

# THE CURRENT STATE OF PHILIPPINE LEGAL EDUCATION IN THE PHILIPPINES

*(Disturbing the Status Quo)*

## I. INTRODUCTION

The Legal Education Summit of 2019 made stark the reality that excepting perhaps the matter of the Legal Education Board, there have been no new pivotal issues on Philippine Legal Education in at least the last 50 years. This is not to say there have been no changes meanwhile, but that the changes have largely revolved around methodology rather than philosophy, or around enhancing structures to make them achieve more efficiently the objectives for which they were designed in the first place, rather than radically creating new structures because the objectives have so changed or should be changed.

The future of the Legal Education Summit rests in the courage of the legal community to steer the state of mind that drives legal education, and set it free of the compulsive motivations that have forever been hooked on bar results, law school enrolment competition, private practice compensation, litigation extremism, political and power brokering, contract adventurism, honors and recognition, and, of course, celebrity status and glamour.

## II. THE STATUS OF LEGAL EDUCATION

To begin to assess the status of Philippine legal education today, let us describe what it is not.

It is not an adequate preparation for passing the bar exams. In the last twenty years, close to 75% on the average, which means 75 out of every hundred law graduates, would fail the bar, a large majority of them more than once. This is the current statistic, despite the truth that our curriculum is, at the core, inescapably bar-centric.

It is not sufficient training for students to be practice-ready upon graduation. In the workshops conducted by the Organizing Committee for the Legal Education Summit, a recurring lament from our trial judges was the inability of new bar passers to stand confidently before a court, much less argue before it, many of them locked in grammatical discord without evidence of organized thought process.

Its academic program is not deliberately designed, or taught, upon the truth that the law degree is not a trade or commercial enterprise but imbued with service, social responsibility, and the highest ethical standards. The curricular courses of Legal History or Legal Theory in which the philosophy of law is taught are generally considered minor subjects or glossed over as diversions from the core bar subjects.

Excepting a few units of Legal Ethics, the present day curriculum does not offer any other subject just for the sake of inculcating values such as morality above legal proficiency, or a sense of justice above professional success. We heard workshop participants describing our law students and practitioners as lacking in empathy for the poor and the disadvantaged.

Philippine Legal Education is today not without challenges on the issues of faculty hiring and retention, student selection processes, and inadequacy of research and other academic resources. Law school administrators bewail themselves as a “one-person management team,” working heroically without strong administrative staff and with logistics bordering on the meager, resulting quite naturally to the prejudice of law education.

Furthermore, what the Philippine Legal Education is not—it is not clear on the extent of the authority of the Legal Education Board to regulate, some say *interfere*, in the discharge of the academic and administrative responsibilities of law institutions.

### III. THE RECURRING ISSUES ON PHILIPPINE LEGAL EDUCATION

Close to 60 years ago in 1961, a Conference on Effective Legal Education was conducted at the UP College of Law. It will be recalled that the features of the Philippine legal education system as we know it today were formulated by Justice George A. Malcolm beginning in 1910, first in his capacity as the first regular Dean of the first English law school in the country, and second, as the recurring chairperson of the rules committee and bar examinations committee in the Supreme Court at that time.<sup>1</sup> The Conference was in celebration of the 50<sup>th</sup> anniversary of the founding of the UP College of Law, and thus, the 50<sup>th</sup> anniversary of legal education in the Philippines. In attendance were Supreme Court Chief Justice Ricardo Paras and Supreme Court Sitting and Retired Justices Malcolm, Barrera, Concepcion, Bautista, Labrador, JBL Reyes and Ozaeta. Lawyer Jose W. Diokno and FEU Law Dean Jovito Salonga were among the presenters that day.

As in 1961, the Legal Education Summit of 2019 was attended by the highest ranking jurists and the individuals most responsible for the justice system in this country. Present were Chief Justice Lucas P. Bersamin, and other Justices of the Supreme Court and the appellate courts, as well as trial court judges, deans and administrators of law schools, high profile practitioners, and students and teachers of the law.

The problem areas articulated in 1961 and in many other similar dialogues in the years following were still echoing during the workshops leading to the Summit. A cursory review of a number of writings and conference/workshop outputs spanning decades reveal that the issues in legal education have hardly mutated.<sup>2</sup> They are mostly indistinguishable in essence, motivation, longing, philosophy, and, in the urgency for a call to change, all waxed conscious of the dominant role of the lawyer in society as *the medium of expression of justice according to law*.<sup>3</sup>

#### A. On the Inadequacy of Practical Skills

Atty. Jose W. Diokno, lovingly Ka Pepe, said that professional men can be classified into 3 categories: *the class of the able, the class of the unable, and the class of the lamentable*.<sup>4</sup> And for a lawyer not to be classified as unable or lamentable, he must possess practical skills. The first skill he proposed was the *art of persuasion of another human being, whether it be a client or a judge*,<sup>5</sup> which skill of persuasion must entail the skill of finding, shifting, weighing and presenting the facts of the case. He went on to say that he found as failures of legal education that lawyers did not have practical skills, and to address this, he suggested, among others, that a teacher must teach the subject in a practical way (for example, by familiarizing students with

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<sup>1</sup> George A. Malcolm, *Formulation of the Philippine Legal System*, in PROCEEDINGS OF THE CONFERENCE ON EFFECTIVE LEGAL EDUCATION 1910-1917 14 (1961) [hereinafter “PROCEEDINGS”].

<sup>2</sup> See Bureau of Higher Education, Department of Education, Culture and Sports, *State of Legal Education in the Philippines* (1989).

<sup>3</sup> MERLIN M. MAGALLONA, *LEGAL EDUCATION: THE SEARCH FOR ITS STRATEGIC CENTER IN FILIPINO CULTURAL DEVELOPMENT* 25 (2016).

<sup>4</sup> Jose W. Diokno, *How to Teach Practical Skills in Law*, in PROCEEDINGS 57.

<sup>5</sup> *Id.* at 58.

forms, documents and public records); that legal research must be taught in the law library; and, that legal aid clinics be established similar to the internship programs in medical schools. <sup>6</sup>

In the workshops of the Instruction Cluster, a commonly shared experience was how both knowledge and skills were more effectively acquired when students are made to confront actual or simulated problems. There was a much felt need for the establishment of legal clinics where students can practice *on the ground* and become more practice ready.

## **B. On the Predictability of the Bar Exams**

In connection with the bar exams, Justice Malcolm recounted in 1961 that the “justices who conduct the bar examinations try to have a middle course, not one year extremely severe, not one year extremely lenient, but in the middle course with fair questions and fair grading on the same basis.”<sup>7</sup> A lifetime later in 2004, Justice VV Mendoza would have occasion to advocate “the calibration of the essay portion of the bar examinations to permit test standards to remain as constant as possible from one examination to the next, so that an examinee is neither rewarded nor penalized for having taken one examination rather than another.”<sup>8</sup>

Predictability requires a recognition that testing and measurements are a science, and that there is a validly scientific way to formulate and check examinations. In any case, it is making public the rules on the formulation of the bar questions so that they are knowable as to complexity, format, modality, length, coverage, metrics, and, most importantly, intent, or that which the exams seek to accomplish or measure. Predictability is at the core of the recommendations of the Bar Exam Cluster of the Summit.

## **C. On the Need to Strengthen Professional Ethics**

Still in 1961, talking about legal ethics, the late great and greatest civilist of his time Justice JBL Reyes asked to what extent legal ethics should be taught in order that the law students can acquire and develop “the requisite moral sense and toughness of fiber required of lawyers.”<sup>9</sup> Surely, he says, 36 hours of study in four years is not sufficient.<sup>10</sup>

I recall that in one of our workshops, one participant reverberated JBL, expressing bewilderment how the only subject that can actually lead to the disbarment of a lawyer, shamefully and forever, is given the least concern, both in the curriculum and in the bar exams. Justice Irene Cortes commented in 1985 that “law teachers who have pondered on the subject realize that legal ethics is appropriately a part of every course in the law curriculum and that every opportunity to bring it out should be taken.”<sup>11</sup> A strong recommendation to revise the curriculum to integrate Ethics into the entire thread of legal education was presented by the Curriculum Cluster during the Summit.

## **D. On the Curricular Design of the Pre-Law Course**

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<sup>6</sup> *Id.* at 60-62.

<sup>7</sup> Malcolm, *supra* note 1, at 17.

<sup>8</sup> Vicente V. Mendoza, *Sharing The Passion And Action Of Our Time*, in SPEECHES AND PAPERS 146 (2003). (Emphasis supplied.)

<sup>9</sup> Jose B.L. Reyes, *Content of Legal Education*, in PROCEEDINGS 35.

<sup>10</sup> *Id.* at 36.

<sup>11</sup> IRENE R. CORTES, ESSAYS ON LEGAL EDUCATION 15 (1994).

At the summit, it was proposed<sup>12</sup> that the law student should be *cultured* prior to entering law school proper, and that this *culture* should be provided by the pre-law or undergraduate course. Again, this issue is not of first impression.

Both Justices George Malcolm and JBL Reyes have long ago called attention to the integration of the undergraduate course with the law curriculum, such that the subjects taught in the first year of law proper be taught in advance in the senior year of the undergrad course, including government, legal research and legal history, and such other subjects “that are to form the cultural background for the law student’s subsequent labors: logic, history, sociology, economics and philosophy.”<sup>13</sup> Explaining the need for a cultural background preparatory to law education, JBL posed:

[...] how can a law student, for instance, appreciate the import of civil liberties – freedom of thought and speech, freedom of press and assembly, when he has not been stirred by the history of man’s struggle to be free. [...] We teach him the rules that regulate the procedures of the courts which his forebears have erected to arbitrate human disputes, but of what use are these unless he can evaluate and appraise these techniques in the light of man’s endless search for justice.<sup>14</sup>

## E. On Law Admission Test

Justice Ozaeta, on the other hand, proved himself a staunch proponent of law school admission test. He said that a student “without the requisite intelligence and mental skills cannot successfully fulfill his demanding role as adviser, negotiator, advocate, judge, arbitrator [...] administrator and executive [...] no matter how painstaking the teaching maybe, and no matter how many diplomas you may bestow upon him.”<sup>15</sup> He explained the features and objectives of the Law School Admission Test or LSAT that was developed in the United States in 1948, and how it had been successfully administered as a gauge of the *mental qualities needed for successful law study*<sup>16</sup> resulting in benefits to all stakeholders as a reliable predictor of success in law school.

The value of law admission tests as a predictor of performance in law school and in the bar exams is much debated, but not as much debated as the issue of whether the same can be imposed by the LEB as a requirement for all enrollees in all law schools.

## F. On Bar-centric Curriculum and Instruction

The observation of almost 60 years ago that law schools circled around the bar, as running water is to a drain, has regrettably changed little. Dean Jovito Salonga made this point clear: “Teaching methods, tools and materials, have to be devised to fit the student’s desire to pass the bar test [...] Too much publicity on bar results has somehow strengthened the old myth that the best school and the best teacher are those that can produce bar toppers [...] Memory skill has displaced incisive analysis and reflection.”<sup>17</sup>

We educators and administrators, are all guilty of this irresistible, fierce competition in the bar exams. And the nation could not help itself passing judgment on the quality of education of a law school

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<sup>12</sup> Abelardo T. Domondon, Concept Paper for Re-Engineering Legal Education and the Bar Exams (July 31, 2019) (presented at the Legal Education Summit).

<sup>13</sup> Malcolm, *supra* note 1, at 16; Reyes, *supra* note 9, at 37. (Emphasis supplied.)

<sup>14</sup> Reyes, *supra* note 9, at 37.

<sup>15</sup> Roman Ozaeta, *Selective Admission to Law Schools*, in PROCEEDINGS 26-27.

<sup>16</sup> *Id.* at 29.

<sup>17</sup> Jovito R. Salonga, *Legal Education in the Philippines: An Appraisal and a Forecast*, in PROCEEDINGS 65.

and of a law graduate on the basis of bar ranking. Somehow we could not help it, yet somehow we all deplore it.<sup>18</sup> We ask ourselves why we cannot teach what we want to teach - the art of argumentation, of respectful defiance and impeccable rebuttals, of academically slicing to pieces Supreme Court decisions (and sometimes the ponentes themselves), of documenting complex contractual relations called legal engineering. In one of our workshops, one faculty participant suggested rather strongly that we teach our students from their first year to answer law school exams in 1 or 2 sentences, all so that they may be prepared to take the exams 4 or more years after.

I think it was Justice Marvic Leonen who once said that what ruins legal education is the bar.

#### IV. THEORY VERSUS PRACTICE

##### A. Theory

Everyone is agreed that the law is what makes possible co-existence, cohesion and cooperation in a society, all rooted in the acceptance by such society that the law is righteous, moral, and just, both in its text and application. This explains why *rule of law* is highest in our hierarchy of values as a people. Lawyers, on the other hand, *have no reason to exist except to see to it that justice be done within the law.*<sup>19</sup> For indeed, *the lawyer is an interpreter of human conduct* who transmutes the relationships of the members of society into rights and duties, deciding on what is right and what is wrong according to law.<sup>20</sup> And it is in this context that the society has *a stake in the shaping of the lawyer's mind and character through legal education.*<sup>21</sup>

Accordingly, the articulators of legal philosophy are unanimous and unanimously emphatic that the crux of legal education is not vocationalism or technical expertise, but social awareness, morality, and a lifetime conviction that a lawyer is society's first and last bastion of militancy against oppression and misuse of law.

##### B. Practice

As is manifest however, the above canonical propositions have remained stuck in poignant discourse with little realization. They are certainly not reflected in the behavior of lawyers in general, whether in private practice (but mostly in private practice), the judiciary, or government service. They are not what is measured in the bar exams, nor do they stand out as the defining features of the law curriculum, law instruction, and law school administration. Otherwise, the recurring issues in Philippine legal education would not be so recurring. Otherwise, lawyers would not be the butt of the many dark and disdainful jokes we so laugh about, and which we know painfully quite well to have basis in fact. *What do you call a hundred lawyers tied together at the bottom of the sea?*

For sure, there are many lawyers and lawyers' groups dedicated to helping the poor and fighting for political and civil rights, and providing inspiration for students to dedicate themselves to socio-civic aspirations. We commend them. Still by and large, it is a lawyer's cornering of big corporate contracts, defending the *big abominable fish* (read: acceptance fee), and sporting Armani suits that are the more commonly lauded indicators of success in this jurisdiction. This is not an argument against material

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<sup>18</sup> *Id.*

<sup>19</sup> JORGE R. COQUIA, LEGAL PROFESSION: AN INTRODUCTION FOR LAW STUDENTS AND YOUNG LAWYERS OF THE 21<sup>ST</sup> CENTURY 164 (2<sup>nd</sup> ed. 2003), *citing* Roberto Concepcion, The Lawyer's Role in Society.

<sup>20</sup> Magallona, *supra* note 3, at 24.

<sup>21</sup> Magallona, *supra* note 3.

progress, for who would not want them. Still, the inquiry revolves around what values do we teach our students, and what values do they learn and live.

The truths we stand by are paradoxically not the facts of our life. And this is why the Legal Education Summit is at a most crucial crossroad, not in *Remodeling*, but in *Revolutionizing Legal Education in the Philippines*.

## V. LEGAL SUMMIT AS TOOL FOR SOCIAL CHANGE

From the perspective of truth, legal education is not the subject of change. Rather, legal education is the tool for change. It is not a process for making lawyers, but a process for building society. The question is what demands of society induced us to conduct the Legal Education Summit?

The function of the Legal Education Summit is best appreciated through the lens of the ordinary Filipino clamoring for a more just, a more humane, a more responsive, a less corrupt justice system of which lawyers are the human components and therefore its most effective and instant game changers. When we assess the status of legal education, it behooves us to assess the status of the entire social fabric that is affected by the kind of justice system the entire legal community is responsible for.

It is reported<sup>22</sup> that an estimated four billion people worldwide live outside the protection of the law, mostly because they are poor or marginalized within their societies. They are cheated, driven from their lands, preyed upon, lose their court battles, discriminated against, sexually harassed, and, essentially, excluded from opportunity and any chance at change. They are dragged to hopelessness and, as part of the reality of their life, simply surrender to injustice.

The kind of lawyers we are affect the kind of lives many others will live. The kind of lawyers we are dictates whether or not the kind of justice and service available to the *haves* are likewise available to the *have nots*.

### A. Policy Directions

Recasting legal education as a tool for change requires boldness and decisiveness in high policy issues. We need policy directions that are specific and achievable, borne of a vivid visualization of both the problems we wish to address and what it will take to resolve them. Needless to say, the problems of society is never the problem of just one sector, and legal education is only a piece of the big puzzle that is this country's dream of a just society.

Legal education must take a stand. On the universal yearning to provide the poor with access to justice, some questions are relevant.

Is the issue of access to justice a consequence of, among many other factors, the insufficient number of lawyers we have in the country? In Batanes, with a population of 17,246, there is zero registered IBP lawyer. In Sibugay Zamboanga, there is 1 lawyer to every 21,000 inhabitants, and In Makati City, there is 1 lawyer to every 150 residents.<sup>23</sup>

Should legal education then work towards the multiplication of lawyers? Is our philosophy of education *the more lawyers, the more access to justice*? Assuming the affirmative, what training is necessary, or

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<sup>22</sup> OECD REPORT (2016).

<sup>23</sup> Integrated Bar of the Philippines, Report (2019) (unpublished raw data).

sufficient, to produce more lawyers? Should we limit law education to a foundational training in core substantive and procedural law subjects, ensuring that law graduates are sufficiently competent to serve the greater number over the more common legal issues, but providing them with the skills needed to specialize, either on their own or under special rules requiring certification, at some later point in time?

In such situation, what sort of bar exams must they pass? Would a bar exam that is not graded, but only marked pass or fail along the lines of *equating* (not ranking) the examinees, be more compatible with verifying basic competencies? Will the removal of the competitiveness in bar grades augur more aggressive reforms in legal education? Of the type that puts premium to social awareness and ethical standards over personal status? No reform initiative in the Summit stands a chance unless the bar is first dismantled and reconstructed, hopefully for reasons grounded on philosophy rather than operational or programmatic conveniences.

If we retained the *status quo* in our bar examination methodology, law curriculum and instruction, we will most certainly produce more bar exam repeaters than lawyers. And it is unlikely we will address the problem of access to justice.

Other policy questions should provoke us.

Should we align our legal education with the Philippine Qualification Framework or the UN sustainable development goals? Should legal education take a stake in business, investment, technology, migration, cryptocurrency, blockchain and like unimaginables, certainly not because they are for the elite (because they are not), but because they are catalysts of social and economic development that, with good governance, impacts the lives of the marginalized.

Should we look forward to 25 years hence and armed with knowledge from research and developing trends, now break ground and lift borders to create new legal knowledge and venture into new frontiers of learning and living? <sup>24</sup>

Or do we want to keep the *status quo*? Sometimes I suspect there is resistance to legal education reform because we unconsciously reflect our experiences on the new generation of students, secretly refusing any departure from all the challenges we once collectively went through and hurdled.

Once it is clear where we, the legal community, wish and decide to be situated in the national and global context, we will quite naturally agree on what next to do with the bar exams, the legal curriculum and instruction, law school administration, and the issue of legal education regulation.

## **B. Political Will**

Still another truth is that nothing will be achieved without political will. Otherwise called *determination of the extreme kind*, also covetousness or obstinacy. Desire is good, but we need political will. Ideas are welcome, but we need political will.

When the smoke of the Legal Education Summit clears, my hope is that we did not come here just to make more bar toppers or lawyers more practice ready. Or we would have rallied for the *status quo*.

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<sup>24</sup> See Salonga, *supra* note 17, at 64.