

Marvic Leonen on fundamental freedoms

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Conversation between Peter Greste and Associate Justice of the Supreme Court Marvic Leonen

Thank you for the privilege to address your forum.

At the onset and for reasons that will be clear soon, allow me to clarify my standpoint.

My legal career before I was appointed to the judiciary mostly entailed working with groups who are mostly labelled as rural, indigenous or peasant. I have also worked with families of the disappeared and victims of human rights violations. I have made representations at various levels of courts including the Supreme Court as well as in various administrative bodies and in the halls of Congress.

For more than twenty years, I travelled to where they lived, literally traversing mountains in this country, crossing rivers, sleeping in huts or in shanties. Occasionally, we would find ways to find the logistics for them to be present in legal forums: in the halls of the Senate or Congress or the Department of Environment and Natural Resources, the Department of Agrarian Reform, and, sometimes, the Office of the President. They would appear before our trial courts. On several occasions, they were with me at the session hall as we argued their cases.

In my younger days, I thought that part of my vocation was to seek to be able to speak for them in legal and policy forums. I was to give them a voice translated into the language of the law ensuring that their rights are asserted and protected and monitoring that their interests are represented as new laws and regulations are drafted.

Communities, however, are complicated. They are not the ordinary clients of lawyers. They are unlike individuals, unlike cooperatives, unlike corporations.

Communities are multi-vocal. There are several groups, identities and sectors which speak from different standpoints even as they inherently reside in their common spaces. They always tend to be dynamic as there are always the interplay of the perspective, strategy and power within the community as well as the various sectors and groups that exist among them. They are always multi-dimensional since their cultures go through levels and phases of conflict and accommodation.

In every group or community, power makes its mark. Those who have it have their own complex bases of power. The interplay of power often defines the elite. They sustain and reflect the status quo. Culture contains, therefore, the powerful hegemonic view. The hegemonic view, however, is not entirely monolithic and not absolutely dominant. Culture will have its own versions of its own subversive elements. Vladimir Ilyich Lenin once remarked that “a new society is always born in the womb of an old one.”

What I understand with working with indigenous and peasant communities was that I could never really speak for them. I can only speak about them. When I speak about them, I relay a narrative of how I understood their lives and interests. Like every narrative, even if told with good intentions, it was never from a standpoint that was truly theirs. Gayatri Spivak, a celebrated historian, once asked through her essay: “Can the Sub-altern really Speak?” For many who have understood the complexity of community and society, the answer is indicatively obvious.

Even if we strive to be accurate, our narratives are never complete – no matter how collective we are. They are, and should always be, vulnerable and open to contestation. Words are the currency of narratives and their challenges. Words are colorful. They describe as well as perform. Open, robust and uninhibited discussion is rarely soothing. Democratic deliberation is not a guarantee of comfort. Given the inequality in our society and the stakes of those who benefit from the status quo: democratic deliberation is often brusque.

I refer not only to the reaction of those in government to your speech but, likewise, those from fellow citizens whether they themselves are organized by powerful interests.

Rational democratic and egalitarian discussion, before they happen, therefore go through certain phases and reincarnations. They evolve and are reformed over and over again.

Many of you in the audience, however, know how it is to be the subject of the discomfort of the powerful, whether this be public officials or dominant economic players in our society. Today, this can also come from those who are what I call the culturally dominant. Roughly this includes the cyber bullies who use their popular status for nefarious ends.

By now you know that social media is generally crowd sourced speech of the owners of the platform. Internet companies and their forums are not entirely neutral conduits of content. They are businesses that wish to thrive and who have responsibilities to their stockholders. The space you use is not for free. You pay it dearly: at minimum with your privacy; at maximum with your addiction.

Social media grows because of our patronage. We empower it with every post, every like, every tweet, every retweet. It has the ability to inform. More dangerously, it also has the ability to erase attention, create digital amnesia and dull critical thinking. We have to be aware of all these and guard against them. The welfare of our society depends on that.

During the conversation with Peter [Greste], I have briefly outlined the constitutional architecture that protects your right to expression. The doctrines that have evolved are mostly to protect the rights to express vis-a-vis government and to limit the ability of government to stifle dissent. There are many occasions the court has played the role of checking this exercises of power while clarifying the various nuances of the Constitutional provisions on freedom of expression. There are, however, many more cases where it took some time – or is taking some time – for the Court to acknowledge that there may be reasons to revisit judicial thinking on some of the strategies that have been used in the past.



Democracy Forum at the Ateneo Law School in Makati on February 12, 2018. Photo by LeAnne Jazul/Rappler

Laws are powerful performative normative statements that can be used in order to expose illegality and, at times, illegitimacy. However, these have the possibility to become inert if not invoked or weakened when the institutions that ensure their clarity fail to do so. I refer to judicial decisions which may not be entirely appropriate to the times. Your role therefore is to use your Constitutional rights and invoke them. Your role is also to use your fundamental freedoms to express criticism of court decisions which you may disagree with. You are welcome to do so. Hopefully, this will lead to some interesting rethinking and the evolution of past doctrines.

Freedom of expression, however, is not only about our capability to express. It also should include questions of equality in the public forum.

There are greater – more social ways – that deliberative speech from those who needs them most are being stifled. Already the poor, marginalized, and oppressed do not have the resources to be able to speak as clearly, as legibly and as loudly as many of us. Many of those I have encountered in my public interest practice do not inhabit my groups or your groups in social media. Few of them can call the attention of journalists. Many of them suffer in continued silence. Whole swaths of our society remain misrepresented, misunderstood and – on a daily basis – rendered invisible by the speech that now dominate the airwaves.

Their daily concerns and their ability to be able to meet the requirements of daily existence are drowned by the scandals of the elite, the diverted attention to the trivialities of the smart phone and social media, the banality (or as someone in your earlier panel intimated the lack of sexiness) of their stories. Yet these are sometimes true stories whose accuracy is not diminished by the absence of attention. These are true stories of those who do not have the ability to speak as significantly as other. True stories that do not have drama.

In other words, the deliberations in the institutions that matter – the academe, the media, the public offices, and, perhaps, even social media – may be so involved that it detaches itself from the underlying reality that have made many of our problems possible. These are poverty, disempowerment, inequality in a society that valorizes individualism, wealth and the quick fix. No wonder there is so much disenchantment not only with our leaders but with how our society is organized. No wonder that many peoples, including our own, will look for the false messiah in the form of a demagogue or a populist or called by the name preferred by Albert Camus, Thomas Mann, and more recently, Rob Reimer: the fascist.

I do not refer to anyone. But the danger is there.

Demagogues can arise out of legal frames that are formally democratic. Usually, they take advantage of the exclusion and frustration of the majority. They offer quick fixes and represent themselves sharply from the more conscientious leaders who know that the major problems require patience, strategy and participative resources that take time. They prey on the unenlightened and, therefore, they arise when the major institutions that should deliberate on truths are weak: education, media and the courts.

The demagogue thrives on dichotomies: the “us” versus “they” syndrome. They also thrive on instinct, passion and the visual. In psychology’s parlance: system one thinking rather than system two. I think that was the point of the last panel. They demonize their enemies to stoke passion amongst their followers while, at the same time, immunizing them from their humanity. The demagogue that will thrive on the dissatisfaction of the many. They will present no viable ideology and, therefore, no consistent truth. He or she will be charismatic, anti-politician and anti-intellectual. Propaganda, in the style of Goebbels and Bernays, will be very important for him or her. He or she will call it: PR.

The antidote to a fascist or a demagogue arising cannot be symptomatic. It requires a systemic, consistent and patient effort to strengthen our people’s critical thinking. It requires that those who have the material luxury to be critical, vocal and organized in order to be able to assist those whose whole day effort is deployed only to survive.. This requires patience which many of the present generation may not have today. It will mostly lead to discomfort. It will mostly lead to dissent.

In times of my own discomfort, I recall the many engagements that I have had with people who are not as fortunate. I recall the conversations I have shared and how I know that I am privileged. That is my surest way to tell myself two things that many in our current generation may have forgotten:

First, persevere. Be patient. The most meaningful and authentic things in this life always come with a lot of patience and effort. There is no quick fix.

Second, it is not always about you. I am not the anti-selfie but the concept of selfie maybe is a fitting anti-meme for something that what we now really need: to think about others.

Perhaps if we all learn to live with this, then we will be able to guarantee fundamental freedoms. Not only ours, but also those who are now poor, those who are now marginalized, those who suffer from the tremendous inequality that exist in our times, those who are invisible.

Thank you.

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