

Edited but "undelivered" talk by Professor Jose C. Laureta during the latter's "(post) birthday celebration" on September 28, 2018

Dear fellow faculty members, good afternoon.

Since this "treat" is a birthday celebration, of which I am both the host and, as it were, the honoree besides, I anticipated that you expected me to give some kind of talk, this even though my birthday this year is, by now, more than a month past. To help you remember my birthday next year, or the next, and so on, *God willing*, just think of the late great President Manuel L. Quezon, who was born on my birthday, which is August 19. (Big deal!)

But even if you did not expect me to give such a talk, I would have imposed it on you anyway – as I am doing now – since you are literally my captive audience, my hapless and fortuneless captive audience.

Hopefully, the sumptuousness of the meal you are to be served (or are now being served) would somehow make up for the dreariness of my talk or speech.

I have taken the trouble of putting down my speech in writing to make it hopefully mercifully short. I could have delivered my talk extempore. But to have done so would tempt a tendency to ramble – which is a waste of everybody's time, mine included, and most of all, yours. I happen to believe that wasting the time of others is rude, or less derisively a discourtesy.

I resorted to writing my talk, not only as a discouragement against rambling, but because I have a message which, to me, is important among ourselves as faculty members or, if you will, teachers. And it is this: I would like to propose the "revival" of the practice which was called shortly after liberation (following the end of World War II) quaintly as "cross-fertilization". Please note, and note with sufficient attention: I said "cross-fertilization" not "cross-breeding" (although the latter, that is to say, "cross breeding," should be more exciting, or at least more titillating).

As a practice, cross fertilization aims to enhance and to foster personal contact among faculty members, preferably in an informal setting, so that they could engage in an exchange of ideas and insights

in the common pursuit of what the late Justice Oliver Wendell Holmes of the American Supreme Court once called "intellectual ambition" – which is or should be the aspiration of all academics.

Of course, as we all know, as faculty members we have a dual function, namely, first, to teach, and next, what is now more popularly known as research and scholarship. To which the late UP Law Professor (as he then was, and later on a Justice, and still later on the Chief Justice of the Philippines), namely, Enrique M. Fernando, demurred. As far as Professor Fernando was concerned, the chief, indeed, the *only* function of a law professor, as of all academics, is to learn. Else what can a professor possible teach. This function, *i.e.* "to learn," which is or should be continuous and unending, should highlight the importance of research and scholarship.

Perhaps, the use of the word "revival" in respect of the practice of cross-fertilization is inappropriate. Perhaps, "reinvigoration" should be more apt. This is because through the recent, patient and persistent efforts of Professors Dante Gatmaytan and Rommel Casis (or Rommel and Dante), specifically in the area of research and scholarship, this practice of sharing ideas and insights among faculty members have been kept alive, even if such efforts of Dante and Rommel were exerted unobtrusively and without fan fare of any sort.

Such efforts of Dante and Rommel (or Rommel and Dante) were/are persistent (even if unobtrusive) because such efforts are also self-driven. Which leads me to suspect that in each, *i.e.*, Dante and Rommel, there is "a book that itches and aches to be written." And when finally written, in the near – or hopefully, not in the not-so-far – future, the book will be, in the words of the late Sir Isaiah Berlin of Oxford, "a commanding work," which "in the realm of thought transforms paradoxes into platitudes, and vice-versa." (By the way, Sir Isaiah was knighted into the Order of the British Empire for his superb achievements as a political theorist, whose work could rival those of the "immortal" Thomas Hobbes himself, also of Oxford, not Cambridge. Oxford is, as it were, the "home" of *political theory*, despite Sir Edward Coke, who was a Cambridge man.)

Incidentally, it is worth noting that research and scholarship have always been fostered and encouraged by the school, principally among *full-time faculty members*. Of the *immediate* predecessors of our intrepid duo of Dante and Rommel (or Rommel and Dante), one can easily recall such names as Professors Pacifico Agabin, Merlin Magallona and Raul Pangalangan – who were, *incidentally*, also deans successively of the College of Law. Or the name of that unique, one-of-a-kind, one-man-writing machine, namely, the late Professor Perfecto V. Fernandez (or “Pecto” to his friends and intimates, myself included), whose works on law are definitely philosophy besides. For Pecto was after all a thoroughgoing *Humean*, an avid disciple of the legendary arch empiricist, David Hume, and was so up to his unfortunate demise. Pecto also was a logical positivist, in the mold of the equally legendary Bertrand Russell himself.

In the interchange of ideas and insights fostered by personal contacts among faculty members, their thoughts could stray in the direction of the “central mystery” of our subject, the Law, which resolves itself into the persistent, but deceptively simple and seemingly innocent-looking question: “What is law”. Or more abstrusely and more “philosophically,” as Oxford’s Professor of Jurisprudence HLA Hart once noted: “What is the nature or the essence of law?”

Is law’s “*nature*” or “*essence*” “*coercion*?” Or more bluntly, “physical force,” as Italy’s jurist-statesman Norbert Bobbio notes. You better believe it, especially if Law is incarnated in, and personified by the former PNP Chief Bato Dela Rosa. As was once observed by Justice Holmes, rather starkly but nonetheless felicitously as always: “There is much law at the end of a policeman’s night stick”. Or in Chief Bato’s 45-caliber pistol.

On the other hand: “Is Law *morality* itself?” as the late Harvard Law School Professor Lon L. Fuller, has always insisted. And so too, our own beloved Dean, the late Dr. Jorge C. Bocobo – who will, or should be the College of Law’s “Dean” for always, perhaps more so than the school’s first, the late Justice George A. Malcolm himself. Like Professor Fuller, Dean Bocobo was an avid exponent of *natural law*. And as Chairman of the (Roxas) Code Commission, “*wrote*” into the Civil Code such undoubted, immutable and “*universalizable*” (although paradoxically controversial) *natural law* principles, such as Article 10, which made as parts of the Philippine legal system such values as “*right*” and “*justice*”.

As a concept, "justice is a distinct segment of morality" – this, coming as it does from Professor Hart himself, who is probably the most sophisticated exponent of *legal positivism* (which is different from *logical positivism*) which is dramatically opposed to *natural law*. By the way, by common consent, Hart is the most preeminent legal philosopher of the 20th century, a "crown" or a distinction which he shares (or should share) with the legendary, if controversial Austrian jurist Hart Kelsen, who was as thoroughgoing a *legal positivist* as Hart himself. Among Kelsen's local disciples are our own former Dean Vicente Sinco, and the much loved Professor Bievenido Ambion, now long deceased (who was much loved *despite* or *because* of his eccentricities).

As a virtue for the assessment of law and legal arrangements, Professor Hart once rhapsodized about justice, as follows: "(I)t is . . . a virtue specifically appropriate to law and the most legal of the virtues." (See also such *natural law* principles embodied, through the efforts of Dean Bocobo, in Chapter 2, Human Relations, Arts. 19 up to 36, and Book II, Title III, Natural Obligations, Arts. 1423 up to 1457, Civil Code).

Surely, Law should be so. That is to say: that Law is *morality* itself, particularly in the Law's "highest and noblest moments of self-expression."

This was the message of the mythical Antigone, who lived in the Classical Age, more than 3,000 years ago in ancient Greece, in the Kingdom of Thebes. When confronted with an edict of King Creon of Thebes, which Antigone thought was iniquitous and wicked, the latter decided – boldly and heroically, but alas, tragically – to defy the King's edict, on the ground that such an edict, or law, cannot be, or was not "law" at all. By paying the ultimate sacrifice for such a cause – "willingly, unhesitatingly, with cheer and even joy" – Antigone sanctified *the conception of law as morality*.

In the middle ages, when reason slumbered for more than 200 years during the Dark Ages, Thomas Aquinas (or Saint Thomas, as he was later to become by Papal edict), in some dark and dank monastery, adopted in his masterwork, *Summa Theological*, the *formulae*: "That an unjust law is not law." as the *canon* for the natural law school which he, Saint Thomas, founded, which is as vigorous *now* as *then*, at least for the Dominicans, but not for the "heretical" Jesuits – who, in the view of the Dominicans, certainly cannot be Catholics, and whose credentials as Christians is at best dubious, at worse subject to substantial doubt.

How, it may be asked, can a law, no matter how wicked and unjust, not be law? This obviously is a contradiction, or at least a paradox. These and similar other paradoxes of the law, I expect Dante and Rommel (or Rommel and Dante) to unravel for us in their commanding work, which should transform such paradoxes into platitudes, and vice versa.

Before I close, I should like to contribute my bit to this process of cross-fertilization, or this matter for us as faculty members, of learning from each other. For this purpose I like to share with you *not* my own ideas and insights, but those of my favorite Yale Law School Professor, the late and much lamented Professor Grant Gilmore, who was much loved for his thoughtfulness and caring, as for his grace and urbanity. As an academic, Professor Gilmore is, by common consent, one of the most outstanding legal scholars of the United States, before and since, and will be remembered for as long as scholarship, *for its own sake*, is celebrated and honored.

To whet your appetite for Professor Gilmore's work I should like to quote a passage from his famous Storrs Lecture:

Law reflects but in no sense determines the moral worth of a society. The values of a reasonably just society will reflect themselves in a reasonably just law. The better the society, the less law there will be. *In Heaven there will be no law, and the lion will lie down with the lamb.* The values of an unjust society will reflect themselves in an unjust law. The worse the society, the more law there will be. *In Hell there will be nothing but law, and due process will be meticulously observed.* (Emphasis supplied)

As teachers of law, I submit that this is a thought which should give us considerable and thoughtful pause.

Three of Gilmore's articles will be distributed among the attendees. A reading of these works should yield as much of *learning* as of *pleasure and passion*. For, as noted by Stanford Law School Professor Herbert L. Packer, of Gilmore's rhetorical elegance:

. . . Grant Gilmore exhibits a lucidity and grace in . . . his works that stands as a reproach to those who think that style is somehow separate from substance. The mind at work in these pages is fastidious, ironic, aristocratic. These are *not* qualities that are much in vogue today; they are qualities that are worth celebrating when brought . . . to the solution of significant legal and intellectual problems.

I should like to close by thanking you, my fellow teachers, most sincerely for your solicitude for joining me as I mark a milestone of my life, my having reached the ripe old age of 87, relatively, as it were, unscathed.

Thank you as well for your infinite patience and your unfailing courtesy.

Again, good afternoon, one and all.