

THE PHILIPPINE LEGAL SYSTEM AND ITS ADJUNCTS: PATHWAYS TO DEVELOPMENT*

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I. INTRODUCTION

A Conceptual Framework for Understanding the System of Law and its Adjunct Systems of Quasi-Law in Philippine Society

Multiplicity of Rules

Let me begin with that celebrated insight with which Rousseau opened up his *Social Contract*.

Man is born free, yet everywhere he is in chains. One thinks himself to be the master of others, and yet remains a greater slave than they.

Rousseau was contrasting the condition of man in a State of Nature, with the State of Man in Society, and also, the condition of the Ruler in Society with the condition of his subjects. In the first comparison, Rousseau holds that in Nature, man is free, but in Civil Society, he is not free. Rather, man in Society is in chains, suggestive of bondage. In the second comparison, Rousseau holds that while a Ruler gives commands, he is less free than his subjects whom he commands. His subjects have duties to the Ruler and to others, but the Ruler has these duties and more, he has as Ruler duties to the Society. Such duties are a terrible burden, epitomized in a maxim of Constitutional Law -- Public Office is a Public Trust. Rulers and Leaders must be prepared to accept sacrifices when required or demanded by the public good.

For our purpose, we must forego discussion of the very first of Rousseau's postulates, that Man in a State of Nature is free. This is the postulate of Natural Liberty. This idea is very much alive today, for it underlies Anarchism and the different schools drawn from it. That the

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idea is attractive, we should concede. That it is not free from doubt is likewise clear. The very first proponent of the Social Contract theory, the ardent monarchist Thomas Hobbes in his *Leviathan*, had a dismal view of human life in a State of Nature. His words are memorable:

And the life of man, solitary, nasty, brutish and short.

We now take up the second postulate of Rousseau, which is relevant to our subject. The postulate is that in Civil Society, man is not free for he is in chains. Of course, the expression is a metaphor. Rousseau was not referring to physical incarceration. By "chains" he meant the compulsions of Duty arising from Law and other sources of obligations in Society. The use of the term "chains" in the plural is fortunate. It is good sociology. For the duties and obligations of each human being in Civil Society is not only multifarious but multilayered as well. Each human being in Civil Society is subjected in his behavior to multiple and several sources of obligations at the same time. Civil Society presents a mosaic or network of regulatory systems, all of which impose duties on human rights simultaneously through binding rules. We can attest, through our individual experiences, to the reality of multiple regulatory systems, regulating and controlling our behavior. In Philippine society, we are all subject to regulations emanating from the following Systems:

1. The Philippine Legal System, or Philippine Law for short.
2. Our Family and its rules.
3. The Church and its rules.
4. The School and its rules.
5. The Business Corporation and its rules.
6. The Labor Union and its rules.
7. Our Political Party and its rules.
8. Our Fraternity or sorority and its rules.
9. Our Trade Chamber and its rules.
10. Our Sports Club and its rules.

Social Orders and Systems of Rules

In society, the population of individuals is coalesced into distinct and discrete groups. These groups are of two kinds. First of these are the communities. A community consists of individuals living together in face to face inter-action, usually sharing ties of blood, territorial space, and a common culture. The basic community is the family. In traditional societies, communities other than the family are groupings of families. Examples of such expanded communities are tribes, clans, and nations.

Communities are distinguished from other human groups by the following: they are permanent and continuing; the relationships on which membership is founded are enduring; for most members, membership is involuntary and starts from birth; the shared life embraces the general concerns and activities in day-to-day existence.

Voluntary associations are distinguished from communities by the consent which establishes the associational tie of each member to the group. Such consent is the foundation of membership, whether the members are individuals, or are themselves groups. The interest which brings together the members in association is specific and limited, and the association is confined to the attainment or realization of such limited purpose.

Thus, in society, we find in addition to the over-arching social order which is society itself, the population grouped into lesser social orders: the communities and voluntary associations. The common interests and objects of each social order generate a corresponding structure of authority, or government, and a system of rules for the governance of action and conduct of those who belong to the community or to the voluntary association. Conceptually, therefore, we may see each society as an aggregate of social orders, with their respective components: governments and the system of rules generated for the governance of conduct.

Mores as General Rules of Right and Wrong

The hundreds of systems of rules generated by the communities and associations within society have a residue of shared values and common ideas of right and wrong, which gain acceptance within the society, or among large sectors of its population, and which over time evolve and develop into *mores*. Mores consist of standards of conduct, which are felt to be right, hence, commanding general approbation, and

acts condemned as wrong in themselves, hence, carrying general disapproval. Because of their general acceptance, within society, and the intrinsic worth ascribed to them by those under their influence, mores exert a tremendous impact not only on behavior of the population but also on the development of Law. Mores readily mobilize changes in the Law, not only by influencing existing content but by propelling growth and trends in new directions. The impact is felt in the major agencies of law creation, including constitutional conventions, legislatures, the courts of justice and administrative tribunals.

Laws Are Rules Enacted by a State

The prolixity of systems of rules within society compel a quest for a defining criterion, by which we can identify, in conceptual terms, the legal system in each society, as distinct from the other systems of rules within such society. In this quest, we are led to the question: What is the social order within society, which generates and produces the system of rules that we call Law? On a purely empirical basis, we find that there is such a social order in society, and this is the State. The sum of human experience teaches us that whenever a State is identified, there is a system of rules generated by the government of such State which is identified as Law. If such teaching is reliable, it follows that a System of Law or a Legal System may be defined thus: A system of rules produced or generated by the government of a State. Stated more simply, a System of Law or a Legal System is the system of rules of a State.

At this point, we must take notice of the two meanings that may be given the word "Law" in the context of a general discussion. First is the meaning of "Law" as a collectivity. In this sense, Law of the State refers to the totality of rules enacted by the State, *i.e.*, by its agencies of government. The second is the meaning of "Law" as a particular enactment by an agency of the State, such as a statute, judgment, decree or ordinance. In this sense, "Law" refers to a specific law in the Legal System.

Let me clarify the point further. One difficulty we confront in the identification of Law and distinguishing Law from other rules, is the absence of intrinsic distinguishing characteristics. There is no mark or characteristic of legal rules, viewed as rules, which is unique to Law and which sets them apart from other rules, such as rules of Dogma or rules of morality. We find here a clear contrast from the situation in the animal kingdom. Given a particular animal, a brief examination of the specimen by itself permits an accurate classification. Indeed, one look is enough to enable us to classify an elephant as a *Vertebrata*, rather than

an *Insecta*, of *Coelenterata*, or a cow as a *Mammalia*, rather than *Reptilia*.

In the case of Law, the method of identification is different. It is more involved. What defines a rule as Law is not to be found in the rule itself but its relationship to a source of enactment, that is to say, the social order which produced the rule. The test or criterion is the nature of the social order which created or enacted the rule. Thus, with respect to a particular rule to be identified as Law or not Law, we look to its source. Where that social order is a State, then the rule is a Law. It is a Law of that State. If the social order is not a State, then, the rule is not a Law.

Laws Enacted Are Laws Only of Enacting State

For clarity, another point must be made. Where a rule is identified to be Law, because it was enacted by a State, its status as Law is circumscribed to being a Law of that State and of no other State. The fact that a rule has become Law with its enactment by one State does not make it Law for all other States. Thus, rules enacted by one State is Law only of the State enacting them but do not acquire the status of Law of all other States. Exceptions may arise where common rules are enacted by two or more States, either simultaneously or in seriatim. But this merely confirms the point being stressed, that a rule becomes Law only for the State that has enacted it. Take, for example, the Bill of Rights. All over the world, in many countries, a Bill of Rights is found in their constitutions patterned after the Bill of Rights in the constitution of the United States of America. In some constitutions, the language and phrasology of the principal guaranties are the same or substantially the same. From this we can say that certain rules of the Bill of Rights of the U.S. are Law not only in the U.S. but also in other countries which have enacted them in their own constitutions, like the Philippines.

Such rules, however, are not Law in the other countries which have not adopted them.

Enactment of Laws by Law-Creating Agencies of the State

Enactment of rules into Laws of a State is made by the different agencies of Government in each State. The matter of authority to enact Laws in behalf of the State is governed by the constitution of the State. In the earlier, simpler forms of the State, the Law-Giver or Law-Maker was easily identified. This was the King. But the pattern was by no means universal. In many ancient societies, including the city-states, two or more agencies of Law-Creation were recognized. Mention may be

made of Ancient Rome. Even during the monarchy, the college of pontiffs was the custodian of *Jus Privatum* and difficult or doubtful questions of Law were referred to it for authoritative enunciation or determination. During the early Republic, the constitution of ancient Rome had come to recognize the following Law-Makers or Law-Givers:

1. The *Comitia*, or Legislative Body
2. The *Praetor*, who was the chief magistrate in the administration of justice.
3. The Censor, who ruled on qualifications for high office.
4. The Consul, who was chief executive officer and who issued decrees in execution of the laws.

In modern State constitutions, especially those adhering to the system of republican government, the following Law-Creating Organs are recognized:

1. Constituent Organs: they enact rules of fundamental law.
2. Electoral Organs: they enact the laws conferring high office on the highest magistracies of the State.
3. Legislative Organs: they enact the general laws defining rights and duties applicable to the entire territory of the State (national), or to a particular portion of such territory (regional or local).
4. Judicial Organs: they enact judgments vindicating rights or enforcing duties upon determination of violation of law.
5. Administrative Organs: they enact Orders recognizing particular rights or mandating particular duties, upon determination of compliance with general law concerning rights and duties.

As will later be pointed out, these different types of State organs correspond to the various modalities of Law Creation and to different Forms of Law.

Criterion of State as Unique Social Order

Because it is identification of rules as enactments of the State that make them Law, it is necessary to our effort to make a clear demarcation of the field of Law, that we have a clear criterion of what is a State. Only such a criterion will enable us to segregate social orders which are States from the social orders which are not States, and thereby delineate with completeness the domain of Law. If our criterion

is not accurate, we shall be led to fundamental errors, and we might consider as Law, rules which are not truly Law. The resulting confusion can lead to confusion, disorder, and even anarchy.

The established criterion which distinguishes the State and sets it apart from the other social orders in society, is Sovereignty. We are all familiar with the textbook definitions of sovereignty. From the juristic viewpoint, which is the viewpoint of legal science, sovereignty simply means the supremacy of the Law of the State within its territory. Whatever may be the Law of the State on a particular matter, there is no rule that State agencies can recognize in opposition to or in derogation of the State Law. This is to say that the agencies of the State, including the State courts, will apply and will enforce the Law, rather any rule contrary thereto, emanating from any source within or without the State. The only exception recognized to the principle of Supremacy of State Law within the territory of the State is the overriding force of Public International Law. As the subject of International Law, the State is bound by its rules -- in the form of precepts, principles and norms. We shall take notice of this obligation of the State when we come to a consideration of the content of the Philippine Legal Order. We shall find two bodies of International Law which the Philippines recognizes as part and parcel of Philippine Law. First is the body of generally accepted principles of international law, which are recognized as part of the law of the Nation (Art. II, Sec. 2, Constitution of 1987). Second is Conventional International Law, or the totality of rules in treaties and other international agreements to which the Philippines is a signatory. This is recognized as binding on the Philippines by force of the doctrine of auto-limitation, cited by the Philippine Supreme Court in its decisions.¹

Supremacy of State Law Secured by Military Apparatus

The supremacy of State Law within its territory as a social fact is maintained by the principle of legitimacy of physical domination through the use of force. Under this principle, the State claims monopoly of the right to determine the lawful use of force. The use of force by individuals and groups within society is perhaps unavoidable, but whether resort to force in any case is lawful or unlawful, is decided by agencies of the State, specially the courts of justice. As a practical matter, such monopoly of right to determine whether force has been employed lawfully or unlawfully, must have the backing of sufficient, if not overwhelming, physical force if the determinations of the State are to prevail. Without adequate physical power, State decisions and

¹See *Reagan v. Commissioner*, 30 SCRA 968.

directives would not command respect and obedience. Hence, we find each State in society employing a coercive apparatus to maintain peace and order, as well as general obedience to Law, including State orders, writs and processes. Such coercive apparatus consists of a professional corps trained in physical combat and provided with arms and armaments to quell or subdue any opposition or resistance to agents of the State. There are two components of such coercive apparatus. One consists of the police, with the regular function of maintaining law and order. The other consists of a military force, with the task of overcoming the enemy in case of invasion, rebellion, insurrection or other serious internal disorder.

The presence of a coercive apparatus as an essential element of the organization and government of a State is a defining criterion which sets the State as unique among the social orders in society. In this regard, the State is nonpareil, and without competition – either from churches or established families, or tribal communities within the society. The coercive apparatus is the physical expression of the sovereignty of the State.

Prelude to Law: Normative Systems, Dogma, Custom, and Mores

On the basis of the foregoing framework, we shall proceed to a concept of Law and of the Legal System, which we shall employ in our discussion of our subject, which is the Philippine Legal System. To arrive at a clearer formulation of such concept, let us take a look at the chief forms of Normative Culture related to Law.

1. Human society consists of groupings of the population according to certain relationships. These are social orders. Where kinship underlies such groupings, we find Communities. Such communities embrace families, extended families, tribes, clans and similar collectivities. Where the groupings are propelled by specific common interests and are founded on membership by consent, we find Voluntary Associations. These include the major corporations in society: the churches, the schools, business enterprises, trade unions, fraternal clubs, etc. In the case where membership is founded on consent, the relationship is set by *associative* contract. Two types of contract must be noticed. The agreement initiating or starting the association, through the coming together of its founders or organizers, is the constitution, or *incorporating* contract. After the association has come into being, new members come in by admission. The contract establishing the status of each new member is an *affiliating* contract. This latter contract is essentially adhesive, in the sense that the new membership is established on the terms and conditions provided in the constitution.

2. Within each society operating on the basis of exchange, the flow of goods and services takes place through transactions. Each transaction is founded on contract. The more common and familiar transactions involve the transfer of commodities, or the use of things. The best known is purchase and sale of goods, chattels, and immovables. Next is lease or rental of things for use, such as houses, vehicles, appliances, office equipment, etc. Then follows transactions concerning services of others. We have here agency, hire or employment, and carriage of goods or passengers. Because the subject of each contract is a transaction, it is proper to call them *transaccional* contracts.

3. Let us now take the chief forms of Normative Culture which are related to Law because they are indeed the matrices from which the Law takes its substance and content. Normative Culture is easily identified. It is the mass of rules in society which govern conduct, which tell men how their lives should be lived. The chief forms of Normative Culture are: Normative Systems, Dogma, Custom and Mores. Normative systems are the culture specific to the social orders in society. We have noticed that each social order which is voluntary association is welded by a constitution or an incorporating contract. Such constitution organizes its government and authorizes the enactment of rules for governance of its members and of its affairs. Such constitution, and all the rules enacted pursuant thereto comprise the Normative System of the voluntary association. A similar pattern obtains in the case of social orders which are Communities. Be it Family, Tribe, Clan or other kin-based Community, there is an Order of Power which generates an Order of Rules. Eugene Erlich in his study of communities speaks of an "Inner Order" underlying community government and communal rules. We thus find in each society as many Normative Systems as there are Social Orders. Taken together, these systems comprise huge and enormous clusters of normative rules. For each society, the patterns underlying such massive volume of rules provide the fundamental for the genesis of Custom and Mores.

4. Religion as culture and as activity finds expression in special institutions, namely, religious denominations which we shall call churches. Each church is a social order, with a definite membership, a hierarchy functioning as its government, and a code of rules regulating different aspects of personal life. That portion of the religious code dealing with sacred relations, beliefs and aspirations is Dogma. The Dogma of each church functioning within a society radiates a powerful and penetrating influence on private and public morality, very often reflects the commands and tenets of the dominant religious sects in the content and substance of its rules.

5. While Dogma in its concrete manifestations is associated with particular Social Orders, which are churches or religious organizations, Custom and Mores are deemed products of each society, for neither is identified with any particular Social Order as source or generating force. Both Custom and Mores are products of anonymous forces within the society. Custom regulates the interactions of groups and communities in the sphere of domestic relations and in the sphere of economic relations, specially in cooperative production and trade. On the other hand, *Mores* define acts which are right and acts which are just in the relations of each man to other men. Customs guide the acceptability of acts among the social orders, while Mores is concerned with the rightness of conduct, in terms of fitness and general approbation, by the population of the society, collective and individual.

6. Viewing the Law of each society in its entirety, these major forms of Normative Culture that we have briefly noticed, are the principal forces both for the Stability of Law and for Change in the Law. Normative Culture, as we have noticed above, interpenetrates with Law, by providing content, substance and direction to the different bodies of rules in the Law. Insofar as there is Persistence and Continuity of these major forms of Normative Culture, Law is and must be stable, reflecting the inertia of Dogma, Custom and Mores. This is a case of inertia at rest. Yet the Law is never wholly still nor completely at rest. For ineludibly, it must respond to movement and change in the very forces that hold it in thrall. As the social orders no less than their members respond to forces of change, the chief forms of Normative Culture undergo corresponding changes. Such changes may be generated by external forces, or by internal dynamics generated within the society itself. In turn, Law itself undergoes change, in response to the seismic movements of its very foundations. As Dogma, Custom and Mores evolve and change, their elements which are embedded in the Law have to be re-worked or modified so as to reflect the adjustments in the Normative Culture. Such changes may be rapid or they may slow and almost imperceptible. Some changes are overt, open and acknowledged. These occur through revision, amendment or repeal. Others are effected with subtlety, almost sub rosa, through Interpretation and perhaps Legal Fictions.

Overview: The Major Components of a Legal System

Let us now take a look at the Legal System of a State operating in a Society, in terms of its components. Here, we are concerned to present the salient features common to all Legal Systems. What is described is

therefore a Model of minimum content. In terms of this model, any concrete Legal System can be analyzed and described, and given a holistic presentation in terms of essential elements and their relationships.

1. The Legal System is divisible into two major subdivisions. These subdivisions are: The Sphere of State Law, and the Sphere of Quasi-Law. The Sphere of State Law consists of all enactments imputed or attributed to the State. Technically, such enactments are "acts of the State." Two criteria must be noted. On the one hand, the enactment must be by an agency of the State, or by an office of Government. On the other hand, the enactment must be by authority of the State.

For clarity, let us put these criteria in question form. What is an agency of the State, or an office of Government? This question is directed to the *actor*, or whoever makes or lays down the rules. Then, is there authority given such actor to make or lay down the rule? This question is directed to the *power* of the actor.

Now, these questions have a simple and common answer. On the question of whether there is an actor who can act for or in behalf of the State, the answer is provided by the State Law itself. We must look to the Law, for an agency or an office, is an agency of the State, or an office of Government, only if it is created and organized by Law. This is a point to be borne in mind, that there cannot be an agency of the State, or an office of Government, unless there is a law or some law creating the agency or office. So, by looking to the Law, we are able to answer the question whether the agency or office is an agency of the State or office of Government. If it is created or established by State Law, then it is an agency of the State or an office of Government. If not, the agency or office is private, and belongs to the Sphere of Quasi-Law.

Now, granting that the actor is an agency of the State or an office of Government, we turn to the other question. Is there authority of such State agency or Government office to make or lay down the rule? This question is significant in a number of ways. First, while most State agencies and Government offices have the authority to enact rules, there are many Government officers at the level of administration who do not make or lay down the rules, but who execute or implement the law made by superior officers. We shall take note here of the police officer who makes an arrest pursuant to a warrant of arrest issued by a judge, or a tax collector who seizes personal property of a taxpayer to answer for unpaid taxes, pursuant to warrant of distraint issued by chief of office, or a cashier who pays the salaries of government personnel, pursuant to an office payroll approved by the head of office. In these examples, the officers do not create rules but implement them. We can therefore make

two observations: There are agencies and officers who can and do make or lay down the rules because they have the authority to do so. Then, there are also officers without authority to make or lay down rules but have authority only to implement, carry out or enforce rules made by others.

Let us follow through on these observations. What if an officer without authority to make or lay down a rule, nevertheless, enacts a rule? We can say that the rule is invalid, because it was enacted without authority. This may constitute usurpation, which is generally punishable by law. Let us take the other case. Suppose an officer makes or lays down a rule which he is authorized by law to make. In such case, the rule he has made or laid down is a law. One direct result is an increase in the number of rules in the Sphere of State Law.

We consider further the question of authority of a State agency or a Government office to make or lay down rules. Even if a State agency or Government office does have authority to make or lay down a rule, a question may arise whether the rule made or laid down is *within* the authority given. Such a question would be directed to the *nature* of the power which has been conferred, and the *kind* of law that is authorized to be enacted.

On the nature of the power conferred, we shall have to consider the categories of law-making powers, the characteristics of each category of law-making, and to come to a determination in which specific category the power exercised by the State agency or Government office comes. The categories of law-making powers are the following:

A. *Constituent Power* - the power to lay down the rules of fundamental law, or the rules of the constitution, which are principles.

B. *Electoral Power* - the power by which supreme power or sovereign power or portions thereof allocated as offices are conferred on individuals.

C. *Legislative Power* - the power to *create* Duties and Rights through general law which are harmonious with and not repugnant to the fundamental law.

D. *Executive Power* - the power to create law for *mobilizing* Administration, in the form of appointments, and directives, addressed to administrative officers and assistants.

E. *Judicial Power* - the power to *create* Duties in favor of particular persons, upon determination of a violation of law.

F. *Administrative Power* - the power to *create* Duties in favor of particular persons, upon determination of compliance with the requisite conditions prescribed by law.

These categories of law-making powers are relevant where there is a distribution of Powers within the Government, and each Power allocated is denied to other power-holders. In many ancient and medieval societies, there is a Union or Merger of Powers. We note the era of royal absolutism in Europe, and the phenomenon of Oriental despotism noticed by Montesquieu. In our time, the equivalent is modern dictatorship. By and large, however, modern governments are organized on the basis of different branches, and Powers distributed among such branches. Such division and distribution of Powers is maintained through the doctrine of Separation of Powers, and supportive doctrines such as Non-Delegation of Legislative Power, and Exhaustion of Administrative Remedies.

On the basis of the distribution of Powers, as reflected in the State constitution, the scope of authority of a State agency or Government office to make or lay down a rule is easily determined. Where the Power conferred is Executive, but the law enacted is general rather than particular, and creates new Rights or Duties, then, we can say that the Power exercised is Legislative, hence, in excess of the power of the Executive, and violative of the doctrine of Separation of Powers. In such a case, the law may be declared unconstitutional. However, where the action taken by the Executive is in implementation of existing law, and the law enacted concerns appointment to a vacant administrative position, or the release of appropriated funds, or investigation of a bureau of official duly charged, or the removal of a Department Head for dishonesty, such enactment of law is within the Power conferred, hence, valid and lawful, and deserving of compliance by one and all.

The point must now be made that, in a Legal System, the validity of a rule, on which its status as Law depends, is to be determined by Law, which is the Law existing at the time of its creation. It is compliance with Law which gives existence and validity to newly created law. This confirms the major insight of Hans Kelsen, that *Law governs its own creation*.

2. Continuing our discussion of the Sphere of State Law; let us notice the divisions within such Sphere. The Sphere of State Law divides into two fields: the Field of Public Law, and the Field of Private Law. Both fields belong to State Law, hence, care should be taken against being misled by the name, Private Law, which is

employed for contrast. Private Law, it must be stressed, is not private -- it is State Law.

Public Law is the Law of the State governing the creation of Law by Government, that is to say, the entire field of Law affecting the *validity* of enactments by all agencies and offices of the Government. Adverting to the concept of Kelsen, Public Law is the Law governing the creation of all forms of State Law. Put in a different light, Public Law is the Law regulating the exercise of the different *Powers* by agencies of State and Government.

Private Law, in contradistinction, is State Law regulating the *recognition, validity* and *effects* of Quasi-Law within the Society. Quasi-Law embraces all rules not enacted by State agencies and Government offices but enacted by the Private Sector of Society. Such rules are always valid for those who created them, but how valid are they for the rest of the Society? Insofar as such private rules are to be made effective outside the group that created them, this is determined by the State through policies reflected in State Law. It is State Law that determines whether private rules are to be *recognized*, that is to say, taken into account in the making of Law by the Judicial and Administrative Powers of Government. Let us clarify by illustrations. Two young people are wedded according to marriage customs of the Manuvu. Is such marriage valid, so that a subsequent marriage contracted by the young man in Manila would make him liable for bigamy under the Penal Code? This poses a question of *recognition* of Manuvu Law by Philippine Law. If there is such recognition in Philippine Law, the next question is, would the Manuvu marriage be valid, even if the bride and bridegroom are uncle and niece? Very likely, Philippine Law would frown on such a marriage, because of the rules against incest in the Civil Code. If so, then Philippine Law operates as condition for *validity* for Manuvu marriages. Suppose children are born to the Manuvu union, and later claim Social Security benefits based on employment of the father for 30 years. Should such children be treated as legitimate, hence, entitled to full benefits, or only natural children, hence, deserving only of partial benefits? Here, Philippine Law would be governing the *effects* of the marriage.

We can multiply the foregoing illustration a thousand times, because the field of Private Law is vast. Its range in terms of social orders within its ambit of regulation is vast. Consider families, tribal communities, and other kin-based groups. Then, we have the religious groups, including churches, religious orders, and religion-based associations. Then, consider the groupings in the economic field: corporations, partnerships, cooperatives, joint-ventures, trade unions, etc. Then, consider the groupings based on non-economic concerns: the

civic groups, the groups for charity, the sports clubs, the social clubs, etc. all of them come within the ambit and regulation of Private Law.

3. Let us now take up the Sphere of Quasi-Law. We have earlier noticed the vastness of the field of private rules generated by social orders, by creation of society itself, and by individuals through contracts. The massive body of private rules is given the name Quasi-Law to distinguish it from State Law, which is generated by State agencies and Government offices. Calling it Quasi-Law is justified, because such mass of private rules is the self-renewing reservoir, which feeds, transforms and revitalizes the diverse fields of Law with new content, direction, orientation and vigor. In this sense, the mass or private rules are Quasi-Law because they are rules on their way to become Law, by a kind of osmotic pressure generated by social needs and interests, forcing incorporation into the body of Law, with suitable adaptations, by the Law-making agencies, especially the Legislative and Judicial Powers.

The Sphere of Quasi-Law embraces three distinct fields:

- (a) Communal Quasi-Law, or the Normative Systems of Social Orders, *i.e.*, the Communities and Associations.
- (b) Social Quasi-Law, consisting of Customs and *Mores* generated by anonymous social forces.
- (c) Transactional Contracts.

Communal Quasi-Law is the precipitate of the rule-creating activities of Social Orders. Each Social Order, as noticed, has a membership with a common purpose effectuated by the governance of rules. The result is a Normative System for each Social Order. This consists of a constitution, which may be enacted and written, exemplified by charters of companies and by articles of partnerships, or evolved and unwritten, such as those of tribal communities, and all rules promulgated pursuant to the constitution. The Normative Systems can be simple, consisting of a few rules, such as those of most households, or it can be very extensive and complex, such as the Canon Law of the Catholic Church, or the System of Governance of giant corporations, such as San Miguel Brewery or General Motors. In most societies, it is the Normative Systems of the established churches at the core of which lies Dogma, which have been most influential in shaping the content of State Law.

Social Quasi-Law is so-named because Customs and *Mores* are generated by anonymous forces of society itself, unlike Normative

Systems each of which is produced by the corresponding Social Order. Customs are basically rules of convenience for facilitating social intercourse among communities and households, for stabilizing relationships especially in the commercial field, and for defining terms and conditions in cooperative production. Customs have been a major source of Law, especially in mercantile and trading activities. What is known as Law Merchant provided the core of present statute law in such areas as marine salvage, marine insurance, negotiable instruments, carriage of goods by sea, etc. Mores has a different subject matter. The dominant or prevailing ideas in each society on what is right and wrong conduct are reflected in the Mores of the society. Unavoidably, the State Law of each society incorporates the more compelling rules of Mores, usually in the criminal and civil codes, which regulate acts which are socially evil or wrongful. The well-known concept of Public Morals applies to the rules of Mores which have been absorbed or incorporated into State Law. The rules of Mores which still have to be made part of State Law have the status of private morality. An example will make the distinction clear. Mores as well as Law frown upon and disapprove of cohabitation of a married man with a woman not his wife. In Philippine Law, cohabitation of this kind is penalized as concubinage. However, isolated acts of illicit sexual congress, though condemned by Mores, is not punished by Philippine Law. Thus, concubinage offends Public Morals, while occasional fornication between a married man and a single woman merely offends Private Morality.

The vast field of transactional contracts comprises the third field of Quasi-Law. We have earlier noticed associative contracts. These have been excluded, because associative contracts properly belong to Normative Systems of Social Orders, which we have discussed. Associative contracts function as the constitutions of their respective Social Orders. Transactional contracts are the socio-legal vehicles of exchange. These include purchase and sale, lease of things, lease of services, barter, loan of money, loan of things, agency, deposit, carriage of goods, carriage of passengers, mortgage pledge and even aleatory contracts like gambling and insurance. These are accorded the status of Quasi-Law because their content has potential for becoming part of State Law. It is a postulate underlying the economy of all societies that a valid contract has the force and the effect of law between the parties to such contract. There is, therefore, recognition, with corresponding legal effect, conditioned upon validity. Once such recognition and legal effects are embodied in a final judgment of State courts, the contract thus recognized becomes a part of the State Law, in terms of its binding force upon all members of the society.

Summing up, the major components of a Legal System may be stated as follows:

I. Sphere of State Law

A. Field of Public Law

1. The Fundamental Law

- (a) The Constitution
- (b) Doctrines and Precedents

2. The General Law

- (a) Legislation
- (b) Treaties and Executive Agreements
- (c) Quasi-Legislation

3. The Particular Law

- (a) Judgments and Orders
- (b) Administrative Orders and Judgments

B. Field of Private Law

1. Associative Contracts

- (a) Marriages
- (b) Articles of Incorporation
- (c) Articles of Partnership
- (d) Articles of Association

2. Transactional Contracts

II. Sphere of Quasi-Law

1. Communal Quasi-Law of Social Orders

- (a) Normative Systems of Communities
- (b) Normative Systems of Associations

2. Social Quasi-Law: Customs and Mores

3. Transactional Contracts

II. THE PHILIPPINE LEGAL SYSTEM

Understanding the System Through the Major Institutions and Processes of Law Creation

The Constitution as the Principle Underlying the Unity of the System

Our understanding of the Philippine Legal System will be greatly facilitated by describing its major components and processes according to the terms of the conceptual model or framework we have just discussed.

It should be understood that our discussion will focus on the present Legal System as it is existing and operating today. Necessarily, our goal is comprehensiveness of description in terms of the System as a whole and while attention will be given to essential parts and processes, details will have to be sacrificed in order not to obscure presentation which is unified and accurate on a somewhat limited canvass.

We begin with the Philippine Constitution for it provides both the unifying principle and comprehensive framework for the entire Philippine Legal System. The unifying principle is the function of the Constitution as the criterion of validity for law creation within the Legal System. The principle may be simply stated: No enactment of the Philippine Government can be law, and no act of such Government can be lawful and valid, unless it is in accordance and harmonious with the Constitution. Acts of the Government purporting to be laws are a mere pretense if repugnant to the Constitution; once such repugnancy is judicially determined, such acts would be pronounced unconstitutional, invalid, null and void, and without force and effect.

As a comprehensive framework of the entire Philippine Legal System, the Constitution operates through positive and negative measures of demarcation. The *positive* measures are devices of power allocation: establishment of institutions of decision and governance, definition of jurisdiction through conferment of Powers, and interdependence through a system of checks and balances.

<u>Institution</u>	<u>Power</u>	<u>Coordination through Checks</u>
Electorate	Constituent Electoral	Initiative and Referendum

<u>Institution</u>	<u>Power</u>	<u>Coordination through Checks</u>
Congress	Legislative	Appropriations Confirmation Impeachment
President	Executive	Veto Administrative Pardon Judicial appointments
Supreme Court	Judicial	Judicial Review

The *negative* measures serve to channel and circumscribe the exercise of Powers conferred by operating as restraints on the Law-generating activities of State agencies and Government offices. These measures take the form of constitutional limitations, as follows:

A. The principle of Separation of Powers derived from the actual division and distribution of Powers through a Tri-partite System of Government. Supporting doctrines flowing from this principle include Non-Delegation of Legislative Power, Political Question, and Exhaustion of Administrative Remedies.

The operation of this principle imposes the following prohibitions on Branches allocated specific Powers, thus:

1. Legislative Power carries a denial of Executive and Judicial Powers.
2. Executive Power carries a denial of Legislative and Judicial Powers.
3. Judicial Power carries a denial of Legislative and Executive Powers.

B. The general standards of Due Process of Law and Equal Protection of the Laws, provide definitive limits and guidelines for the processes of law creation. Special notice must be of Substantive Due Process and Equal Protection as limitations on Legislative Power, and Procedural Due Process as limitations on Judicial and Administrative Power.

C. Specific guarantees of liberty in the Bill of Rights operate as limitations on all Powers of Government for law-creation.

D. Express and specific limitations imposed on each Power of Government for law-creation.

*Forms of State Law Authorized or
Recognized by the Philippine Constitution*

<u>Power of Government</u>	<u>Forms of Law</u>
Constituent	Constitution and Amendments
Electoral	Votes, Election Returns, and Certificates of Canvass and Election Proclamations
Legislative	Statutes Resolutions Certificates of Confirmation
Executive	Treaties Executive Agreements Executive Orders Proclamations Administrative Orders
Judicial	Judgments Orders
Administrative	Regulations Administrative Judgments Orders Ordinances

The present Constitution likewise expresses, recognizes and enunciates favorable policies for the following:

Social Orders:

1. The Family

2. The Cultural Communities

(a) Respecting their Ancestral Lands

(b) Respecting their Indigenous Law

3. Associations in General, for which freedom is guaranteed in the Bill of Rights

(a) Churches are guaranteed Separation from the State and Religious Liberty

(b) Corporations

(c) Cooperatives

(d) People's organizations

Likewise, the present Constitution recognizes the following forms of Quasi-Law:

1. Indigenous Law of the Cultural Communities, concerning Ancestral Domain and property rights

2. Customs and Usages of Cultural Communities

3. The marriage contract

4. Contracts generally are guaranteed against impairment of the obligations thereby established.

Equally important, the Constitution incorporates as part of State Law by express provision, the generally accepted principles of International Law, which are declared part of the Law of the Nation.

*State Law and Its Regulation of Law**Creation: The Constitutional Processes*

The Constitution can best be understood by considering it as a set of formulas for the making or enactment of the major forms of law, namely, amendments to the Constitution, statutes or legislative enactments, treaties, and judgments. Each formula has a prescribed set of elements: (1) Setting up of law-creating Organs; (2) Vesting each State

Organ with a Specific Power; (3) Prescribing definite conditions and procedures to be observed; and (4) Subjecting the process of law creation to the limitations stipulated in the Bill of Rights.

Let us now proceed to the prescribed formulas in the Constitution for the making of the major forms of general law.

A. Amendments to the Constitution.

There are three successive stages for bringing about Amendments to the Constitution: (1) *Adoption* of proposals for Amendment; (2) *Submission* of such proposals at a plebiscite at which the proposals will be voted upon by the electorate; and (3) *Ratification* of the Amendments by majority of the votes cast. The power of adoption of proposals for Amendment is lodged with Congress, which may adopt proposals directly, or call a convention of elected delegates for the purpose. The power of submission is lodged with Congress, which enacts a law calling for a plebiscite and submitting the proposals to be voted upon in such plebiscite. Ratification is a power lodged with the electorate, and is evidenced by a favorable vote comprising a majority of the votes cast. Upon ratification as proclaimed by the Commission on Elections, the Amendments become part of the Constitution.

B. Conferment of Political Powers by Election

The making of law in its diverse forms is always done through people's representatives. These are officials whose acts are deemed acts of the sovereign People. In a juristic sense, the sovereign People are the State. There are two forms of representation. One is direct and the other is indirect. There is *direct* representation where the people acting through electors choose the officials by popular election. There is *indirect* representation where the officials are not elected but are instead appointed by the elected officials, or in some cases, by high appointive officials.

1. Officials involved in the creation of general law are always elective. This is true at both the national and local levels of government. At the national level, the President and Congress are involved in the creation of the following forms of general law: (a) amendments to the Constitution; (b) statutes; (c) treaties; and (d) executive agreements.

In the case of amendments, proposals emanate from Congress. Congress may propose amendments directly by adopting them through resolutions, or it may do this indirectly by calling a constitutional

convention, which will frame and adopt the proposals. In either case, it has been the practice for Congress to make submission of the proposals at a plebiscite. This is usually done by statute, which is enacted by Congress and approved by the President.

In the case of statutes, enactment is by Congress followed by mandatory presentation to the President, who is given a period within which to veto the measure, sign it into law, or allow it to lapse into law without his signature.

In the case of treaties, the President negotiates each treaty and after it is signed by the parties, submits it to the Senate for ratification. It is the ratification by the Senate, which gives it the status of law.

In the case of executive agreements, while these are negotiated by the President alone, and take effect upon his signature, such agreements are generally undertaken pursuant to authority given in a statute or in a concurrent resolution of Congress, or provide for implementing details of provisions in existing treaties.

At the level of local government, quasi-legislative law-making by regional governments, provinces, cities, municipalities and barangays, are entrusted to elective leaders, consisting of executives and governing assemblies, board and councils.

2. Electoral power or suffrage is a common right; the sole qualifications are citizenship, residence in the Philippines, and age of 18 years or over; the disqualifications are statutory and few. For exercise of the right to vote in any election, the elector must be a registered voter. The registration proceeding is a device for determining the qualified electors in territorial unit called election precinct; all who qualify are placed in a voter's list for each precinct, which is updated just before every election through registration of new voters and through voter inclusion and voter exclusion proceedings. These matters are governed by the current Omnibus Election Code of 1985, with changes made in the Electoral Reform Law of 1988, and some supplemental rules in the 1992 Election Law.

3. Candidates for national office must meet the qualifications specifically provided for in the Constitution and must possess none of the disqualifications provided by law. Respecting qualifications, what the Constitution provides is exclusive, and additional qualifications prescribed by statute are null and void. As a check on qualifications and in aid of the preparation of the lists of candidates for distribution among the election precincts for the guidance of electors, registration of candidacy is required through the filing of a certificate of candidacy. A

period is allotted for challenging qualifications of each candidate; candidates determined to be ineligible are stricken off the list of candidates.

In the case of candidates for local office, qualifications and disqualifications are prescribed by statute; in respect to other matters, procedures are similar to those prescribed for national candidates.

4. Each election is a proceeding, segmented in seriatim as follows: (1) on election day, electors in the different precincts cast their votes according to the constituencies to which they belong. Votes are cast for national candidates by voters belonging to the national constituency; and for district and local candidates by voters belonging to their respective district or local constituencies; (2) following the close of the voting hours, the election board in each precinct tallies the valid votes cast for each candidate; the results are tabulated in an election return, which is prepared in several copies and signed by all members of the board; they are forwarded to the municipal canvassing board, city and provincial canvassing boards and the national canvassing bodies; (3) a canvass is made at the municipal, city, provincial and national centers, and a certificate is made of the results of each canvass; (4) on the basis of such certificate, a proclamation is made of the winning candidates for the different elective offices.

5. The utility of elections lies in the certainty of accountability for the holding and exercise of political power by elective officials. Necessarily, each office is held only for a definite duration corresponding to the term of office. Theoretically, therefore, Government is rid of each elective official upon expiration of his term. Where he stands for re-election in the cases where this is allowed, and is re-elected, this is proof positive that his prior stewardship, in the perception of his constituency, had redounded to the common good. This is, of course, a common-sense presupposition. The truth, of course, could be much less palatable. Re-election could be explained by less edifying reasons. It could be that the other candidates were much worse; the incumbent could have appeared as a much lesser evil. Or his machine, well oiled and well funded, proved to be too much for the opposition. Or it could have been that the people were simply bought.

But law always must deal with the general case. Periodic elections therefore must be taken as the most efficient and popular method of enforcing public accountability. Elective office holders are automatically excised from their seats of power. If perchance some are returned to their offices by re-election, the chances are that the public has been served and served well.

C. Legislation or the Enactment of Statutes.

We take note of the difference between the chief forms of general law under the Constitution, which are the rules of the Constitution itself, and general legislation in the form of statutes. The difference is this: fundamental law is directed to Political Structure of Powers. It sets up the Organs of Government, prescribing their composition in terms of offices, the method for filling up the offices, the requisite qualifications, and the specific Power which each Organ is to exercise in accordance with the prescribed procedure. While there is, indeed, a Bill of Rights, this should be seen as part of the system of restraints by which exercise of each Power is canalized and directed. Observance of the fundamental guarantees is a condition for the validity of each enactment of law, hence, part of the structural edifices for ensuring Limited Government under the Constitution.

On the other hand, in contrast, general legislation is concerned chiefly with definition of General Rights and Duties of individuals and groups within the population, and only incidentally, with Administrative Structure. The rights and duties which receive the bulk of government attention and effort are not those prescribed in the Constitution, but those prescribed by statute, which is general legislation. This is clear from a consideration of the more than thirty codes of law which comprise the heart of our statutory law. These codes of law have diverse content, ranging from the most general concerns, as in the case of our Civil Code and our Penal Code, to somewhat special concerns, such as the Corporation Code, Securities Code, the Building Code and so on.

1. The Constitution prescribes definite procedures for the enactment of statutes, in implementation of overriding State concerns. First of such concerns is to secure adherence to a historic postulate of popular sovereignty: no taxation without representation. In the spirit of this principle, all matters which may ultimately burden the people through taxation is required to be initiated by the House of Representatives. The thinking here is that congressmen, being elected by district, are closer to the localities, than the members of the Senate, who are elected on a national constituency. Along this thinking, the Constitution directs bills proposing laws on revenue, borrowing of money, increasing the public debt, as well as all appropriation measures authorizing disbursement of public funds from the National Treasury should originate from the House of Representatives.

2. A second procedural safeguard should be noticed. This concerns the anomalous practice of "log-rolling," by which pet measures of legislative leaders and influentials get enacted without adequate notice and opportunity to question, given to most members. History records that in many legislatures of Europe and America, bills favoring special interests even to the detriment of the general interest had become law without having been considered and debated on the floor. As a measure to forestall log-rolling, the Constitution prohibits riders in measures presented through bills. A rider is a provision dealing with a subject foreign to the matter presented by the bill. It is required that each bill should deal with only one subject, and to give notice thereof, it is required further that such subject should be expressed in the title of the bill. We notice here that certain statutes have been invalidated for non-adherence to this restriction.

3. A third concern is prevention of hasty or ill-considered legislation. As a safeguard, an elaborate procedure is mandated for the enactment of a bill into an act of Congress. The steps prescribed are: first reading after filing of the bill, reference of the bill to the proper committee for study and report, with recommendations; furnishing copies of the committee report on the bill to members; second reading of the measure in the course of which the sponsors explain the measure, interpellation may be made by any member, leading to debates on issues raised, followed proposals for amendments and discussions thereof; when all amendments have been accepted or approved, the measure is approved on second reading, and is sent to the printer for the printing of final copies; distribution of copies is made to all members days before the bill is taken up on third reading; during the third reading, the bill as printed is read in its entirety, but no further amendments are allowed, after which a final vote is taken on the measure, with the yeas and nays recorded in the journal of the chamber. If approved, then it is referred to the other chamber with a request for concurrence, and in the second chamber, the measure undergoes the same process requiring three readings. Where the measure is concurred in without change, the measure is deemed approved by Congress. In case of variance between the House and Senate versions, a conference committee with representatives from both Houses forge a common measure, which is voted upon by each House. If approved, the measure is signed and certified by the presiding officers and secretaries of the two chambers. At this stage, the measure is known as an enrolled bill. The enrolled bill undergoes the presentation required by the Constitution. The enrolled bill is submitted to the President, who within the prescribed period, may veto the measure, or approve the measure by signing it, or simply allow it to lapse into law without his signature. In case of veto, a message is forwarded to the Congress stating the grounds therefor.

Congress is empowered to override such veto, by re-passing the measure through super-majority vote of the two Houses. In the case of revenue and appropriation measures, the President is authorized to veto particular items in the budget or tax or tariff measure, including conditions attached to such items. However, no veto may be made of any condition without vetoing at the same time the item or items to which such condition relates.

D. Executive Legislation.

The Chief Executive is expressly empowered to enter into treaties and international agreements. In the latter case, executive agreements are contemplated, not only with states but also with other international persons, such U.N. agencies and other international bodies. Such types of law deal chiefly with the relations of the Republic with other States and other international persons. Under the Constitution, the procedures prescribed are minimal. In the case of treaties, the President simply negotiates the treaty, signs it, submits it to the Senate for ratification. It becomes law for the Philippines, upon ratification by the requisite super-majority vote of the Senate and upon ratification by the other State or States as the case may be. In the case of international agreement, to which the Philippines is a party, the same becomes law upon approval by the President as indicated by his signature.

E. The Making of Law Through Judgments of the Courts.

The fifth formula for law-making specifically regulated by the Constitution is the making of law through the judgments of the courts. We had already adverted to the concept of Judicial Power. We have pin-pointed its chief characteristic, which is the making of law by the courts upon their finding or determination that a *violation* of law has occurred or is threatened as charged. It would be useful to clearer understanding, if we are able to contrast Legislative Power with Judicial Power and identify the principal differences.

The first difference lies in the scope of the law respectively created. Legislative Power creates Rights and Duties through general laws in that they apply to an indefinite number of persons. On the other hand, Judicial Power adjudicates Rights and Duties through particular laws known as Judgments, which identify particular persons as having the right or having the duty. In terms of persons subject to Legal Duty under a judgment, such judgment may be in personam, quasi in rem or in rem. When the judgment identifies only a particular person as subject to the Duty imposed and to no other, the judgment is in personam. When

the judgment identifies a particular person as subject to the Duty plus any other who might be in the same situation, the judgment is quasi in rem. This type of judgment has been devised to protect creditors, for in the case of mortgages, the judgment creditor cannot be quite sure in whose possession the property mortgaged might be at the time of execution. In the case of a judgment in rem, the Duty is imposed on all persons whose acts may prejudice the holder of the Right adjudged. In the extravagant language of the land registration decisions, the judgment is binding on the whole world.

The second difference is equally fundamental. While the Congress is concerned with *desirability* or social advantage which would flow from the legislation, the main concern of the courts is the *Truth* of the allegations or averments supporting the cause of action. This applies both to ordinary actions, civil and criminal, as well as to special proceedings. In such ordinary actions, the inquiry is focused on the correctness of the charge, with issues of fact concerning the *violation* of Legal Duty. Did the accused murder the victim? Did the defendant obtain a loan and refused to pay the amount when due? In special proceedings, inquiry is focused on the correctness of the claims of the applicant, with issues focused on the facts of entitlement to the relief sought. Was there a clerical error made in the entries in the Civil Registry, resulting in a misspelled name of the child, or the wrong birth-month, or the wrong sex? Was the will being probated truly made by the decedent, or was it forged? In our foregoing observations, extraordinary actions have been left out, and the reasons for this will be seen presently.

1. Judicial Power under the Constitution embraces three categories: Judicial Power as applied to the *validity* of laws and acts of the Government, which is given the name of Judicial Review; Judicial Power directed to *actions*, with focus on inquiry into the Truth of alleged *violations* of Legal Duty; and Judicial Power directed to *special proceedings*, with focus on inquiry into the Truth of *claims* concerning alleged *Rights*.

2. Judicial Review is directed to determining the *validity* of laws or other acts of Government, its agencies and officials. Validity is relational; it entails the logical relationship of harmony of a questioned rule to a superior rule, such as the relationship of an order to an enabling law, an ordinance to a municipal charter, an administrative regulation to a code, or a statute to the Constitution. Where there is consistency of the questioned norm to the superior norm, then a pronouncement of validity is made. On the other hand, if the court finds repugnancy because of a logical contradiction, then the inferior norm suffers from invalidity, and is therefore null and void. In cases where

the constitution is the superior norm, there is a declaration of unconstitutionality: the questioned rule thereby ceases to be law.

The exercise of Judicial Review is a matter of great delicacy. First, in constitutional cases, the acts challenged are acts of co-equal and coordinate departments, the Legislative and Executive Branches. Second, the principle of Separation of Powers mandates minimum disturbance of the sphere or domain of the political departments. In consequence, two main limitations have developed by the Supreme Court as measures of self-restraint. First is the requirement of justiciability, going into the jurisdiction or power of the Court on the matter. In this connection, doctrines and rules have developed to forestall court action and compel dismissal of the case. There is the Political Question doctrine, under which the Court holds that the matter at issue is wholly within the power of the political branches, to the exclusion of the courts. Another is the requirement of a Case or Controversy, presenting serious injury to legal rights, in which the parties stand in genuine adversarial relationship. The second barrier flows from the Court's own Policy of Avoidance of constitutional issues. This policy is implemented through Prudential Rules, such as those on Standing, Ripeness for Review, Mootness, Availability of non-constitutional grounds of decision, Estoppel to raise the question of constitutionality.

While questions of constitutionality and validity may be litigated in ordinary cases, including criminal cases, where the remedial vehicles are ordinary actions or special proceedings, by and large, due to the urgency presented by questions of validity or constitutionality, the usual vehicles for making such challenges have been the extraordinary legal remedies, or as they are called in our Rules of Court, special civil actions. These include Certiorari, Prohibition, Mandamus, Injunction, Quo Warranto and Habeas Corpus. The making of law in these cases has two facets: the judgment providing for relief to the litigants and those similarly situated, and perhaps more important, the laying down of doctrines, principles and rules which become part of the Constitution in constitutional cases, and of the General Law in other cases of validity.

3. The making of law through judgments in ordinary actions and special proceedings must adhere to the rules of procedure governing the different remedies. There are important differences, which account for divergences in procedure. In ordinary actions, the situation is always adversarial, hence, a trial is generally called. There are also differences in standards. In criminal cases, the standard applied is proof beyond reasonable doubt, while in civil actions, the standard is preponderance of evidence. In special proceedings, the matter may or may not be adversarial. Where there is no opposition, the court may be

inclined to grant the claim of right, such as change of name, or correction of an error in the civil registry.

***State Law and Its Regulation of Law Creation:
Processes of Administrative Agencies***

We now take up law creation by the Administrative Sector of Government. There are two categories of administrative agencies; those established or authorized by the Constitution itself, with the status of Constitutional Commissions, and those established by general law, which may consist of only one office, or a composite of offices, such as a board, tribunal, commission, etc. Basically, the forms of law-making and the principles governing them are the same. As earlier noticed, the Administrative Power makes law in three ways: Administrative Judgments, Quasi-Legislative Regulations and Orders, and Quasi-Judicial Orders.

1. Administrative Power straddles both Fields of Public Law and Private Law. In the field of Public Law, we have the following matters within the jurisdiction of Administrative Agencies:

(a) Elections under the Election Code, administered by the Commission on Elections. Administrative orders comprehend certificate of voter registration, certificate of canvass of election returns, and proclamations of election of winning candidates.

(b) Audit of Disbursements of public funds and settlement of claims against the Treasury under the Auditing Law, administered by the Commission on Audit. Administrative orders include certificates of approval in audit, and orders allowing claims and directing payment by the Treasury.

(c) Personnel administration under the Civil Service Law, administered by the Civil Service Commission. Administrative orders comprehend certificates of civil service eligibility, certificates of attested appointments, certificates of next-in-rank status, etc..

(d) Public land administration under the Public Land Law, administered by the Bureau of Lands. Administrative Orders comprehend certificates of status of land as public agricultural land, administrative free patents, sales patents, lease patents, etc..

(e) Internal Revenue under the National Internal Revenue Code, administered by the Commissioner of Internal Revenue. Administrative Orders include certificates of tax payments for travel abroad, certificate of registration for certain enterprises, certificate of registration of employee pension trusts, certificate of exemption as a non-profit corporation.

2. Administrative Power yields administrative orders in many fields of Private Law.

(a) In the matter of marriage under the Civil Code the following Administrative Orders may be noted:

- (1) Issuance of marriage license by the Civil Registrar.
- (2) Certificate to perform marriage ceremony issued to priests and ministers by the Director of the National Library.
- (3) Certificate of registration of marriage certificate.

(b) In the matter of registration of juristic persons, the following administrative orders may be noted:

- (1) Registration of corporations and partnerships by the Securities and Exchange Commission, with corresponding certificates issued.
- (2) Registration, with certificates, of cooperatives by the Cooperatives Development Office.
- (3) Registration of banks under the Banking Law by the Central Bank.
- (4) Registration of insurance companies by the Insurance Commissioner.
- (5) Registration of trade unions with the Bureau of Labor Relations under the Labor Code.

3. Quasi-Legislative Power of Administrative Agencies regulating particular areas of the economy or business enterprise, may be noted as follows:

- (a) Regulation of money and banking through Circulars of the Central Bank.
- (b) Regulation of employer-employee relations through regulations of the Department of Labor and Employment.
- (c) Regulation of mining operations, timber concession operations, and marine resource operations by the Department of Environment and Natural Resources.

4. In the field of Quasi-Judicial Power of Administrative Agencies, the Supreme Court has prescribed minimum procedures and standards for the validity of judgments and orders through Procedural Due Process requirements, starting with the *Ang Tibay Case*. The result is approximation of hearing procedures mandated in the Rules of Court for Trial Courts.

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