THE SUPREME COURT AND THE CONSTITUTION

Carmelo V. Sison[*]

I. THE PREMISES

I begin with the basic proposition that "The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them".[1] This includes the concept that government has only the authority given to it by law and such authority continues only with the consent of the people.[2]

Democracy is government of, by, and for the people while the essence of republicanism is representation *i.e.*, the selection by the citizenry of public officials who derive their authority from the people and act on their behalf for a limited period until replaced by them. A republican government is a responsible government whose officials are at all times accountable to the people, and its purpose is the promotion of the common good according to the will of the people expressed in the Constitution or through their duly elected representatives. This will is usually determined by the will of the majority.

In establishing the government, the Constitution of the Philippines as of the United States, has adopted, by actual division, the principle of separation of powers. Thus, in Article VI, sec. 1, "The legislative power shall be vested in a Congress... except to the extent reserved to the people..."; in Article VII, sec. 1, "The executive power shall be vested in the President of the Philippines"; and, lastly, in Article VIII, sec. 1, "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law." Each department is supreme in the exercise of the power vested in it; but while supreme in its own sphere, each is equal

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[*]Professor of Law, University of the Philippines, College of Law, LL.B. (1963), U.P.; LL.M. (1983), University of Michigan.

[1]CONST., art. II, sec. 1.

[2]J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY 20 (1988).

and coordinate to the others. Although the departments are independent of each other, they are interdependent in order to carry out the work of government.

The principle of separation has been adopted because arbitrary rule and abuse of authority would inevitably result from the concentration of powers in the same persons or body of persons[3] and this will be destructive of individual liberty. So that each department may be kept to its proper sphere and be prevented from encroaching or usurping the powers of the others, a system of checks and balances is instituted by the Constitution. In this system of checks and balances, the judicial department wields the power of judicial review by which, acts of the political branches may be declared unconstitutional, either because they have exercised powers not granted or in excess of what has been granted, on the one hand, or because individual rights guaranteed by the Constitution have been violated, on the other.

In the United States, where the power of judicial review is not expressly vested by the words of the text of the Constitution nor of the framers, to the Supreme Court, the legitimacy of judicial review rests on historical practice. It is a historical outgrowth of constitutional theories surrounding the American Revolution particularly that of The Federalist Papers (#78) and Marshall's seminal opinion on judicial review in *Marbury v. Madison*.[4]

It is the culmination of the essentials of Revolutionary thinking, and, indeed, of the thinking of those who a hundred years and more before the Revolution called for a "government of laws and not of men."

II. JUSTIFICATIONS FOR JUDICIAL REVIEW

The Constitution as supreme law imposes limits on the powers of government, and because limits are part of the supreme law, some institution must enforce them, otherwise these would be not be legal norms but political moral norms.[5] The courts and not the legislature or the executive branch must exercise this power because it is the branch that has the greatest institutional capacity to enforce the legal norms of the Constitution in a

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[3]SINCO, PHILIPPINE POLITICAL LAW 128 (1963).
[4]1 Cranch 137 (1803).
[5]M. PERRY, THE CONSTITUTION, THE COURTS AND HUMAN RIGHTS 15 (1982).

disinterested way. The political branches as policy makers have many more incentives than the judiciary to ignore constitutional limits on governmental power. Alexander Hamilton wrote:

> The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or infuse them. The executive not only dispenses the honors but holds the sword of the community. The legislative not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword nor the purse; no direction either of the strength or of the wealth of society; and can take no active resolution whatever. It may truly be said to have neither *force* nor *will* but merely judgment and must ultimately depend upon the aid of the executive arm even for the efficiency of its judgments.[6]

Moreover, government serves not only what is seen as the immediate material needs of society but also enduring values which must continually be derived, enunciated and applied in appropriate cases. The first are concerns peculiarly within the province of the political branches while the second appropriately pertains to the judiciary which is the "pronouncer and guardian" of such values. Courts are singularly capacitated for dealing with these values because they have or should have, "the leisure, the training and the insulation to follow the ways of the scholar in pursuing the ends of government, . . . [which] is crucial in sorting out the enduring values of a society..."[7] They have "the capacity to appeal to men's better natures, to call forth their aspirations [and they have] the opportunity for the sober second thought." They also constitute a great and highly effective educational institution.[8]

Lastly, judicial review has been justified because the Court performs not only a checking function (when it strikes down as unconstitutional the acts of the other branches), but also a legitimating function, such as when it validates acts as within constitutionally granted powers. The legitimating function is impossible without the checking function. The result of legitimation is a stable government as it is the fruit of consent to specific action or to authority to act and it contributes to the unity of the people, especially of the majority.[9]

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[6]HAMILTON, FEDERALIST # 78, The Federalist Papers 464, 465 (Mentor ed. 1961).
[7]A. BICKEL, THE LEAST DANGEROUS BRANCH 25 (1962).
[8]*Id.*, at 26.
[9]*Id.*, at 29-30.

III. OBJECTIONS TO JUDICIAL REVIEW

For Alexander Bickel, the concrete reality of judicial review is that it is counter-majoritarian and it is an abstraction to deny that judicial review constitutes control by an unrepresentative minority of an elected majority.[10] Alexander Hamilton - echoed in *Angara v. Electoral Commission*[11] by Justice Laurel - said in *Federalist* # 78 that "It [judicial review] only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges are by right to be governed by the latter rather than the former." To Prof. Bickel, the reality that must be accepted and cannot be ignored is that "when the Supreme Court declares unconstitutional a legislative act or the action of an elected executive it thwarts the will of representatives of the actual people of the here and now; it exercises control, not in behalf of the prevailing majority but against it. [This] is the reason why the charge can be made that judicial review is undemocratic."[12]

Besides being a counter-majoritarian check on the legislature and the executive, judicial review may have a tendency over time to seriously weaken the democratic process.[13] This is so, because "the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that comes from fighting the question out in the ordinary way and correcting their own errors. The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility".[14]

Finally, because judicial review runs counter to democratic theory, in a society which in all other respects rests on that theory, judicial review cannot ultimately be effective. Judge Gibson of Pennsylvania wrote: "Once let public opinion be so corrupt as to sanction every misconstruction of the Constitution and abuse of power which the temptation of the moment may

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[10]*Id.*, at 16.
[11]63 Phil. 139 (1936).
[12]*Supra* note 7, at 16-17.
[13]*Id.*, at 21.
[14]*Supra* note 7, *citing* J. B. Thayer, JOHN MARSHALL, 106-107 (1901).

dictate, and the party which may happen to be predominant will laugh at the puny efforts of a dependent power to arrest it in its course."[15]

IV. KINDS OF JUDICIAL REVIEW

In the United States, two kinds of judicial review have developed: interpretive and non-interpretive. There is interpretive review when the Supreme Court decides the constitutionality of an act of the other branches on the basis of the value judgments embodied in some particular provision of the Constitution or in its overall structure. It is called interpretive because the Court arrives at its conclusion by interpreting the textual provision (or some aspect of governmental structure) that is the embodiment of the determinative value judgment. It seeks to ascertain from available historical materials the character of a value judgment as the framers constitutionalized it at some point in the past. For the interpretivists, it is illegitimate, judged by the democratic norm, for legislative policy-making and executive policy administration to exceed constitutional bounds. Similarly, it is illegitimate by the judiciary to engage in constitutional policy-making (which is non-interpretive) review as opposed to constitutional interpretation. Whether constitutional boundaries have been exceeded must be determined by interpretation, not policy-making - by reference to the value judgments constitutionalized by the framers.[16] If the Constitution does not embody any value choice, then the Courts must accept any value choice the legislature or the executive makes.

Interpretivists argue that since the Constitution has created a predominantly democratic and majoritarian structure of government, society has consented to be bound by decisions of the Supreme Court (which is undemocratic) only "within defined areas by certain enduring principles believed to be stated in, and placed beyond the reach of majorities by, the Constitution."[17] These principles should be discoverable from the language of the text, and if the text is ambiguous the permissibility of official action should be assessed from *within* rather than *above* the Constitution by adhering to the intentions of the framers.

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[15]Eakin v. Raub, 12 S & R 330, 343, 355 (1825).

[16]PERRY, *supra* note 5, at 28-29.

[17]R. FALLON, *A Constructivist Coherence Theory of Constitutional Interpretation,* HARV. L. R. 1210 *citing* BORK, *Neutral Principles and Some First Amendment Problems* 47 IND. L.J. 3 (1971).

Interpretivists are divided, however, into two camps. On one side are the originalists who insist that only the original understanding of the language and the framers' specific intent ought to count.[18] In the other camp are the moderate interpretivists who allow contemporary understandings and the framers' general or abstract intent to enter the constitutional calculus.[19]

Originalism has formidable historiographical, conceptual, and interpretive, problems if reliance is placed on the framers' intent, whether individually or as a group. Prof. Perry observed that originalism cannot account for the United States constitutional practice of at least the last fifty years[20] particularly in free speech, modern equal protection, due process, and the role of precedent in constitutional argument.

Moderate interpretivism recognizes the legitimacy of arguments of original, as well as contemporary meaning and of specific and general intent.[21] However, the choice of whether the specific or general intent of the framers should be used, is determined by a standard or value external to the category, hence this fails to provide a viable theory. Moreover, contemporary meanings or the framers' abstract intent frequently requires reliance on extra-constitutional values.

The Court engages in non-interpretative review when it makes the determination of constitutionality by reference to a value judgment other than one constitutionalized by the framers. Such review is non-interpretivist because the Court reaches decision without really interpreting any provision of the constitutional text or any aspect of government structure but creates his own value judgments or its own derivations therefrom.

Interpretivism is the constitutional theory that claims that only interpretive judicial review is legitimate and in particular, that all non-interpretive review is illegitimate. On the other hand, non-interpretivism is the constitutional theory which claims that at least *some* non-interpretive review with respect to at least some categories of

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[18] R. BERGER, GOVERNMENT BY JUDICIARY 283-418 (1977).

[19] P. BREST, *The Misconceived Quest for the Original Understanding* 60 B. U.L. REV. 223, 224 (1980).

[20] M. PERRY, *supra* note 5, at 1-2.

[21] A. BICKEL, *id.*, at 222-24.

constitutional questions is also legitimate. Prof. Michael Perry believes that the Court must exercise this power of non-interpretive review in order to protect individual rights which are not adequately represented in the political processes. Non-interpretive review in human rights cases is the elaboration and enforcement by the Court of values, pertaining to human rights not constitutionalized by the framers. It is the function of deciding what rights individuals should and shall have against government. It is not justified by (1) tradition, (2) contemporary "consensus" in the sense of "basic shared national values" or "conventional morality," (3) principled interpretation, but explained by some "religious self-understanding and openness to moral evolution."[22]

Professor Choper is of the opinion that judicial review is unnecessary concerning the respective powers of the executive and the legislative for the effective preservation of democracy. According to him, the Court should not decide constitutional questions on the respective powers of Congress and the President because the line separating legislative from executive authority is ambiguous and shifting and these issues can be trustworthily resolved by them without judicial involvement.[23] By declining to exercise it, the Justices "both reduce the discord between judicial review and majoritarian democracy and enhance their ability to render enforceable constitutional decisions when their participation is critically needed".[24] If through judicial review judgments of electorally responsible political institutions are rejected, the Court spends its limited capital and diminishes its ability to gain compliance with the decisions it renders and those it may seek to render in the future".[25]

Dean Ely's theory, in common with interpretivists, constrains judicial decision making but relies initially on the constitutional text. He does not see the framers' intent as decisive but believes that they gave judges the responsibility for giving content to their highly general directives. He finds in the U.S. Constitution three constitutional provisions to be "open-ended," which authorized courts to enforce values that are not directly connected with the constitutional text, namely, the ninth amendment which "refers to unenumerated constitutional rights"; the privileges or immunities clause which represents "a delegation to future constitutional decision makers to protect rights that are not listed either in

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[22]M. PERRY, at 93-99.
[23]J. CHOPER, JUDICIAL REVIEW & THE NATIONAL POLITICAL PROCESS 3 (1980).
[24]*Id.*, at 2.
[25]*Id.*

the Fourteenth Amendment or elsewhere in the document"; and the equal protection clause which provides "no significant limitation at all" on the range of evaluative choices that judges must make and therefore "amount[s] to... a rather sweeping mandate to judge of the validity of governmental choices.

But since the Constitution not only creates an essentially majoritarian form of government but also seeks to prevent substantive unfairness there should be procedural safeguards to ensure that democratic processes work fairly, and these procedural values alone should be used to give content to the text's open-ended guarantees. Substantive value arguments, the significance of interests or the desirability of outcomes should have no role in this perspective because all groups and individuals would have fair opportunities to protect their interests through participation in the political process. The judicial branch should intervene only when the political process "malfunctions" by proving itself "undeserving of trust," as when (1) the "ins" are choking off the channels of political change to ensure that they will stay in and the "outs" will stay out, or (2) though no one is actually denied a voice or a vote, representatives beholden to an effective majority are systematically disadvantaging some minority out of simple hostility or a prejudiced refusal to recognize commonalities of interest, and thereby denying that minority the protection afforded other groups by a representative system. This theory fails because its reliance on procedural safeguards after rejecting substantive value choices would by itself be a substantive value choice.

Closely connected with interpretivism is the theory that the Courts should make principled decisions, *i.e.*, that they observe principles of generality and neutrality. This theory requires that:

> The main constituent of the judicial process is precisely that it must be generally principled, resting with respect to every step that is involved an analysis and reasons quite transcending the immediate result that is achieved... resting on ground of adequate neutrality and generality tested not only by the instant application but by others that the principles imply.[26]

Its corollary is that a judge must remain faithful to the body of law within which he works by following the principles already established, rather than constantly reshaping them to fit his preferences in the case at

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[26]H. WECHSLER, PRINCIPLES, POLITICS & FUNDAMENTAL LAW 21 (1961).

hand.[27] Neutrality also imports disinterestedness, which requires that judges must first be above partisan politics; second, they must be free from personal egotistic prejudices and, third, that the values the Court indicates must have a content greater than any single concern of the moment.[28]

V. JUDICIAL REVIEW IN THE 1987 CONSTITUTION

In the Philippines, the power of judicial review is expressly granted by the Constitution and notwithstanding the anti-majoritarian objection, appears to be accepted without question in this jurisdiction. The Court derives its power to decide the legality of the political acts of branches of government not only from the grant of judicial power but from the explicit grant of the power of judicial review. This seems to me to imply a distrust of the people not only of the political departments but of their capacity to decide their destiny and calling into account their political leaders who make policy choices.

Soon after the adoption of the 1987 Constitution, the Court announced in *Sarmiento v. Mison*[29] its own role and the scope of its task in the Constitution:

> The Court will thus continue the applicable constitutional provisions, not in accordance with how the executive in the legislative department may want them construed but in accordance with what they say and provide.

This follows the dictum of Justice Jose Abad Santos in *Gold Greek Mining Corp. v. Rodriguez*[30] that:

> The fundamental principle of construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves.

Until recently, the Supreme Court, had on the whole, exercised the policy of judicial self-restraint, cognizant of the principle of separation of powers and the respect due to co-equal departments.

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[27]M. TUSHNET, *Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles*, 96 HARV. L.R. 782, fn. 4 (1983).

[28]A. BICKEL, *supra* note 5, at 50.

[29]156 SCRA 552 (1987).

[30]66 Phil. 259 (1938).

First, it had observed of course, with some exceptions, the conditions laid down in *People v. Vera*[31] for the exercise of the power of judicial review.

Second, it had, in several cases, given continuing adherence to the principle of presumed constitutionality.[32]

Finally, it had respected, when it deemed it appropriate, the political question doctrine, as a limitation on the power of judicial review. In the cases where the Court refused to assume jurisdiction, it has been observed that these are questions which cannot be decided without the assessment of facts easily available to the political departments but not to the judicial.[33] But, even if it were a justiciable or legal issue, the Court would not take cognizance if its decision would compel a co-equal political department to do a particular act because the Court would be powerless to order the execution of its judgment. "Judgment should not be pronounced which might be disregarded with impunity".[34] It had intervened, as in *Avelino v. Cuenco*,[35] after it had felt the pulse of the nation and considered the possibility of being disobeyed by a political branch; although in *Tolentino v. Comelec*[36] in relation to a decision of the 1971 Constitutional Convention to submit a proposed amendment to a plebiscite, the Court said "no", in spite of public opinion to the contrary. As interpreted by the Court, the Constitution did not allow piece-meal submission of proposed amendments, to the people. But in all these cases, self-restraint was induced by a realization of the necessity to observe the principle of separation of powers which insures that each department is supreme in the area committed to it by the Constitution and secures it from intrusion or usurpation of the others in government.

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[31]65 Phil. 56 (1937).

[32]Ermita Malate Hotel & Motel Operators, Inc. v. City Mayor of Manila, 20 SCRA 849 (1967); Morfe v. Mutuc, 22 SCRA 424 (1968); Alalayan v. National Power Corporation, 24 SCRA 172 (1968).

[33]Barcelon v. Baker, 5 Phil. 87 (1905); Osmeña v. Pendatun, 109 Phil. 863 (1960) J. Bernas, *The Supreme Court & the Political Departments*, 1905-1960, XI Ateneo L.J. 28 (1951).

[34]Alejandrino v. Quezon, 46 Phil. 95 (1924); Vera v. Avelino, 71 Phil. 129 (1940); Severino v. Governor-General, 16 Phil. 366 (1910).

[35]83 Phil. 19 (1949).

[36]41 SCRA 702 (1971).

Justice Bengzon said: "... Judicial interpretation has tended to the preservation of the independence of the three and a zealous regard of the prerogative of each, knowing fully well that one is not the guardian of the others".[37] The Supreme Court, while charged with enforcing the Constitution by interpreting and applying it in specific cases, was not intended to be a revisor of the acts of Legislature or the Executive. For then, it would be a second Legislature or Executive and this would negate the principle of separation.

It was in *Lansang v. Garcia*[38] that the Supreme Court modified its adherence to the political question doctrine. It will be recalled that *Lansang* arose out of the suspension of the privilege of habeas corpus in 1971. Interpreting the 1935 constitutional provision, the Court said that for the validity of the suspension of the privilege two conditions must concur: (1) that there is invasion, insurrection, rebellion, or imminent danger thereof; (2) that public safety requires the suspension. The Presidential Proclamation stated that there was an actual state of rebellion and that "public safety requires that immediate and effective action be taken in order to maintain peace and order, secure the safety of the people and preserve the authority of the State." The Court was "unanimous in the conviction that it [had] the authority to enquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof." Since the power to suspend the privilege was qualified by constitutional limitations "like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice."

As perceived by the Court, its proper function is "merely to check - not to supplant - the Executive, or *to ascertain merely whether he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act." Comparing the scope of its power in other cases, the Court said that its power in this particular instance was not "even comparable with its power over civil or criminal cases elevated thereto by appeal... in which cases the appellate court has all the powers of the court of origin," nor to its power over quasi-judicial administrative decisions where its inquiry is limited to whether "there is some *evidentiary basis*" for the administrative finding. The Court should "go *no* further than to satisfy [itself] *not* that the President's decision is

[37]Vera v. Avelino, 77 Phil. 192 (1946).
[38]42 SCRA 448 (1971).

correct and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act *arbitrarily*."

The 1987 Constitution radically changed the role of the Supreme Court in our scheme of government. Unlike the other powers vested in the political departments, judicial power is now defined to "include the duty to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of any branch or instrumentality of the Government".[39] Moreover, in Article VII, section 18, it is expressly provided that "The Supreme Court may review in an appropriate proceeding filed by any citizen the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof."

The definition is divided into two parts: the first part refers to cases which are traditionally judicial in nature, adopted by the Supreme Court in several cases, *Lopez v. Roxas*,[40] and in *Casibang v. Aquino*.[41] The second part appears to have narrowed the scope of the political question doctrine which heretofore constituted a limitation on the power of judicial review. A political question was defined in *Tañada v. Cuenco*[42] as "those questions which under the Constitution are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government." The determination of when full discretion has been given, has always proved to be difficult, but generally, considerations of wisdom, efficiency and practicality of a particular act would characterize these as political questions. The trend of decisions has been toward the Supreme Court assuming jurisdiction whenever the Court finds constitutional limits, in terms of scope and manner, of the exercise of the powers or functions conferred upon political bodies.

It was partly because of the decision in *Javellana v. Executive Secretary*,[43] where a majority held that whether or not the 1973 Constitution was already in effect with or without constitutional

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[39]CONST., art. VIII, sec. 1.
[40] 17 SCRA 756, 761 (1966).
[41] 92 SCRA 642 (1979).
[42]103 Phil. 1051, 1067 (1965) citing 16 C.J.S. 413.
[43]50 SCRA 30 (1973).

ratification was a political question, that Commissioner Roberto Concepcion who was Chief Justice at the time of the *Javellana* decision, proposed the second paragraph of Section 1 which imposes on the Court the duty to determine whether or not there has been grave abuse of discretion amounting to lack of jurisdiction.[44] Moreover, the addition was introduced because of the frequency with which the Government had appealed and the Supreme Court had affirmed the political question doctrine during the period of martial law. It is not meant to do away with the political question doctrine itself. Commissioner Roberto Concepcion said: "It definitely does not eliminate the fact that truly political questions are beyond the pale of judicial review."[45] These may involve matters where the Constitution confers power without qualification or conditions such as the determination of *whether* or *when* legislative or executive power may be exercised. It is not clear, however, what discretionary acts are subject to judicial review outside of those mentioned in the Constitution. Following past decisions, these may be where the power conferred is hedged by limitations and conditions and the Court's intervention consists merely in determining whether the political departments acted arbitrarily, as the facts and the provisions conferring power would warrant. In this way, the Court would not act as a revisor because it would not supplant the decision but rather would check whether the power is exercised within constitutional boundaries.

In judging whether the political branches had committed grave abuse of discretion, the Court seems to have adopted as criterion, the test of reasonableness because grave abuse has been characterized as "capricious and whimsical exercise of discretion".[46] If past decisions are to be followed, this entails a determination of whether the means employed have a reasonable relation to the ends sought to be achieved. This essentially is the rational relationship test employed in due process and equal protection cases. While the judicial power may have the appearance of having an open texture or being open-ended, it does not give the Supreme Court blanket authority to adopt its own policy choices. The 1987 Constitution, unlike the United States Constitution, has three categories of provisions: One concerns the separation of powers, distributing the authority granted to the government among the legislative, executive, and judicial branches, and the Constitutional Commissions; the second consists of guarantees of individual liberty; and the third concerns expressly enunciated values, principles and

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[44]Concepcion, Sponsorship Speech, 1 RECORD 434-435.

[45]1 RECORD 434, 443.

[46]*Garcia v. Garcia*, 191 SCRA 288 (1990), Melencio-Herrera, J, *citing* Abad Santos v. Province of Tarlac, 67 Phil. 480 (1939), Alfariz v. Noble, 70 Phil. 278 (1940).

policies, all of which limit governmental power. Values, principles, and policies are embodied in constitutional provisions regarding (1) upholding human dignity and respect for human rights, (2) promotion of social justice, (3) the national economy and patrimony, and (4) education. The third category refers to constitutional value choices which the Court is obliged in deciding a case to use as ends or goals, it only remains for the Court to judge whether the means employed by the political branches are reasonably necessary for their accomplishment. Because of this, the Court's scope of discretion in making its own policy choices would be considerably lessened. Its fidelity to its constitutionally assigned task could thus be measured and the legitimacy of its decisions would then be properly judged.

If the story is toldof the 1987 Constitution and the role of the Supreme Court in its enforcement, it will be, in capsule form, narrated thus:

In the beginning was the sovereign people, and the sovereign people established a republican government on the principle of separation of powers to rule over them for the common good. But, because of excesses of the political branches, the sovereign people made the Supreme Court the final arbiter of what is reasonable for the fulfillment of their goals set forth in the Constitution.