



An Ethical Assessment of Philippine Laws on National Security through Deontological Ethics

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Abstract: As a democratic country, the Philippines value the natural rights enshrined in the Constitution. Filipinos, particularly those who were involved in the preservation of democracy, were up in arms when the Republic Act 11479 or the Anti-Terrorism Act and formerly, the repealed Republic Act 9372 or the Human Security Act were passed. Filipinos fear that both infringe on basic human rights, such as that of right to life, liberty, and property. For this reason, there is a need to encourage research that will assess these laws concerning the national security of the country, in an ethical manner, in order to shed light on the ethical basis of these laws whether or not they abide by the foundational moral theories in promoting the national security of the Philippines.

Key Words: national security; deontology; ethics; human rights; natural rights.

1. INTRODUCTION

1.1 Background of the Study

The field of ethics involves systemizing, defending, and recommending concepts of right and wrong behavior. Ethics is something that is present in our daily lives but is often overlooked by people who deem it relative to an individual's desires and beliefs because they think that philosophy and ethics are subjects that are highly theoretical which don't affect the lives of people in ways which they could see directly and tangibly.

This study focuses on deontological ethics as we relate it to the Philippine Laws regarding National Security. Deontology is a theory proposed by Immanuel Kant, a German philosopher and one of the most influential philosophers in history. The theory states that as humans, we have a set of rules and principles that we need to follow, where the theory is based on the person's actions and not the outcome. On the other hand, John Locke, an English philosopher and widely regarded as one of the most influential Enlightenment thinkers or as the "Father of Liberalism", proposed the natural rights theory. Locke's natural rights theory highlights the inalienable natural rights that every human being has. These are God-given rights that cannot be taken away or even given away. Among these fundamental rights are "life, liberty, and property."

People often think that ethics is often black and white, where it only aims to avoid harming the innocent, but sometimes it may also force people to sacrifice lives for the good of the nation. An example of this would be whether or not to sacrifice individual human rights for the security of a nation. But what exactly is the boundary when it comes to taking

actions that would otherwise be wrong?

1.2 Statement of the Problem

To present an ethical assessment of Philippine Laws on National Security using Deontological Ethics, specifically to compare the human rights aspect of pertinent provisions of the two laws using the aforementioned theories.

1.3 Scope and Limitations

The study is limited to the two laws, the Human Security Act of 2007 and Anti-Terrorism Law, using only Deontology. This research will focus on evaluating said laws by conducting a series of philosophical and legal analyses. The research will not tackle anything beyond these laws, nor will it use other theories in Ethics as a mode of assessment to deem whether said laws are ethical or not.

2. METHODOLOGY

The researcher of this study conducted archival research by searching for books, literature, as well as news articles relevant to the topic. Primary sources of this paper include Republic Act No. 9372, Republic Act 11479, Universal Declaration of Human Rights (UDHR), Bill of Rights, Case Laws, and Groundwork of the Metaphysics of Morals by Immanuel Kant; secondary sources of this paper are news articles. The researcher used legal and philosophical analysis to draw conclusions for this study. No interviews were conducted for this research.

Primary sources were chosen for this study for the reason that these sources will allow the researcher, as well as the readers, to analyze the said laws on national security. While the secondary



sources, such as news articles, will provide additional information that may be used in analyzing the two laws.

3. RESULTS AND DISCUSSION

3.1 Deontology and Natural Rights

Upon analyzing Immanuel Kant's theory of deontological ethics, it allowed this study to have a deeper understanding of the concepts of deontology and how it is applied in real life. In Kant's theory, it was stated that people are morally obligated to act in accordance with a set of principles and rules regardless of the outcome. Kant's deontological ethics theory holds the principle that some acts are always wrong, even if the act results in an admirable outcome. Therefore, actions in deontology are the sole basis of being ethically correct or wrong and are always judged independently from their outcomes. On the other hand, John Locke's theory of natural rights highlights the inalienable natural rights of every human being. He pointed out that among these fundamental natural rights are "life, liberty, and property." The first fundamental right, life, pertains to individuals having both rights and duty to preserve their own lives. On the other hand, Liberty argues that all individuals should be free to make their own choices on how to live their own lives. And lastly, property pertains not only to material possessions but rather ownership of one's self; this includes a right to personal well-being. Moreover, it is worth noting that according to Locke, these rights are God-given and can never be taken or even given away hence the reason why Locke believes that the ideal government will encompass preservations of these three rights for all, each and every one, of its citizens.

3.2 Due Process

Article III, Section 1 of the Bill of Rights, which discusses the concept of due process or equal protection, states that "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." This section provides protection against the accused by providing them a proper justice system that allows them to have an opportunity to be heard and explain one's side without repercussions or prejudice.

As per Section 27 of the Anti-Terrorism Law—Preliminary Order of Proscription, which states that when there is a probable cause, the Court of Appeals upon application by the Department of Justice within 72 hours issues a preliminary order of proscription is necessary to prevent the commission of terrorism declaring the respondent as a terrorist. Zeroing on this section of the Anti-Terrorism Law, it

can be drawn that it does not abide by the Philippine Constitution as the person under suspicion of terrorism will not undergo the proper judicial process, thereby disregarding Article III, Section 1 of the Bill of Rights which states that "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

The discussion of deontology and natural rights shows that section 27 of the Anti-Terrorism Law not only violates the Philippine Constitution but as well as deontological ethics. As it was established in the former part of this study that deontological principles believe that actions are judged independently from the outcomes, thereby making this section of the law unethical. It is worth noting that in hindsight, this section of the law has the potential to prevent future acts of terrorism, ergo saving thousands or even millions of lives. However, the Philippine Constitution deems this act as unconstitutional and violates human rights; moreover, deontological ethics rules this section of the law unethical since it sacrifices the rights of a person no matter what the outcome may be. Furthermore, this section of the law compromises the safety of those who are wrongfully accused, thereby strengthening why this law is unethical based on deontology.

3.3 Search and Seizure

In Article III, Section 2 of the Bill of Rights, this provision of the Philippine Constitution protects the people against unreasonable searches and seizures without a proper search warrant or warrant of arrest with the exception of a probable cause determined by a judge and particularly describing the place to be searched or person to be seized. This section of the bill of rights allows people to be secure in their persons and houses as well as restricting the State from abusing their power.

Republic Act 11479 or the Anti-Terrorism Act of 2020 in Section 29—Detention Without Judicial Warrant of Arrest, this section of the law explicitly states that any law enforcement agent duly authorized by ATC has taken custody of persons suspected of sections 4-12 of the Anti-Terrorism Law shall deliver the suspected person to proper judicial authority within a period of 14 days from the moment the suspect was arrested without incurring any criminal liability. This section of the Anti-Terrorism Law violates Article III, Section 2 of the Bill of Rights as it allows law enforcement to conduct unlawful searches and arrests without a warrant issued by a judge. In the case of Marissa Torres, who accused two policemen of conducting a warrantless search and arrest in her own household on January 29, 2020, the accused were demoted from their positions as the Quezon City People's Law Enforcement Board ruled that under the



Philippine Constitution. The accused argued that their search and seizure could be justified under the plain view doctrine as they claimed that they noticed a suspected firearm in Torres' sling bag. However, the QC PLEB ruled that the warrantless arrest and search and seizure conducted by the policemen cannot be justified under the plain view doctrine; hence the accused actually conducted an illegal and unlawful arrest against Torres.

Moreover, in the discussion of deontology and natural rights, this section of the aforementioned law also does not abide by the principles that deontology and natural rights uphold. While one can be argued that detaining a person for up to 14 days without a judicial warrant of arrest would be acceptable since they are suspected of terrorism and may commit acts of terrorism that may endanger the lives of millions, however, in Kant's theory of deontology, the most logical solution or the solution that will benefit the most will not always be ethical. Upon analyzing this particular section of the Anti-Terrorism law using deontology, it could be drawn that it does not adhere to the beliefs and principles of deontology hence it is deemed unethical. In Torres' case, the two policemen decided to search and seize Torres without the proper judicial warrant since they suspected that she had a firearm; though the intentions of the policemen were good, it still violated the rights of Torres ergo making their actions unethical since based on deontology, the actions are judged independently from their outcome, therefore, sacrificing the rights of the accused of the greater good is impermissible. Furthermore, Locke's natural rights theory supports Kant's arguments in deontology since according to Locke, natural rights are inalienable and that individuals have both rights and duty to preserve their own lives.

3.4 Privacy of Communication

Article III, Section 3 of the Philippine Constitution, protects the privacy of communication of persons. This right is inviolable except upon lawful order of the court or when public safety or order requires otherwise, as prescribed by law. Moreover, this section of the law also states that any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Under Section 16 —Surveillance of Suspects and Interception and Recording of Communications, of the Anti-Terrorism Act of 2020, notwithstanding the Republic Act No. 4200 or otherwise known as the "Anti-Wire Tapping Law", allows law enforcement or military personnel to secret wiretap, overhear, and listen to, intercept, screen, read, surveil, record, or collect, any private communications, conversations, discussions, data, information, or messages of any person charged with or suspected of committing

terrorism for up to 60 days upon written order of the Court of Appeals. Though this section of the Anti-Terrorism Law somewhat abides by Article III, Section 3 of the Philippine Constitution, Colmenares (2021) argues that how is it possible for the court to know if there is a crime that is being or about to be committed. Colmenares also added that just because it [apprehend criminals] is an important or serious concern, it does not mean that the fundamental rights of others can be violated. Furthermore, it can also be argued that the surveillance of suspected terrorists that can last up to 60 days is comparatively long as opposed to the former national security law, the Human Security Act of 2007.

Taking Kant's deontological ethics theory, as well as Locke's natural rights theory, this section of the law does not abide by the principles that these theories adhere to. In this case, invasion of privacy of a person, whether or not they are suspected of terrorism, is still frowned upon, hence this section of the law is not ethical from a deontological perspective. As stated by Colmenares, the constitution requires that basic rights must be followed, basic steps must be followed. This supports Locke's belief that the government should encompass preservations of the three fundamental rights, life, liberty, and property, for each and every one of its citizens.

4. CONCLUSIONS

Upon analyzing the two aforementioned laws in this paper, this study has found out that some of the sections of the newly enacted Anti-Terrorism Act of 2020 are not ethical based on the standards of Deontology and John Locke's natural rights theory. Not only that but it also does not abide by some provisions of the Philippine Constitution and risks the human rights of the citizens of the Philippines. Certain provisions of the new national security law can be classified as unconstitutional, hence the importance of this study. It is noteworthy that this paper is not against laws on terrorism but rather aims that the laws on terrorism be compliant with the Philippine Constitution as well as it does not violate natural and human rights. Furthermore, this paper does not aim to oppose the Anti-Terrorism Act of 2020 but rather to shed some light on some of the unconstitutional provisions of this law. By analyzing the aforementioned law, this study allows us to create better laws in the future that not only prevent future acts of terrorism but also protect the rights of individuals and upholds the Philippine Constitution.



5. ACKNOWLEDGMENTS

The researcher would like to thank the continuous support and assistance of Mr. Lambert Yancy Garganta during the duration of the research.

6. REFERENCES

Allen, Anita L., "An Ethical Duty to Protect One's Own Information Privacy?" (2013). Faculty Scholarship at Penn Law. 451. https://scholarship.law.upenn.edu/faculty_scholarship/451

Bayer, P.B. (2013). The Individual Mandate's Due Process Legality: A Kantian Explanation, and Why It Matters. Scholarly Works. Paper 775. <http://scholars.law.unlv.edu/facpub/775>

Cruz, I. (2007). Constitutional Law. Quezon City: Central Book Supply, Inc.

Finnis, J. (1980). Natural Law and Natural Rights. Oxford University Press.

Hurtubise, M.F. (1952). Philosophy of Natural Rights According to John Locke. Retrieved from: https://ecommons.luc.edu/luc_theses/1057

Kant, I. (1785). Groundwork of the Metaphysics of Morals. In Practical Philosophy, 37-108. Retrieved from: https://books.google.com.ph/books/about/The_Metaphysic_of_Ethics.html?id=cbOHJb66pCcC&printsec=frontcover&source=kp_read_button&redir_esc=y#v=onepage&q&f=false

Kantian Ethics. (n.d.). Retrieved from: <https://www.csus.edu/indiv/g/gaskilld/ethics/kantian%20ethics.htm>

Langbroek, P., van den Bos, K., Thomas, M. S., Milo, M., van Rossum, W. (2017). Methodology of Legal Research: Challenges and Opportunities. Utrecht Law Review. Volume 13, Issue 3. <http://doi.org/10.18352/ulr.411>

Lechner, S. (2011). Kantian ethics. Kantian Review, 16(1), 141. doi:10.1017/S1369415410000129

Marquez, C. (2020). 2 QC cops demoted for unlawful arrest, warrantless search. Retrieved from: <https://newsinfo.inquirer.net/1375925/2-qc-cops-demoted-for-unlawful-arrest-searching-without-warrants>
 Republic Act No. 9372 or Human Security Act of 2007

Republic Act No. 11479 or Anti-Terrorism Act of 2020

Talabong, R. (2021). Justice Carandang: 'Can terrorism be prevented without surveillance?' <https://www.rappler.com/nation/supreme-court-justice-carandang-asks-can-terrorism-prevented-without-surveillance-oral-arguments-anti-terror-law>

The 1987 Constitution of the Republic of the Philippines
 United Nations Human Rights (n.d.). What are Human Rights? Retrieved from: <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>