FOREWORD*

*Justice Francis H. Jardeleza (Ret.)***

This issue of the JOURNAL contains four articles and a note, all of which, to my mind, are notable attempts at original contributions to legal thought. This bountiful harvest of cutting edge material is testament to the hallowed tradition of the JOURNAL as the country's first and pre-eminent law journal.

In *The Philippines' Antitrust Regulation Relating to Minority Shareholdings: Is There an Enforcement Gap?*, Krystal Lyn T. Uy, formerly of the Philippine Competition Commission, argues that there are minority shareholdings that are anti-competitive. Uy marshalled American and British precedents in support of her thesis. She has superbly succeeded. It's almost an instance of her preaching to the converted. She then goes into high gear, when she points to the crux of the problem: namely, that a handful of companies or family businesses dominate the Philippine economy. She minces no words when she presents her central recommendation: it is important for competition law and policy to break down oligopolistic coordination. She ends her article by proposing a slew of reforms, mainly legislative. We congratulate Uy for her insights. Indeed, the problems confronting competition law enforcement remain daunting. How oligopolistic strangleholds on key sectors of our economy hinder competition law enforcement must be studied more extensively; this weakness in our administrative law seems to be more nefarious than the more understood phenomenon known as regulatory capture. We hope that this article will help focus the mind of our legislators and policy makers on how to effect much needed reforms, urgently, in this nascent area of our law.

In his article on *Cross-Border Data Flows and Data Regulation under International Trade Law*, Czar Matthew Gerard T. Dayday makes a scholarly and comprehensive analysis of how, despite the flaws inherent in the international law and agreements forming the World Trade Organization, and the attempts of the more current Free Trade Agreements to fill in gaps in the trade relationships, the challenge remains for the Philippines: how to make its internal law and rules on and data flows and data regulation consistent with

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these two regimes. Dayday thankfully gives us the clear answer: our current legal regime on data regulation is largely compliant with our international obligations, for compliance purposes. He has crafted a road map for possible legislative action; or for guides to adjudication, in case issues are raised case to case before administrative agencies or the courts.

The next article presents an equally penetrating analysis on the clash of the hoary principles of classical diplomatic immunities and privileges of ambassadors, with the relatively newer concepts of the protections to migrants against human trafficking. Lorenz Fernand D. Dantes, Acting Director of the Office of the Undersecretary for Migrant Workers' Affairs of the Department of Foreign Affairs, in *Abuse of Privilege: Evaluating the Application of the Laws on Diplomatic Immunity in Cases of Migrant Trafficking and Exploitation*, argues for the adoption in the Philippines of the rule in *Basfar v. Wong*, decided by the Supreme Court of the United Kingdom in 2022. This case arose from a complaint by a Filipina who claimed she was trafficked and subjected to abusive and slavery-like conditions by a Saudi diplomat. The UK Court held that activities incidental to the daily life of a diplomat in the receiving state, e.g., engaging services of household help, cannot be considered as falling within the scope of a diplomat's official functions. Dantes has proven the compelling case for the adoption of the core principle of *Basfar* in Philippine law. However, he hedges his recommendation by saying that it can only be an "important guidepost" in future Philippine litigation. Indeed, the rule can be promulgated in the Philippines only after litigation, with a proper case filed, and observing our hierarchy of courts. Dantes, however, seems so affected by what he adverts to as the "caution" by the Philippine Supreme Court in *Pangilinan v. Cayetano*, not to be "beguiled by foreign jurisprudence." I will not be gun-shy; Dantes' prodigious argument shows that Filipinos know how to use a foreign judgment as a useful aid in advocacy before our courts. First, the kilometric decision in *Pangilinan v. Cayetano* is *obiter dicta*. Second, we always look at the cogency of argument or principle advanced, and it matters not that it was first enunciated by a foreign court. For, as Dantes so rightly puts in his closing sentence, to "give justice is the most important function of law." We eagerly look forward to constitutional litigators making use of this article in future test cases.

In the fourth article in this issue, *Revisiting* Raro v. ECC*: Occupational Diseases, Impossible Conditions, and Social Insurance in Employees' Compensation*, Liam Calvin Joshua C. Lu makes the credible argument that the ruling in *Raro* be re-examined, and abandoned, in favor of for a more inclusive and humane workmen's compensation system, updated to accommodate advances in medicine. Intuitively, I accept the analysis of Lu that the social dimensions of the problem call for a more inclusive treatment. I add only that in the case of

future litigation, or legislative amendments to the current law, the element of affordability—that is, squaring off the size of the insurance fund, the burden on employer contribution, as against what new diseases to add to be covered— be confronted squarely. Hard data is needed to determine whether the Employees' Compensation Commission system, with its present contribution from employers, can absorb more inclusivity. I submit that evidence on the true cost of the reforms advanced will tip the balance in this case. Still, Lu deserves credit for his aggressive stance.

A Note, *In Sickness, How Do We Part? Due Process Issues in Terminations of Employment on the Ground of Disease* by Marc Cedric N. Dela Cruz, argues persuasively that the definition of "competent public health authority" in labor litigation is inadequate, and that the twin notice rule applies in labor termination cases, thus making Section 5.3 of Department of Labor and Employment Department Order No. 147-15, insofar as it drops the two notice rule requirement, unconstitutional. Dela Cruz has written a respectable playbook on how to overturn this provision of a labor code regulation.

In sum, congratulations to the JOURNAL staff for the insightful articles and note presented in this issue.

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