

# COGITANT LEGALIS

ATENEO JOURNAL OF LAW, POLICY, AND ADVOCACY

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ATENEUM DE MANILA  
UNIVERSITY



Ateneo de Zamboanga  
University



Xavier University  
ATENEUM DE CAGAYAN



ATENEUM DE DAVAO  
UNIVERSITY



ATENEUM DE NAGA  
UNIVERSITY

## FOREWORD

### *Cogitant Legalis. Ad Maiorem Dei Gloriam*

We all know the story quite well.

It was 500 years ago, in May 20 of 1521, at the Battle of Pamplona, Spain, when the leg — and the ego — of a vainglorious Ignacio de Loyola were fractured by the crippling impact of a hostile cannonball. Debilitated and frustrated, Ignacio was forced to retreat to his home to physically recover and recuperate in isolation.

It was during this period of tedium and immobility that he pored over reading materials on the life of Christ and of the saints that was consequential to his spiritual awakening, conversion, and the commencement and dogged pursuit of a lifelong mission dedicated to the service of others for the greater glory of God. Integral was his founding of the Society of Jesus.

The lasting effects of that cannonball moment of Ignacio, canonized into sainthood in March of 1622, has been far-reaching in time and space. Five hundred years hence, we find ourselves engaged in, and committed to, individually carrying out the work of San Ignacio through each of the law schools of the five Philippine Jesuit Universities: Ateneo de Davao, Ateneo de Manila, Ateneo de Naga, Ateneo de Zamboanga, and Xavier University – Ateneo de Cagayan.

Recognizing our common roots, the unity of our purpose and our shared mission as educators in law, committed equally to scholastic excellence and the responsible pursuit of our profession, the five Philippine Jesuit law schools have come together, in the spirit that graced Ignacio and his companions, on the quincentenary of that cannonball moment, to collaborate in siring this special law journal: *Cogitant Legalis* — *Ateneo Journal of Law, Policy, and Advocacy*.

The name and subtitle of this special journal captures our vocation as law schools — to teach our young to think legally. That is to say, to know the law as well as appreciate its role in an organized society, to learn to use and apply law to protect the common good and achieve the ends of justice, and to promote and defend the rule of law.

This journal purposefully assembles contributions from each of our law schools consisting in selected scholastic commentaries and think pieces that touch upon and dive deep into matters of consequence in the field of law. These include writings on themes and topics directly relevant to our institutional and individual calling as Ignatian law schools,

lawyers, and educators such as discourses on issues impacting persons and communities in the periphery, whose needs and dignity we are summoned to pay special attention to.

Consider these samplings:

Xavier University – Ateneo de Cagayan College of Law’s Fr. Ismael Jose III V. Chan-Gonzaga, S.J., J.D. looks into a critical issue of international law affecting refugee rights as he examines, and takes a position on, the practice by refugee host states of effectively outsourcing Refugee Convention commitments to provide asylum to displaced refugees with the building of offshore detention and processing camps for refugees in other countries.

Spotlighting the war on the illegal drug trade, Ateneo de Zamboanga University College of Law student Rey David M. Lim peruses problem areas on the legal processes such as capture and arrest, planting of evidence, excessive force, detention, plea bargaining, and prosecution and reflects on how Atenean lawyers can be agents of change and advocates of justice in service to defendants in drug cases who cannot afford legal counsel.

Examining how mediators can reconcile the science of neuro-linguistic programming and the Ignatian spiritual exercise of discernment in leading parties to arrive at a voluntary resolution of their disputes through mediation is the focus of Ateneo de Naga University College of Law’s Vergenee Marree A. Abrenica-Orillosa.

Patricia Anne D. Sta. Maria of the Ateneo de Manila University School of Law highlights inadequacies of the Philippine Disaster Risk Reduction and Management Act and corruption in implementation as systemic roadblocks to providing genuine relief to the marginalized sectors who often end up disproportionately suffering on account of a fragile natural disaster relief system.

Ateneo de Davao University College of Law’s Romeo T. Cabarde, Jr. probes into the Philippine Mining Act with focus on its apparent shortcomings in comprehensively assuring that the benefits of natural resources are primarily enjoyed by the Filipino people, especially the poor and the impoverished local mining communities.

This collaborative journal contains these and more.

We trust that you find the carefully curated contents of *Cogitant Legalis* insightful and the camaraderie that has caused it to be, inspiring.

Who knows if reading through *Cogitant Legalis* in this time of pandemic-induced immobility might lead you too, in respect of the law, to an awakening, a conversion, and a commencement and dogged pursuit of a lifelong mission dedicated to the service of others for the greater glory of God.

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Manuel P. Quibod  
Dean  
College of Law  
Ateneo de Davao University  
*Fortes in Fide*

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*Pro Deo et Patria*

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*Veritas Liberabit Vos*

# UNDERSTANDING SEX, GENDER, AND GENDER IDENTITY IN THE CONTEXT OF INTERNATIONAL HUMAN RIGHTS LAW AND EUROPEAN LAW

*Anne Maureen B. Manigbas\**

The principles of equality and non-discrimination are foundational hallmarks upon which international human rights law has been built and developed. Through the past few decades, these particular principles have been enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and more international covenants. Today, they continue to be foundational to the development of discourse on the protection of individuals against discrimination based on sex, gender, and gender identity.

In this Article, the Author seeks to compare the perception of sex, gender, and gender identity in the contexts of international human rights law and European law. While both international human rights law and European law have similar frameworks, it is apparent that European law has not incorporated developments found in international human rights law, such as the inclusion of non-discrimination on the basis of gender identity within the scope of equal treatment and the evolving understanding of the infringements of civil liberties on the basis of sexual orientation, gender identity, and gender expression.

Analyzing these differences, the Author posits that the broader understanding of discrimination found in international human rights law should be reflected in European law as well. Such can be achieved through the Court of Justice of the European Union incorporating these developments in its interpretation of anti-discrimination laws and policy reform within European laws.

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# THE CATASTROPHE OF CORRUPTION: EXAMINING THE INTERSECTIONS OF THE PHILIPPINES' DISASTER RESPONSE FRAMEWORK WITH CORRUPTION, VULNERABILITY, AND DEVELOPMENT

*Patricia Anne D. Sta. Maria\**

The Philippines has long been engaged in a struggle to produce effective disaster relief systems. Earlier legislative efforts have proven to be ineffective in establishing a working system for disaster relief. These ineffective first attempts at relief legislation have led to staunch criticism directed at the government and the level of preparedness it had for the effects of natural disasters. In response, the Philippine Congress passed Republic Act No. 10121, otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010 (DRRM), to address concerns. This Act signaled a shift in the government's disaster response philosophy. From being limited to immediate relief, the DRRM Act sought to add resilience building and risk reduction to its mandate.

This Article examines the significant deficiencies in the government's disaster relief system and the lapse in internalizing the more progressive positions embodied by the DRRM Act. The Author also delves into the question of how the country must account for corruption to shape a rule of law which establishes an effective regime for addressing natural disasters. Both corruption and natural disasters are serious issues in the Philippines as they cause destruction and significantly hinder development and progress. Marginalized sectors often bear the brunt, to a disproportionate degree, of their effects.

The passing of the DRRM Act is one step in the long process of developing a fully comprehensive, responsive, and effective system of disaster response. Disaster response itself is but one component in a larger push for prosperity and development in the Philippines — one that is constantly hampered by corruption and its enduring negative effects. The fight for better disaster systems is therefore also a fight against corruption and a fight for larger progress in the country.

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# PHILIPPINE MINING POLICY: A CRITIQUE

*Romeo T. Cabarde, Jr.\**

Despite the role that the mineral industry plays in national industrialization, the current policy on mining in the Philippines has caused local harm, displaced indigenous communities, and worsened conditions of poverty. The export-oriented character of the local mining industry results in the failure to maximize the benefits of natural resources for the Filipino people, especially the poor. In fact, mining communities are often among, if not the most, impoverished communities in the Philippines.

Hence, this Article seeks to serve as a guide in understanding the legal context behind the Philippine mineral industry and the alternative policy framework in a perspective that would fully guarantee the exploration, management, and utilization of natural and mineral resources that is in accordance with the harmony and rhythm of nature and that is most beneficial for the Filipino people. The Author examines Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995, and notes limitations with regard to the law's fiscal regime, general framework, and provisions on community participation, among others. The Author discusses policies in past administrations from the year 1986 which were directed towards liberalizing the extractive industry, and extensively analyzes the shortcomings of the Philippine Mining Act of 1995 — particularly how such law allowed a shift of government policy from tolerance to an aggressive promotion of large-scale mining, which irrationally exploited our natural resources, retarded our national growth, and compromised the lives of the Filipino people.

Considering the Philippines' geographic and topographic vulnerabilities, defense of the environment and ecology must take precedence over mineral extraction. The Author recommends (a) the revocation of Executive Order No. 130, Series of 2021, which lifted the moratorium on mining applications; (b) the reinstatement of Executive Order No. 79, Series of 2012; (c) the repeal of the Philippine Mining Act of 1995; and (d) the enactment of an alternative minerals management law.

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# HOW IGNATIAN DISCERNMENT AND NEURO-LINGUISTIC PROGRAMMING TECHNIQUES HELP MEDIATORS RESOLVE CONFLICT

*Vergene Marree A. Abrenica-Orillosa\**

With the pressing trend of resolving disputes outside of court, there comes a serious need to educate people on the necessary skills to ensure that the conduct of mediation is purposive and successful. This Article discusses the science of neuro-linguistic programming (NLP) and the Ignatian spiritual exercise of discernment. The Author endeavors to integrate these in the conduct of mediation, the value of which has been recently emphasized in the international sphere through the Singapore Convention. The Author emphasizes how today, the mediator is placed in a position of legal power and influence to settle disputes, rather than a position of a mere transcriber or bystander.

Similarly, under Philippine law, the mediator assumes a proactive role in resolving conflicts. With this, mediators need tools to enable them to perform their roles well and to become deliberate in leading parties during the mediation process, without necessarily imposing a solution upon them. Hence, the Author suggests the adoption of techniques found in other disciplines, such as NLP techniques and Ignatian discernment. The challenge for the mediator in the former is leading the parties to speak the same language and to incorporate the same mind. On the other hand, the goal in Ignatian Spiritual Exercises is to bring the individual to a place of detachment by quieting their thoughts and emotions. Through these methods, the mediator assists the parties towards mindfulness and awareness of the many other possibilities *beyond* their own positions.

Accordingly, the Author comprehensively discusses prevailing studies and jurisprudence on the use of NLP. Opposing criticisms on NLP techniques are weighed against its advantages. Ultimately, the Author suggests the solution of utilizing these two techniques together in order to maximize the function of a mediator, and to promote the use of mediation as a mainstream approach rather than as a mere alternative to dispute resolution.

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# **MEDIATION: A STRONGHOLD OF THE LEGAL PROFESSION THROUGH THE LENS OF IGNATIAN SPIRITUALITY**

*Ma. Carmela Francia T. Peña\**

Mediation is an open process of negotiation in the resolution of disputes. It involves a neutral third party, the mediator, who is well-versed in negotiations and allows those involved in a dispute a wide latitude on how they can arrive at a solution that would benefit one another. Mediation, as a method of dispute resolution, is in stark contrast to the traditional way of lawyering where one is championing a client's cause. The Article discusses the difference of mediation from traditional lawyering and the significant changes in how mediation is seen and practiced by the legal profession.

The Author notes that representing a client in mediation is a far cry from the usual role a lawyer in adversarial proceedings. Lawyers have always been trained in the tradition of advocating a client's cause, and they are used to taking one side and staying on that side for the remainder of any proceeding. Yet, because of the training that lawyers have undergone and the legal knowledge that they possess, none are probably better suited at serving as mediators.

Accordingly, the Author arrives at the following conclusions: (1) to ensure a vibrant profession, all lawyers must be open to adapting to the changing landscape in the legal practice, and (2) a lawyer must refit the view of being superior to the client, of having the monopoly of legal knowledge, and of presuming to always know what is best for the client. Lawyers must soften to the notion, and eventually accept that clients can be partners and that they must be empowered for them to actively participate in the resolution of their cases. Ultimately, the values that St. Ignatius exulted provides guidance in the dynamics of mediation.

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# **OUTSOURCING STATE OBLIGATIONS UNDER THE 1951 REFUGEE CONVENTION TO A THIRD COUNTRY: ACCEPTABLE SOLUTION OR INHUMANE DEFLECTION**

*Ismael Jose III V. Chan-Gonzaga, S.J.\**

The ravages of war have caused great displacement of peoples. Even today, in the midst of increasing social, economic, and political interaction among nations, aided by the advancement of technology in travel and communications, intolerance and discrimination continually force families to leave lands of origin and home to find refuge in foreign soil. The 1951 Refugee Convention and its 1967 Protocol aimed to address this difficulty in life and were adopted to protect the vulnerability of these peoples.

Many displaced refugees from Africa, Asia, and the Middle East have become the dominant population. One of their primary countries of choice for asylum is Australia, which is a State party to the 1951 Refugee Convention and has opened its doors to refugees. However, since the early 21st century, Australia's foreign policies have shifted to discouraging the influx of refugees and setting up offshore detentions for those seeking refuge in its territory, imitating the same strategies used by first world European host countries. In 2001, Australia began outsourcing its responsibilities when it built offshore detention and processing camps on Christmas Island, Manus Island in Papua New Guinea, and the island-nation of Nauru. Then, in the middle of 2014, Australia entered into a bilateral agreement with Cambodia where Australia was to resettle refugees seeking shelter in its territory to Cambodia in exchange for an economic stimuli program.

This Note aims to show that such "outsourcing" of the host State's responsibility to third countries is a breach of the object and purpose of the Convention. A State party's action of deflecting such responsibility falls within the category of outsourcing which can be considered a "manner" of expulsion or transfer of responsibility and security as contemplated in Article 33 (a) of the 1951 Refugee Convention and is a breach of international law, specifically Articles 26 and 27 of the Vienna Convention on the Law of Treaties, for which the state party may be held accountable under Articles 12 and 15 of the Articles of State Responsibility.

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# LEGAL EDUCATION IN A GLOBAL PANDEMIC: PERSPECTIVE OF AN ATENEO LAW SCHOOL AS AN IGNATIAN INSTITUTION

*Ma. Luisa Rose P. Caybot\**  
*Gil E. Garcia II\*\**

Following the global and national declaration of COVID-19 outbreak as a pandemic, schools and universities ceased on-site operations for the safety of their students, faculty, and other personnel. The “new normal” has brought its fair share of psychological and spiritual trials, with the online setup presenting both a burden and an opportunity for students of all levels, including post-graduate students of the law.

This Essay discusses and lays down the diverse, yet equally grounded experiences and hurdles faced by students, professors, and deans of the Ateneo de Davao College of Law. In this synthesis of narratives, their challenges are outlined and compared metaphorically to the symbolic hurdles met by St. Ignatius of Loyola in his journey towards sainthood. The Essay highlights how an Ignatian institution deals with the aftermath of its own cannonball, ultimately going beyond such setbacks to keep the faith and its Ignatian spirit alive.

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# A PICTURE OF THE WAR ON DRUGS IN THE PHILIPPINES

*Rey David M. Lim\**

The cultivation, possession, use, and the business of illegal drugs affect adversely not only oneself, but also the rest of the members of the society. It poses a danger that transcends the ordinary bounds of a crime or offense committed against the law. Throughout history, illicit drug use has grown to be a worldwide problem that both international and domestic policies attempt to address. This fight against illegal drugs has been dubbed as the country's "War on Drugs."

The Philippines has been fighting this war even before the infancy of its Penal Code and has enacted numerous legislations in its pursuit to overcome and triumph over the battle that has claimed so many lives. While the intent is laudable, the recent enforcement of laws concerning illegal drugs has garnered international concern because of the sheer number of reports of human rights violations, particularly cases involving the poor.

By virtue of the country's approach and current situation as regards this "war" against the poor, the Author calls upon Atenean law professionals and students alike to re-examine their duty during this time vis-à-vis the values instilled in them by their alma mater. Specifically, the Author calls upon its students and community to see and value the dignity of each man in addressing the overwhelming and unfortunate state of the nation as advocates of the law and of justice. This Essay highlights that through *pro bono* legal aid in these kinds of cases, Atenean lawyers can be agents of change and protect the rights of those who cannot afford legal counsel.

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# **RESTORING RELATIONSHIPS, REDEEMING INSTITUTIONS: REFLECTIONS ON THE LEGAL PROFESSION'S RESPONSE TO THE PAPAL CALL FOR UNIVERSAL LOVE IN FRATELLI TUTTI**

*Gerard Micael R. Oro\**

The latest papal encyclical written by Pope Francis, *Fratelli Tutti*, outlines the trends that hinder the development of universal fraternity all over the world. The encyclical elaborates on the severe divisions brought about by polarization in politics, the discarding of persons deemed expendable, the inequity of rights, and the new forms of slavery found in the reality of migrants and laborers. The Pope writes that the supposed hyper-connectivity brought about by globalization and advancements in technology are mere false securities.

This Essay discusses the key idea that every human person is valuable and has the right to live with dignity. The Author intertwines the ideas and arguments of the encyclicals with the legal profession, through the idea that lawyers are called to live a life of service. The Code of Professional Responsibility elaborates the four-fold duties of a lawyer — to society, to the profession, to the courts, and to his or her clients. The Essay attempts to connect these duties to the call for greater fraternity and social friendship found in *Fratelli Tutti*.

The Author posits that through the lens of *Fratelli Tutti*, lawyers and the legal community are motivated to move along with the rest of humanity towards a more open world where we realize a juridical, political, and social order that favors the development and protection of all, in solidarity with one another as brothers and sisters. The legal profession must adopt a perspective that revolutionarily improves the way it deals with clients, with justice institutions and the practice, and with society as a whole.

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\* '23 J.D. *cand.*, Xavier University — Ateneo de Cagayan College of Law. The Author won the 2020 Philippine Youth Essay Contest on Atrocity Prevention.

# LIVING AND LEAVING A LEGACY: IGNATIAN SPIRIT IN THE PRACTICE OF LAW

*Adriel Earl A. Toribio\**

Through the establishment of the Ateneo law schools, the Jesuits have pursued the path of forming men and women for others. These schools accepted the mission founded in making the community a better place — a mission grounded in faith that upholds justice and educates agents of change. True to its tradition and the Ignatian Spirituality, these institutions respond to the call of the times by training lawyers who seek to influence change within society, guided by Ignatian values.

The Author explores what a Jesuit law school looks for in a student and its ultimate purpose of choosing the future vanguards of law. The Atenean institution subjects its students to rigorous discipline that the Jesuit education is known for, with the purpose of educating them to aspire for excellence in every aspect, steering towards the goals of the profession. The Essay discusses how the Ateneo curriculum is not only focused on the law and jurisprudence, but also in faith. Such intensive formation, not only in the mind, but also in the heart, results in the deeper understanding and appreciation of their roles in society.

As a whole, the Jesuit law schools promote the continuous process of formation of the students where Ignatian values serve as the core of learning the law. The Essay demonstrates the Ignatian brand of lawyer through the 4Cs — competence, character, compassion, and commitment. Equipping lawyers with these characteristics ensures that they are multi-faceted and holistically formed. Thus, the Ateneo lawyer is equipped with competence, imbued with character, inspired with compassion, and strengthened with the commitment to be vanguards of law and servants of God. The foundation lies on Ignatian Spirituality, which encourages the search for God in all things. In essence, the Atenean education ensures that the formation of lawyers is founded upon the principle of guiding students to respond to the needs of the world.

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