Philpost Privatization: Impact on Workers From a Socio-legal Perspective*

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Introduction

Under globalization, which is the unfettered flow of money, goods, technology and services across countries,[1] policies leading to deregulation, withdrawal of the state from economic activities, privatization of state-owned companies and promotion of foreign investments are pursued and national laws modified in the process.[2]

The pursuit of these policies results in the fragmentation and multiplicity of delivery systems, which aim to foster market-like choice, competition and public service efficiency.[3] Principles such as implementation by "steering" rather than "rowing" guide governance, and success is measured in terms of performance and customer satisfaction.[4] "After all, those who steer the boat have far more power over its destination than those who row it," as noted by Osborne and Gaebler.[5]

However, one writer points out that the "publicness" or "privateness" of organizations is a continuum.[6] An organization is public to the extent that it exerts or is constrained by political authority (e.g., accountability to political actors, concern with

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externalities, equity and social goals), and private to the extent it exerts or is constrained by economic authority (i.e., operation of market forces and technology).[7]

Be that as it may, the empirical evidence suggests that poor countries have resorted to privatization to reform their public sectors:

Table 1 Public Sector Reform in Poor Countries[8]
1980-1999

Type of Reform	Number of Countries
Civil Service Reform	24
Downsizing	31
Financial Management/ Budgetary Reform	22
Privatization	63
Regulatory Reform	20
Decentralization	39
Countries undertaking 2 or more reforms	18

n = 99

Sixty-three countries implemented privatizations to cope with public sector deficits, trim down the public sector wage bill, and enhance state enterprise and service delivery agency performance.[9] Described as first generation initiatives to address performance issues, they answer questions like: Why public servants conduct themselves badly? Why public organizations perform functions poorly? Why is there corruption and inefficiency?[10]

In the Philippines, the fiscal deficit of government-owned or –controlled corporations (GOCCs) seems to provide the impetus for their privatization, as reflected in the following figures:

Table 2 Monitored GOCC Deficit[11]
1997-2004

Level (P billion)	1997	1998	1999	2000	2001	2002	2003	2004
Total	17.2	38.0	4.6	19.2	24.5	46.4	105.3	116.8
%of GDP	0.7	1.4	0.2	0.6	0.7	1.2	2.4	2.5

The dismal performance of GOCCS has been attributed to factors such as poor cost recovery due to inadequate prices, poor record in collecting fees, and large debts.[12]

The Philippine Postal Corporation, or Philpost for brevity, is one of the GOCCs slated for privatization.[13]

This paper will analyze the impact of the planned privatization of Philpost on its workers from a socio-legal perspective. Will the privatization of Philpost alleviate poverty and promote equity among its workers? According to the International Labor Organization (ILO), participation involves active, collectively organized and continuous efforts by people in setting goals, pooling resources together and taking actions to improve their living conditions.[14] As the Philpost privatization process unfolds, are its workers being or getting involved in the goals setting, resources pooling and action taking to improve their living conditions?

A private corporation is created for a nongovernmental, usually business or nonprofit, purpose.[15] According to Frederickson and Smith, public administration theories guide the authoritative allocation of public goods.[16] Is the transfer of mail and other postal matters from one person to another a public good the provision of which is based on equity, or is the performance of that service a private good that is subject only to the efficiency criterion? What are the consequences under law and public policy of the proposed Philpost privatization? Are there alternatives to privatization?

These are some questions that this paper hopes to address.

Privatization In General

The World Bank has defined privatization in two senses.

Privatization in a strict sense is the divestiture by the State of enterprises, land or other assets.[17]

In a broader sense, privatization is any action that moves an enterprise or an economy in the direction of private ownership or that tends to make the behavior of state enterprises more like that of private entities.[18]

Under Philippine law, however, an entity is a private corporation if incorporated, formed and organized under the Corporation Code,[19] that is, Batas Pambansa Blg. 68 of 1980.[20]

Proclamation No. 50, as amended, was issued in 1986 to speed up the privatization program.[21] The Philippine experience reveals three (3) waves of privatization since the Aquino administration.

The first wave is called "reprivatization" because of its revenue-driven character, e.g., Paper Industries Corporation of the Philippines, PHILSECO, Occidental Petroleum, Nonoc Mining, Ortigas