FORTICH V. CORONA: MAKING SENSE OUT OF A HOLOGRAM OF LEGALESE

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> *When you talked to the [Mapalad] farmers two years ago, you could smell the richness of earth in their breath. Now the case and the issue of land have become uprooted. It rests on the slimy saliva of lawyers and recycled paper.*[1]

I. A HOLOGRAM OF LEGALESE

In 1997, a group of farmers staged a hunger strike to protest their dispossession of a 144-hectare property in Sumilao, Bukidnon. The media reported that the farmers' claim over the land (previously owned by Norberto Quisumbing) hinged upon certificate of land ownership titles (CLOA) awarded to them by the Department of Agrarian Reform (DAR) in line with the Comprehensive Agrarian Reform Law (CARL).[2] The award of these titles was contested by the landowner, Quisumbing, the governor of Bukidnon Carlos Fortich, and the mayor of Sumilao, Rey Baula, all of whom based their opposition on the fact that both the province of Bukidnon and the municipality of Sumilao's respective *sanggunians* had passed a resolution and an ordinance reclassifying the land from agricultural to agro-industrial use. Media took these acts of the rich landowner and powerful government officials as acts performed to circumvent

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[1] Ceres Doyo, *Mapalad case is like a hologram*, PHIL. DAILY INQUIRER, Sept. 9, 1999, at 9.

[2] Alecks P. Pabico, *Searching for an Agrarian Reform Friendly Government*, (Visited Sept. 21 1999) http://www.archipelago.com.ph/06.29.98/current/feature1.html.

CARL's provisions. For instance, Ceres Doyo, a respected columnist of the Philippine Daily Inquirer, wrote:

> ...[W]hen the farmers fasted, the case looked like it as really just all about land and farmers seeking to own a piece. And a few individuals who wanted to convert that vastness into an industrial/agribusiness complex despite the DAR's ruling that it should not be done because of the nature of the land.[3]

Despite media's sympathy for the farmers, the Supreme Court ruled against the farmers' cause in three decisions that upheld the landowner's contention. Each of these decisions was criticized for being decided on technicalities.[4] When the latest decision was issued in August 1999, neither media nor the public could make heads or tails out of the story and how, despite being awarded a valid title under the CARL, the farmers were deprived of their own land. Doyo wrote:

> The celebrated agrarian case that got so many people fired up and [which] shook the government's lethargic stance on land reform has become not only something for the law books, it has become something beyond the common folk to understand. It has slid down into a cold legal abyss. It has transmogrified and become swallowed up in a legal hologram, so to speak.[5]

Since the right of the farmers to the land appears to be based on clear provisions of law, the denial of this right by the Supreme Court seemed to go against common sense.

This paper aims to re-examine the *Fortich v. Corona*[6] rulings in two ways. First, it examines how the Supreme Court adopted or ignored the arguments raised by the parties to the case by examining the pleadings filed by the latter and comparing these with the decision finally rendered by the Court. After doing so, it

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[3] Doyo, *supra* note 1, at 9.

[4] *Id.*

[5] *Id.*

[6] G.R. No. 131457, 24 April 1998, 289 SCRA 624 [hereinafter Fortich I]; G.R. No. 131457, 17 November 1998 [hereinafter Fortich II]; G.R. No. 131457, 19 August 1999 [hereinafter Fortich III].

shall then analyze and critique the decision-making process of the High Court with the use of R.M. Dworkin's critique of positivist decision-making.[7]

A. Crisis in the courtroom

The media's response to the Supreme Court's decisions is yet another expression of the public's growing discomfort with a series of puzzling judgments issued by the Court in recent years. In May 1997, for instance, the Philippine Center for Investigative Journalism published a series of articles on the Philippine judiciary in several news dailies,[8] charging that the decisions of the Supreme Court have been so inconsistent with established rulings that these fuelled the belief that considerations other than justice and the law influenced the decision-making process of the Supreme Court.[9] Former Comelec Chair Haydee Yorac has also said that it is the High Court's frequent failure to give sufficient basis for overturning established legal doctrines that puts its credibility to question.[10] To restore the Judiciary's credibility, therefore, is to restore the public's faith in our judges' capacity to make just and reasonable decisions.

B. In search of good decisions: Building a framework for critique

What are good decisions and how are they made? In theory, a judge's method of adjudication involves a simple process of applying the appropriate law to the facts of the case. The Constitution itself provides that "No decision shall be rendered by any court without expressing clearly therein *the facts and the law* on which it is based."[11]

1. The positivist approach to decision-making: Strict adherence to rules, allowance for discretion in hard cases

Philippine courts, particularly the Supreme Court, have been described as positivist in their approach to a judge's decision-making process.[12] By "positivist,"

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[7] R.M. Dworkin, The Philosophy of Law 38 (1977) [hereinafter Dworkin I]; R.M. Dworkin, Taking Rights Seriously 82 (1977) [hereinafter Dworkin II].

[8] Sheila Coronel, *Litigants, Lawyers and the Supreme Court: Justice to the Highest Bidder*, MLA. TIMES, 2 39:50 (1997) [hereinafter Coronel I].

[9] *Id.* at 3.

[10] Sheila Coronel, The Lawyer's Verdict: What Ails the Supreme Court? Corruption, Huge Case Load, No Philosophy, MLA. TIMES, 1 39:50 (1997) [hereinafter Coronel II].

[11] CONST. art. VIII, sec. 4.

[12] Crisolito Pascual, Introduction to Legal Philosophy 151-152 (1974).

we refer to an approach that generally deals only with legal rules—rules used by the community to determine which behavior will be punished or coerced by a public power or sovereign—as distinguished from moral codes or social rules.[13]

Legal rules differ from moral or social rules because of the way the former are adopted. One school of positivist thought which follows the tradition of John Austin believes that unlike social and moral norms, legal rules are constituted by a sovereign commanding his or her followers to observe them under pain of punishment.[14] Another school which adheres to the thought of H.L.A. Hart believes that the law was constituted by both primary and secondary rules: Primary rules are deemed valid when constituted in accordance with secondary rules, which stipulate how legal rules ought to be enacted; secondary rules lay down the procedure that the community or its legislators must follow in order to adopt a new law or to modify an old one.[15]

When a judge decides a case to enforce a legal right or obligation, he or she must decide in accordance with a legal rule validly created by the sovereign, or in accordance with certain secondary rules. Apart from these, nothing else should inform his judgment.

The Supreme Court has expressed this philosophy thus:

> A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought "to protect and enforce it without fear or favor," resist encroachments by governments, political parties, or even the interference of their own personal beliefs.[16]

However, positivist philosophy allows the judge to reach beyond the rules that he or she is normally bound to apply, and employ extralegal standards to make or supplement a legal rule whose provisions may be inadequate for a particular case.[17] The judge's use of discretion is an important facet of positivist philosophy, for it is a convenient escape hatch for judges who are confronted with "hard cases"— cases which do not seem to fall under any legal rule.

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[13] DWORKIN I, *supra* note 7, at 38.

[14] *Id.* at 39.

[15] *Id.* at 41.

[16] People v. Veneracion, G.R. Nos. 119987-88, 12 October 1995, 249 SCRA 244, 259.

[17] DWORKIN I, *supra* note 7.

2. The integral role of discretion in positivism

There are times when a case cannot be resolved by an existing rule of law. Sometimes, a case may be resolved in two different ways, each resolution being in accordance with two diverse, but equally applicable rules. These situations are called controversial or "hard" cases—cases that raise issues so novel that they cannot be decided by merely applying or stretching the law.[18] Apparently aware of the fact that positivist legal philosophy would be unable to resolve such cases justly by strictly adhering to legal rules, positivists reserve a special place for the use of judicial discretion in deciding these exceptional cases. Despite this concession, however, the judge is not allowed to suppress or twist facts in order to reach what he or she believes to be the just result. As Chief Justice Andres Narvasa said, "In the Philippines...where there is greater latitude in the exercise of judicial function, what is expected of a justice is to determine what the facts are in a particular case and to apply the law to those facts...regardless of your personal feeling or your own philosophy."[19] In other words, "an upright judge ought to decide the facts free from any conscious consideration of what the results will be."[20]

Similarly, in *People v. Veneracion*, the Supreme Court castigated Judge Lorenzo Veneracion for refusing to apply the death penalty on a convict due to his personal religious beliefs:

> Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence...[21]

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[18] DWORKIN I, *supra* note 7.

[19] Coronel II, *supra* note 10.

[20] Bernanrd Shientag, *The Virtue of Impartiality*, in Reading Materials for the 8th Judicial Career Development Program for Regional Trial Court Judges 83 (1991).

[21] People v. Veneracion, G.R. Nos. 119987-88, 12 October 1995, 249 SCRA 244, at 251.

3. The problem with judicial discretion

Although the positivists' use of judicial discretion allows them to wriggle through the problem posed by hard cases that do not fit within the provisions of established legal rules, this same positivist theory of discretion creates new problems.[22] The most obvious question one can pose is: If judges are free to reach beyond legal rules to resolve a hard case, but the standard they use must not be based on their own belief, philosophy or feelings, on what, then should the decision be based? How can the public know for certain whether the judge who decides "in exercise of his or her discretion" did so because of a real standard by which their decisions may themselves be judged as good, reasonable or just? The absence of any clear answer to this point is perhaps the source of the public's misgivings against judges and the puzzling decisions the latter are wont to issue.

4. Treating law as a web of rules and principles

R.M. Dworkin has argued that the problems opened up by judicial discretion disappear if law is treated not as a set of rules but as a web of principles. "Principle" denotes "a standard that is to be observed, not because it will advance or secure an economic, political, social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality."[23] In other words, principles are social goals that are more or less permanently enshrined in public consciousness, despite changes in socio-political or economic conditions of a particular community.

According to Dworkin, an example of a principle is the statement that no person ought to profit from his or her wrongdoing.[24] In *The Philosophy of Law*, he discusses the case of *Riggs vs. Palmer*[25] to show how the United States court ruled on the basis of this principle to deny a testamentary heir of his inheritance because he had murdered the testator. He notes that although there was no existing rule of law which particularly denied a testamentary heir of his inheritance under the circumstances, the United States court decided not to grant the heir his

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[22] Judicial discretion has often been criticized for going against the doctrine of separation of powers, which proscribes judges from creating or modifying existing law. It has also been criticized for *ex post facto* depriving people of rights guaranteed by existing legal rules, since judges are free to decide cases on bases other than existing legal rules. See DWORKIN II, *supra* note 7, at 82, 102.

[23] DWORKIN I, *supra* note 7, at 43.

[24] *Id.* at 44.

[25] 115 N.Y. 506; 22 N.E. 188 (1889).

inheritance because to do so would go against the justice that courts ought to serve.[26]

Legal rules differ from legal principles in that they are applicable in an "all-or-nothing" fashion. They must apply all the time, or never at all.[27] Given a particular set of facts, only one of two conflicting rules must apply—that which has a greater or more important role in regulating behavior.[28]

In contrast, principles are merely persuasive. They do not define specific duties, rights or obligations when they are used to decide a particular case. They merely aid the resolution of a conflict by leading a person to argue toward a particular direction. To resolve an issue where two conflicting principles may apply, all one has to do is to *consider* the relative weight of each.[29] Thus the issue is resolved not by applying only one of the two principles, but by weighing which of two principles can lead the judge to make a decision that is more in line with justice and fairness.

In Dworkin's view, judges who decide hard cases use standards that do not function as rules, but operate as principles. Thus, in reality, a significant number of decisions veer away from seemingly established precedents for a variety of reasons such as "justice or equity," "fairness" or "national policy."

Dworkin claims that the positivists' refusal to admit that judges use principles rather than rules, to justify their decisions in hard cases, is due to their inability to see that beneath legal rules lie principles. In other words, Dworkin argues that principles are not extralegal standards that courts may use only when hard-pressed to find a suitable rule to justify decisions in hard cases. Instead, principles must be treated as part of the law of the land, as are legal rules created by authority of the sovereign, or by law.

5. Treating principles as part of law

To treat principles as part of law is to make judges duty-bound to wrestle with relevant arguments of principle when they make a decision. Since principles are not mere moral standards but are part of law, principles ought to play an

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[26] DWORKIN I, *supra* note 7, at 44.
[27] *Id.* at 45.
[28] *Id.* at 48.
[29] *Id.*

important role in informing the decision made by the judge. Even if principles do not determine a particular result in the same manner as rules, judges are bound to deal with principles because the latter may determine the general direction of the judge's application of a particular rule to the facts of a case.

That principles underlie even the most established legal rules is apparent even to positivists who cannot but implicitly admit that principles govern a judge's discretion when he or she introduces or overturns an established rule in a given case.[30] Dworkin points out that the following principles are used by positivists themselves to justify the use of judicial discretion in deciding a hard case:

> 1. The change in ruling is justified because it advances some policy or principle; and
>
> 2. The judge proposing the change takes into account some important standard that argues against departures from established doctrine, such as the doctrine of legislative supremacy or the doctrine of precedent.[31]

If positivists implicitly admit that principles are part of law, then there is no need for judges to look beyond the law for extralegal standards to justify case decisions. There is no need to exercise "judicial discretion." Instead, judges need only determine which principle among many is weightier in a given problem, in order to aid him or her decide what rule embodying such principle may be used to resolve the case. This takes away all the confusion that the positivist conception of law as a system of rules and the theory of judicial discretion brings.

C. Analyzing Fortich v. Corona*: Searching for principles in a hologram of legalese*

Dworkin's critique of the positivist view of law as a system of rules is particularly important to any analysis of the Supreme Court's decisions on the 144-hectare Quisumbing property for the following reasons.

First, the public's discontent with the decision centered on the fact that the Court chose to resolve the case on technical, rather than substantive grounds.

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[30] *Id.* at 58.
[31] *Id.*

Dworkin's analysis[32] helps in explaining why a decision based on technicalities (legal rules) gave birth to the indignant uproar[33] over the outcome of the case.

Second, the same framework helps us evaluate the soundness of the Court's decision—whether it is amply supported by both legal rules and principles, or whether the Court made wanton use of the doctrine of judicial discretion.

Third, there is reason to believe that Dworkin's view gives a more satisfactory account of how decisions *are made.* As mentioned in the earlier section, even positivists implicitly admit that good decisions made when judges "exercise their discretion" and deviate from established rules are made in accordance with some underlying principle. The exercise of discretion is not, as positivists ostensibly espouse, free from both the clutches of legal rules and other considerations. Rather, judicial discretion ought to be, and is actually exercised in order that a miscarriage of justice may be avoided.

Although this paper has cited authorities who claim that the Philippine legal system is "positivist" in orientation—that is, it adheres to the belief that judges should make decisions in accordance with legal rules, but allows judges to go beyond such rules and "exercise their discretion" in "hard cases"—there likewise is reason to believe that Dworkin's framework of weighing principles is a better description of the manner in which Philippine courts have made good and just decisions. In several cases, the Supreme Court allowed itself to deviate from "strict rules of procedure" and "technicalities." In these cases, however, the Court's deviation from established rules was a result of its weighing the principle of precedent and the principle of justice, and finding that the latter's importance surpasses the former's.

In *Lim v. Court of Appeals,*[34] the Supreme Court ruled:

> [O]ne does not have any vested right in technicalities. In meritorious cases, a liberal, not literal interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent of the rules which is the proper and just determination of litigations. Litigations should, as much as possible, be decided on their merits and not on technicality. [E]very party-litigant should be afforded the

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[32] *See* DWORKIN I, *supra* note 7; DWORKIN II, *supra* note 7.

[33] *See* Doyo, *supra* note 1.

[34] Lim v. Court of Appeals, G.R. Nos. 84154-55, 28 July 1990, 188 SCRA 23.

> amplest opportunity for the proper and just disposition of his cause free from the constraints of technicalities.[35]

In the case of *Mauna v. Civil Service Commission*,[36] the Supreme Court likewise ruled: "[I]t is within the power of this Court to temper rigid rules in favor of substantial justice...If [procedural] rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties."[37]

Dworkin's view of judicial decision-making as a process of acknowledging the principles behind legal rules and weighing which principles may better govern a particular set of facts not only does away with the nebulous concept of judge's "exercise of discretion;" more importantly, it describes *what actually takes place* when a judge makes a *proper exercise of discretion* in a hard case. Dworkin's view fills in the gaps that positivism and its theory of judicial discretion leaves uncovered.

For the forgoing reasons, this paper chooses Dworkin's framework as the paradigm through which it views, and tries to make sense, out of the legal morass that is the Sumilao case.

II. HOW THE SUPREME COURT LOOKED THE OTHER WAY

> *In Ancient mythology, Antaeus was a terrible giant who blocked and challenged Hercules for his life... Hercules flung his adversary to the ground thinking him dead, but Antaeus rose even stronger to resume their struggle. This happened several times to Hercules' increasing amazement. Finally, it dawned on Hercules that Antaeus was the son of Gaea and could never die as long as any part of his body was touching his Mother Earth. Thus forewarned, Hercules then held Antaeus up in the air, beyond the reach of the sustaining soil, and crushed him to death.*

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[35] *Id.* at 32.

[36] Mauna v. Civil Service Commission, G.R. Nos. 97794, 13 May 1994, 232 SCRA 388.

[37] *Id.* at 398.

Mother Earth. The sustaining soil. The giver of life, without whose invigorating touch even the powerful Antaeus weakened and died.[38]

These dramatic opening paragraphs of the "Win-Win Resolution"[39] set the tone for a decision upholding the cause of agrarian reform. Ironically, these same lines also aptly chronicle how the highest court of the land paved the way for the demise of a group of farmers' hope of finally owning the land they till.

A. Chronology of the controversy

The cases in the Supreme Court began with the filing of a Petition for Certiorari by real estate developer NQSRMDC, Governor Fortich of Bukidnon and Mayor Baula of Sumilao, all of whom sought to declare the Office of the President's modification of a previous decision as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.[40] To bolster their claim, Petitioners alleged that the Office of the President's modification of the previous ruling violated not only the constitutional provision on local autonomy but also the provision on the President's power of general supervision over local government units.[41] The Petitioners further claimed that the resolution was void for allegedly violating the fundamental principle of separation of powers,[42] and was confiscatory because it violated the due process clause, and was thus arbitrary and oppressive.[43] Petitioners also prayed for a temporary restraining order to prohibit DAR from implementing the modified decision.[44]

1. Precursor to the controversy

On December 11, 1993, the Bukidnon Agro-Industrial Development Association (BAIDA) and NQSR Management and Development Corporation (NQSRMDC) filed an application for land use conversion before the DAR concerning the latter's 144-hectare land in San Vicente, Sumilao, Bukidnon. In an Order dated 14 November 1994, DAR Secretary Ernesto D. Garilao denied the

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[38] Association of Small Land Owners v. DAR Secretary, G.R. No. 787742, 14 July 1989, 175 SCRA 343, 352.

[39] Office of the President Decision, 7 November 1997, at 1[hereinafter, Win-Win].

[40] Petitioner's Petition for Certiorari in Fortich I [hereinafter Petition for Certiorari], at 16.

[41] *Id.* at 17, 23.

[42] *Id.* at 26.

[43] *Id.* at 30.

[44] *Id.* at 16.

application for conversion of the land from agricultural to agro-industrial use and ordered its distribution to qualified landless farmers. BAIDA and NQSRMDC filed a Motion for Reconsideration dated 9 January 1995, which was denied in an Order dated 7 June 1995.

2. A letter appeal and a hunger strike: The controversy at the Office of the President

> Thereafter, Bukidnon Governor Carlos O. Fortich sent a letter to President Fidel V. Ramos requesting him to suspend the Garilao Order and to confirm the ordinance enacted by the Sangguniang Bayan of Sumilao converting the subject land from agricultural to industrial/ institutional land.[45]

Acting on the letter, then Executive Secretary Torres reversed the Garilao Order and upheld the power of local government units to convert portions of their agricultural lands into industrial areas in a decision dated 29 March 1996.

Secretary Garilao filed a Motion for Reconsideration, admittedly tardy, which was denied by Torres on the ground that his decision had already become final and executory in view of the lapse of the fifteen-day period for filing a motion for reconsideration.

A second Motion for Reconsideration was filed. During this time, farmer-beneficiaries affected by the Torres Decision conducted a hunger strike in Manila. After meeting with the farmers, President Ramos constituted a Presidential Fact-Finding Task Force to look into the issue.

On 7 November 1997, Deputy Executive Secretary Corona issued the "Win-Win" Resolution which, pursuant to the recommendations of the task force, substantially modified the Torres Decision by awarding one hundred (100) hectares of the Sumilao property to the qualified farmer beneficiaries and allocating only forty four (44) hectares for the establishment of an industrial and commercial zone.

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[45] Fortich v. Corona, G.R. No. 131457, 17 November 1998 (Puno, J., separate opinion, at 1.)

3. An unwavering stand: The controversy at the High Court

NQSRMDC filed a Petition for Certiorari questioning the validity of the "Win-Win" Resolution on the ground that the Corona Resolution constituted grave abuse of discretion amounting to lack of jurisdiction because it substantially modified the Torres Decision "in order to appease the hunger strikers" and because in doing so, it violated the local government's power under section 20 of the Local Government Code "to reclassify and convert agricultural lands."[46]

The Supreme Court promulgated a decision on April 24, 1998, which annulled the "Win-Win" Resolution; this was, however, on a different ground. The Supreme Court ruled that Deputy Executive Secretary Corona committed grave abuse of discretion in modifying an already final and executory decision of then Executive Secretary Torres.[47]

The Court said:

> When the Office of the President issued the Order dated June 23, 1997, declaring the Decision of March 29, 1996 final and executory, as no one has seasonably filed a motion for reconsideration thereto, the said Office had lost its jurisdiction to reopen the case, more so modify its decision. Having lost its jurisdiction, the Office of the President has no more authority to entertain the second Motion for Reconsideration filed by Respondent DAR Secretary, which second motion became the basis of the assailed "Win-Win" Resolution.
>
> The orderly administration of justice requires that the judgments/resolutions of a court or quasi-judicial body must reach a point of finality set by the law, rules and regulations. The noble purpose is to write finis to disputes once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always

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[46] Petition for Certiorari, *supra* note 40, at 16.

[47] It is undisputed that DAR received the Torres Decision on 10 April 1996 but it transmitted its Motion for Reconsideration to the DAR Records Management Division for mailing to the Office of the President only on 23 May 1996, way beyond the reglementary period. The Office of the President received the motion on 14 July 1997. The second division of the Supreme Court applied the rule on finality of administrative determinations and upheld the policy of setting an end to litigation as an indispensable aspect of orderly administration of justice.

> be maintained by those who wield the power of adjudication. Any act which violates such principle must immediately be struck down."[48]

The decision also denied the Mapalad farmers' motion for intervention on the ground that they were not real parties in interest, being only "qualified farmer beneficiaries," and not beneficiaries themselves.

In their respective motions for reconsideration, the farmer beneficiaries and DAR protested the technical basis of the decision. On 2 November 1998 the Supreme Court rendered a split Resolution. Justices Martinez and Mendoza voted to deny the motion while Justices Puno and Melo voted otherwise.

On 2 December 1998, the Respondents filed a Motion for Reconsideration of the Resolution dated 17 November 1998 and for the Referral of the Case to the Honorable Court *En Banc*. The following day, the farmers also filed their own Motion for Reconsideration and/or motion to refer the matter *en banc* pursuant to article VIII, section 4, paragraph (3) of the 1987 Constitution.

On 2 March 1999, the Intervenors filed their urgent omnibus motion for the Supreme Court sitting *en banc* to annul the Second Division's Resolution dated 27 January 1999 and immediately resolve the 28 May 1998 Motion for Reconsideration filed by the Intervenors.

Finally, on 19 August 1999, the Special Second Division handed down the long-awaited resolution denying the farmers' appeal to overturn the 17 November 1998 decision of the second division. The Court also stressed that the farmers can no longer appeal before the Supreme Court *en banc*.

In an eight-page decision, the Court said that the "Win-Win" Resolution was in the first place "void and of no legal effect" since Malacañang's original decision to convert the land into an industrial estate had become final and executory.

The third decision, penned by Associate Justice Consuelo Yñares-Santiago, summarized the High Court's unwavering stance on the case by ruling "once and for all" that the farmers, who had organized themselves into the Mapalad cooperative, "have no legal or actual and substantive interest over the land inasmuch as they have no right to own the land," since "the issuance of the

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[48] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 650-651.

certificates of land ownership award (CLOAs) to them does not grant them the requisite standing in view of the nullity of the Win-Win Resolution."[49]

B. Opening a can of worms: How the Supreme Court decided the case

On its face, the High Court's resolution of the Mapalad case is already controversial. At the heart of the dispute is the Court's positivist adherence to legal rules, on the one hand, and its seemingly arbitrary use of the doctrine of judicial discretion on the other.

1. Giving with one hand, taking with the other: Inconsistencies in *Fortich I*

In the first *Fortich* decision, the Court defined as the main issue of the case the question on whether or not the Deputy Executive Secretary acted with grave abuse of discretion amounting to lack of jurisdiction in modifying the Torres Decision which had already become final and executory.

It was undisputed that DAR received the Torres Decision on 10 April 1996 but transmitted its Motion for Reconsideration to the DAR Records Management Division for mailing to the Office of the President only on 23 May 1996, way beyond the reglementary period.[50]

The Second Division of the Supreme Court applied the rule on finality of administrative determinations strictly and upheld the policy of setting an end to litigation as an indispensable aspect of orderly administration of justice. The Court said:

> The rules and regulations governing appeals to the Office of the President of the Philippines are embodied in Administrative Order No. 18 section 7 thereof which provides:
>
> Sec. 7. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

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[49] Fortich v. Corona, G.R. No. 131457, 19 August 1999, at 6.

[50] Fortich v. Corona, G.R. No. 131457, 17 November 1998 (Puno, J., separate opinion, at 3.)

> Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.[51]

Since the Torres Decision had attained finality, the Supreme Court ruled that the Office of the President had lost not only its jurisdiction to re-open the case, but had likewise "lost [its] authority to entertain the *second* Motion for Reconsideration filed by Respondent DAR Secretary which...became the basis of the assailed "Win-Win" Resolution..."[52]

The Court adhered so strictly to the legal rule applicable that it denied the Respondents any possibility of ever coming under the exception to the "one motion for reconsideration" rule found in the law itself:

> And even if a second motion for reconsideration was permitted to be filed in "exceptionally meritorious cases" as provided in the second paragraph of section 7 of Administrative Order No. 18, still the said motion should not have been entertained considering that the first Motion for Reconsideration was not seasonably filed, thereby allowing the Decision of March 29, 1996 to lapse into finality.[53]

The Court then concluded its Decision by quoting from the case of *San Luis v. Court of Appeals*:[54]

> It is well-established in our jurisprudence that the decisions and orders of administrative agencies, rendered pursuant to their quasi-judicial authority, have upon their finality, the force and binding effect of a final judgment within the purview of the doctrine of *res judicata* The rule of *res judicata* which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial acts of public, executive and administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers.[55]

Strangely enough, the Court abandoned this rigid adherence to legal rules when discussing threshold issues raised by the Respondents in response to the issues raised by Petitioners in the Petition for Certiorari.

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[51] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 649-650.

[52] *Id.* at 650.

[53] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 650.

[54] G.R. No. 80160, 26 June 1989, 174 SCRA 258.

[55] San Luis v. Court of Appeals, G.R. No. 80160, 26 June 1989, 174 SCRA 258, 291.

As mentioned earlier, Petitioners' ground for asking that the Decision of the Deputy Executive Secretary be nullified was that in substantially modifying the Torres Decision the "Win-Win" Resolution violated the local government's power under section 20 of the Local Government Code "to reclassify and convert agricultural lands."

In answer to the Petition, Respondents countered that the remedy of Petitioners ought to have been to file their Petition for Certiorari with the Court of Appeals which had concurrent original jurisdiction over such petitions.

The Supreme Court admitted that Respondents were correct since according to section 4 of rule 65, "[T]he Supreme Court, Court of Appeals and Regional Trial Court have original concurrent jurisdiction to issue a writ of *certiorari, prohibition* and *mandamus*..."

> [However, the] jurisdiction of these three courts are also delineated in that, if the challenged act relates to acts or omissions of a lower court or of a corporation, board, officer or person, the petition must be filed with the Regional Trial Court. And if it involves the act or omission of a quasi-judicial agency, *the petition shall be filed only with the Court of Appeals.*[56]

Despite recognizing this clear legal rule, the Court asserts its "full discretionary power to take cognizance of the Petition filed directly to it if compelling reasons or the nature and importance of the issues raised warrant."[57] The Court justified its taking cognizance of the Petition in the "interest of higher justice":[58]

> We resolve to take primary jurisdiction over the present petition in the interest of speedy justice and to avoid future litigations so as to promptly put an end to the present controversy which, as correctly observed by Petitioners, has sparked national interest because of the magnitude of the problem created by the issuance of the assailed resolution. Moreover...we find the assailed resolution wholly void and requiring the Petitioners to file their petition first with the Court of

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[56] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 644-645 (emphasis supplied).

[57] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 644-645.

[58] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 645.

> Appeals would only result in a waste of time and money.[59] Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided.[60]

In a single decision, the High Court demonstrated inconsistency in applying legal rules on one hand and exercising its discretion on another. The difference between the manner in which the two issues discussed above were resolved by the Court only demonstrates the inadequacy of the Court's adherence to the positivist treatment of law as a system of rules in making cogent decisions, especially when it arbitrarily chooses to exercise its discretion. In adhering too rigidly to procedural rules on the one hand and exercising its discretion to waive the same on the other, the Supreme Court succeeded in giving one party concessions, while denying the rights of another.

2. A dichotomy of substance and procedure: Inconsistencies in *Fortich II*

It has been said that there is no clear-cut line which can be drawn to separate questions of law from questions of fact.

> In truth, the distinction between question of law and question of fact really gives little help in determining how far the courts will review and for the good reason that there is no fixed distinction. They are not two mutually exclusive kinds of questions, based upon a difference of subject matter. Matters of law grow downward into roots of fact, and matters of fact reach upward, without break, into matters of law. The knife of policy alone affects an artificial cleavage at the point where the court chooses to draw the line between public interest and private right. It would seem that when the courts are unwilling to review, they are tempted to explain by the easy device of calling the question one of "fact"; and when otherwise disposed, they say that it is a question of "law."[61]

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[59] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 646 (emphasis supplied).

[60] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 646.

[61] Dickinson, Administrative Justice and the Supremacy of Law in the United States, 55 (1969), *cited in* Irene Cortes, Philippine Administrative Law, Cases and Materials 494 (1984).

The problem with these "shady areas" is that they are usually dependent on the predilection of the judge reviewing the case. If he is hell-bent on reviewing a case, he will treat it as one involving a question of law. Otherwise, he will merely waive it off as one involving a question of fact.

In the second *Fortich* decision, the Supreme Court maintained that its first decision, widely criticized for being based on technicality, was in fact based on substantive justice:

> The movants, however, complain that the case was decided by us on the basis of a "technicality," and, this has been the rallying cry of some newspaper columnists who insist that we resolve this case not on mere technical grounds.
>
> We do not think so.
>
> It must be emphasized that a decision/resolution/order of an administrative body, court or tribunal which is declared void on the ground that the same was rendered without or in excess of jurisdiction, or with grave abuse of discretion, is by no means a mere technicality of law or procedure. It is elementary that jurisdiction of a body, court or tribunal is an essential and mandatory requirement before it can act on a case or controversy. And even if said body, court or tribunal has jurisdiction over a case, but has acted in excess of its jurisdiction or with grave abuse of discretion, such act is still invalid. The decision nullifying the questioned act is an adjudication on the merits.[62]

In this decision, the SC categorically stated that the "crux of the controversy" in the first decision was the validity of Ramos' "Win-Win" compromise.[63]

The Court said, "We maintain that the same is void and of no legal effect considering that the 29 March 1996 decision of the Office of the President had already become final and executory even prior to the filing of the Motion for Reconsideration which became the basis of the Win-Win Resolution."[64]

Not even the DAR's explanation—that it was unable to file a timely motion for reconsideration due to the fact that the manner of service of the

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[62] Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 9.
[63] Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 5.
[64] Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 5.

decision made it impossible for DAR to do so—was accepted by the Court as a "justifiable cause" that would merit a relaxation of the rules.[65] In strictly adhering to section 7 of Administrative Order No. 18, the Court upheld a legal rule over the principle of "substantial justice," upon which Respondents pegged their plea for a relaxation of procedure.

It added that the farmers' Motion for Reconsideration of the Torres Decision was thrown out not only because they were deemed not to be the real parties in interest in the case, but also due to the underlying consideration that the Petitioners have the "substantive right" to enjoy the finality of the resolution of the case.

These pronouncements suggest that the wide discretion with which judges may treat rules as "substantive" or "technical" are based on reasons other than a just consideration of the facts of the case and the applicable laws. Any "technicality" can always be labeled as a substantial issue if the Court would want to view it that way. Any procedural lapse committed by one party almost always benefits the opposing party in some way. And the enjoyment of this benefit becomes a "substantive" right that can always be invoked by the Court to justify the strict implementation of a procedural rule.

3. The Court blows hot and cold

In its second *Fortich* decision, the Court insisted that the movants were barred from questioning the supposed procedural lapse of petitioner Fortich when he failed to comply with the appropriate administrative rules by immediately appealing the DAR decision to the Office of the President.[66]

The Court, noting that this was not mentioned in the "Win-Win" Resolution, said that it cannot be questioned for the first time in the Supreme Court. "It should have been raised and resolved at the first opportunity, that is, at the administrative level."[67]

In the first place, it would not matter whether the "Win-Win" Resolution stated it or not since, according to the court, the resolution was "void."

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[65] Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 6.
[66] Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 11.
[67] Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 11.

To borrow the Court's own words,[68] "Such void resolution," as aptly stressed by Justice Thomas A. Street in a 1918 case,[69] is "a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."[70]

Besides, the Corona Resolution did not put into issue whether Fortich's appeal was proper or not since the decision hinged on the other substantial issues involved in the case. In fact, the timeliness of DAR's Motion for Reconsideration of the Torres' decision was resolved merely by citing the case of *A-One Feeds v.* CA[71] and nothing more.

The "Win-Win" Resolution states:

> The application of the rules on procedure should be made liberal to give way to substantial justice. In a long line of cases decided by the Supreme Court, the High Tribunal has reiterated that the rules on procedure should be interpreted liberally, not literally. The Supreme Court has often passed upon controversies pitting procedural technicalities against the demands of substantial justice, invariably ruling in favor of the latter. [72]

In the language of the Court,

> Because there is no vested right in technicalities, in meritorious cases, a liberal, not literal, interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules which is the proper and just determination of litigation. Litigations should, as much as possible, decide on their merits and not on technicality. Dismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help serve, and not override, substantial justice and thereby defeat their very aims. As has been the constant rulings of this Court, every party-litigant

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[68] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 651.

[69] El Banco Espanol-Filipino v. Palanca, 7 Phil. 921 (1918).

[70] El Banco Espanol-Filipino v. Palanca, 7 Phil. 921, 949 (1918).

[71] A-One Feeds v. Court of Appeals, G.R. No. L-35560, 30 October 1980, 100 SCRA 590.

[72] Win-Win, *supra* note 39, at 9.

> should be afforded the amplest opportunity for the proper and just disposition of his cause, free from the constraints of technicalities."[73]

This can also explain why the Office of the President simply did not rule on the issue of the propriety of the Fortich letter-appeal. To dwell on it and render it invalid would go against the Office of the President's stand of relaxing procedural rules. Unlike the Court, the Office of the President refused to blow hot and cold in one breath in terms of the procedural aspect of the case.

Secondly, DAR actually raised the issue in the administrative level, albeit indirectly, when it filed the two motions for reconsideration[74] of the Torres Decision. Both were denied. Consequently, DAR, in fact, had no other mode of raising the issue until the case reached the Supreme Court.

The second Motion for Reconsideration filed by the DAR states:[75]

> 2.2 The manner [in which] the service of the copy of the decision sought to be reconsidered was effected, by itself, would render very difficult, if not impossible, to strictly observe the time limit imposed. As it happened herein, the same was received by the Records Section of the DAR, referred to the Office of the President and, thereafter, to the Bureau of Agrarian Legal Assistance. In fact, it was already beyond the reglementary period for filing of motion for reconsideration when the same was forwarded to the proper office (litigation). *But this could have been simplified and avoided if instant were an ordinary case where DAR is a proper party and represented by counsel for, during then, service would be, as required by existing rules, direct to the counsel himself.* It is not so herein.[76]

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[73] A-One Feeds v. Court of Appeals, G.R. No. L-35560, 30 October 1980, 100 SCRA 590, 594.

[74] Respondent's Motion for Reconsideration of the DAR before the Office of the President dated 20 May 1996, In Re: Land Use Conversion Application for Agro-Industrial Purpose of a Parcel of Land Covering 144-Hectares Located at San Vicente, Sumilao Bukidnon, OP Case No. 96-C-6464; Respondent's second Motion for Reconsideration before the Office of the President dated 11 July 1997, In Re: Land Use Conversion Application for Agro-Industrial Purpose of a Parcel of Land Covering 144-Hectares Located at San Vicente, Sumilao Bukidnon, OP Case No. 96-C-6464.

[75] Respondent's second Motion for Reconsideration before the Office of the President dated 11 July 1997, In Re: Land Use Conversion Application for Agro-Industrial Purpose of a Parcel of Land Covering 144-Hectares Located at San Vicente, Sumilao Bukidnon, OP Case No. 96-C-6464, at 1.

[76] *Id.* at 2.

4. Distinction Between Case and Matter: The Thin Line Drawn in *Fortich III*

The Court's attempt to justify its decision against Respondents and the farmer-beneficiaries in the first two *Fortich* cases by strictly adhering to legal rules is likewise resorted to in the third *Fortich* decision. In this decision, however, the Second Division of the Supreme Court had to come up with a convoluted interpretation of the rule it wished to apply: Article VIII, section 4, paragraph 3 of the Constitution.

On May 28, 1998, the Intervenors filed a "Motion for Reconsideration of the Honorable Court's Decision dated 24 April 1998 with Motion for the Court to Resolve the Motion For Reconsideration *En Banc*." Respondents, meanwhile, filed an Urgent Motion to Resolve the Motion for Reconsideration by the Supreme Court Sitting *En Banc* on June 8, 1998.

Both Respondents and Intervenors claimed that since *Fortich II* was not decided by a majority of at least three members, the case has to be decided by the Supreme Court *en banc*.

By mandate of the Constitution, cases heard by a division when the required majority of at least three votes in the division is not obtained are to be heard and decided by the court *en banc*.

Paragraph 3, section 4, article VIII of the Constitution seems clear on this matter:

> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided *en banc:* provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

The Supreme Court *En Banc* passed Resolution No. 99-1-09-SC dated January 22, 1999 that settled the issue of an even (2-2) vote in a division.[77] In this Resolution, a distinction was made between "cases" and "matters" referred to in

[77] Fortich v. Corona, G.R. No. 131457, 19 August 1999 (Melo, J., separate opinion, at 1).

the above-quoted constitutional provision.[78] According to the interpretation given by the Resolution, "cases" were decided, and "matters," resolved.[79]

Only "cases" are referred to the Court *en banc* whenever the required number of votes is not obtained. "Matters" are not referred to the Court *en banc*.[80] On this point, Justice Melo remarked:

> I submit that the requirement of three votes equally applies to motions for reconsideration because the provision contemplates "cases" or "matters" (which for me have no material distinction insofar as divisions are concerned) heard by a division, and a motion for reconsideration cannot be divorced from the decision in a case that it seeks to be reconsidered. Consequently, if the required minimum majority of three votes is not met, the matter of the motion for reconsideration has to be heard by the Court *en banc*, as mandated by the Constitution. *To say that the motion is lost in the division on a 2-2 vote, is to construe something which cannot be sustained by a reading of the Constitution.* To argue that a motion for reconsideration is not a "case" but only a "matter" which does not a concern a case, so that even though the vote thereon in the division is 2-2, the matter or issue is not required to be elevated to the Court En Banc is to engage in a lot of unfounded hairsplitting.[81]

To further bolster this claim, Justice Melo even cited the deliberations of the 1986 Constitutional Commission where it was clear from the language of the delegates that when the smallest division of the Supreme Court decides with a vote of 2-1, which is less than three votes, the decision should immediately go to the Court *en banc*.[82]

Intervenors have all the right to feel oppressed by the interpretation given by the Supreme Court not only because of the foregoing reasons, but also because of one glaring argument which they pointed out in their Omnibus Urgent Motion for the Supreme Court *En Banc* to Annul the 27 January 1999 Resolution. The Intervenors asserted therein that even the Filipino version of the Constitution shows that the contested constitutional provision should not be interpreted, as it

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[78] Fortich v. Corona, G.R. No. 131457, 19 August 1999 (Melo, J., separate opinion, at 4).

[79] Fortich v. Corona, G.R. No. 131457, 19 August 1999 (Melo, J., separate opinion, at 4).

[80] Fortich v. Corona, G.R. No. 131457, 19 August 1999 (Melo, J., separate opinion, at 4).

[81] Fortich v. Corona, G.R. No. 131457, 19 August 1999 (Melo, J., separate opinion, at 6, 7). (emphasis supplied)

[82] Fortich v. Corona, G.R. No. 131457, 19 August 1999 (Melo, J., separate opinion, at 3).

is clear and complete in itself. The official Filipino version of the 1987 constitution on the same provision states that:

> (3) Ang mga kaso o bagay na dininig ng isang desisyon ay dapat pasyahan o lutasin ng may pag-sang-ayon ang nakararaming mga Kagawad na talagang nakibahagi sa mga deliberasyon ang mga isyu sa usapin at bumoto roon, AT HINDI KAILANMAN, nang walang pangsang-ayon ng tatlo man lamang ng gayong mga kagawad. Kapag hindi natamo and kinakailangang bilang, ang usapin ay dapat pasyahan en banc, sa pasubali na ang anumang doktrina o simulain ng batas na inilagda ng hukuman sa isang pasya na iginawad en banc o sa dibisyon ay hindi maaaring baguhin o baligtarin maliban sa pagpapasya en banc ng hukuman. (empasis supplied)

The official Filipino translation did not even mention "case" and "matter." The mandate is clear: there has to be at least three votes on any issue, otherwise, the case goes to the Supreme Court *en banc*.

That the Supreme Court's Second Division found it necessary to convolutedly interpret a clear rule of law to deny respondents and intervenors their right to elevate the case to the Court *en banc* underscores the Court's underhanded practice of paving Petitioners' road to victory, under the guise of ostensibly using legal rules to support its decisions.[83]

C. What the judge had for breakfast: Examining the pleadings of the parties

"What the judge had for breakfast is more important than any principle of law."

- Professor Robert Hutchins,
in THE DEATH OF COMMON SENSE

The inconsistencies revealed in the first and second *Fortich* decisions that are discussed above, as well as the curious interpretation given by the Court to a constitutional provision in the third *Fortich* decision, only begin to tell of how questionable the Court's "exercise of discretion" (or lack thereof) is in this series

[83] In September 1999, the Respondents and Intervenors filed yet another motion asking that the Supreme Court sitting *en banc* consider the case *despite* the warning given by the *ponencia* of Justice Ynares-Santiago that no other motion, pleading or paper shall be entertained by the Court with regard to the matter at hand. The Court allowed the motion and heard the case *en banc*.

of cases. A close look at the pleadings filed by the parties suggest that the Court may have favored one party over the other. The following section reveals how the court:

(1) Picked facts which would enable it to support its own definition of issues, and ignored those which supported Respondents' and Intervenors' stand;

(2) Framed the controversy in a manner that made it easier to throw out the case of Respondents and Intervenors; and

(3) Resolved the case on grounds the Petitioners did not even raise in their Petition for Certiorari.

1. Erring on the side of facts

In the *Fortich* cases, the Supreme Court seems to have been made to choose not only between conflicting set of rules, but also between discrepant reports of the facts of the case. Since the legal rules that the Court eventually adopts to resolve the case are applied to a given set of facts, it is important to check whose narration of facts the Court adopted in order to see how the set of facts adopted by the Court affected its choice of which legal rules to apply.

A perusal of the footnotes in the Supreme Court's first decision shows that in narrating the facts of the case, the Court relied mainly on the allegations of fact of Fortich, Baula and NQSRMDC, as well as the facts adopted by the Torres Decision. In fact, the entire Torres Decision is quoted in the first *Fortich* decision.

The trouble is that the Torres' Order was based entirely on one side of the coin—that of the Petitioners'. The record of the entire DAR proceedings denying Petitioners' application for conversion was not elevated to the Office of the President when Executive Secretary Torres decided the case. Neither the DAR nor the Mapalad farmers' cooperative had any idea that the DAR's order to deny conversion and to place the land under compulsory coverage of the CARP for distribution to qualified farmer beneficiaries was being questioned.

The reason for this is the fact that what triggered the proceedings at the Office of the President was a *letter* sent by Governor Fortich, a non-party to the

proceedings at DAR, which was treated by Executive Secretary Torres as an *appeal*.[84]

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[84] That the "letter" dated 28 June 1995 which was sent by Governor Fortich to President Ramos was *not* an appeal is evident from the form in which it was written, as well its content. The following are the pertinent portions of the "letter":

Dear President Ramos:

On March 4, 1993, the Sangguniang Bayan of Sumilao, Bukidnon, enacted Ordinance No. 24 converting or reclassifyng a 144 hectares of land situated in Barrio San Vicente, Sumilao from agricultural to industrial/institutional. This move is based on the authority granted to Local Government Units (LGU's) under Section 20 of Republic Act. No. 7160 otherwise known as the Local Government Code of 1991. Under said section, fourth to sixth class municipalities may authorize the reclassification of five (5%) of its total agricultural land area at the time of the passage of the ordinance and provide for the manner of their utilization or disposition.

The Municipality of Sumilao as of 1994 has an estimated population of 16,840 with an estimated annual income of only P7.75 million with almost nil in growth rate because agriculture has not done much to improve the lives of the farming families who constitute most, if not all the residents of the municipality. The Local Government Code provides an opportunity to attract investors who can inject new economic vitality, provide more jobs and raise the incomes of the people in general. In seeking the approval of the Provincial Board and my office, which we gave most willingly, Sumilao's local government gave full support to the project of NQSR Management of Development Corp., Inc. (NQSRMDC) to invest millions into its 144-hectare land and develop it for eco-tourism and education projects. We saw in this investment proposal opportunities for thousands of jobs, the influx of local and foreign investors and the development of a center of education to prepare the youth, not only of Bukidnon but also of the whole Mindanao, for the needs when the EAGA corridor, espoused by Your Excellency, becomes a reality.

In conformity with the mandate of the Local Government Code, the Provincial Land Use Committee approved Sumilao's Ordinance No. 24 on 12 October 1993. This was followed by the approval by the Sangguniang Panlalawigan on 1 February 1994, through its Resolution No. 94-95, clear testimonies that Ordinance No. 24 had our fullest and unconditional support. Furthermore, Sangguniang Panlalawigan Resolution No. 94-573 enacted on 27 September 1994, adopted the Bukidnon Investment Grid (BIG) which declares a strip of land five (5) kilometers from both sides of the highway as the investment area for commercial and industrial uses.

And it can be worth mentioning that the other agencies of your government, Mr. President, also gave their full backing....

Now, we are saddened to know that the Secretary of DAR, Mr. Ernesto Garilao, denied the application for clearance for conversion of the subject land...

The province of Bukidnon shares with DAR's vision of ensuring equity in growth. That is why we understood the position they have taken in the subject land use conversion. Bukidnon, undoubtedly, is in and is the heart of Mindanao...

DAR knows that Bukidnon is not one of those special areas. However, because of its obligation and commitments to its constituents to provide equitable employment and business

Not only was the letter *not in the proper form of an appeal and filed by an interested party;* the DAR was not even given a chance to be heard by the Office of the President before the Torres Decision was promulgated.

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opportunities to bring about real development, the provincial government has to look for alternatives to finance its requirements. One of the viable options for Bukidnon is to ensure a private sector led growth with the government providing a conductive environment. Along this line, Bukidnon is now granting local fiscal and non-fiscal incentives to investors investing in the province. It also created its own Investment and Export Board.

The project of the NQSRMDC in Sumilao, Bukidnon can create opportunities and open a new horizon for the province. First, the proposed Science High School will prepare the youth of the province and the entire island of Mindanao for its role to sustain and improve further the gains made in Philippines 2000. Second, the establishment of an Export Development Center will ensure that products, not only in Bukidnon but also in the whole Mindanao will be able to compete in the very competitive new world order brought about by the GATT Uruguay Round. Third, YOUR EXCELLENCY, has already approved in principle the establishment of an EAGA Institute of Management in the area. With this, the country's role will be made clearer and more focused. Last, but not the least, the realization of the NQSRMDC project will enhance the stability and readiness of the province which have been one of our strong selling points. All these of course will not happen if the agricultural land will remain such...

Rice farming, tomato contract farming or any farming activity requiring irrigation is definitely not feasible. Due to forest denudation, the irrigation facility which was designed to irrigate three hundred hectares can only service 110 hectares. Even assuming that DAR has money, it will be a disaster for the department to provide all what these beneficiaries need. There maybe some beneficiary cooperatives which are successful. The fact is the success of the few cannot overshadow the misery of the many.

It is our view when DAR approved the landlease conversion of irrigated riceland in Cavite it had what we had in mind. This being so there is no reason why clearance for the conversion applied for by NQSRMDC should be denied. Besides there is still a lot of area in the province and even within the municipality which can be made available to CARP beneficiaries.

In the spirit of the Philippines 2000, therefore we would like to request your Excellency to order DAR to open the door for discussion on the subject matter. Denying it will not do good for the Agrarian Reform Program. Freeing the DAR of non-development oriented rules is what we need to move forward.

In view of the foregoing, we therefore petition your Excellency:

1. To officially order the suspension of Sec. Garilao's order to distribute to so-called beneficiaries the land already reclassified/converted into industrial/institutional upon the effectivity of Ordinance/Resolution #24 of the Municipality of Sumilao.

2. To strengthen and reconfirm the concept of local autonomy by making the DAR respect the reclassification made by the LGU of untenanted land pursuant to Sec. 20 of RA 7160.

3. To support the drive and awakening of LGU such as the municipality of Sumilao in attracting investors in order to improve the economic life of an inert, immobile and unproductive community which has been locked in for decades into just any kind of resource and opening up other avenues of economic opportunities in line with the thrust of Excellency's Year 2000.

That DAR was given no notice of the proceedings at the Office of the President was the reason why it was not able to make a timely motion for reconsideration after the Torres Decision was issued. It was the same reason why Executive Secretary Torres was not able to make accurate findings of facts in his decision. Unfortunately, the Supreme Court adopted the findings of facts of the Torres Decision, which Petitioners adopted as their own in their Petition for Certiorari.

The discrepancies between the findings of fact of the parties are discussed in the next section, which tackles the following three issues: (a) Whether or not the disputed real property was covered by the Comprehensive Agrarian Reform Program; (b) Whether or not the land was agricultural, irrigated land that ought to be covered by the CARP; and (c) Whether or not the farmer-beneficiaries had the right to intervene in the case.

After discussing the different positions[85] taken by the Petitioners, Intervenors, the DAR, Executive Secretary Torres, and Deputy Executive Secretary Corona with regard to each issue, this paper shall point out which of these positions was adopted by the Court. The section shall then end by noting that the Court's findings *which evidently favored the Petitioners*, ignored the rule of substantial evidence.

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[85] Except for the third issue, this paper shall discuss: (i) The Petitioners' position; (ii) The Respondents' and Intervenors' position; (iii) The position of Executive Secretary Torres; (iv) The position of Deputy Executive Secretary Corona; and (v) The position of the Supreme Court.

With regard to the third issue (concerning the farmer-beneficiaries' right to intervene in the proceedings in the Supreme Court), the discussion will follow the following format: (i) Petitioners' position; (ii) The Intervenors' position; (iii) The Respondent DAR and Deputy Executive Secretary Corona's position; and (iv) The Supreme Court's position. Since the Torres Decision and the Corona Resolution preceded the proceedings in the Supreme Court in which Intervenors wished to take part, both Torres and Corona did not pass upon the issue of whether or not the Intervenors had standing in the Petition for Certiorari filed against the Deputy Executive Secretary and the DAR. Hence, they do not contain material which can be discussed in this section of the paper.

a. Was the land covered by the Comprehensive Agrarian Reform Program?

i. The Petitioner-landowner's tale: Void DAR proceedings, no just compensation

In their Petition for Certiorari, NQSRMDC, Governor Fortich and Mayor Baula alleged that NQSRMDC is the registered owner of the land, who leased the land in 1984 to the Philippine Packing Corporation (Del Monte Philippines) for a period of ten years.[86] When the DAR placed the land under compulsory acquisition pursuant to the Comprehensive Agrarian Reform Law in October 1991, the lease to Del Monte was still subsisting. Hence, NQSRMDC questioned DAR's action and the latter's assessment of the land before the quasi-judicial DAR Adjudication Board.[87]

According to the Petitioners, DARAB granted NQSRMDC's petition and ordered DAR to desist from pursuing any activity concerning the subject land on 31 March 1992. Despite DARAB's order, DAR directed the Land Bank of the Philippines (hereinafter, Land Bank) to open a trust account in NQSRMDC's name and to start summary proceedings to determine the just compensation to be given for the subject property.

NQSRMDC responded to the opening of the trust account by filing a motion to enforce the DARAB's 31 March 1992 decision and to declare the summary proceedings undertaken by the DAR null and void. According to the Petitioners, the DARAB Provincial Adjudicator for Bukidnon issued an Order dated 22 October 1992 directed to the DAR Regional Director of Region X and the Land Bank "to seriously comply with the terms of the order dated March 31 to return the claim folder to the DAR until further orders; and [to] declar[e] *null and void the summary proceedings conducted.*"[88] In their statement of facts, Petitioners concluded that this Order "[e]ffectively removed [the land] from the coverage of the Agrarian Reform Program until further orders from the same or higher court."[89] The issuance of the 22 October 1992 order resulted in the cancellation of the trust account opened by Land Bank in NQSRMDC's name. Petitioners again

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[86] Petition for Certiorari, *supra* note 40, at 4.

[87] *Id.* at 5.

[88] *Id.*

[89] *Id.* The aforementioned Order of the DARAB, dated October 22, 1992, was attached to the Petition for Certiorari as Annex "D."

concluded in their statement of facts that "[t]his act of Land Bank is a clear proof that no just compensation for the property was ever deposited."[90]

ii. The DAR's and Intervenors' comment: DAR proceedings merely suspended; land covered by CARP

In its Comment on the Petition for Certiorari, DAR characterized the action of the Provincial Agrarian Reform Adjudicator of the DARAB on 31 March 1992 as one which did not void the act of placing the land under CARP coverage but merely *suspended* the proceedings because of Del Monte's lease over the land.

That the DARAB's Order of 31 March 1992 was one that merely suspended the proceedings initiated by DAR in 1990 was consistently cited as the reason why the DAR Secretary denied NQSRMDC's application for conversion on 14 November 1994. It is also the reason why the DAR proceeded to award a CLOA to farmer-beneficiaries on 13 October 1995.

The DAR Secretary's denial of NQSRMDC's application, however, was not only based on the fact that the land was already placed under coverage of the CARP, but because the land is "a prime agricultural land with irrigation facility; applicant failed to comply with the requirement to obtain certifications from DENR, HLURB, NIA, DA, the MARO of the municipality, and obtain a work and financial plan of each component of the proposed projects; the existing policy on withdrawal or lifting of areas covered by NCA (notice of compulsory acquisition) is not applicable in the case; and there was no clear and tangible compensation package or arrangement for the beneficiaries whoever they may be."[91]

The DAR Secretary, however, also stated in the decision that the land shall, without delay, be placed under CARP compulsory coverage and distributed to all qualified beneficiaries.[92]

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[90] *Id.* at 6.

[91] DAR's Denial of NQSRMDC's Application for Conversion, In Re: Land Use Conversion Application for Agro-Industrial Purposes of a Parcel of Land Covering 144 Hectares Located at San Vicente, Sumilao, Bukidnon dated 14 November 1994 [hereinafter DAR's Denial].

[92] *Id.* at 10.

In their Memorandum with Comment on the Petition dated 26 February 1998, the farmer beneficiaries adopted DAR's narration of facts on this point, and asserted that they are the holders of the CLOAs awarded after the land was validly placed under a Notice of Acquisition by the DAR in 1990.

iii. Executive Secretary Torres' findings of fact

After Governor Carlos Fortich wrote a letter to the President asking that DAR's order of denial be reversed since the same "would be more beneficial to the province of Bukidnon," the Office of the President, through Executive Secretary Ruben Torres approved the *reclassification/conversion* of the subject land into an agro-industrial estate.

Part of the decision reads: "the said [Notice of Compulsory Acquisition] was declared null and void by the Department of Agrarian Reform Adjudication Board as early as 1 March 1992." [93]

iv. Deputy Executive Secretary Corona's findings of fact

Contrary to the Torres Decision's finding that the land was not effectively placed under the operation of the CARL, the Corona Resolution states: "A Notice of Coverage was served on the property as early as 3 January 1990. This was followed by a Notice of Acquisition on October 25, 1991. We find no merit in NQSRMDC's argument that the PARAD's order dated 31 March 1992 effectively prevented the CARP's coverage of the subject property because it was clear from the terms thereof that the intent was merely to temporarily freeze all actions thereon *until after the expiration of the lease agreement with DMPI in April 1994*."[94]

The Corona Resolution further states:

> On 31 March 1992, NQSRMDC sought from and was granted by the Provincial Agrarian Reform Adjudicator (PARAD) a writ of prohibition with preliminary injunction which effectively suspended the compulsory acquisition of the property at least until the termination of its lease to Del Monte in April 1994.
>
> On 12 October 1992, PARAD ordered the DAR Regional Director and Land Bank to comply with his Order of 31 March 1992, suspending

[93] *Id.*

[94] Win-Win, *supra* note 39, at 10.

> the compulsory acquisition of the property and "to desist from pursuing any activity or activities covering Petitioner's property." PARAD reasoned that under section 8 of Republic Act No. 6657, the subject property could not be the subject of compulsory *acquisition until after the expiration of its lease to DMPI.* It also nullified the *summary proceedings on the valuation* of NQSRMDC's land.[95]

What was nullified was the summary proceedings on the valuation, and not the coverage of the land itself. On the basis of this finding, the Corona Resolution ruled that the land in question, being an agricultural land that had been issued a notice of coverage, should no longer be open to reclassification by local government units.[96] The conclusion finds its legal basis in Memorandum Circular No. 54, series of 1993, section 1 (d), which provides: "In addition, the following types of agricultural lands shall not be covered by the said reclassification: (2) Agricultural lands already issued a Notice of Coverage or Voluntarily Offered for Coverage under CARP."

v. How the Court ruled

On this point, the Supreme Court adopted the findings of fact of the Torres Decision and of the Petitioners by stating that the DAR Notice of Compulsory Acquisition was voided by DARAB's 22 October 1992 Order.[97] Why the Court adopted the Torres decision *in toto* boggles the mind, especially since the DAR—which is the agency under which the DARAB operates—states that what was voided was the summary proceeding concerning the valuation of the property and *not* the placing of the land under CARP coverage.

The only reason why the Court may have adopted the findings of fact in the Torres Decision is the fact that it ruled that the latter had already become final and executory; thus it and its findings of fact cannot be disturbed, no matter how wrong these may be.

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[95] *Id.* at 4 (emphasis supplied).

[96] *Id.*

[97] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 636: "Suffice it to state that the said NCA was declared null and void by the DARAB as early as March 1, 1992."

b. Was the land, in fact agricultural, irrigated land that ought to be covered by the CARP?

i. Petitioner Fortich's letter to the President: Land is used for grazing, suitable only for corn and pineapple

In petitioner Fortich's letter to the Office of the President dated June 28, 1995, which Executive Secretary Ruben Torres treated as an appeal of the DAR's denial of NQSRMDC's application for conversion, Fortich claimed that prior to Del Monte's lease of the 144-hectare Quisumbing property, the land was devoted to livestock breeding, and only a small portion was planted with coffee from 1979 to 1984.[98]

Although Fortich's letter admitted that the land was planted with Del Monte pineapples for ten years, and that the land was irrigated, it asserted that only corn farming was possible on the land. Rice farming, tomato contract growing and any other activity requiring irrigation was asserted to be unfeasible because forest denudation prevented the irrigation facilities from working at their fullest potential.[99]

In the Petition for Certiorari Fortich filed with Baula and NQSRMDC, however, Fortich and his co-petitioners admitted that the land was indeed agricultural, when they alleged that the municipal and provincial boards of Sumilao and Bukidnon had to "reclassify/convert" the 144-hectare property from agricultural to agro-industrial use.[100]

ii. DAR's findings: The area is prime agricultural and irrigated land

In DAR's denial of NQSRMDC's application for land conversion, the Presidential Agricultural Reform Council (PARC) Land Use Technical Committee found that the land in question was a "prime agricultural land with existing irrigation facility."[101] The DAR Engineer reported that the land was

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[98] Letter from Carlos Fortich, Governor of Bukidnon, to Fidel V. Ramos, President of the Philippines (28 June 1995), at 5.

[99] *Id.* at 4.

[100] Petitioner's Petition for Certiorari, *supra* note 40, at 6.

[101] DAR's Denial, *supra* note 90, at 7.

within the service area of the Kisolon Communal Irrigation System and was thus irrigated.[102]

On 30 September 1994, the Presidential Agrarian Reform Council Land Use Technical Committee denied NQSRMDC's application for conversion based on the following findings: (a) the area is generally flat to slightly rolling with a slope ranging from zero to five percent, with loamy soil and rich with organic matter, indicating that the soil is productive, and that the land was formerly planted with pineapple; (b) the area has an existing water supply from a deep well and has irrigation canals under the Kisolon-San Vicente Irrigation Multi-purpose Cooperative; (c) the Department of Agriculture stated that the property is within a 300-hectare service area identified by the NIA for irrigation.

Based on the above findings, DAR denied the application for conversion of NQSRMDC.

iii. The Torres Decision

The Office of the President, through Executive Secretary Ruben Torres, treated Governor Fortich's letter as an appeal of the DAR denial of NQSRMDC's application for conversion. It did not, however, notify DAR that an appeal had been taken of its decision. Hence, DAR was unable to present its findings to the Office of the President.

It is unsurprising, therefore, that the Torres Decision finds that the land was *not irrigated although an irrigation facility passes through the property*. The Torres Decision, which is fraught with inconsistencies, reads:

> ...[O]n the issue that the land is considered a prime agricultural land with irrigation facility, it may be appropriate to mention that, *as claimed by Petitioner*, while it is true that *there is, indeed an irrigation facility in the area*, the same merely *passes through the property as a right of way* to provide water to the ricelands located on the lower portion thereof. The land itself, subject of the instant petition *is not irrigated*, as the same was, for several years, planted with pineapple.[103]

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[102] *Id.* at 9.

[103] Office of the President Decision, 29 March 1996, at 4.

iv. The Corona Resolution

The "Win-Win" Resolution states that on 9 October 1997, seventeen farmers affected by the Torres Decision began a hunger strike in front of the DAR Compound in Quezon City.[104] The next day, 113 persons claiming to be the farmer-beneficiaries filed a Motion for Intervention in the Office of the President. President Ramos held a dialogue with the striking farmers and created an eight-man Fact Finding Task Force to look into the controversy and suggest possible solutions.

The Fact Finding Task Force submitted a report to the President on 29 October 1997 with the following findings, among others:

The land is productive and suitable for agriculture, is generally flat to slightly rolling;

Del Monte leased it as a pineapple plantation for ten years, and there is an existing water supply with an active irrigation canal passing through the land.[105]

Given these findings, the Office of the President concluded that the NQSRMDC property "is clearly agricultural land, falling squarely within the ambit of section 1 of Administrative Order No. 20 series of 1992... [and] is not subject to and is non-negotiable for conversion."[106]

v. How the Court ruled

In affirming the Torres Decision, the Court ignored the many factual findings of other administrative agencies that consistently found the land to be both prime agricultural land and irrigated. The affirmation of the Torres Decision and its findings, therefore, was one which defeated the principle behind the Comprehensive Agrarian Reform Law because of the Court's dogged insistence on adhering to the legal rule that administrative decisions, once final and executory, can no longer be disturbed.

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[104] Win-Win, *supra* note 38, at 6.
[105] *Id.* at 8, 10.
[106] *Id.* at 10.

c. Did farmer-beneficiaries have the right to intervene in the case?: An error in the appreciation of the farmers' claim

i. Petitioners' contention

In their Opposition[107] to Intervenors' Motion for Leave to Intervene,[108] Petitioners argued that the farmer-beneficiaries are not "real parties in interest," and thus cannot intervene in the first *Fortich* case because they do not have "a present substantial interest," but only a "mere expectancy or a future, contingent, subordinate or consequential interest."[109] They support this assertion by arguing that the "Masterlist of Farmer Beneficiaries" issued by the Municipal Agrarian Reform Officer (MARO) of Sumilao identifying 108 farmers as farmer-beneficiaries merely *recommends* the identified farmers as being qualified to the land:

> 4. In their motion, Intervenors contend that they are the farmer-beneficiaries, hence, are the real parties in interest. To this end, they attached as Annex "I" a Masterlist of Farmer Beneficiaries. A perusal of the said document however reveals that the Intervenors are just those purportedly "Found Qualified and Recommended for Approval." Thus, very clear from their own document is the fact that they are just the recommended farmer-beneficiaries.[110]

ii. The Intervenors' claim: Masterlist, CLOAs and APFUs make them real parties in interest

In their Motion for Leave to Intervene[111] in the first *Fortich* case, Intervenors primarily anchored their claim of being real parties in interest on the fact that the Corona Resolution had ordered the Municipal Agrarian Reform Officer (MARO) of Sumilao to issue a "Masterlist of Farmer-Beneficiaries" and the MARO had actually issued such a list which identified 108 Intervenors as "farmer beneficiaries." Since the Intervenors were already identified as "farmer beneficiaries," the Intervenors argued that they would "stand to be benefited or

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[107] Petitioners' Opposition to Motion to Intervene in Fortich I [hereinafter Petitioner's Opposition].

[108] Intervenor's Motion for Leave to Intervene, Fortich I [hereinafter Intervenor's Motion for Leave to Intervene].

[109] Petitioners' Opposition, *supra* note 106, at 2.

[110] *Id.*

[111] Intervenor's Motion for Leave to Intervene, *supra* note 107, at 2.

injured by the judgment in the suit, or entitled to the avails of the suit," and thus be considered as real parties in interest.[112]

This, however, was not their only ground on which they claimed to have standing. The Intervenors also mentioned the fact that they were previously identified by the DAR as agrarian reform beneficiaries and were the actual recipients of a Certificate of Land Ownership Award (CLOA) covering all 144 hectares of the disputed property before the case was elevated to the Office of the President.[113] They noted that since this CLOA had yet to be cancelled, despite the Corona Resolution's award of only 100 hectares to the farmers and forty-four hectares to Petitioners, the farmer beneficiaries continued to have "a clear right as titled owners of the land."[114] The Motion for Leave to Intervene states:

> Any decision in this case reversing or modifying the decision of the Respondent Deputy Executive Secretary will prejudice Intervenors who will consequently be deprived of their landholding. If this Honorable Court upholds the acquisition by the DAR of the 100 hectares, then they shall be entitled to ownership of the subject land.[115]

In their Reply to Petitioners' Opposition to Motion for Intervention, Intervenors mentioned yet another ground to bolster their claim of standing. Sixty-one of the 108 Intervenors identified as qualified farmer beneficiaries of the MARO had been found to have signed "Applications to Purchase and Farmer's Undertaking (AFPUs),[116] which state: "We, the *identified and qualified beneficiaries of the Comprehensive Agrarian Reform Program do hereby apply to purchase farmlots/homelots of the parcel of land owned by Norberto Quisumbing located at San Vicente, Sumilao Bukidnon.*"[117]

The AFPUs were presented to counter Petitioners' contention that the Farmer-Beneficiaries identified in the MARO's masterlist are "mere recommendees and that their interest in the land is a mere expectancy":[118]

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[112] *Id.* at 4.

[113] *Id.* at 2,4.

[114] *Id.* at 4.

[115] *Id.*

[116] Intervenors' Reply to Petitioners' Opposition to Motion for Intervention in Fortich I, 2-3.

[117] *Id.* at 3.

[118] *Id.* at 4.

> The fact that they have been asked to sign this document reveals the intent of the DAR to eventually distribute the land to these farmer beneficiaries. In other words, the DAR, in asking these beneficiaries to sign the APFUs, have in fact determined that they will be the actual beneficiaries of the CARP in so far as the land subject of this petition is concerned. It stands to reason then that they will ultimately benefit from the distribution of the land under the CARP.
>
> Under the premises, the propriety, if not the necessity of the landless farmers' intervention in the present proceedings is crystal clear.[119]

iii. Respondents' stand: Intervenors' right based on different ground

Although the DAR and Deputy Executive Secretary Corona expressed no objection to the Motion for Leave to Intervene filed by the Intervenors, they had a different theory with regard the basis of the Intervenors' standing in the case.

In Respondents' Motion for Reconsideration of the Supreme Court Resolution dated 17 November 1998 and for Referral of the Case to the Supreme Court *En Banc*,[120] Respondents based Intervenors' substantial interest in the proceedings involving the application for the conversion of lands on the basis of section 22 in relation to section 23 of Republic Act No. 6657, which provides that agrarian reform beneficiaries include landless residents of the same barangay, or in their absence, landless residents of the same municipality. Respondents argued that since the proceedings involved the application for the conversion of lands within their barangay or municipality, the farmers, being landless residents of the barangay or municipality, would be affected by the fact that the outcome of the proceedings would affect the size and number of the land available for distribution under Republic Act No. 6657.[121]

Respondents thus equated the substantial interest of the farmers with the fact that they were landless residents of the barangay or municipality who may be benefited or prejudiced by an outcome which may reduce the size and number of

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[119] *Id.*

[120] Respondents' Motion for Reconsideration of the Supreme Court Resolution dated 17 November 1998 and for Referral of the Case to the Supreme Court *En Banc* (with Urgent Prayer for Issuance of Restraining Order) in Fortich I.

[121] *Id.* at 22.

land that may be distributed to them under sections 22 and 23 of Republic Act No. 6657.

iv. How the Court ruled

Despite the variety of arguments presented by the Petitioners, Intervenors and Respondents, the Supreme Court curiously adhered to only one view regarding the matter, and failed to discuss the other conflicting arguments offered by the other parties. The way by which the Supreme Court disposed of the farmer-beneficiaries' right to intervene in the case resulted from the Court's over-reliance on Petitioners' Opposition to the Motion for Intervention.

In striking down the farmers' contention that they were real parties in interest, the Supreme Court said:

> To prove [their standing as real parties in interest], they attached as Annex "I" in their motion [for intervention] a Master List of farmer-beneficiaries. Apparently, the alleged master list was made pursuant to the directive in the dispositive portion of the assailed "Win-Win" Resolution which directs the DAR "to carefully and particularly determine who among the claimants are qualified.
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> However, a perusal of the said document reveals that the movants are those purportedly "Found Qualified and Recommended for Approval. In other words, movants are merely recommendee farmer-beneficiaries.[122]

The above argument was lifted word for word from Petitioners' Opposition to the Motion for Intervention.[123] This reliance on Petitioners' Motion is unforgivable, since the farmer-beneficiaries submitted not only the "Masterlist" mentioned by the Court, but also sixty-one signed APFU-CARP documents which the DAR requires those whom it has already determined to be actual beneficiaries of the CARP to sign.

Furthermore the Court also turned a blind eye to the fact that the farmers--who were all members of the Mapalad Cooperative--were in fact the registered title holders of the property by virtue of the CLOAs awarded to the Mapalad Cooperative in 1995.

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[122] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 649.

[123] Petitioner's Opposition , *supra* note 110 at 2.

Just as dismaying is the Court's refusal to pass upon the ground raised by Respondents in acquiescing to the Intervenors' desire to take part in the proceedings. In the light of these facts, one is left wondering whether the Court inadvertently failed to discuss the bearing of the APFU and the title in the name of the Mapalad Cooperative because it did not serve any purpose to the Court or if these documents were deliberately ignored for some other more dubious reasons.

d. Court's findings ignored the rule of substantial evidence: A summary of the Court's lopsided resolution of crucial issues in Fortich v. Corona

In the second *Fortich* decision, the Court stated, "It is axiomatic that factual findings of administrative agencies which have acquired expertise in their field are binding and conclusive on the Court, considering that the Office of the President is presumed to be most competent in matters falling within its domain."[124]

Given the narrative of discrepancies in the facts alleged by DAR and those adopted by the Torres Decision, it seems like the Court used this doctrine to justify only the findings of fact of the Torres Decision which was entirely based on Fortich's letter-appeal. DAR's earlier findings of fact based on an actual inspection of the area and the findings of fact of the eight-man Fact Finding Task Force that President Ramos created to look closely into the matter were completely ignored.

In American Inter-Fashion Corporation v. Office of the President,[125] the Supreme Court said:

> Findings of administrative agencies are accorded respect and finality, and generally should not be disturbed by the courts owing to the special knowledge and expertise gained by these tribunals from handling the specific matters falling under their jurisdiction. This general rule, however, is not without exceptions. Such factual findings may be disregarded only if they are (1) *not supported by evidence*; (2) where the findings are initiated by fraud, imposition or collusion; (3) where the procedures which led to the factual findings are irregular; (4) when palapable errors are committed; or, (5) when grave abuse of discretion, arbitrariness, or capriciousness is manifest.[126]

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[124] Fortich v. Corona, G.R. No. 131457, 17 November 1998, at 15.
[125] G.R. No. 92422, 23 May 1991, 197 SCRA 409.
[126] *Id.* at 425-426 (emphasis supplied)

This doctrine has been codified in the Administrative Code of 1987, which states that, "The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law."[127]

The quantum of evidence required in administrative proceedings is substantial evidence. The Supreme Court has ruled that: "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[128]

Since the Supreme Court did not look beyond the findings of fact of Executive Secretary Torres, it can be assumed that the Court believed that these were based on substantial evidence. In light of the fact that the record clearly reflects that the DAR was not informed of, and did not participate in the proceedings in the Office of the President when Executive Secretary Torres was deciding the case, the Supreme Court's adoption of the Torres ruling baffles the mind. That Executive Secretary Torres decided the case on the basis of Petitioners' allegations of fact alone and the contrary allegations of DAR and the Intervenors clearly suggest that the Torres ruling may not have been solidly based on substantial evidence.

2. The Court argues for the Petitioners

As mentioned, the Supreme Court declared the Corona "Win-Win" Resolution null and void on the ground that it substantially modified a previous decision of the Office of the President that had already attained finality. In doing so, the Court adjudged the Deputy Executive Secretary to have acted with grave abuse of discretion. Since his action was done in excess of his jurisdiction, the action was deemed void. It is shocking, therefore, to learn that Petitioners *never made issue of the fact that DAR's Motion for Reconsideration was filed out of time in their pleading.*

In the first *Fortich* decision, the Court points to page 17 of the Petition for Certiorari as stating that:

> "[P]etitioners claim that the Office of the President was prompted to issue the said resolution "after a very well managed hunger strike led by

[127] Exec. Ord. No. 292 (1987), sec. 25 (7).
[128] Ang Tibay v. CIR, 69 Phil 635, 642 (1940).

> fake farmer-beneficiary Linda Ligmon succeeded in pressuring and/or politically blackmailing the Office of the President to come up with this purely political decision to appease the 'farmers,' by reviving and modifying the Decision of 29 March 1996 *which has been declared final and executory in an Order of 23 June 1997...*" Thus, Petitioners allege Respondent "committed grave abuse of discretion and acted beyond his jurisdiction when he issued the questioned Resolution of 7 November 1997."[129]

The cited page quoted by the High Court, however, is not found on page 17 of the petition, but on page 14, which contains the Petitioners' statement of material facts. Page 17 of the said document refers to a discussion under the heading, "The so-called Win-Win Resolution of the Office of the President dated 7 November 1997 is violative of the constitutional policy of local autonomy hence, void."[130]

Page 16, on the other hand, shows what Petitioner deemed as the "Grounds for Allowance of the Petition":

> V. GROUNDS FOR ALLOWANCE OF THE PETITION
>
> 1. Respondent Deputy Executive Secretary Corona committed grave abuse of discretion and acted beyond his discretion when he issued the questioned Resolution of 7 November 1997 granting Petitioners' application for the conversation to the extent of forty-four hectares only while denying the application for conversion of the remaining 100 hectares *in order to appease the hunger strikers thereby modifying the Decision of the Office of the President through Executive Secretary Ruben D. Torres dated 29 March 1996 which upheld the local governments' power under section 20 of Republic Act No. 7160 to reclassify and convert agricultural lands.*[131]
>
> 2. Reduced to its bare essentials, the main issue posited by Petitioners in this petition involves the application of the constitutional policy on local autonomy. Specifically, this Court is being asked to rule on the power of local government units to reclassify and convert land under section 20 of Republic Act No. 7160, and the power of DAR to approve conversion under Republic Act No. 6657.

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[129] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 641.

[130] Petition for Certiorari, *supra* note 43, at 17.

[131] *Id.* at 16 (emphasis supplied).

> 3. Worth mentioning is the fact that what was brought before the Office of the President was the application for clearance for the conversion of the subject land already reclassified and converted by the Municipal Government of Sumilao and the Provincial Government of Bukidnon in accordance with section 20 of the Local Government Code of 1991.[132]

Other issues raised by the Petitioners were the following:

> (1) The so-called "Win-Win" Resolution of the Office of the President dated 7 November 1997 is violative of the constitutional policy of local autonomy, hence, void.[133]
>
> (2) The so-called "Win-Win" Resolution of the Office of the President dated 7 November 1997 is violative of the constitutional provision on the presidential power of general supervision of local government units, hence, void.[134]
>
> (3) The so-called "Win-Win" Resolution of the Office of the President dated 7 November 1997 is violative of the fundamental principle of separation of powers, hence void.[135]

An executive fiat, in this case, Administrative Order No. 20 series of 1992 and Memorandum Circular No. 54 cannot amend or restrict the exercise by the Local Government Unit of its power to reclassify agricultural land under the express provision of section 20, Republic Act No. 7160.[136]

The so-called "Win-Win" Resolution of the Office of the President is confiscatory as it is violative of the due process clause as well as arbitrary and oppressive.[137]

Although Petitioners, Respondents and Intervenors discussed these points extensively in their pleadings and subsequent motions, *none of these issues was touched upon by the Court* in the first *Fortich* decision. Instead of issuing a ruling on these points, the Court inexplicably refused to pass upon the arguments

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[132] *Id.*
[133] *Id.* at 17.
[134] *Id.* at 23.
[135] *Id.* at 26.
[136] *Id.* at 16.
[137] *Id.* at 30.

of the parties. Neither did it look at the legal rules and principles raised by the parties.

Instead, the Court stubbornly adhered to the legal rule that administrative orders that have achieved finality can no longer be disturbed—a rule that Petitioners themselves did not raise; a rule the Court itself applied to the case only after obscuring the issues Petitioners raised by deciding the case on an issue which it itself defined. In this sense, therefore, the Court seems to have left its lofty bench and descended to the bar to argue the case for the Petitioners.[138]

D. How the Court Did Not Decide the Case

In stubbornly issuing, affirming and reaffirming its judgment that the Deputy Executive Secretary had gravely abused his discretion by substantially modifying a judgment that had already become final, the Court ignored the issues raised by Petitioners and discussed repeatedly by Respondents and Intervenors. In ignoring these issues, the Court refused to consider and weigh important rules and principles which convincingly point to another way of resolving the case.

1. The power of local governments to convert land

a. The first *Fortich* case

Petitioners alleged that "the main issue for resolution is whether or not local government units were granted by section 20 of the Local Government Code the power to convert land to other uses."[139]

Based on the said provision, the Petitioners claimed that the Municipal Council of Sumilao had validly converted the property into agro-industrial land when it passed Resolution/Ordinance No. 24. They buttressed this claim with the

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[138] Where did the Court get the idea that the main issue of Petitioners' case revolved around the modification of a final and executory judgment? Intervenors' Memorandum with Comment on the Petition dated February 26, 1998 reveals that Petitioners belatedly argued that the abuse of discretion committed by Corona sprung from his modification of the Torres Decision which had become final and executory *during the oral arguments before the Supreme Court on February 16, 1998*. Why the Supreme Court did not fairly state this circumstance in its decision, and why it instead dubiously presented this argument as one raised in the Petition for Certiorari makes the said decision arouses even more suspicion.

[139] *Id.* at 18.

fact that the said resolution/ordinance was subsequently adopted and confirmed by the Provincial Board of Bukidnon.

In its Memorandum with Comment on the Petition, the Intervenors countered that the power of the local government units is limited only to reclassification and does not include conversion. In support of their argument, they noted that under section 20 of the Local Government Code, the word "reclassification" was reiterated five times and no mention of the term "conversion" was made. They also noted a marked distinction between reclassification and conversion as these are defined under Administrative Order No. 363, series of 1997 to wit:

> "Reclassification of Agricultural Lands" refers to the act of *specifying how agricultural lands shall be utilized* for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for conversion.[140]
>
> "Land Use Conversion" refers to the act or process of *changing the current use* of a piece of agricultural land into some other use.[141]

On this basis, Intervenors allege that the power to convert the land, which Petitioners claimed to have been usurped by the Win-Win Resolution, does not exist.

Intervenors also noted that Petitioners tacitly knew there was a difference between these two concepts. The Petition for Certiorari, they point out, utilized the word "reclassification" as the power granted by the Local Government Code but stated that Secretary Garilao denied its application for clearance for *conversion*.[142]

b. The second *Fortich* ruling

When Respondents and Intervenors raised this issue a second time in their motions for reconsideration of the Court's first ruling, they pressed the Supreme Court to render a judgment on the matter saying that the issue is a matter "of transcendental importance," since it asks, for the first time, whether the Local Government Code's grant to local government units of the power of reclassification included the power of conversion.

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[140] Adm. Ord. No. 363 (1998), sec. 2 (emphasis supplied).
[141] Adm. Ord. No. 363 (1998), sec. 2 (emphasis supplied).
[142] Petition for Certiorari, *supra* note 43, at 20.

The Court, however, treated the issue as a mere preliminary matter and brushed it aside saying that the same controversy had already been resolved in the case of *The Province of Camarines Sur v. CA.*[143]

The Court quoted the dispositive portion of the said case to support its claim that the power of local government units to convert land without DAR approval has already been resolved by the Court:

> The questioned decision of the Court of Appeals is set aside insofar as it requires the province to obtain the approval of the DAR to convert or reclassify private Respondent's property from agricultural to non-agricultural uses.[144]

Respondents, however, correctly point out that the issue in *Camarines* involved the local government unit's power to expropriate agricultural lands, and not its power to reclassify the latter. Respondents explain that expropriation takes the nature of eminent domain. The latter differs from reclassification, which is an exercise of police power. In expropriation, local government units enter upon private property, oust the owner of all beneficial use, enjoyment and possession of the land, which is applied to some public purpose. In reclassifying land, local governments do not expropriate or take property and apply the same to some purpose envisioned. Instead, the local governments regulate the manner by which specific areas within its territorial jurisdiction are utilized and disposed.[145]

In disposing of Respondents' repeated plea to the Court to pass upon this issue, the Court had been forced into a corner. In order to escape, the Court made the mistake of relying on an erroneous rule—one which does not apply to the facts of the case.

2. Local autonomy v. the power of supervision

In deciding the case strictly on the basis of a procedural rule, the Supreme Court seemed to have been more comfortable ruling on the basis of a legal rule instead of issuing a ruling that was reached after a judicious consideration of principles.

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[143] G.R. No. 103125, 17 May 1993, 222 SCRA 173.

[144] Province of Camarines Sur v. CA, G.R. No. 103125, 17 May 1993, 222 SCRA 173, 182.

[145] Respondents' Motion for Reconsideration, *supra* note 123.

Petitioners themselves argued on the basis of legal principles when they asserted that the act of the Deputy Executive Secretary must be nullified because it violated the principle of local autonomy.

In their Petition for Certiorari, Petitioners cited the case of *San Juan v Civil Service Commission*[146] which held that "(W)here a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy."[147] Based on this ruling, they alleged that it was erroneous for the Deputy Executive Secretary not to uphold the resolutions of the Municipal Council of Sumilao and the Provincial Council of Bukidnon which reclassified the land into agro-industrial/institutional land.

Furthermore, they alleged that the President had no power of control over local governments. They asserted, instead, that his duty is limited to ensuring that laws are faithfully executed. They argued that he did not have the power to substitute his own judgment for that of a lower officer. Petitioners thus concluded that the Deputy Executive Secretary had only the option to "reverse or affirm" the Torres Decision of 29 March 1996 but not to modify and split the land already classified by them as Agro-Industrial/Institutional.[148]

In their Memorandum, the Intervenors recognized the existence of the principle of local autonomy, but opposed the allegation of the Petitioners by stating that the Corona Resolution did not violate this principle, since the latter was a valid exercise of the President's power of supervision. The power of supervision was noted to have been exercised over both the Department of Agrarian Reform and over the local government units.

Respondents stressed that the Office of the President took cognizance of an appeal from the decisions issued by the Secretary of the Department of Agrarian Reform and not from the decisions of the local government units. According to them, the actions of the Office of the President were made to review the decision of the Department of Agrarian Reform.

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[146] G.R. No. 92299, 14 April 1991, 196 SCRA 69.

[147] San Juan v. Civil Service Commission, G.R. No. 92299, 14 April 1991, 196 SCRA 69, 71.

[148] Petition for Certiorari, *supra* note 43, at 25.

On the other hand, Respondents also recognized that in reviewing DAR's action and subsequently modifying the earlier Torres Decision which nullified DAR's action, the Office of the President had in fact corrected an erroneous action of the local government. An action of the Office of the President ensured that local affairs would be conducted in accordance with law is a valid act of supervision, not control. The Office of the President did not substitute its judgment for that of the local government's. Instead, it merely corrected the invalid resolutions invoked by the Petitioners.

That the Supreme Court refused to rule on the matter betrays its discomfort with passing upon issues based on some asserted principle. This discomfort is even more apparent in the Supreme Court's refusal to acknowledge other issues based on principles raised by Respondents and Intervenors.

3. Issues based on legal principles not passed upon by the Court

The Supreme Court's reluctance to pass upon issues based on principles is even more pronounced when one notices how the Court ignored principles raised by the Intervenors.

a. Substantial justice and transcendental importance to the public

Intervenors repeatedly asked the Court to consider facts and circumstances which would merit a relaxation of procedural legal rules on the ground of substantial justice.

In their Motion for Reconsideration of the Supreme Court's *Fortich I* decision,[149] the Intervenors countered the Court's refusal to recognize them as "real parties in interest" not only by showing the Court that they actually had substantial interest in the case because of their CLOAs and AFPU's, but also by continually raising the principle of substantive justice as a reason for waiving the "technical rule of procedure of standing to sue."[150] The substantive justice invoked in this case was due to the fact that the case was one which bore a "transcendental importance to the public." This "transcendental importance," according to Intervenors, was due to the impact of the issues and the ultimate

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[149] Intervenor's Motion for Reconsideration, 28 May 1998 in Fortich II, at 5 [hereinafter Intervenor's Motion for Reconsideration].

[150] *Id.* at 7.

resolution of the case, which involved two statutes of national significance—the Local Government Code and the Comprehensive Agrarian Reform Law.[151]

The Court, however, refused to weigh these principles in considering whether or not it should allow the farmers to intervene. Instead, it doggedly decided to rule on the motion for intervention on the basis of the legal rule on standing, and turned a blind eye to evidence which showed that even on the basis of the said legal rule, farmers were real parties in interest with a right to intervene in the proceedings.

Intervenors also used the principle of substantial justice to persuade the Court that the Office of the President's correction of the Torres Decision was justified, despite the fact that the latter had already attained finality. They argued on the basis of the case of *PNB v. CA*[152] which states:

> It has been said time and again that the perfection of an appeal within the period fixed by the rules is mandatory and jurisdictional. But it is always in the power of this court to suspend its own rules, or to except a particular case from its operation whenever the purposes of justice require it. Strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof warrant the suspension of the rules.[153]

In *Fortich*, substantial justice consisted of the fact that it was practically impossible for DAR to comply with the fifteen-day prescriptive period to file a motion for reconsideration because DAR *did not* participate in the proceedings engendered by Fortich's very irregular "letter appeal." DAR was never represented by counsel, was unaware of any proceedings in the Office of the President, and thus was unable to forward the Torres Decision to the proper office for action immediately. DAR's failure to file a timely first Motion for Reconsideration was neither intentional nor intended to delay the proceedings or prejudice any party.

That the case held issues of "transcendental importance" was also a ground raised by Intervenors for the Supreme Court to resolve the case *en banc*. In their Motion for Reconsideration dated 28 May 1998, they argued that the Petitioners defined the main issue of their petition to be the local government's

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[151] *Id.* at 2.

[152] G.R. No. 108870, 14 July 1995, 246 SCRA 304, 316-317.

[153] PNB v. CA, G.R. No. 108870, 14 July 1995, 246 SCRA 304, 316-317.

power to reclassify, vis-à-vis the DAR's authority to convert land. It was a question of first impression, involving two laws of significance to the nation.

The Court, however, repeatedly ignored this argument by stating in its subsequent decisions that the case had already been decided with finality when it had ruled that the Win-Win Resolution was void for having altered a final and executory decision by Executive Secretary Torres.

b. Fairness

Intervenors also tried to persuade the Court to decide the case in a manner that did not offend fair play. In their Motion for Reconsideration dated 28 May 1998, they noted that the Office of the President overlooked and set aside a technical irregularity when it treated the letter of Fortich to the President as an appeal. Just as the manner of elevation of the matter to the Office of the President through the letter of a nonparty was irregular, Intervenors argued that it was only fair and just to brush aside technicality with regard to DAR's second Motion for Reconsideration, which was filed after the Torres Decision had lapsed into finality.[154]

In the same Motion for Reconsideration, Intervenors appealed to the Court's sense of fair play when they noted that if the Court's decision were consistently made on the basis of technicality, then DAR's decision denying the application for conversion should have been the one pronounced as final and executory, because of the following reasons:

NQSRMDC/BAIDA never filed a proper and timely appeal to the Office of the President after the Win-Win Resolution was issued;

Fortich who sent a letter to Torres was a non-party in interest, and his letter did not comply with the rules in Administrative Order No. 18 of the Office of the President, which governed appeals to that office; and

Torres' act of treating Fortich's letter as a proper appeal was erroneous and a grave abuse of discretion, especially since DAR was not given opportunity to be heard, this denial of due process being tantamount to lack of jurisdiction. The Supreme Court cannot therefore countenance this lack of due process to which

[154] Intervenor's Motion for Reconsideration, *supra* note 148, at 10.

DAR is subjected by saying that DAR had not seasonably filed its first Motion for Reconsideration.

Intervenors further assailed the apparent lack of fairness in the Supreme Court's decision when it noted that although Petitioners did not pursue the matter of the purported "finality" of the Torres Decision as the main issue in their petition, the Court resolved the case on this point. Nowhere in the discussion of the petition did Petitioners present the finality of the Torres Decision as a significant issue, nor did it present arguments therefore. The Supreme Court, hence, acted on a technicality that was not sufficiently discussed and never alleged by Petitioners as a grave abuse of discretion.

c. Social justice, compassionate justice

Intervenors also relied heavily on the principle of social justice in creating arguments that they thought would tip the Court's decision in their favor. In their Motion for Early Resolution dated December 12, 1998, Intervenors argued that local government units should not be granted the power to convert agricultural lands not only because the DAR had been granted the sole power to convert lands, but also because the Constitution "prioritizes the goals of social justice, hence, agrarian reform must precede NQSRMDC's projects and their benefit to the [local government]."[155]

Furthermore, the Intervenors argued for the early resolution of their Motion for Reconsideration because "the essence of the Comprehensive Agrarian Reform Law is to protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities, and make an equitable diffusion of wealth based on social justice."[156]

Finally, Intervenors practically begged the Court for mercy when it asserted that the principle of compassionate justice should underscore the Supreme Court's decision. By analogy, it compared the farmers deprived of land to unemployed workers, and cited the case of *Almira v. BF Goodrich*[157] to justify the Court's employment of compassionate justice in resolving the case:

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[155] Intervenor's Motion for Early Resolution, December 12, 1998 in Fortich III, at 1.

[156] *Id.*

[157] G.R. No. L-34974, 25 July 1974, 58 SCRA 120.

> The law regards the worker with compassion. Where a penalty less punitive would suffice, whatever missteps may be committed by the worker should not be visited with the supreme penalty of dismissal. There is in addition his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage earner. After all labor determinations should not be according to logic but also with compassion.[158]

The Court, however, was not moved by Intervenors' arguments that the farmers were starving because they were deprived of land, and simply ignored this appeal to social and compassionate justice.

By appealing to the principles of substantial justice in considering the case to be one of transcendental importance to the public; of fairness; of social justice; and of compassionate justice, Intervenors were not arguing that the Court apply these principles to decide the case in their favor. Instead, what Intervenors sought to accomplish was that the Court veer away from its blind application of legal rules of procedure to consider facts and circumstances which would allow, precisely, a relaxation of the rules. In refusing to heed these appeals to principle, the Court seems to have adopted a stance positivists would be proud of—one which strictly adhered to rules as the sole basis for deciding legal controversies—at least at first glance.

III. POUNDING ON THE TABLE: EVALUATING THE *FORTICH V. CORONA* DECISIONS

One brilliant lawyer's advice to another, "If the facts are on your side, pound on the facts. If the laws are on your side, pound on the law. If neither the facts nor the laws are on your side, pound on the table!"[159]

This seems to be what simply the Court has been doing all along.

In this chapter, this paper has pointed out the many instances when the Court made puzzling judgment calls in the *Fortich* cases. Among these were instances when the Court inconsistently adhered to technical and procedural rules

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[158] Almira v. BF Goodrich, G.R. No. L-34974, 25 July 1974, 58 SCRA 120, 131.

[159] Complainant's Reply to the Answer to the Memorandum on Appeal, at 1, Castillejo vs. Philam, NLRC-NCR No. 00-07-06059-98, 27 August, 1999.

in some instances, but allowed itself to exercise discretion freely as to other matters. The judgment of the Court in all three instances hinged on a strict application of a procedural rule found in Administrative Order No. 17. However, the Court's decisions waived other procedural rules in favor of Petitioners.

The inconsistency with which the Court applied legal rules is evident in its arbitrary adoption of Petitioners' narration of facts even if the findings of the Torres Decision fell below the standard set by case law with regard to substantial evidence.

Even more alarming is the fact that the Court repeatedly refused to rule on novel issues of transcendental importance which Petitioners themselves raised to the Court as the main ground of their Petition for Certiorari. Instead, the Court stubbornly resolved the case around an issue that was raised by Petitioners, an issue that the Court itself seemed to have created on the Petitioners' behalf.

Given all these instances when the Supreme Court blew hot and cold in its strict adherence to legal rules on one hand yet wantonly exercised its discretion on the other, it is no wonder then that the *Fortich* decision has been regarded with much suspicion by the media and a bewildered public.

A. Was Fortich a paragon of good positivist decision-making?

At first glance, the *Fortich* decision may be argued as a good example of positivist decision making. As mentioned earlier, the Court seems to have eschewed any discussion of issues that the parties argued on the basis of principles and applied procedural legal rules strictly instead. The following discussion, however, reveals that the *Fortich* decisions were not decided strictly on the basis of legal rules. Instead, the *Fortich* decision is dubious precisely because it makes use of legal rules when the latter uphold the stand of one party, but abandons legal rules when these no longer meet the same objective.

1. The elements of good decision-making

As previously discussed, the elements of a good decision-making according to the positivst framework are the following: (1) When a judge decides a case, he or she must decide in accordance with a legal rule, nothing else should inform his judgment; (2) A judge is given ample room to "exercise discretion" in deciding controversial or "hard" cases—cases that raise issues so novel that they cannot be decided by merely applying or stretching the law. In these cases, he or

she can employ extralegal standards to make or supplement a legal rule whose provisions may be inadequate for a particular case; and (3) A judge ought to decide the facts free from any conscious consideration of what the results will be. He or she is not allowed to suppress or twist facts in order to reach what he or she believes to be the just result.

The *Fortich* decisions fail on all three standards.

a. *Fortich* was not decided solely on the basis of legal rules

Over and over, from first decision to last, the Supreme Court declared the "Win-Win" Resolution of Deputy Executive Secretary Corona as null and void because it substantially modified a previous decision that had attained finality. This procedural rule is embodied in Administrative Order No. 18 section 7 of the Office of the President.

The Court, however, refused to decide the case on the basis of legal rules in the following instances:

- The Court waived the legal rule embodied in jurisprudence recognizing the hierarchy of courts with original jurisdiction over *certiorari* cases;

- The Court violated the legal rule respecting due process and substantial evidence when, it declared the Torres Decision final and accepted the narration of facts therein despite evidence that the DAR was deprived of due process in the above proceedings.

b. The Court's "use of discretion" in cases where it eschewed legal rules were unwarranted under the positivist framework

In the positivist framework, the Court can justify its use of extralegal standards in deciding a case only if the case is a case that raises issues so novel that they cannot be decided by merely applying or stretching the law.

However, the instances when the Court "exercised its discretion," were not instances that could be considered hard cases. There was no novel or compelling issue that had to be resolved.

For example, in the case of the Court's waiver of the legal rule concerning the hierarchy of courts in taking cognizance of the Petition for Certiorari, the Court justified its deviation from the rule "in the interest of speedy justice and to avoid future litigations" which was necessary because "as correctly observed by Petitioners, [the issue] has sparked national interest because of the magnitude of problem created by the issuance of the [Win-Win] resolution."[160] Exactly what problem of great "magnitude" was created by the issuance of the Win-Win Resolution, apart from media coverage and widespread sympathy for the farmers, the Court did not say. There was certainly nothing novel nor compelling in these circumstances, except that the Court and Petitioners' actuations were under fire and viewed with growing suspicion.

This suspicion grows when one recalls how the Supreme Court chose to keep silent on the really novel and controversial issue: whether or not the local government had the power to convert land under section 20 of the Local Government Code.

Just as the Supreme Court exercised its discretion in instances when it should not have, the Supreme Court exercised its power to interpret the law in instances when *it should not have*. The Second Division's act of construing a clear provision of law in the third *Fortich* decision was patently unwarranted.

Judges have the power to apply the law to a given set of facts, and *interpret* it *only when interpretation is called for*. Only when the provision of law is unclear, or when it does not seem to have foreseen the occurrence of a given set of facts may the Court be justified in interpreting a legal rule. The constitutional provision used by the Court to justify its decision in the third *Fortich* case--which clearly made no distinction between cases and matters--left no room for interpretation by the Court. Hence, the latter's interpretation of the constitutional provision was therefore patently unjustified.

c. The Court refused to use its discretion when confronted with a hard case

This paper has dealt extensively with the errors in the findings of fact adopted by the Court when it affirmed the validity of the Torres Decision. Its basis for ignoring the Torres Decision's findings of fact is based on the rule that the Decision had lapsed into finality and thus can no longer be modified by the Office

[160] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 646.

of the President. The Court, therefore, chose to adopt one legal rule over others, over the same set of facts.

That more than one rule may have been determinative of the case with regard to the resolution of this issue points to the fact that the case—at least with regard to this issue—is a hard case which may necessitate the use of the judge's discretionary powers. The Court, however, did not use its discretion in resolving this point. Rather, it ignored the rules of due process and substantial evidence and obstinately applied a technical rule of procedure to answer this problem.

d. The Court's disregard for certain facts and evidence led to an erroneous resolution of issues

The Court inflexibly refused to consider the existence of AFPU's signed by the farmers in determining whether or not they had standing to intervene in the proceedings. Furthermore, it had erroneously concluded that the CLOAs could not be the basis for their right to intervene for it had been issued in pursuance of the Win-Win Resolution.[161] Had the Court been more circumspect in its appreciation of facts and evidence, it would have realized that the CLOAs were issued even before the Corona Resolution had been decided. In fact, the CLOA was issued in pursuance of the Notice of Coverage and Acquisition issued over the land in 1992. That the Court turned a blind eye to these facts while adopting the findings of fact of the Torres Decision, as well as the narration of facts of the Petitioners only makes the judgments it rendered even more dubious.

B. Would Dworkin have approved of the Fortich decisions?

One cannot help but notice that the *Fortich* decisions themselves use principles in deciding the case, most notably in instances when it refused to use applicable legal rules to resolve a clear problem. However, the Court's use of principles would not have found favor even with adherents of Dworkin's thought.

1. The Court used principles in *Fortich* as rules

For instance, when the Court refused to use the rule regarding the hierarchy of courts, the Supreme Court said that the Supreme Court has full discretionary power to take cognizance of a petition filed directly to it if compelling reasons or the nature and importance of the issues are raised. In its

[161] Fortich v. Corona, G.R. No. 131457, 19 August 1999, at 7.

decision, the Court cited the principles of "speedy justice" and the "avoidance of future litigation," as considerations that merited its waiver of the aforementioned legal rule.

Furthermore, in resolving what it deemed to be the "main issue" of the case—whether or not the Torres Decision, which had attained finality, may still be modified by the Win-Win Resolution—the Court did not only decide on the basis of Administrative Order No. 18 section 7, but on the principle underlying the latter rule:

> The orderly administration of justice requires that judgments or resolutions of a court or quasi-judicial body must reach a point of finality set by law, rules and regulations. The noble purpose is to write *finis* to disputes once and for all. This is a *fundamental principle* in our justice system. Otherewise, there would be no end to litigation. Utmost respect and adherence to this principle must always be observed by those who wield the power of adjudication. *Any act which violates this principle must be struck down.*[162]

This last quote is revealing in that it discloses the Court's penchant for using principles as it would legal rules, in an "all-or-nothing" fashion which would rule out the use of other legal rules when a particular set of facts warrant the case.

In ruling that "any act which violates this principle must be struck down," the Court effectively barred other legal rules and principles from operating to enable the Court to make a better, fairer judgment.

Thus, even if the principle used by the Court is denominated as a "principle," it goes against the nature of principles as conceived by Dworkin when he proposed that judges ought to decide on the basis of both legal rules and principles.

Dworkin believed that principles play a *persuasive* role in decision-making. Unlike rules, they do not define specific duties, rights or obligations when they are used to decide a particular case. Instead, they merely aid the resolution of a conflict by leading a person to argue toward a particular direction. To resolve an issue where two conflicting principles apply or where the principle behind a rule

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[162] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 651 (emphasis supplied).

conflicts with another principle, one has to *consider* the relative weight of each to determine which direction his or her decision will ultimately go.

That the Court employed principles in the *Fortich* decisions only to box out other principles in making the decision renders the *Fortich* decisions a failure in Dworkin's analysis.

2. The Court's failure to weigh principles results in manifest injustice

The failure of justice in the *Fortich* cases can therefore be summarized into the observation that the Court refused to do its job in weighing which principle ought to determine the outcome of the case in line with fairness and injustice.

Where two or more legal rules potentially applied to the given set of facts, it inexplicably resolved the case on a particular rule, without weighing principled considerations raised by Respondents and Intervenors. Furthermore, the Court used principles to justify deviation from rules which clearly applied to certain issues, without weighing the principles underlying the abandoned legal rules.

The manifest injustice of this refusal to weigh principles is best revealed by the fact that while the Court disregarded the principles of substantial justice, social justice, compassionate justice and fairness when these were all raised in the pleadings of Respondents and Intervenors, the Court's decision was actually influenced by the following consideration, which was repeatedly cited in the *Fortich* decisions: "We take special notice of the fact that the Quisumbing family already contributed substantially to the land reform program of the government ten years ago...for which they have not received just compensation at this time."[163] How the interests of one family can outweigh the interests of thousands of Filipino families and still be deemed fair and just is simply inexplicable. All too clearly, the *Fortich* decision is an example of how the courts should *not* make a decision.

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[163] Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624, 637; Fortich v. Corona, G.R. No. 131457, 17 November 1998, Main Opinion at 14.

C. The future of judicial decision-making in the Philippines

The Court's penchant for arbitrarily applying legal rules to certain situations and its equally capricious use of principles to box out other rules and principles in deciding cases has divorced the judge from his or her true calling. Judges are in robes in order that they may weigh the soundness of the arguments of partied, and decide which arguments are more reasonable, fair and just.

To treat principles as rules and to decide lazily on the basis of rules only leads to the judge's alienation from the tasks he or she is duty bound to perform. Furthermore, an over-reliance on rules and principles that are treated as rules only opens the judge to charges of being arbitrary and unjust.

To restore the public's faith in the judiciary, we need to recognize the important role principles play in judicial decision-making. At the same time, judges need to learn the correct way with which such principles are employed in obtaining a just decision.

By recognizing principles as much a part of law as legal rules, we prevent our judges from freely exercising "discretion" – a term often construed as an excuse for judges to decide cases any which way they want. In the absence of a clear-cut rule governing a hard case, our judges must consider all the pertinent principles that informed the judgment handed down and must explicitly mention them in the decision, to fulfill the Constitutional mandate that all decisions handed down by the court must state the facts and law on which it is based. Such an approach recognizes the existence of rights and obligations that may exist independently and thus helps our judges escape from a strict legalism that fails to consider the evolving nature of our law.

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