act (ATCA). We should learn from *Filartiga v. Peña-Irala*,⁵ Some victim or surviving kin may have filed a tort case and jurisdiction can be acquired over a defendant on U.S. soil under the ATCA. Filartiga in particular should be studied by the administration lawyers. Fish is caught by its mouth.

Crimes against humanity

Digong and Bato say a lot of things that would support a theory that they are guilty of crimes against humanity. Tort is a transitory, the right to sue follows the wrongdoer.

See also the case of a top Ethiopian police official Kelbessa Negewe in Atlanta (found by an elevator passenger, a torture victim, when he was working as a bellhop when recognized.) and Guatemalan General Hector Gramajo in Cambridge (summoned while doing graduate work in Harvard).

Digs threatens to abolish Congress if it would not rubber-stamp what he wants; he would declare martial law if the Supreme Court asserts its independence. All on record. Not helpful either when sued under ATCA . Fascistic, some court might say.

Immunity a superstition

Presidential immunity is a superstition, a joke, not taken seriously in the U.S.. Kennedy, Nixon and Clinton were sued successfully as sitting Presidents. We are influenced by U.S. jurisprudence.

JFK (sued by the donkey-riding State Senator Hugh Lee Bailey), Richard Nixon (Ernest Fitzgerald) and Bill Clinton (Paula Jones) tried to use the immunity defense but the courts said immune for official acts, but not personal ones. All three had to settle, JFK paid \$17,500 to the State Senator; Nixon, \$142,000, to a whistle-blower, and Clinton, \$850,000, to Paula Flowers, a girlfriend.

Lawsuits have been filed against President Trump and we do not hear immunity being raised (at this writing). Immunity was not available to Marcos when sued by Joe Mari Velez and Bob Swift in Hawaii (Rod Domingo, Ruben Fruto and I continue to assist Bob; Joe Mari is gone).

Digong's public stance of honoring an established gross human rights violator as found by Honolulu and Seattle courts make it particularly imprudent for him to visit the U.S., which

⁵ 630 F. 2nd 876 (2nd Cir. 1980)

he needlessly lambastes.

The Ombudsman is having DAP (pork) probed. The prober will go where the evidence leads. If it shows PNoy's involvement in personal skullduggery, it will be have to be mentioned as part of the report. His supposed immunity is superstition.

But, it is doubtful if a Prez can be sued for official acts, given the plenitude of his powers and responsibilities. Perfection or infallibility is not required of any Prez, entitled and obligated as he is to make judgment calls.

If PNoy is charged with sexual harassment, such would not be part of a Prez's job description, leaving him with timely consent as one defense. But, not on pork.

Presidential immunity is a myth as to personal misdeeds but protects one for official acts, even mistakes, for which he answers only to his conscience and to history. Fallibility is not required of Presidents, nor of anyone, such as basketball coaches and megastars.

Pork not toxic per se

Stealing is never official and is at war with immunity.

Pork, not toxic per se, continues in the U.S.. We had pork in 1987-92. Not a single cent pass thru our office. We could only identify projects. I did so by pointing to a market in Cebu, another in Pangasinan, a library in Isabela, and an ambulance for Pasig. Also to cover the open canals in our Barangay, Palanan, where I was a star boarder of my late ever-loving wife, Dulce. With the canals covered, our kids could no longer catch "guppies" but I doubt I could and should be sued for my official act of pointing out a project, with not a single singkong dulingpassing through us.

It is not as if they all have halos in the executive and only horns in the legislative branch.

Most and least dangerous branches

Pork, not toxic per se, continues in the U.S., where courts can declare an act unconstitutional. However, its unelected Supreme Court cannot declare that the elected President or Congress has gravely abused its discretion.

It is there called the least dangerous branch. Here, our Supreme Court may be the most dangerous.

The jury may still be out though.