COMPARATIVE STUDY OF THE JUDICIAL ROLE AND ITS EFFECT ON THE THEORY ON JUDICIAL PRECEDENTS IN THE PHILIPPINE HYBRID LEGAL SYSTEM*

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Subjugated, christianized, and governed by Spain for more than 350 years until the close of the 19th century, and then further subjected to 4 decades of American domination, the Philippines today has a legal system which is a blend of Malay customary laws, Spanish civil law and Anglo-American common law, with the partial application of Muslim law to the Filipino Muslims of southern Philippines.[1] The unique legal scenario resulting from this blend of diverse cultures is due largely to the strategic location of the Philippine archipelago as the gateway to and from Southeast Asia into the Pacific Ocean.[2]

The victory of Commodore Dewey in the battle of Manila Bay on May 1, 1898, followed by the ratification of the Treaty of Paris in 1898, marked the transformation of the Philippine legal system from its traditional Spanish Civil Law orientation, into one patterned after Anglo-American juridical principles.[3]The confluence of the two great western legal systems during the four decades of American occupation gave our legal system elasticity and progressiveness, yet it engendered great confusion as it raised the fear that the "cross-breeding of the Castilian lion

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[1]PASCUAL, THE LEGAL SYSTEM OF THE PHILIPPINES 7 (1970); *See* also Gilmore, *Philippine Jurisprudence--Common Law or Civil Law?* 16 A.B.A.J. 89 (1916-1917); Lobingier. *Blending Legal Systems in the Philippines*, 21 L. Q. REV. 401 (1905); Abreu, *The Blending of the Anglo-American Law with the Spanish Civil Law in the Philippines*, 3 PHIL. L. REV. 285 (1914).

[2]*See* description in FORBES, THE PHILIPPINE ISLANDS 29 (1945).

[3]*See* GAMBOA, *The Meeting of the Roman Law and the Common Law in the Philippines*, 49 PHIL. L. J. 304-305 (1974).

and the American eagle had resulted in the evil birth of a phenomenal creature."[4]

Even then, there was a desire to refashion the Philippine legal system to conform to the Filipino way of thought, customs, traditions, and temperament, and to make it responsive to the needs of the nation.[5] Like most developing countries, the challenge faced by the Philippines was the need to evolve a legal system that is logically and structurally coherent and responsive to the complex needs of its diverse society. One that strikes the essential balance between the importance of anchoring its laws in the sociological and cultural values of its people and of adopting such laws to the international legal environment due to the imperatives for national development of foreign trade and relations.

A study of the Philippine hybrid legal system offers a fascinating setting for the evaluation of the effects of the direct blending of two of the major western legal systems.[6] This paper will study (1) the implications of the confluence of common law principles on what originally was an established civil law system[7] and (2) the emerging theory on judicial precedents.

Stare Decisis, Doctrina Legal, and Jurisprudence Constante

Stability, uniformity, and predictability are the compelling reasons for the value placed upon judicial precedents. "Although in practice the use of precedents may often be approximately similar in civilian and in common law jurisdictions, the essential difference lies in the attitude towards them and the sanctity with which they are regarded."[8]

Under the common law doctrine of *stare decisis*, judicial precedents are considered law *de jure*, while in civil law jurisdictions case-law, when recognized at all, is merely law *de facto*.[9] The variance in these underlying philosophies is rooted in the role they ascribe to their judges.

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[4]LAUREL, ASSERTIVE NATIONALISM 80 (1931).

[5]Balbastro, *Philippine Legal Philosophy*, 41 PHIL. L.J. 635, 636-637 (1966).

[6]DAVID, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY 17 (1985).

[7]*See* Gilmore, *supra* note 1, at 90-92.

[8]Tate, *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727, 743 (1962).

[9]Daggett, Dainow, Hebert, and McMahon, *A Reappraisal Appraised: A Brief For the Civil Law of Louisiana*, 12 TUL. L. REV. 13, 17 (1937).

In the civil law system the traditional role of judges in law-making is very limited.[10] Because law-making is considered to be the function solely of the legislators, judicial decisions were designed to "develop within the framework established by legislation."[11]

On the other hand, the common law theory on judicial precedents has an opposite premise. The primary principle of hierarchy in the doctrine of *stare decisis*, i.e. that a "lower court is under obligation to accept the position held by its hierarchical superior,"[12] flows from the theory that decided cases are, in their own right, sources of law. "The fact that the lower court thinks the decision wrong does not justify its ignoring the precedent."[13]

Under the English doctrine of *stare decisis* each decision is a binding authority which Parliament alone may change. This is understandable since England does not have a rigid constitution, and Parliament can always remedy a precedent that has gone awry. On the other hand, the existence of a rigid constitution, and the complexities of the federal and multi-state judicial systems in the United States, necessitate the practice of taking into account the nature of the pending case in order to weigh the binding effect of prior decisions.[14] The principle followed by Spain in its *jurisprudencia* which evolved through its *doctrina legal*,[15] and by France in its *jurisprudence constante*, give judicial precedents authoritative weight when established by a number of decisions.[16]

The Spanish doctrine of *doctrina legal* allows appeal to the Supreme Court of lower court decisions violating prior decisions of the Supreme Court.[17] The term *jurisprudencia* is reserved to decisions rendered by the Supreme Court or by the other superior courts to the exclusion of those rendered by the courts of appeal or the lower courts.[18] The *doctrina legal* exists only when a decision of the Supreme Court is

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[10]*Id.*

[11]DAVID, *supra note* 6, at 136 (underscoring supplied).

[12]VON MEHREN, LAW IN THE UNITED STATES 15 (1988).

[13]*Id.*

[14]*Cf.* Helvering v. Hallock, 309 U.S. 106, 60 S.Ct. 44, 84 L.Ed. 604, 125 A.L.R. 1368 (1940).

[15]*See* DAVID, *supra* note 6, at 145.

[16]*See* Loussaouam, *The Relative Importance of Legislation, Custom, Doctrine, and Precedent in French Law*, 18 LA. L. REV. 235, 255-260 (1958).

[17]*Id.*

[18]*Id.*

confirmed by a second decision of the same Court involving a similar case.[19]

The underlying principles of judicial precedents in the civil law and common law systems have been greatly influenced by the role played by the judiciary in the evolution of the legal system. In our case, the blend of the civil law and the common law traditions is nowhere more pronounced than in the evolution of the role of the judges. In accordance with its Anglo-American heritage, the judiciary is regarded as "the indestructible citadel of the people's rights, the solid bulwark of their liberties, the hallowed repository of their accumulated beliefs and collective faith in the supremacy of the Rule of Law."[20] A judge in the Philippines is more than a mere "civil servant" or "bureaucrat" or "functionary" of the government, nor are his powers considered to be "narrow, mechanical, and uncreative."[21] On the other hand, the judiciary itself deeply respects the preeminence of the statutory enactments of the legislature and their primacy in the legal order.[22] The judiciary will not impose its conception of wisdom and propriety upon the function of the legislature.[23]

In its theory of judicial precedents, therefore, the Philippine hybrid legal system has blended together the underlying philosophies of the principle of *stare decisis* of the common law system, and the evolving principles of judicial precedents of the civil law systems. This paper will examine the logical consistency and functional cohesiveness of the resulting amalgam.

FACTORS INFLUENCING THE PHILIPPINE THEORY ON JUDICIAL PRECEDENTS

The creative role that the judiciary plays today in Philippine society, and the underlying theory on judicial precedents, are attributable to 5 factors: (1) the adoption of the American court system; (2) the constitutional powers vested in the Supreme Court; (3) the transplant of Anglo-American principles in the Philippine legal system; (4) the continuing influence of civil law; and (5) the cultural, social, and economic demands of Philippine society.

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[19]*Id.*

[20]BATACAN, THE SUPREME COURT IN PHILIPPINE HISTORY 4 (1972).

[21]*See* MERRYMAN, THE CIVIL LAW TRADITION 38 (1985).

[22]*See* Salas v. Jarencio, 46 SCRA 734 (1970); Morfe v. Mutuc, 22 SCRA 424 (1968); Peralta v. Commission on Elections, 82 SCRA 30 (1978).

[23]Uy Cong Eng v. Trinidad, 47 Phil. 385 (1925).

Adoption of American Court System.

The Spanish judicial system in the Philippines being as it were, antiquated, corrupt, and venal[24]; the demand for a more enlightened and efficient system of judicature was recognized by the Philippine Commission.[25] A new judicial system was installed patterned after the American model of justice of the peace courts of limited jurisdiction; courts of first instance of general jurisdiction; and a Supreme Court at the apex as the final arbiter of law and the Constitution. The Supreme Court was organized by the appointment of a chief justice and six associate justices, any five of whom constituted a quorum. The concurrence of at least four members of the Court was necessary in order to pronounce a judgment. Up until the commencement of the Commonwealth period, the Court was composed of 4 American and 3 Filipino justices.[26]

The 1935 Constitution increased the membership of the Supreme Court to 11 justices,[27] which could either sit *en banc* or in two divisions.[28] In that period, an intermediate apellate court, known as the Court of Appeals, was established to take jurisdiction over appeals involving questions of fact, so that only questions of law are raised to the Supreme Court.[29] Originally composed of 11 justices, the membership of the Court of Appeals was increased to 24 in 1968, to 37 in 1973, and to 45 in 1987.[30] The court may sit *en banc* or in 15 divisions of 3 justices each. [31]

Likewise, the inherent weakness of Spanish procedural laws in the Philippines necessitated its abrogation.[32] New codes of civil and criminal procedures were adopted based entirely on American models.[33] Indeed, the Philippine judicial system functioned almost entirely in the structure of the American system. Any and all incidents of the former system which conflicted with the essential principles and settled doctrines of the U.S. were abrogated by the law organizing the emergent system.[34] Thus, in *Alzua v. Johnson*, despite the existence of the Spanish civil law

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[24]Samson, *The Judiciary*, 2 PHIL. L. J. 59 (1915).

[25]*See* Harvey, *The Administration of Justice in the Philippine Islands*, 1 PHIL. L. J. 330 (1914).

[26]*Id.*, at 339.

[27]CONST., art. VIII, sec. 1.

[28]*Id.*, art. VIII, sec. 2.

[29]*See* COMMONWEALTH ACT 3 (1935); COMMONWEALTH ACT 259 (1948).

[30]*See* COURT OF APPEALS INTERNAL OPERATING PROCEDURES, at 3 (1979).

[31]*Id.*, at 5.

[32]Lobingier, *supra* note 1, at 403.

[33]*Id. See* also Gilmore, *supra* note 1, at 93.

[34]21 Phil. 333 (1912).

providing for the civil liability of judicial officers, the common law doctrine that "judges of superior and general jurisdiction are not liable for damages when acting within their legal powers and jurisdiction," was made to prevail.[35]

Judicial Review and Constitutional Law

The molding of the Philippine juridical system in the pattern of the American judiciary, and the transplanting of American constitutionalism in Philippine soil, necessarily resulted in the adoption of the doctrine of judicial review predicated upon the supremacy of the constitution, over legislative or executive acts.[36] Chief Justice Fernando describes the early development of the power of judicial review in the Philippine legal system:

> At the time when the United States acquired the Philippines from Spain at the end of the [19th] century, one of the principles of constitutional law binding on the territorial government established by her in the Philippines was [the] concept of judicial review. It was natural for American lawyers, who were admitted to the practice in the Philippines, to challenge the validity of statutes or executive orders, whenever the interests of their clients so demanded. The Filipino justices and judges who with their American brethren administered justice were soon made aware that the power to pass on the constitutionality of such statutes and executive orders was part of their judicial function. The Filipino lawyers vied with the American members of the bar in raising the question of constitutionality whenever appropriate. The American practice of appealing the decisions of the executive and legislative branches became part of the accepted doctrines in the Philippines early in the period of American sovereignty.[37]

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[35]*Id.*, at 326-329.

[36]Constitutionalism in the Philippines dates back to the ratification of the Treaty of Paris of 1898 transferring Spanish sovereignty over the archipelago to the United States. Prior to the 1935 Constitution, Philippine Constitutional Law grew from a series of organic documents enacted by the United States government, namely: (1) President Mckinley's Instructions to the Second Philippine Commission (Public Laws of the Philippines XIII, February 2, 1900); (2) the Philippine Bill of 1902 (Public Laws of the Philippines XIII, February 2, 1900. Act July 1, 1902, ch. 1369, 32 Stat.691); and (3) the Philippine Autonomy Act of 1916, (11 Public Laws of the Philippines 237. August 29, 1916, ch. 416,39 Stat. 545).

[37]FERNANDO, THE POWER OF JUDICIAL REVIEW 11-12 (1969).

The institutionalization of the power of judicial review paved the way for the metamorphic growth of the Philippine theory on judicial precedents in the field of constitutional law. Similar to its American conception, constitutional law as understood in Philippine law, is not just the text of the constitution itself, but the body of rules resulting from the interpretation by a high court of cases in which the validity, in relation to the constitutional instrument, of some acts of governmental power have been challenged.[38] "The task of the student of constitutional law, therefore, cannot be reduced to a mere exegesis of the constitutional text, [h]e must plow through the thousands of pages of courts decisions in order to find the mass of `judge-made' laws that have grown from the text."[39]

The value of judicial precedents as a source of law followed an uneven terrain since the establishment of the Supreme Court by the American Military Government in 1900. The molding of the Philippine judiciary in the image of the American judicial system; the maintenance of a majority of American justices in the Supreme Court for the crucial 35 years until the establishment of the Commonwealth Government; and the appointment of many American jurists to courts of first instance, especially the courts of the city of Manila and the assumption of the judicial power of review by the judiciary under the constitutional framework, have all inexorably contributed to leaving a clear imprint on the value of judicial decisions as a source of law. The creative and aggressive role that the judiciary played in constitutional law, where its judgments became "the law," is noteworthy. From the very first volume of the Philippine Reports, the Supreme Court, though not specifically referring to the doctrine of *stare decisis*, began to rely on earlier rulings to resolve pending cases.[40] Such a development was further enhanced by the rigorous transplanting of Anglo-American statutes in the Philippine legal system.[41]

Transplant of Anglo-American Laws and Principles.

The Attorney-General and the courts of the Philippines followed Anglo-American precedents in the nature of common law without

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[38]BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES VI (1987) citing CORWIN, CONSTITUTION OF THE UNITED STATES OF AMERICA I (1963).

[39]*Id.*

[40]*See* De Santos, *The Philippine Doctrine of Precedents*, 5 U.E. L. J. 235, 242-244 (1963).

[41]*See* Gilmore, *supra* note 1, at 93.

apparently considering to what extent those authorities were binding.[42] In the 1908 case of *U.S. v. Cuna*,[43] the Supreme Court, speaking through Justice Carson, declared, "Neither English nor American common law is in force in these islands; nor are the doctrines derived therefrom binding upon our courts, save only insofar as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law."[44] Later in *Alzua v. Johnson*[45] the same justice modified the strict pronouncement in *Cuna* and in effect adopted the inverse principle,

> [W]hile it is true that the body of the common law as known to Anglo-American jurisprudence is not in force in these Island, 'nor the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law', *nevertheless, many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied through the aid of the common law from which they are derived, and that, to breathe the breath of life into many of the institutions, recourse must be had to the rules, principles, and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth.*[46]

This basic doctrine was reiterated in subsequent cases which directed that Anglo-American case-law was the authoritative guide for the proper construction and application of the terms and provisions of statutes borrowed from Anglo-American models,[47] unless, local conditions warrant differently,[48] or when the situation is covered by express provision of law.[49]

Justice Malcolm, wrote in *In re Shoop*,[50]

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[42]*See* MALCOLM, THE GOVERNMENT OF THE PHILIPPINE ISLANDS 699 (1916).

[43]12 Phil. 241 (1908).

[44]*Id.*, at 244. The doctrine was reiterated in Arnedo v. Llorente, 18 Phil. 257 (1911).

[45]*Supra* note 34, at 308 (1912).

[46]*Id.*, at 331-332 (underscoring supplied).

[47]U.S. v. De Guzman, 30 Phil. 416 at 419 (1915); U.S. v. Abiog, 37 Phil. 137, at 141 (1917); Cerezo v. Atlantic, Gulf & Pacific Co., 33 Phil. 425 (1916).

[48]Cuyugan v. Santos, 34 Phil. 100, at 107 (1916).

[49]Cruz v. Pahati, 98 Phil. 788 (1956).

[50]41 Phil. 213 (1920).

> A survey of recent cases in the Philippine Reports, and particularly those of the last few years, shows an increasing reliance upon English and American authorities in the formation of what may be termed as Philippine Common Law, as supplemental to the statute law of this jurisdiction. An analysis will show that a great preponderance of the jurisprudence of this jurisdiction is based upon Anglo-American case law precedents, - exclusively applying those statutory law which have been enacted since the change of sovereignty and which conform more or less to American statutes, and - to a large extent in applying those and expanding the remnants of the Spanish codes and written laws.
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> The foregoing two groups of cases in combination, those under the subjects covered by Spanish statutes and those under the subjects covered by American-Philippine legislation and effected by the change of sovereignty, show conclusively that Anglo-American case law has entered practically every one of the leading subjects in the field of law, and in the large majority of such subjects has formed the sole basis for the guidance of this court in developing the local jurisprudence. The practical result is that the past twenty years have developed a Philippine common law, or case law, based almost exclusively, except where conflicting with local customs and institutions, upon Anglo-American Law. The Philippine common law supplements and amplifies our statute law

The attitude of the American-dominated Philippine Supreme Court during that period was understandable. The Court felt itself bound by the rulings of the United States Supreme Court in construing and applying statutory enactments modelled upon or borrowed from Anglo-American originals.[52] But even then, it was recognized in the case of *Javellana v. Mirasol*[53] that "[i]t is to be assumed that our lawmakers, whether Americans or Filipinos by nationality, have legislated with knowledge of conditions here existing; and even those laws which have been bodily taken from American sources not infrequently acquire a

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[51] *Id.*, at 225-247.

[52] Bryan v. American Bank, 7 Phil. 255, at 257 (1906); U.S. v. Pico, 178 Phil. 386, at 398 (1911); *see* also TOLENTINO, CIVIL CODE OF THE PHILIPPINES 9 (1984) *citing* Cuyugan v. Santos, *supra* note 48.

[53] 40 Phil. 761 (1920).

characteristic coloring from the change of environment."[54] In *People v. Vera*[55] the Supreme Court recognized that "to keep pace with new developments of times and circumstances, fundamental principles should be interpreted having in view existing local conditions and environments."[56]

With the establishment of the Philippine Republic on July 4, 1946 and the consequent appointment of Filipino justices to the Supreme Court, however, Anglo-American doctrines began to be treated merely as persuasive. The proposition for a "Philippine common law" did not flourish and was even denied by some Philippine jurists today.[57] But the fact that judicial precedents had taken permanent roots in Philippine jurisdiction can not be denied. While a subtradition of "romanization" that had began even during the American regime, started to manifest itself strongly after the grant of independence, the continued borrowing from American cases persists to the present time.

A good illustration is the common law principle on citizenship of *jus soli*, which in a long line of cases from the advent of American regime was applied in the Philippine jurisdiction under the thesis that the Fourteenth Amendment to the Constitution of the United States extended here. There was one case[58] in 1939, however, which ruled that the principle of *jus soli* was not applicable in Philippine jurisdiction because the provisions of section 2 of the organic Jones Law[59] provided otherwise. Nevertheless the application of the principle persisted in Supreme Court decisions until the advent of the second world war. After the war and the grant of independence, the young Philippine Republic, through its Supreme Court in *Tan Chong v. Secretary of Labor*[60] once and for all discarded the principle of *jus soli* and affirmed the civil law principle of *jus sanguinis*.

> Citizenship, the main integrate element of which is allegiance, must not be taken lightly. Dual allegiance must be discouraged and prevented. But the application of the principle of *jus soli* to persons born in this country of alien parentage would encourage dual allegiance which in the long

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[54] *Id.*, at 775.
[55] 65 Phil. 56 (1937).
[56] *Id.*, at 137.
[57] PARAS, CIVIL CODE OF THE PHILIPPINES 47 (1984); Gamboa, *supra* note 3, at 314.
[58] Chua v. Secretary of Labor, 68 Phil. 649 (1939).
[59] ACT OF UNITED STATES CONGRESS of Agust 29, 1916.
[60] 79 Phil. 249 (1947).

> run would be detrimental to both countries of which such persons might claim to be citizens.
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> In *Tan Chong*, the Supreme Court held that the principle of *stare decisis* does not mean blind adherence to precedents. The "doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found contrary to law, must be abandoned;" the duty of the court "is to forsake and abandon any doctrine or rule found to be in violation of the law in force.[61]

Although the Philippine doctrine on judicial precedents is no longer bound by Anglo-American common law developments,[62] the reality of the situation makes the latter very persuasive on Philippine jurisprudence.[63] On this score, a leading Filipino commentator has observed:

> The official theory is that American decisions, being expressions of foreign law, are not binding on our courts, but our judges, nevertheless, behave as though they were. Many an argument has been able to push through a point across the threshold of judicial belief because it is buttressed with citation of American authorities. One is led to the suspicion that by a curious extension of the parity amendment, what the American judges say is in fact taken as the equal of local decisions in authoritativeness. There is much to support such a suspicion in the decisions of our Supreme Court.[64]

The trend will continue long into the future mainly because the Philippine legislature has taken the stance of granting the judiciary broad powers of "law-making" in various statutory enactments. In adopting the remedy of reformation of instruments, Article 1360 provides that "[t]he principles of the general law on the reformation of instruments are hereby adopted insofar as they are not in conflict with the provisions of this Code." On trusts, Article 1442 provides that "[t]he principles of the general law of trusts, insofar as they are not in conflict with this Code, the Code of Commerce, the Rules of Court and special laws are hereby adopted. On estoppel, Article 1432 provides that "[t]he principles of estoppel are hereby adopted insofar as they are not in conflict with the provisions of this Code, the Code of Commerce, the Rules of Court and special laws." Article 32 grants an individual a cause of action against "[a]ny public

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[61]*Id.*

[62]U.S. v. Cuna, *supra* note 43.

[63]Alzua v. Johnson, *supra* note 34.

[64]Fernandez, *Sixty Years of Philippine Law*, 35 PHIL. L.J. 1397 (1960).

officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs" any of the civil liberties guaranteed by the Bill of Rights of the Constitution. Article 33, adopted from principles in Anglo-American jurisprudence, provides that "[i]n case of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." In addition, "general principles" are codified in the Civil Code, giving judges greater judicial leeway, such as the principle of "abuse of rights."[65]

Tenacity of Civil Law Influence.

As discussed above, when sovereignty over the Philippine Islands was transferred from Spain to the United States, there was an existing civil law system in the colony. Many Filipino lawyers, mostly Spanish mestizos, were practising law in Manila. There was an established law school in civil law at the University of Santo Tomas in Manila which was founded in 1734. The College of Law of the University of the Philippines, established only in 1910, followed the American legal educational system.[66] It was only in 1916 that a private law school was established that gave instructions exclusively in English.[67] And although the trend during the early decades of American sovereignty was the adoption of statutes borrowing Anglo-American models, the heart of the law which most affected the ordinary Filipino - the private laws - remained the Spanish Code of 1889.

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[65]CIVIL CODE, art. 19 states that:

> Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
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> Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnity the latter for the same.
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> Art. 21. Any person who willfully cause loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[66]Malcolm, *The College of Law University of the Philippines*, 1 PHIL. L. J. 4 (1914-15).

[67]Benitez, *The Private Law Schools*, 2 PHIL. L. J. 315, 317 (1916).

The underlying bias of the civil law system for coherence, structure, and high-level generalization[68] was a tantalizing feature that, on the part of the Filipino civil-law trained lawyers, was difficult to give-up in light of the almost haphazard growth of common law doctrines through case-law. The deeply-rooted and historically-conditioned attitudes about the nature of civil law persisted even as the Philippine legal system began to adopt many Anglo-American laws and doctrines. This method of exegesis still has its strong influence in the system, as the Filipino jurists continue to believe that the starting point for legal reasoning should normally take the form of legislation. But similar to the development in continental Europe, legislative enactments, whether in the form of codes or special legislations, were recognized to be insufficient in covering all possible situations.

Even at present, Philippine codes are considered insufficient, though complete in the sense that they contain comprehensive rules and principles, and embody a system for applying these norms to all cases arising within the areas they propose to cover. No matter what type of problem arose, if the text failed to supply an answer, the judge would fashion a solution derived from the code, from the relation of its part, from its structure or from its general principles. The respect that Filipino jurists have for the primacy of legislative enactments even in areas where the judiciary has previously ruled upon has not given rise to the phenomenon in common law jurisdictions where the "codes" have to be considered as not meant to abolish, but rather, to consolidate and restate the common law, and provisions thereof "construed in the light of common law decisions on the same subject."[69]

This civil law tradition finds expression in Philippine case-law when the Supreme Court itself directs the courts to be cautious in overruling legislative judgments;[70] holding that "it is the sworn duty of judges: to apply the law without fear or favor, to follow its mandate - not to tamper with it."[71] The courts "cannot adopt a policy different from that of the law," since "what the law grants, the courts cannot take away;"[72] and for so long as the laws do not violate any constitutional provisions, the courts can merely interpret and apply them regardless of whether or

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[68]VON MEHREN, *supra* note 12, at 3.

[69]SAUVERPLANNE, CODIFIED AND JUDGE MADE LAW 11-12 (1981); *also* DAVID, *supra* note 6, at 450.

[70]Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 719 (1919).

[71]Government of the Philippines v. Anti-Chinese League, 84 Phil. 468, 472 (1949); *also* Barretto Gonzales v. Gonzales, 58 Phil. 67, 72 (1933).

[72]*Id.*

not they are wise or salutary, and if such laws turn out to be unwise or detrimental, remedy should be sought with the legislature.[73]

Legal education in the Philippines influenced the "romanized" development of the Philippine legal system. Philippine law instruction, generally done through lectures and recitation, has the preoccupation "to get the students of law to pass the bar examinations."[74]

> In the Philippines, what should merely be a device to measure the fitness and capability of a law graduate to join the ranks of the professional lawyers has been transformed into a monster that holds in its viselike grip, law school administrators, professors, students and just about everybody concerned with law. The lifetime glory and honor it bestows on one who emerges topnotcher and the prestige and increased enrollment it can generate for a triumphant law school are the allurements that obsess both students and institutions.[75]

The great and perhaps grave influence of the bar examinations, which for several decades involved mostly objective questions consisting of definition of terms and enumerations, was the tendency to gear the law curriculum towards doctrinal exposition.[76] As it were, the rote method of study became prevalent. There was little incentive for law students to undertake legal exploration and scholarship when their utmost preoccupation is to "prepare for the bar examination" by mastering legal provisions, doctrines, and principles.[77]

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[73]Quintos v. Lacson, 97 Phil. 290, 293 (1955).

[74]Cortes, *The Law Teacher in Philippine Society*, 5 PHIL. L.J. 1, 7 (1976).

[75]Romero, *Challenges to Legal Education*, 52 PHIL. L.J. 487, 495 (1977). Unfortunately, the popular gauge for rating law schools is the performance in the bar examinations of their graduates. Hence, the paramount concern of practically all law schools is to make a good showing in those examinations. Any law school that is an exemption to this would merely prove the rule.

Cortes, *The Law Curricular Assessment and Recommendations in the Light of the Need of a Developing Society*, 47 PHIL. L. J. 446, 457 (1972).

[76]*See* Labrador, *The Bar Examinations As An Instrument of Legal Education*, 12 ATENEO L. J. 329 (1963), comments of Laurel, at 332, and Ledesma, at 333.

[77]Juco, *The Doctrine of Stare Decisis and the Philosophy of Law in a Changing World*, 13 ATENEO L. J. 40, 51 (1963). When law examinations, for instance, are so geared to memory and mastery of legal provisions, one begins to doubt whether the examiners and professors expect lawyers to be thinking men or simply robot memorizers.

Socio-Economic Demands in Modern Philippine Society.

The imperatives of socio-economic developments likewise greatly influenced the evolution of the theory of judicial precedents. The Supreme Court once held that

> The doctrine [of *stare decisis*] is flexible; so that when, in the light of changing conditions, a rule has ceased to be of benefit and use to society, the courts may rightly depart from it. *Stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.[78]

The 1987 Constitution, more than just being a transplant of the American constitution, clearly manifests that Philippine constitutional developments have blossomed from the people's experience in a struggle to build a lasting republic more attuned to the needs of a developing country. The people's hopes and aspiration for a just and humane society are now deeply enshrined in constitutional precepts and directives. The promotion of "a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all,"[79] the promotion of social justice in all phases of national development,[80] the declaration of the family as the basic social institution,[81] the protection of human rights;[82] the provision for a national economy that shall achieve "a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged,[83] the guarantee for a comprehensive rural and agrarian policy,[84] urban land reform and housing,[85] the welfare of indigenous cultural communities,[86] and the broad policy relating to education, science, technology, arts, culture, and sports, are clearly

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[78]TOLENTINO, *supra* note 52, at 39 citing Helvering v. Hallock, 309 U.S. 106 1940

[79]CONST., art. II, sec. 9.

[80]*Id.*, art. II, sec. 10; also art. XIII, secs. 1-2.

[81]*Id.*, art. XIII, sec. 12.

[82]*Id.*, art. XIII, sec. 17-19.

[83]*Id.*, art. XII, sec. 1.

[84]*Id.*, sec. 21; *also* art. XIII, secs. 4-8.

[85]*Id.*, art. XIII, secs 9-10.

[86]*Id.*, sec. 22.

expressed in the Constitution.[87] At the forefront of such constitutional mandate is not only the legislative and executive branches, but also the judiciary, particularly the Supreme Court, which, in the exercise of its power of judicial review and even in resolving controversies among private parties in activities considered to be within the public interest, must promote the constitutional directives which have to do less with the "structure" of government, and more with the "mission" of the state. The value of judicial precedents can be gleaned from the fact that development in various fields is expected to go beyond the language of statutory enactments in the "spirit and direction" they will pursue. Dramatic examples over the decade have been shown in the fields of investments in private companies, labor laws, agrarian relations, and other social welfare legislations.

Another example where the judiciary broke new grounds by drawing on Anglo-American doctrines beyond the language of the Civil Code, is in the field of torts. The doctrine on quasi-delict was expanded by the Supreme Court beyond the area of negligent acts to include any act or omission which cause damage or injury to another, whether done intentionally or negligently, and whether punishable or not.[88] Under this expanded doctrine, "there is no longer any substantial distinction between the civil and the common law concept of tort liability."[89]

In addition, the complexities of the modern world led to a radical restructuring of the legal system that saw the emergence of the administrative bodies fusing legislative, judicial, and executive powers into one office. Candidly, this development in administrative law makes a mockery of the principles of separation of powers which is the touchstone of the Philippine legal system. More and more,

> the role of the courts is to accommodate the administrative process to the traditional judicial system, to accommodate private rights and the public interests in the powers reposed in administrative agencies, and to reconcile in the fields of administrative action, democratic safeguards and standards of fair play with the effective conduct of government.[90]

This change in the administrative field is phenomenal. In fact, legal theorists have yet to strictly and specifically classify the hybrid created within the three great branches of government. Even purely

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[87] *Id.*, art. XIV.

[88] SANGCO, PHILIPPINE LAW ON TORTS & DAMAGES 49-50 (1978).

[89] *Id.*

[90] GONZALES, ADMINISTRATIVE LAW - A TEXT 6-7 (1979).

private rights are now within the justiciable jurisdiction of administrative agencies, such as intra-corporate disputes with the Securities and Exchange Commission, and employer-employee relationship with the National Labor Relations Commission. A governing structural policy is being evolved by both the legislature, the Supreme Court in its precedents, and by leading Filipino jurists. Since the development of a unifying theoretical basis in administrative law is piece-meal and empirical, the process has been rather slow. One of the weaknesses of the present system is the lack of a national reporter system of the decisions of administrative bodies, such as those of the Securities and Exchange Commission and the National Labor Relations Commission, so as to develop a system of administrative precedents.

Since decisions of all administrative bodies, on issues of law and doctrine, are ultimately appealable to the Supreme Court, the doctrines established by the Supreme Court are providing a unifying structure of precedents to make the administrative system "uniform, stable and predictable," instead of "an endless, disjointed, and complex rules to be sought in reports of cases as numerous as the sands of the sea."[91]

ANALYSIS OF THE THEORY

Adoption of the Principle of Stare Decisis

Article 6 of the Spanish Code of 1889 provided that if no "written law" (ley) is applicable, the "customs of the place" (*costumbre de lugar*), and in default thereof, the "general principles of law" (*principios generales del derecho*), shall be applied.[92] In order to determine the general principles of law, Spanish commentator Sanchez Roman opined that "judicial decisions cannot be resorted to [since] a lower court of Spain is at liberty to disregard the decisions of a higher court."[93] Another Spanish commentator, Manresa, formulated the theory that courts are governed in the following successive order: written law, customs of the place, judicial decision, and by general principles of law;[94] and it was posited that "resort to judicial decisions should come before resort to general principles of law." Manresa observed, however, that the courts do just the opposite.[95]

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[91]Henry, *Jurisprudence Contante and Stare Decisis Contrasted*, 15 A.B.A.J. 11, at 12 (1929).

[92]*See* PADILLA, CIVIL CODE 15 (1932).

[93]2 Derecho Civil, at 79-81, cited in In re Shoop, *supra* note 50, at 227.

[94]*Id.*

[95]*Id.*

As previously discussed, the almost unbridled resort by judges and the Supreme Court to common law principles built upon judicial precedents in the United States established early on the principle of *stare decisis* in the Philippine legal system despite Article 6 of the Spanish Code. Ironically, the principle on judicial precedents found permanent anchor in a new Civil Code which was adopted in the fourth year of independence in 1949. Article 8 of the New Civil Code provides: "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

It is urged that by virtue of Article 8 of the new Civil Code, the legislature intended to incorporate into the Philippine legal system the common law doctrine of precedents.[96] This is not an accurate statement of the implication of Article 8. Long before its adoption, the principle of judicial precedents was already an established doctrine in the Philippines. The most that the codification of Article 8 did was to *confirm* in statutory form a well-entrenched general principle.

Time and again, the Supreme Court referred to the principle of *stare decisis* and accepted its applicability in Philippine jurisdiction.[97] However, pronouncements on its applicability are blunted by other statements of the high Court that it refuses "blind adherence to precedents."[98] In *Philippine Trust Co. v. Mitchell*,[99] it was held that the "rule of stare decisis is entitled to respect." The Court held that its decisions "[by] themselves are not law," but are merely evidence of the meaning of the law.[100] In *Caltex v. Palomar*, on the other hand, the Supreme Court considered its decisions as "law" when it declared that

> In effect, judicial decisions assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations (sic) not only of those called upon to abide thereby but also of those duty bound to enforce obedience thereto.[101]

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[96]De Santos, *supra* note 42, at 236. .,

[97]*See* Kuenzle & Streiff v. Collector of Customs, 12 Phil. 117 (1908); J.M. Tuason & Co., Inc. v. Mariano, 85 SCRA 644, 647 (1978).

[98]Tan Chong v. Secretary of Labor, 79 Phil. 249, at 257 (1947).

[99]59 Phil. 30, 36 (1933).

[100]People v. Jabinal, 55 SCRA 607, 612 (1974); *also* People v. Licera, 65 SCRA 270,272-273 (1975). Early in Gomez v. Hipolito, 2 Phil. 732 (1975), the court denied the existence of case-law; *see* also Johnson and Trent, JJ. dissents in Lamb v. Philipps, 22 Phil. 456, 558 (1912).

[101]Caltex (Philippines), Inc. v. Palomar, 18 SCRA 247, 257 (1966).

At the very least, it can be said that Article 8 gives *de jure* standing to judicial precedents.

Leading Philippine commentators today hold that judicial decisions are not independent sources of law in the sense of creating new law, as understood in England and other case-law countries.

> Jurisprudence, in our system of government, cannot be considered as an independent source of law; the courts cannot create law. A law established by jurisprudence would be a judge-made law, which is juridically impossible in our governmental system that mandates separation of powers, inasmuch as the sole function of our courts is to apply or interpret the laws.[102]

Thus, judicial decisions are considered merely as having the function of filling the gaps, clarifying ambiguities, and harmonizing apparent inconsistencies in the law.[103]

But even as Philippine commentators deny the concept of judge-made law, they acknowledge the creative role of the Philippine judge.

> While a judge cannot create abstract rules of law, because that would be an invasion of legislative power, he certainly can formulate and declare the law as applied concretely to the case before him. Courts are not limited to the automatic and mechanical function of interpreting the law. They have, furthermore, a double function: First, to fill the deficiencies of legislation and provide a rule for the facts of a given case for which there is neither positive provision of law nor established custom; and second, to adapt and adjust rigid and inflexible provision of law, rendered inadequate by time and circumstances, to the changing conditions of life and society, so that the law may accomplish its social mission. Because of this, jurisprudence must necessarily be flexible, capable of receiving impressions from without, so that it can be an advance guard in the equitable application of law and an active instrumentality in the progressive development of the law.[104]

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[102]TOLENTINO , *supra* note 52, at 38. *See* also PARAS, *supra* note 57, at 44; PASCUAL, *supra* note 1, at 22; Gamboa, *supra* note 3, at 314; and Juco, *supra* note 92, at 45.

[103]PASCUAL, *supra* note 1, at 22.

[104]TOLENTINO, *supra* note 52, at 38.

This stance follows the concept of "free scientific research" advocated by Francois Geny in France.[105]

Article 6 of the Spanish Civil Code, which provided for the application of custom and general principles in cases where no statute is directly applicable to the point in controversy, was not retained in the draft of the new Civil Code. Instead a broader provision was included on the subject which read:

> Where there is no law clearly applicable to the point at issue, or if the law is doubtful, ambiguous or conflicting, and previous judicial decisions do not throw light upon the question, the general or local customs shall govern. In the absence thereof, the judge shall apply that rule which he believes the lawmaking body would lay down, but he shall be guided by the general principles of law and justice. The spirit of analogous laws may be considered. He may bear in mind foreign legislation and decisions as well as the opinions of jurists. He may likewise take into consideration legal maxims.

The proposed provision was eliminated by the Congress when it enacted the new Civil Code, leaving no express provision with respect to suppletory rules in case of deficiency in the law. On this matter, Tolentino, a leading Filipino civil law commentator, and who for a brief period was a member of the Code Commission, holds that

> In spite of this, however, such suppletory rules must be considered as existing. Even in countries where there is no express enumeration of the rules that may be applied in the absence of positive law, custom and jurisprudence are always considered as suppletory rules, contributing to the evolution of law and its adjustment to changing conditions. The opinions of jurisconsults and commentators are also constantly referred to in judicial decisions; they serve to fill gaps in the application of the law.[106]

Such a conclusion is to be clearly implied from the provision of Article 9 of the new Civil Code which states that "No judge or court shall decline to render judgment by reason of silence, obscurity or insufficiency

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[105]Loussaouarn, *supra* note 16, at 240-244, citing GENY, METHODE D' INTERPRETATION ET SOURCES NE DROIT PRIVE POSTIF (1954).

[106]TOLENTINO, *supra* note 52, at 41-42 (underscoring supplied).

of the laws."[107] In addition, Articles 11 and 12 of the Civil Code,[108] which regulate customs, clearly support the role that jurisprudence must play in evolving the customary laws and integrating them into the legal system because of the positive requirement that "[a] custom must be proved as a fact, according to the rules of evidence."[109]

Characteristics of the Theory.

To quote Gilmore, "[t]he basis of a thing is usually understood to be the foundation upon which it rests."[110] From the foregoing discussions one gets the impression that the Philippine concept of judicial precedents enjoys no unifying theory. On the one hand, judicial decisions are submitted to be sources of law, and yet it is likewise opined that by themselves decisions of the judiciary do not constitute law.

An understanding of this apparent "double-talk" would best be achieved by analyzing the three other characteristics of Philippine judicial precedents: (1) its application is hierarchical; (2) its scope is modal; and (3) its form is doctrinal. These characteristics give the Philippine principle on judicial precedents more flexibility than the doctrine of *stare decisis*, while achieving the goals of *jurisprudence constante* for the pre-eminence of statutory law.

Hierarchical Application.

In the case of *Miranda v. Imperial*,[111] the Supreme Court held:

> Only the decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction. However, this does not prevent that a conclusion or pronouncement of the Court of Appeals which covers a point of law still undecided in our jurisprudence may serve as juridical guide to the inferior courts, and that such conclusion or pronouncement

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[107]However, Article 9 does not require a court to decide each and every question of law raised by one party regardless of its materiality to the litigation. Novino v. Court of Appeals, 8 SCRA 279, 280 (1963).

[108]CIVIL CODE.

Art. 11. Customs which are contrary to law, public order or public policy shall not be countenanced.

Art. 12. A custom must be proved as a fact, according to the rules of evidence.

[109]*Id.*

[110]Gilmore, *supra* note 1, at 90.

[111]77 Phil. 1066 (1947).

> be raised as a doctrine if after it has been subjected to test in the crucible of analysis and revision, this Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.[112]

It follows that the principle that court decisions constitute binding law is strictly applicable only to the decisions of the Supreme Court, and Court of Appeals decisions on issues not covered by the Supreme Court jurisprudence serve merely as a juridical guide. The decisions of all other courts, on the other hand are not considered binding precedents at all.

Miranda does not disclose the legal or historical basis for the doctrine. What is readily apparent from the hierarchical application of *Miranda*, however, is that it adheres to the structural pattern of the *doctrina legal* of Spain, where only the Supreme Court establishes binding precedents.[113] However, unlike the concept of *doctrina legal*, the *Miranda* application grants to the decisions of the Court of Appeals persuasive juridical effect, much like that of *jurisprudence constante*.

As previously discussed, subsequently, in 1950, the newly enacted Civil Code provided without distinction that "judicial decisions" shall form part of the legal system of the Philippines. And yet, the hierarchical application of *Miranda* continued to be applied. In *Albert v. Court of First Instance of Manila*[114] the Supreme Court stressed that "the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings."[115] Later, in *Tugade v. Court of Appeals*,[116] where a long line of Court of Appeals precedents were being pressed upon the Supreme Court, it declared: "it is this tribunal, not respondent Court of Appeals, that speaks authoritatively."[117]

Why would the Supreme Court withhold the full applicability of Article 8 to the decisions of other courts? Indeed it has been expressed

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[112] *Id.*, at 1073. Original decision in Spanish; *see* translation in PADILLA, *supra* note 93, at 42 (1975).

[113] *See* Ramos, Book Review, 22 REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO 442 (1953).

[114] 23 SCRA 948 (1968).

[115] *Id.*, at 961 (underscoring supplied).

[116] 85 SCRA 226 (1978).

[117] *Id.*, at 230. *See* also Fong Choy v. Republic, 25 SCRA 24, 25 (1968); Insular Life Assurance Co., Ltd. Employees Association v. Insular Life Assurance Co., Ltd., 37 SCRA 244, 279 (1971).

that lower courts, when necessitated by the changing demands of the times and public policy, should be allowed to depart from decisions of superior tribunals as a "direct way of provoking a re-examination of an important legal question, and giving the Court of last resort an opportunity of either reaffirming the old doctrine or abandoning it, and adopting a new one."[118] The case of *Barrera v. Barrera*[119] explains the rationale for the hierarchical application of the binding effects of judicial precedents:

> The delicate task of ascertaining the significance that attaches to a constitutional or statutory provision, an executive order, a procedural norm or a municipal ordinance is committed to the judiciary. It thus discharges a role no less crucial than that pertaining to the other two departments in the maintenance of the rule of law. *To assure stability in legal relations and avoid confusion, it has to speak with one voice. It does so with finality, logically and rightly, through the highest judicial organ, this court. What it says then should be definitive and authoritative, binding on those occupying the lower ranks in the judicial hierarchy. They have to defer and to submit.*[120]

The implication of the *Barrera* rationale is that although a lower court possesses the power of judicial review, its determinations are at best *de facto* and may at most constitute the "law of the case" and bind only the litigants; no precedence commences from such decisions, except in the case of the Court of Appeals where its determination is persuasive on the lower courts. It may be argued that the doctrine would give rise to inconsistency of rulings in the lower echelons of the judiciary and an uneven or unequal dispensation of justice for parties who may be similarly situated. This is more apparent than real, since in the ordinary course of events, parties eventually go up to the Supreme Court on issues of constitutionality and validity of legislative and executive acts. This may seem to encourage appeals, but the Philippine judicial system is the four-tier system, which follows the modern view that appellate jurisdiction should be assumed on a discretionary basis in accordance with the principle that litigants would not be accorded more than one appeal as a matter of right.[121]

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[118]Cf. Juco, *supra* note 78, at 50-51 citing dissent in People v. Santos, 104 Phil. 551, 560 (1958).

[119]34 SCRA 98 (1970).

[120]*Id.*, at 107 (underscoring supplied).

[121]PUNO, INNOVATIONS AND REFORMS IN THE JUDICIAL SYSTEM (1978).

Under the Revised Rules of Court, a review by the Supreme Court of decisions of the Court of Appeals "is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefore."[122] The grounds given for review by the Supreme Court are:

> (a) Where the Court of Appeals has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with applicable decisions of the Supreme Court;
>
> (b) When the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.[123]

Pursuing the point further, it is true that even without the *Miranda* hierarchical application, the same practical result would be achieved because of the fear of reversal. However, the *Miranda* application has the effect of streamlining the application of judicial precedents, in the sense that the legal community would not have to sort through the cacophony of divergent judicial pronouncements at the lower level of the judiciary. Even at the Court of Appeals level, only precedents from a long line of decisions tend to be persuasive, especially when said court speaks with "several voices" having 15 divisions. This really makes a lot of economic sense for a legal community that is short in financial resources. There has never been a consistent reporter system of decisions of Court of Appeals and other special courts; and there has never been a reporting of the decisions of courts of first instance of which there are more than 420 salas throughout the archipelago.

By giving the decisions of the Court of Appeals persuasive value, the *Miranda* hierarchical application provides a "testing ground" for legal issues to be clarified and ventilated in the "crucible of analysis and revision". By the time the issues shall have reached the Supreme Court there would have been a solid judicial background to lay down proven doctrines. The set-up adds pliability to judicial precedents similar to that achieved in the doctrine of *jurisprudence constante* where a sense of *de facto* stage is reached at the Court of Appeals level by a line of decisions tending to uphold a common doctrine, from which the legal community may draw juridical guide, with fore-knowledge that the "doctrines" may

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[122]RULES OF COURT, rule 45, sec. 4.
[123]*Id.*

still be changed, depending upon the final determination of the Supreme Court.

The Constitution further sanctifies the principle of judicial precedents by providing that "no doctrine or principle of law laid down by the court in a decision rendered en banc or in a division[124] may be modified or reversed except by the court sitting *en banc*."[125]

Outside the exercise of their power of judicial review, the creative role of judges is not lost. Judges, who cannot be in agreement with every decision of the Supreme Court, are not required "to keep locked up within their breasts their own views and in fact should not be discouraged, for the progress of the law may very well depend on a more searching inquiry as to the continuing validity of certain assumptions and presuppositions uncritically accepted."[126] Lower court judges are free to express their dissenting views, although they are mandated to render judgment in accordance with Supreme Court precedents.[127]

The Constitutional mandate of granting the Supreme Court the power of control and supervision over all inferior courts, reinforces the binding nature of judicial precedents. Specifically, the Supreme Court is granted the power "to discipline judges of lower courts, or order their dismissal",[128] This power has been exercised by the high court in instances where judges have by their decisions shown "gross incompetence or gross ignorance of the law or gross misconduct."[129]

Therefore, insofar as decisions of the Supreme Court are concerned the first principle of hierarchy of the doctrine of *stare decisis* has been adopted in the Philippine jurisdiction, under the mechanism of *doctrina legal* of the Spanish civil law system. The principle of *jurisprudence constante* permeates the decisions of the Court of Appeals.

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[124]Under Article VIII, Section 4 (1) of the 1987 CONSTITUTION, the Supreme Court composed of a Chief Justice and 14 Associate Justices may sit *en banc* or, in its discretion, in divisions of three, five or seven members.

[125]CONST., art. VIII, sec. 4 (3).

[126]Barrera v. Barrera, 34 SCRA 98, 106 (1970).

[127]*Id. See* also People v. Santos, 104 Phil. 551, 560 (1958).

[128]CONST., art. VIII, sec. 11.

[129]People v. Valenzuela, 135 SCRA 712 (1985); Cathay Pacific Airways v. Romillo, Jr., 142 SCRA 262 (1986).

Modal Scope

The Philippine doctrine on judicial precedents has certainly been much influenced by the second principle of stare decisis that "a court is bound by its own previous decisions",[130] but more in accord with the American tendency to depart from precedent when warranted by policy considerations. The Supreme Court has decreed

> The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. ... The principle of *stare decisis* does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the law and the precedent. The duty of the Court is to abandon any doctrine or rule found to be in violation of the law in force.[131]

In the Philippine legal set-up, the power to interpret laws is strictly construed to be a judicial power. Necessarily, the legislature cannot bind courts to a particular construction of an existing law. In *Endencia v. David*,[132] the Supreme Court held:

> We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the legislative department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in an actual case ascertained its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on a judicial interpretation of the law or of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being

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[130] VON MEHREN, *supra* note 12, at 15. *See* also DAVID, *supra* note 6, at 435-36.

[131] Tan Chong v. Secretary of Labor, *supra* note 99. *See* also Lam Swee Sang v. Commonwealth, 79 Phil. 249, 258 (1947) citing Prall v. Burckhart, 299 Ill. 19, 132 N.E. 280.

[132] 93 Phil. 696 (1953).

> clearly violative of the fundamental principles of our constitutional system of government, particularly those governing the separation of powers.[133]

The legislature may, however, define the terms it uses in a statute, said definitions being considered as part of the law itself.[134] In France, the function of interpreting the law is exercised by the legislature itself through the system of *refere legislatif*, which system has fallen into disuse because of the great difficulties and delays involved.[135]

In situations where long-established precedents are to be overturned, the Supreme Court has consistently adopted the practice of qualifying the effect of the change of stance by providing that the new doctrine applies prospectively. This the Supreme Court has done even when the overturning of precedent pertains to the interpretation of a statute, notwithstanding its previous declaration that its interpretation of a statute "constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."[136]

What remains uncovered by the doctrine are those situations not governed by the principle of *res adjudicata* simply because no action has risen, and yet, the parties have arranged their affairs or transacted their businesses relying upon the uniform decisions and rulings of the Supreme Court as to the correct transaction of the law.[137] There is no simple resolution to this situation, as there is no guarantee that laws will not be changed. However, even the legislature when it enacts a new law changing the old order usually protects vested interests; or allows an interim period for parties to readjust their transactions or relations.

But in criminal cases the attitude of the Supreme Court has been more solicitous towards the defendant. The doctrine laid down by the Supreme Court in criminal laws is deemed to constitute a part of the law as of the date it was originally passed, but a reversal of that doctrine is also considered a part of the interpreted law on the date the law was passed.[138] Thus, theoretically, a particular law can have as many interpretation as the Supreme Court should change its interpretation.

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[133] *Id.*, at 700-702.

[134] PARAS, *supra* note 57, at 47.

[135] Loussaouarn, *supra* note 16, at 239.

[136] Senarillos v. Hermosisima, 100 Phil. 501, 504 (1956).

[137] *E.g.*, dissent in Philippine Trust Co. v. Mitchell, 59 Phil. 30, 41 (1933).

[138] *See* People v. Jabinal, *supra* note 101.

To illustrate, in 1958 in *People v. Lucero*[139] the Supreme Court held that a civilian who has been appointed agent by a provincial governor with written authority to carry firearm would not violate the law governing illegal possession of firearms. The doctrine was reaffirmed in 1959 in *People v. Macarandang*.[140] In 1967, however, in *People v. Mapa*,[141] the Supreme Court abandoned the doctrine and affirmed the conviction of defendant Mapa. In 1974, the Supreme Court in *People v. Jabinal*,[142] acquitted the defendant (although he was in the same position as Mapa carrying a firearm pursuant to his appointment as special agent by the provincial governor), on the ground that when he was appointed agent in 1962, the prevailing doctrine on the matter was that laid down in *Macarandang* (1959) and *Lucero* (1958) and the reversal of the doctrine came only in 1967 in *Mapa*. Because the *Macarandang* doctrine was part of the law of the land when Jabinal was arrested in 1962, he should benefit from such doctrine. The *Mapa* doctrine can only be given prospective effect and "should not apply to parties who relied on the old doctrine and acted on the faith thereof."[143] The reliance doctrine was also applied in *People v. Licera*.[144] There is no doubt that the "reliance" doctrine of the Supreme Court is just and equitable, but it was applied uneven-handedly. *Mapa* became the scapegoat since at the time of his apprehension the prevailing doctrine was also the *Macarandang* doctrine and he relied on it just as in the case of defendants Jabinal and Licera.

The principle of reliance discussed above has been applied by the Supreme Court in situations where relations or transactions were established pursuant to a state or executive order that is unconstitutional prior to the time the same is declared void by the courts.[145] The Philippines, as in the American tradition, adopts the orthodox view that an "unconstitutional act, whether legislative or executive, is not a law; it confers no rights, imposes no duties, and affords no protection."[146] However, this orthodox view has been qualified by the Supreme Court with the "operative fact" doctrine giving legal effect to a legislative or executive act where theoretically none exists:

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[139]103 Phil. 500 (1959).

[140]106 Phil. 713 (1959).

[141]20 SCRA 1164 (1967).

[142]55 SCRA 607 (1974).

[143]*Id.*, at 612.

[144]65 SCRA 270 (1975).

[145]Article 7 of the Civil Code provides that "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern."

[146]J. Fernando concurring in Fernandez v. Cuerva, 21 SCRA 1095, 1106 (1967) citing Norton v. Shelby Country (1886) 118 U.S. 425, 442, 30 L.Ed. 178, 6 R.C.L. 117 (1886).

> The growing awareness of the role of the judiciary as the governmental organ which has the final say on whether or not a legislative or executive measure is valid leads to a more appreciative attitude of the emerging concept that a declaration of nullity may have legal consequences which the more orthodox view would deny. That for a period of time such a statute, treaty, executive order, or ordinance was in `actual existence' appears to be indisputable. What is more appropriate and logical than to consider it as an operative fact.[147]

In the area of procedural law, the Supreme Court has, in the interest of public policy or justice, waived its own rules of procedure.[148]

An interesting point that has arisen in connection with the adherence of the principle that decisions of the Supreme Court are binding precedents, and therefore constitute "law," is the doctrine that judicial precedents only have prospective effect and cannot be made to operate retrospectively.[149] Such doctrine would contradict the stance that a court's interpretation of a law constitutes part of the law as of the date it was originally passed since the court's construction merely establishes contemporaneous legislative intent.[150] The prospective effect being placed upon judicial precedents is not by itself a clear recognition of the proposition that they create new laws, but rather is borne out by the necessity of carrying the public policy that there must be an end to particular litigation; the "law of the case" doctrine or res *adjudicata*.[151] "There would be no end to a suit if every litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate of chances from changes in its members. An itch to reopen questions foreclosed on a first appeal would result in the "foolishness of the inquisitive youth who pulled up his corn to see how it grew."[152] Under the principle of *res adjudicata*, a subsequent reinterpretation of the law is applicable prospectively only to new cases, whether civil or criminal, but not to old ones that have finally and conclusively been determined.[153] "Public policy and sound practice demand that at the risk

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[147]*Id.*, at 1106; *See* also Manila Co. v. Flores, 99 Phil. 738 (1956); de Agbayani v. Philippine National Bank, 36 SCRA 429 (1971).

[148]*E.g.*, Ordovesa v. Raymundo, 63 Phil. 275.

[149]People v. Pinuila, 103 Phil. 992 (1958); Pomeroy v. Director of Prisons, 107 Phil. 50 (1960)

[150]Senarillos v. Hermosisima, *supra* note 137 at 504 (1956); see also, TOLENTINO, *supra* note 52, at 38-39.

[151]People v. Olarte, 19 SCRA 494, 499 (1967).

[152]Zarate v. Director of Lands, 39 Phil. 747 (1919).

[153]People v. Olarte, *supra* note 152.

of occasional errors, judgments of courts should become final at some definite date fixed by the law. The very object for which courts were constituted was to put an end to controversies."[154]

Thus, in the case of *Tan Chong*,[155] the Supreme Court in abandoning the principle of *jus soli* on Philippine citizenship, decreed that its new doctrine "is not intended or designed to deprive, as it cannot divest, of their Filipino citizenship those who had been declared to be Filipino citizens, or upon whom such citizenship had been conferred, by the courts because of the doctrine or principle of *res adjudicata*."[156]

Doctrinal Treatment of Precedents

Legal education in the Philippines is eclectic in the sense that there is a dual emphasis on the exposition of general principles from which the results in concrete cases are derived by a process of deductive reasoning, best enunciated through the lecture method of instruction and the rote method of class participation by students. At the same time, the importance of the decision-making process of policy and factual consideration is also given importance by study of the various decisions of the Supreme Court as they apply, amplify, or expand the meaning or coverage of the law; in this process a modified case-method is employed by lecturers. But even in the latter process, the study of the decisions of the Supreme Court tends to lead to the method of evolving the decisions into general precepts, much like the function of the codal provisions; consequently, although the factual setting is important, they are not vital because the whole purpose of the "story telling" of the facts is to answer the query: "What lesson does the case teach?"

Decisions of the Philippine courts follow the American style of elaborate statements of the facts and discussions of precedents; in collegiate courts such as the Supreme Court and the Court of Appeals, the name of the author of the opinion (the *ponente*) is given, as are the names of other justices; dissenting and concurring opinions are frequent. The decisions of the Supreme Court are published in official and commercial reporters.[157] There are various digesting services.[158] Moreover, legal

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[154]Layda v. Legaspi, 39 Phil. 83 (1918); Dy Cay v. Crossfield & O'Brien, 38 Phil. 521 (1918); Contrera v. Felix, 78 Phil. 570 (1947).

[155]79 Phil. 249,258 (1947).

[156]*Id.*

[157]The "Philippine Reports" and the "Supreme Court Reports Annotated."

writers and scholars exert an effort to "fit" and systematize the *ratio decidendi* (and even *obiter dicta*) of Supreme Court decisions into "appropriate" codal or statutory provisions. The existence of the code system makes it easier for the facts of the cases to be glossed over as the doctrines they establish are "fitted" into appropriate codal sections. The systematization process is therefore doctrinal. Although it will not be admitted, there is less emphasis on the "exactitude" of the facts of cited precedents to the facts of the case being argued. In this respect, the doctrine of a precedent is treated much the same way as the method of exegesis employed in the language of the statute for application to a set of facts involved in a pending case. The techniques employed when arguing from judicial precedential doctrines often are by way of analogy, reasoning a *fortiori*, or *a contrario*.

Judicial precedents are therefore perceived to serve the same "constitutional" function as codes, so that a whole body of doctrine may, as in the case of codes, be "treated, although not complete, but as self-sufficient, in the sense that they contain comprehensive rules and principles and embody a system for applying these norms to all cases arising within the areas they propose to cover."[159] As a consequence, the Supreme Court has become flexible in its treatment of precedents. This puts an element of surprise into the principle of judicial precedents, which is contrary to stability.

Ideally, a hybrid legal system, such as that of the Philippines, is better able to cope with the weaknesses inherent in, and be able to draw from the strengths offered by, both the civil law and common law systems. Both systems have philosophical mechanisms to promote certain important but contending and often conflicting aims; predictability by the doctrine of *stare decisis*, and flexibility and growth by the rules of equity and the techniques for limiting and distinguishing precedent in the common law system. Whereas, in the code system of civil law, predictability and stability are assured by the "written law" of the codes, while flexibility and growth are permitted, internally, by general clauses tempering rigid rules, and externally by interpretation, made more apparent by the absence of a formal rule of *stare decisis*.[160]

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[158]*E.g.*, SCRA INDEX, Philippine Reports Digest, Republic Reports Digest. Annual "Surveys" of Supreme Court decisions in important fields are published yearly by various legal and law school publications.

[159]*Cf.* GLENDON, GORDON & OSAKWE, COMPARATIVE LEGAL TRADITIONS 126-128 (1982).

[160]*Id.*, at 139-140.

REFLECTIONS AND CONCLUSION

The present ambivalent theoretical precepts in Philippine legal system of the power of the judiciary in "lawmaking" has led to an irregular terrain that can only be explained by the legal predilections of individual judges who may or may not choose to wield the power, and leading commentators, mostly civilists, whose drawback to some of the archaic principles of civil law does not take into consideration the trend in leading civil law countries such as Spain, France and Germany to adopt radical principles as to the proper role of judicial precedents as formal sources of law. The lack of a clear-cut legal philosophy on this matter breeds inconsistent results and leads to the danger pointed out by Rene David that without the guidance of a clear underlying legal philosophy, what becomes the essential factor is the willingness, or hesitation, of each judge to admit that distinctions may or may not be drawn, or whether he considers himself bound by an archaic principle, or whether he is even aware of the need that the law should evolve and whether he is to be guided by progressive or conservative ideas.[161]

The elements of a more vigorous and innovative legal system punctuated by a clearly-defined principle of judicial precedents are all practically existing in the Philippines. Many Filipino jurists recognize and apply the various parts of the principles. But what is lacking is a unified juristic approach and a systematic realization that such a system does in fact exist. Unless the clear limits of this theory are recognized *de jure*, the best of Filipino legal scholars continue to work in the shadow of outmoded principles.

There should be a redefinition of the principle of "separation of power", at least insofar as lawmaking power is concerned, to one that emphasizes more the "separation of primary responsibility" rather than the exercise of such power.[162] At the very least such a doctrine should dispense with the notion that courts and administrative agencies never put anything into the law which was not there at the time they used it and that all they do is apply the received rule.[163] Filipinos do not have French

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[161]DAVID, *supra* note 6, at 437.

[162]The existence and seeming indispensability of administrative agencies exercising all three of the great governmental powers is the clearest indication of the necessity of redefining the principle of separation of power to perhaps a two tier principle: structural and constitutional coherence on the first tier covering the executive, legislative, and judiciary branches; and a composite and flexible structure on the second tier, which is to govern administrative agencies, and perhaps even lower courts. But the discussion of such doctrine would constitute a separate paper altogether and cannot be covered here.

[163]*See contra* Fernandez, *Sixty Years of Philippine Law*, 35 PHIL. L. J. 1391 (1960).

history where the legislators mistrusted the judges and have withheld from the latter any participation in lawmaking. Indeed the present legal set-up has been the product of entrusting unto the judicial safeguard the very fundamental law of the land – the Constitution. By and large the judiciary has acquitted itself rather well.

As this paper has shown, the Philippine legal system has straddled the main features of the principles of *stare decisis, doctrina legal,* and *jurisprudence constante* in evolving a composite doctrine on judicial precedents. What has clearly emerged from the beginning of this century is a Philippine principle of judicial precedents that has the following structural characteristics: (a) unity and stability, achieved by the compulsory rules that a single decision of the Supreme Court is sufficient to establish a legal rule or doctrine binding on lower courts throughout the archipelago; (b) predictability, achieved by the practice that such doctrines are generally followed by the Supreme Court in subsequent cases; and (c) flexibility and growth, achieved by the rule that the Supreme Court is not enjoined from abandoning a doctrine if it determines its falsity or impracticality, but that in instances where it must abandon a doctrine, the Supreme Court "manages" or "qualifies" the adverse effects to do justice to those who have relied upon the doctrine prior to its abandonment.

Underpinning this eclectic principle is the respect and primacy that the Supreme Court gives to statutory enactments by the legislature. In areas in which the legislature has laid down its policies, judicial decisions are seen to develop, but are not confined, within the legal framework established by legislation. But in areas or situations where there is legislative lacunae the judiciary in effect becomes the "lawmaker". This is engendered by the general principles clauses in the Civil Code and other statutory enactments which allow greater discretion on the part of the judiciary to develop the law.

The weak link in the Philippine judicial system is the middle part of the chain involving the Court of Appeals and other high courts, including the administrative agencies, since there is no reliable reporter system covering their decisions. A development of a strong reporter system in this field will encourage a system of *jurisprudence constante* on that level of the judicial system. This is necessary, for often the Supreme Court cannot find the time to address all issues important in the lives of people, especially when it can only act on the basis of justiciable controversies. Transactions and lives cannot pause to await the slow grind

of the Supreme Court decisional process, evolving a reliable system of precedents in the upper middle level of the judicial echelon would facilitate commercial, economic and social developments.