OLD DOCTRINES AND NEW PARADIGMS *

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Traditionally, the truly educated person is regarded as one who has been bred in the humanities and the sciences and who, at the same time, has specialized in a particular branch of knowledge. It is not enough that one is an expert in one's profession; it is also required that one has a more than passing understanding of the arts, history, literature, ethics, and the humanities in general. Indeed, excellence in liberal education and specialization in a career are the earmarks of the truly educated.

LIBERAL EDUCATION AND LEGAL EXPERTISE

In the profession of law, this same standard is expected of all lawyers.[1] Thus, a course in liberal education or in commerce or in the sciences is a prerequisite to admission to a law school.[2] For those who want to join the judiciary, this combination of general education and specialized knowledge is especially important. In describing an ideal magistrate, one of the most eminent jurists of his time, Judge Learned Hand, declared:

> I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have a bowing acquaintance

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[1] *Macias v. Malig*, A.C. No 2409, January 29, 1988, 157 SCRA 762, 776, describes law as a "learned profession."

[2] RULES OF COURT, rule 138, sec.6 provides:

> Pre-Law. – No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized University or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, English, Spanish, history, and economics.

> with Acton and Maitland, with Thucydides, Gibbon, and Carlyle, with Homer, Dante, Shakespeare, and Milton, with Machiavelli, Montaigne, and Rabelais, with Plato, Bacon, Hume, and Kant as with books that have been specifically written on the subject. For in such matters, everything turns upon the spirit in which he approaches the question before him. The words he must construe are empty vessels into which he can pour nearly everything he will. Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of application which will disrupt it, if rigidly confined.[3]

As civilization gets deeper into the e-age, well-rounded general knowledge coupled with career specialization becomes even more crucial. It is no longer enough for judges to be walking encyclopedias of the Constitution, the codes, and judicial doctrines. It is as essential that they also have a working knowledge of new paradigms in economics, biotechnology, medicine, world history, computers, telecommunications, digital sciences, mathematics, and physics.

In this lecture entitled "Old Doctrines and New Paradigms," I will discuss recent decisions in which the Supreme Court used traditional legal principles and precedents to meet challenges posed by new paradigms, especially those relating first, to the new economy; second, to constitutional law; third, to political law; and fourth, to medical malpractice. In the process, I will demonstrate why, aside from legal expertise, a well-rounded education is essential to judicial dispensation; and hopefully, I will assess the Supreme Court's success in resolving legal disputes brought by these new paradigms.

A. THE NEW ECONOMY

For a start, let me bring up the paradigms of the new economy; namely globalization, liberalization, deregulation and privatization. To those of us who have lived long enough, we know that the last century was dominated by an incessant global struggle of various ideologies and forces.[4] Before the 20th century ended, however, the world witnessed the collapse of colonialism and

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[3] HENRY J. ABRAHAM, JUSTICES AND PRESIDENTS 56 (1992), *quoting from* THE NEW YORK TIMES MAGAZINE, November 28, 1954, at 14.

[4] ARTEMIO V. PANGANIBAN, TRANSPARENCY, UNANIMITY, AND DIVERSITY 156 (2000).

totalitarianism; and the victory of independence, freedom and nationalism. The Cold War and the balance of nuclear terror have ended. Only one super power dominates the earth now. Indeed, *Pax Americana* has prevailed and the world is at relative peace.

As we behold the dawn of the 21st century, the arena for world pre-eminence has shifted from military warfare to a more subtle economic, informational, and intellectual upmanship. In this new race, attention has veered from government control to deregulation, from state ownership to privatization, and from national sovereignty to globalization and liberalization.[5]

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[5] *See* Pacifico A. Agabin, Globalization and the Judicial Function, Lecture Delivered During the Chief Justice Andres R. Narvasa Centennial Lecture Series (October 29, 1998), *in* ODYSSEY AND LEGACY: THE CHIEF JUSTICE ANDRES R. NARVASA CENTENNIAL LECTURE SERIES (Antonio M. Elicano, ed., 1998). In his lecture "Globalization and the Judicial Function", delivered on October 29, 1998, Dr. Pacifico Agabin, former Dean of the UP College of Law, proposed a redefinition of the role of the judiciary in a globalized economy in these words:

> The problems posed by a global economy make it essential that we redefine the role of the judiciary in the light of recent developments. Jurisprudence cannot possibly return to the Gilded Age of the 19th century for, as sociologists have noted, it is this type of thinking which would help legitimize a legal order based on social and economic inequality. (De Gaay Fortmann, *Entitlement and Development: An Institutional Approach to the Acquirement Problem*, ISS Working Paper No. 87 [1990] at 19) If the function of the courts is to render justice, we also have to redefine justice in economic terms. Perhaps Dworkin's definition should be considered: "justice ... is a matter of right outcome of the political system: the right distribution of goods, opportunities, and other resources." (R. DWORKIN, LAW'S EMPIRE, 404 [1986].)
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> The question that arises is that, in a globalized market economy, the distribution of goods, opportunities and resources is always weighted in favor of the dominant players. While the law upholds equality as a value, some are in fact more equal than others. In a well-known article, a noted social scientist points to four factors why the "haves" always come out ahead of the "have-nots" in the distribution process: (1) the strategic position of the "haves" in society; (2) the role of lawyers; (3) institutional facilities available to those who can manipulate these; and (4) the characteristics of the legal principles (De Gaay Fortmann, *id.* at 23-24). Thus, in a globalized market system, there is really no "trickle-down process" that automatically operates to distribute goods and resources to the "have-nots." The gross national product can grow rapidly without resulting in any reduction of poverty, unemployment, and inequality. In fact, certain types of growth may actually cause social crises and political upheavals, as we have seen in the case of Indonesia.
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> In this context, there is a need to redefine the role of the judiciary: It is to aim at the realization of the economic rights of the people. Economic rights are the "acknowledgment of the legitimacy of claims to income and to participation in resource allocation." (Samuels, *An Economic Perspective on the Compensation Problem*, 21 WAYNE L. REV. 113, 118). As a development expert puts it, "in the same way that civil and political rights have to be rooted in a political order, economic and social rights would have to acquire institutional protection in an economic order." (De Gaay Fortmann, *id.* at 28)

Up to the end of the early 1980s, states – the Philippines included – depended on the protection of local industries as the main economic strategy of prosperity. Hence, to barricade local industries, they set up tariffs, currency controls, quantitative restrictions, preferential treatments, import quotas, and tax incentives. The last two decades, however, witnessed the establishment of, among others, the European Community (EC), the North American Free Trade Agreement (NAFTA) and the ASEAN Free Trade Area (AFTA), in which these protectionist barriers were lifted amongst member-states, on the theory that trade could be better promoted on a regional, rather than on a national, basis.

It is significant to note that in *Federation of Free Markets v. Bautista*,[6] the Court, in an extended unsigned resolution, ruled that the "intent of the Philippines" to reduce tariff on rice as mandated by AFTA did not contravene the Constitution, the Agricultural Tariffication Act, or the Magna Carta for Farmers.

Soon enough, however, regionalism was deemed insufficient, and economic globalization beckoned.[7] Thus, after much hesitation, the World Trade Organization (WTO) was born as the ultimate effort to eliminate tariff and other traditional protectionist barriers altogether; as well as to usher in free trade amongst members, not just of a regional bloc, but of the entire world community.[8]

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[6] G.R. No. 128502, 13 July 1999. "The mere statement of intent made by the public respondents would still be subject to confirmation after public consultations to be conducted by the concerned agencies and after the government would have complied with due process and other requirements mandated by law."

[7] With globalization, liberalization, deregulation, and privatization as new paradigms, how will the Philippines fare in the 21st century? An interesting answer is found in Ian Burma, *A New Asian Century*, READERS' DIGEST, July 2000, at 54, as follows:

> In all likelihood, parts of Asia will do very well (in the e-age) but not for the reasons people were talking about a decade ago. The formula of state discipline, efficient workers, low wages, and an absence of independent unions is fine in a country that needs to get heavy industries going. But for a country, a city, or a region to thrive in the age of information technology, its citizens must be *flexible, creative, individualistic, cosmopolitan, free, and preferably, conversant in English*. Endowed with such people, the Philippines – properly inspired and led – should prosper in this new age. (italics supplied)

[8] For a discussion on the rise of the WTO, *see* RUFUS B. RODRIGUEZ, THE GATT AND THE WTO: AN INTRODUCTION (1998). Undoubtedly, WTO serves well the interests of developed countries and supranational corporate behemoths. However, developing countries and their fledgling industries can hardly cope with borderless competition. Hence, the last two WTO summits (1999 in Seattle and 2000 in Melbourne) have been disrupted by rioting and protest actions, as well as by a more sober reassessment of new trade talks. *See* Amando Doronila, *Lessons After Five Years of WTO*, PHIL. DAILY INQUIRER, September 15, 2000, at A9. *See, also,* ASIAWEEK, December 29, 1999, at 34, which heralded Vandana Shiva's books, essays and speeches educating people on the evil effects of "free-trade logic."

Tañada v. Angara
On Globalization

Our WTO membership was concurred in by the Senate on December 14, 1994. The ink on the ratification documents had barely dried up when, on December 29, 1994, Sen. Wigberto E. Tañada and several others challenged the constitutionality of the Philippine adherence to the WTO Agreement. Thus was born *Tañada v. Angara*.[9]

The Court *en banc* unanimously ruled that, in affirming Philippine membership in the WTO, the Senate did not violate the economic nationalism or "Filipino First" provisions of the fundamental law.[10] These provisions, which are included in the "Declaration of Principles and State Policies of the Constitution," are not self-executing.[11] They are merely guides to the exercise of judicial review and to the enactment of laws. More important, such provisions should be read together with other constitutional pronouncements, in order to attain a balanced

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[9] G.R. No. 118295, May 2, 1997, 272 SCRA 18. To be able to write the *ponencia* in this case, I had to read not only the 36-volume Uruguay Round of Multilateral Trade Negotiations, which contained the WTO Treaty and the various detailed commitments of each member-state in regard to specific schedules of tariff reductions, but also books and treatises on the new economic paradigm of globalization.

[10] On the petitioners' theory that the Constitution did not contemplate a "borderless world of business," the decision I wrote for the Court read:

> No doubt, the WTO Agreement was not yet in existence when the Constitution was drafted and ratified in 1987. That does not mean however that the Charter is necessarily flawed in the sense that its framers might not have anticipated the advent of a borderless world of business. By the same token, the United Nations was not yet in existence when the 1935 Constitution became effective. Did that necessarily mean that the then Constitution might not have contemplated a diminution of the absoluteness of sovereignty when the Philippines signed the UN Charter, thereby effectively surrendering part of its control over its foreign relations to the decisions of various UN organs like the Security Council?
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> It is not difficult to answer this question. Constitutions are designed to meet not only the vagaries of contemporary events. They should be interpreted to cover even future and unknown circumstances. It is to the credit of its drafters that a Constitution can withstand the assaults of bigots and infidels but at the same time bend with the refreshing winds of change necessitated by unfolding events. (citations omitted)

[11] In the controversial case of *Manila Prince Hotel v. GSIS*, G.R. No. 122156, February 3, 1997, 267 SCRA 408, the Court by a vote of eleven (Justices Padilla, Regalado, Davide, Romero, Bellosillo, Vitug, Kapunan, Mendoza, Francisco, Hermosisima and Torres) to four (Chief Justice Narvasa, Justices Melo, Puno and Panganiban, with the last two writing separate dissents), ruled that article XII, section 10 of the Constitution was "self-executing." Thus, "in public biddings concerning the grant of rights, privileges and concessions covering the national economy and patrimony," like the ownership of the controlling shares of the Manila Hotel, a losing Filipino bidder "will have to be allowed to match the bid of the [winning] foreign entity. And if the Filipino [thereafter] matches the bid of a foreign firm, the award should go to the Filipino." In *Tañada*, the Court clarified that the *Manila Hotel* ruling "is enforceable only in regard to the grant of rights, privileges and concessions covering the national economy and patrimony and not to every aspect of trade and commerce. It refers to exceptions rather than the rule."

development of the economy.[12] The Court ruled: "While the Constitution has a bias in favor of Filipino goods, services, labor, and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity, and limits protection of Philippine enterprises only against foreign competition and trade practices that are unfair."

At bottom, the Court upheld the constitutionality of the Philippine adherence to the WTO Agreement by using the old doctrine that hinged on petitioners' failure to show grave abuse of discretion on the part of the Senate. The decision concluded:

> That the Senate, after deliberation and voting, voluntarily and overwhelmingly gave its consent to the WTO Agreement thereby making it "a part of the law of the land" is a legitimate exercise of its sovereign duty and power. We find no "patent and gross" arbitrariness or despotism "by reason of passion or personal hostility" in such exercise. It is not impossible to surmise that this Court, or at least some of its members, may even agree

[12] On the issue of whether the WTO Agreement impaired the congressional power to legislate, the Court declared:

> [W]hile sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations." By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* – international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken."
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> By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by or derived from a convention or pact. After all, states, like individuals, live with coequals, and in pursuit of mutually covenanted objectives and benefits, they also commonly agree to limit the exercise of their otherwise absolute rights. Thus, treaties have been used to record agreements between States concerning such widely diverse matters as, for example, the lease of naval bases, the sale or cession of territory, the termination of war, the regulation of conduct of hostilities, the formation of alliances, the regulation of commercial relations, the settling of claims, the laying down of rules governing conduct in peace, and the establishment of international organizations. The sovereignty of a state therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (1) Limitations imposed by the very nature of membership in the family of nations and (2) limitations imposed by treaty stipulations. As aptly put by John F. Kennedy, "Today, no nation can build its destiny alone. The age of self-sufficient nationalism is over. The age of interdependence is here." (citations omitted)

> with petitioners that it is more advantageous to the national interest to strike down Senate Resolution No. 97. But that is not a legal reason to attribute grave abuse of discretion to the Senate and to nullify its decision. To do so would constitute grave abuse in the exercise of our own judicial power and duty. Ineludibly, what the Senate did was a valid exercise of its authority. As to whether such exercise was wise, beneficial, or viable is outside the realm of judicial inquiry and review. That is a matter between the elected policy makers and the people. (citations omitted)

As an aftermath of the Philippine membership in the WTO, specifically in connection with the annexed Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPS, Congress enacted the Intellectual Property Code of 1998[13] "to strengthen the intellectual and industrial property system in the Philippines." More interestingly, in *Mirpuri v. Court of Appeals*[14] in 1999, the Court ruled that the Paris Convention for the Protection of Industrial Property, to which the Philippines was a signatory, was a self-executing treaty and did not "require legislative enactment to give it effect." It used said Agreement to strike down the application for registration of a local trademark, "Barbizon International," because the latter had essentially usurped the goodwill of a well-known brand of ladies' garments known worldwide by the same name, "Barbizon."

Tatad v. Secretary of Energy
On Deregulation

Let me now move to a companion paradigm of the new economy; namely, deregulation. In essence, this norm shifts the burden of price control from the government to "market forces," with the ultimate goal of producing the best goods and services at the cheapest prices possible. This policy, however, is not an infallible cure because the evil sought to be avoided – government abuse – may well pass on to market players, particularly when they combine to restrain trade or engage in unfair competition. "The market is motivated by price and profit (and sadly not by moral values). The market does not automatically supply those who need (no matter how badly they need it) but only those who have the money to buy."[15]

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[13] Rep. Act No. 8293 (1998) took effect on January 1, 1998.
[14] G.R. No. 114508, November 19, 1999, 318 SCRA 516, 543.
[15] ROMULO L. NERI, ECONOMICS AND PUBLIC POLICY 23 (1999).

In *Tatad v. Secretary of Energy*,[16] the Court, by a vote of nine[17] in favor and two against,[18] invalidated Republic Act No. 8180, the Oil Deregulation Law, because it allowed the Big Three oil companies – Petron, Shell, and Caltex – to act as a monopoly or, more precisely, an oligopoly. In the gutsy words of the *ponente*, Justice Reynato S. Puno, "The Constitution mandates this Court to be the guardian not only of the people's political rights but their economic rights as well."

Big business immediately reacted by accusing the Court of undue interference in economics, a subject allegedly beyond the latter's competence and authority to decide on.[19] In flailing the Court, some of its critics even clamored for a constitutional amendment to deprive the judiciary of jurisdiction over economic questions, ignoring the express caveat in the decision that "the Court did not condemn the economic policy of deregulation as unconstitutional. It merely held that, as crafted, the law [ran] counter to the constitutional provision [on] fair competition."

Indeed, the legislative and the executive departments may adopt any policy, subject to one indispensable condition: It must conform to the Constitution. When such policy and its implementing laws violate the Charter, the Supreme Court shall, in appropriate proceedings, strike them down. In the words of the *ponencia*, "[c]ombinations in restraint of trade and unfair competition are absolutely proscribed and the proscription is directed both against the State as well as the private sector. Monopolistic or oligopolistic markets deserve our careful scrutiny and laws which barricade the entry points of new players should be viewed with suspicion."

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[16] G.R. Nos. 124360 and 127867, November 5, 1997, 281 SCRA 330.

[17] Justices Regalado, Davide Jr., Romero, Bellosillo, Puno, Vitug, Kapunan (see separate opinion), Mendoza (concurred in the result), and Panganiban (with concurring opinion).

[18] Justices Melo and Francisco (Chief Justice Narvasa was on leave and there were three vacancies in the Court).

[19] The business community's anxiety might have been aggravated by an earlier controversial decision in *Garcia v. Board of Investments*, G.R. No. 92024, November 9, 1990, 191 SCRA 288, in which the Court ruled that the Board of Investments "committed grave abuse of discretion in. approving the transfer of the petrochemical plant from Batangas to Bataan." This seven (Justices Gutierrez, Cruz, Gancayco, Padilla, Bidin, Sarmiento, and Medialdea) to four (Justices Narvasa, Regalado, Melencio-Herrera, and Griño-Aquino, who wrote the main dissent; Chief Justice Fernan and Paras took no part; and Justice Feliciano was on leave) decision was heavily criticized because "the majority has actually imposed its own views on matters falling within the competence of a policy-making body of the government," to quote Justice Herrera's dissent. "It decided upon the wisdom of the transfer of the site of the proposed project, the desirability of the capitalization aspect of the project, and injected its own concept of the national interest as regards the establishment of a basic industry of strategic importance to the country."

Specifically, the Court found that three provisions of Republic Act No. 8180 obstructed the entry of new oil companies into the Philippines, thereby perpetuating a monopoly of the Big Three. First, there was a provision on tariff differential which imposed on crude oil importations of the Big Three only a three percent tariff, and on imported refined petroleum products of new entrants to the market, seven percent. Such provision thereby gave the Big Three a four percent differential against new players – an advantage that translated per 1997 prices, to about twenty centavos for every liter of retail gasoline. Second, the minimum inventory clause required new players to maintain in storage in the country at least ten percent of their annual sales volume or a forty-day supply, whichever was lower. Third, the predatory pricing scheme prohibited the selling of any product at a price unreasonably below the industry average cost. In the Court's opinion, these three provisions infected the entire statute to such an extent as to render it completely void.

But is it true, as the critics lament, (1) that the Court has no power or competence to decide economic issues, and (2) that its intrusion into this domain "will drive away foreign investors?"[20]

In answer, let me immediately say that the Philippine system of government breathes and lives within democratic space where the rule of law, not the decree of man, prevails. Such arrangement finds its roots in the American free enterprise system, with which foreign investors should be familiar. And investors, whether local or foreign, should find comfort in a republican government that allows individual rights and liberties to prevail over even the awesome might of a majoritarian government or of mob rule and temporary popular sentiments or, for that matter, of despots and dictators.

That justices are not economists or businessmen does not lessen the cogency or the binding effect of their decisions. By the same token, the fact that

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[20] *See* Merlin M. Magallona, Globalization Trends: From Republican Democracy to Authoritarianism, Lecture Delivered During the Chief Justice Andres R. Narvasa Centennial Lecture Series, (October 29, 1998), *in* ODYSSEY AND LEGACY: THE CHIEF JUSTICE ANDRES R. NARVASA CENTENNIAL LECTURE SERIES (Antonio M. Elicano, ed., 1998), at 95 ,104. In his lecture "Globalization Trends: From Republican Democracy to Authoritarianism," Dean Merlin M. Magallona, former Dean of the UP College of Law, opines that globalization and its companion paradigms – liberalization, privatization and deregulation – are impositions of the "supranational legal order:" by the WTO, the IMF and the World Bank, and quickly adds that the "Court's decision in *Tatad v. Secretary* disrupted the long-established practice of exploiting the country's needs for funds as a means of extracting policy and institutional changes in the hands of the new sovereigns."

they are not physicians or theologians does not render their judgments involving medicine or theology less conclusive.

For example, in *People v. Ortega*,[21] the Supreme Court used medical science to establish the culpability of the accused who had not taken part in stabbing the victim. In the face of medical evidence that the victim's lungs and stomach had imbibed muddy particles identical to the residue at the bottom of the well where the cadaver was located, the Court ruled that drowning, not stabbing, was the immediate cause of death. In its words, the "water and fluid contents in the stomach corresponded to the medium where the body was found."

So too, in *Santos v. Court of Appeals*[22] and *Republic v. Molina*,[23] the Court interpreted with finality the meaning of Canon Law, specifically Canon 1095, which had laid down a provision, later borrowed by our Family Code, for declaring a marriage void. Hence, even if justices were not theologians, they render decisions on whether marriages could be voided on the canonical ground of "psychological incapacity."

In *Iglesia ni Cristo v. Court of Appeals*,[24] the Supreme Court magistrates – although not experts in broadcasting, religion, or social sciences – ruled on the constitutional issue of whether the Board of Review for Motion Pictures and Television[25] had acted properly in giving an "X-rating" to certain religious television programs.

The point is, the members of the Court need not be experts in economics, medicine, or religion in order to decide cases involving those disciplines. It is up to the parties concerned to enlighten the Court, argue their sides, and convince the justices of the merits of their causes. That is the nature of the judicial process and that is how decisions are and will be made.

In any event, big business and the government grudgingly relented and bowed to our decision. The legislature thereafter enacted a new Oil Deregulation Law, Republic Act No. 8479, which eliminated the three monopolistic provisions on tariff differential, minimum inventory, and predatory pricing.

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[21] G.R. No. 116736, July 24, 1997, 276 SCRA 166.
[22] G.R. No. 112019, January 4, 1995, 240 SCRA 20.
[23] G.R. No. 108763, February 13, 1997, 268 SCRA 198.
[24] G.R. No. 119673, July 26, 1996, 259 SCRA 529.
[25] Now "Movie and Television Review and Classification Board," or MTRCB.

Nevertheless, Rep. Enrique T. Garcia was unconvinced and lost no time in challenging the constitutionality of this second Oil Deregulation Law, mainly because of section 19 thereof, which had set the full deregulation of the oil industry five months from its effectivity. He deemed such provision unconstitutional, because the transition period was too short and would enable the Big Three to monopolize the market. He wanted the government to retain the power to fix oil prices indefinitely, while awaiting "real" competition to emerge. Hence, he effectively asked the Court to fix a "reasonable time" for a transition to full deregulation.

However, in *Garcia v. Corona*,[26] promulgated on December 17, 1999, the Court unanimously[27] upheld the validity of the new law. Speaking through Madame Justice Consuelo Ynares-Santiago, it ruled:

> [W]hat constitutes reasonable time is not for judicial determination. Reasonable time involves the appraisal of relevant conditions, political, social and economic. They are not within the appropriate range of evidence in a court of justice. It would be an extravagant extension of judicial authority to assert judicial notice as the basis for the determination.[28]

Decentralization of Political Power

While the e-age idolizes globalization, deregulation, and privatization as new economic paradigms, at the same time it urges decentralization of political and fiscal power. In our country, this effort to vest more authority in basic political units is no more remarkable than in the 1987 Constitution[29] itself and in the Local

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[26] G.R. No. 132451, December 17, 1999.

[27] Although I voted to invalidate the first oil deregulation statute, I concurred with the rest of the justices that the second deregulation law, Rep. Act No. 8479, could not be constitutionally faulted. In my separate concurring opinion, I wrote in part:

> In sum, I make no secret of my sympathy for petitioner's frustration at the inability of our government to arrest the spiraling cost of fuel and energy. I hear the cry of the poor that life has become more miserable day by day. I feel their anguish, pain and seeming hopelessness in securing their material needs.
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> However, the power to lower petroleum prices through the adoption or the rejection of viable economic policies or theories does not lie in the Court or its members. Furthermore, absent sufficient factual evidence and legal moorings, I cannot vote to declare a law or any provision thereof to be unconstitutional simply because, theoretically, such action may appear to be wise or beneficial or practical. Neither can I attribute grave abuse of discretion to another branch of government without an adequate showing of patent arbitrariness, whim, or caprice. Should I do so, I myself will be gravely abusing my discretion, the very evil that petitioner attributes to the legislature.

[28] The *ponencia* cited *Coleman v. Miller*, 307 US 433 (1939).

[29] CONST. art. X, sec. 3.

Government Code.[30] In *Ganzon v. Court of Appeals*,[31] the Court hailed decentralization as a "more responsive and accountable local government structure." *Drilon v. Lim*[32] emphasized that the President had the power of supervision only, not control, over local governments; thus, he merely sees to it that local officials follow the law and the rules, but he himself does not lay them down. Neither does he have the discretion to modify or reverse actions made in accordance with them, even if he does not agree with them.

Consistent with these tenets, the recent case *Pimentel v. Aguirre*[33] upheld the fiscal autonomy of local government units (LGUs) and ordered the automatic release of the shares of the LGUs in the national internal revenues." Declared void by the Court was section 4 of Administrative Order No. 372. This provision withheld a portion (10 percent, later amended to 5 percent) of their share in internal revenue allotments (IRA).

Earlier, *Meralco v. Province of Laguna*[34] had upheld the power of provincial governments "to impose a tax on businesses enjoying a franchise." The rationale was "to safeguard the viability and self-sufficiency of local government units."

B. NOVEL PARADIGMS IN CONSTITUTIONAL LAW

Let me now shift to decisions of the Court disposing of new paradigms in Constitutional Law.

Free Expression: Exit Polls and Libel

One of the most revered rights of the people is free expression.[35] It began in the Middle Ages with free speech and the right to peaceful assembly for redress of grievances.[36] When the printing press was invented, freedom of expression was expanded to include freedom of the press. Labor's right to strike and to picket also became modes of protected expression when the Industrial Age flourished. Then,

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[30] Rep. Act No. 7160 (1991).
[31] G.R. Nos. 93252, 93746, and 95245, August 5, 1991, 200 SCRA 271.
[32] G.R. No. 112497, August 4, 1994, 235 SCRA 135, 142.
[33] G.R. No. 132988, July 19, 2000.
[34] G.R. No. 131359, May 5, 1999, 306 SCRA 750.
[35] *See* JOHN STUART MILL, ON LIBERTY 48, 76, and 115-116 (1974). To Mill, freedom of discussion is the pre- requisite of truth.
[36] *See* PANGANIBAN, *supra* note 4, at 376.

radio, television, and cinema came up, and these too were recognized as new modes of expression and thus given constitutional mantle.

Indeed, as mankind pushes the frontiers of science and technology in mass communications, so must the scope of free expression expand. Soon, questions will arise on the constitutional limits of the Internet, broadband fiber optics, and teleconferencing. In line with these technological developments, the Court in *ABS-CBN v. COMELEC*[37] deemed exit polls[38] to be part of free speech and entitled to constitutional protection. Hence, the Commission on Elections gravely abused its discretion when, during the 1998 elections, it totally prohibited the holding of exit polls and the dissemination of their results through mass media.

Indeed, like any other right, the freedom to hold exit polls and to disseminate their results may be subjected to reasonable regulation. The purpose is not to stifle or diminish, but in fact to safeguard it and at the same time to ensure that it does not collide with or overturn the rights of others. Hence, the decision, which I penned, expressly added that "narrowly tailored counter-measures may be prescribed by the COMELEC so as to minimize or suppress incidental problems in the conduct of exit polls, without transgressing the fundamental rights of the people."[39]

In another landmark case in free expression – *Vasquez v. Court of Appeals*[40] – the Court, speaking through Justice Vicente V. Mendoza, has ruled that truth is a complete defense in a libel case in which a public official or a public figure is the offended party. The *avant garde* Court explained that "even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with actual malice – that is, with knowledge that it was false or with reckless disregard

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[37] G.R. No. 133486, January 28, 2000.

[38] An "exit poll" is defined thus:

> At the outset, the Court defined exit polls as "a species of electoral survey conducted by qualified individuals or groups of individuals for the purpose of determining the probable result of an election by confidentially asking randomly selected voters whom they have voted for, immediately after they have officially cast their ballots. The results of the survey are announced to the public, usually through the mass media, to give an advance overview of how, in the opinion of the polling individuals or organizations, the electorate voted. In our electoral history, exit polls had not been resorted to until the recent May 11, 1998 elections.

[39] It should be noted that the dissents of Justices Melo, Vitug, Kapunan, and Mendoza centered largely on the mootness of the issue (the 1998 election was over when we promulgated the Decision) and the possible adverse effect "on the need to preserve the sanctity of the ballot."

[40] G.R. No. 118971, September 15, 1999.

of whether it was false or not." In other words, conviction in libel suits filed by public officials may be obtained only by proving that the defamatory words were (1) false and (2) made with the knowledge of their falsity or with a reckless disregard of whether or not they were false. This landmark decision reversed existing jurisprudence requiring the accused to prove absence of malice in order to be entitled to an acquittal.

The Death Penalty Law and the Right to Life

Let me now discuss the most basic of all constitutional rights – the right to life.

Article III, section 19[41] of the 1987 Constitution prohibits the imposition of the death penalty, "unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it." The legislature "provided for it" by enacting Republic Act No. 7659, the Death Penalty Law, which became effective on December 31, 1993. In *People v. Echegaray*,[42] the Supreme Court upheld its constitutionality.[43]

I should hasten to add that a subsequent companion case, *Echegaray v. Secretary of Justice*,[44] ruled that lethal injection, like the electric chair, was a valid means of carrying out the death penalty, and was not cruel, degrading or inhuman, because it did not involve "torture or a lingering death."

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[41] CONST., art. III, sec. 19 reads:

SEC. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua.*

2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

[42] G.R. No. 117471, February 7, 1997, 267 SCRA 682.

[43] The Court reasoned thus:

1. The death penalty is not a "cruel, unjust, excessive or unusual punishment." It is an expression of the prerogative of the state to "secure society against threatened and actual evil."

2. The offenses for which Rep. Act No. 7659 prescribes death satisfy "the element of heinousness." Said law specifies the "circumstances that generally qualify a crime x x x to be punished x x x [by] death."

3. Rep. Act No. 7659 "is replete with both procedural and substantial safeguards that ensure [its] correct application."

4. The Constitution gave Congress the discretion to determine the presence of the elements of heinousness and compelling reasons, and the Court would exceed its authority if it questions the exercise of such discretion.

[44] G.R. No. 132601, October 12, 1998, 297 SCRA 754.

In my dissent, however, I pointedly lamented the failure of Congress to satisfy the constitutional requirements of "heinousness" and "compelling reasons."[45]

In spite of the death penalty, government statistics show that the incidence of these so-called "heinous crimes," particularly rape, has continued to rise up to the present, seven years after Republic Act No. 7659 took effect.[46]

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[45] I summed up my arguments in the Epilogue of my dissent, as follows:

(1) The 1987 Constitution abolished the death penalty from our statute books. It did not merely suspend or prohibit its imposition.

(2) The Charter effectively granted a new right – the constitutional right against the death penalty, which is really a species of the right to life.

(3) Any law reviving the capital penalty must be strictly construed against the State and liberally in favor of the accused because such a statute denigrates the Constitution, impinges on a basic right, and tends to deny equal justice to the underprivileged.

(4) Every word or phrase in the Constitution is sacred and should never be ignored, cavalierly-treated, or brushed aside.

(5) Congressional power to prescribe death is severely limited by two concurrent requirements:

First, Congress must provide a set of attendant circumstances which the prosecution must prove beyond reasonable doubt, apart from the elements of the crime itself. Congress must explain why and how these circumstances define or characterize the crime as "heinous."

Second, Congress has also the duty of laying out clear and specific reasons which arose' after the effectivity of the Constitution compelling the enactment of the law. It bears repeating that these requirements are inseparable. They must both be present in view of the specific constitutional mandate – "for compelling reasons involving heinous crimes." The compelling reason must flow from the heinous nature of the offense.

(6) In every law reviving the capital penalty, the heinousness and compelling reasons must be set out for each and every crime, and not just for all crimes generally and collectively.

"Thou shall not kill" is a fundamental commandment to all Christians, as well as to the rest of the "sovereign Filipino people" who believe in Almighty God. While the Catholic Church, to which the vast majority of our people belong, acknowledges the power of public authorities to prescribe the death penalty, it advisedly limits such prerogative only to "cases of extreme gravity." To quote Pope John Paul II in his encyclical *Evangelium Vitae* (A Hymn to Life), "punishment must be carefully evaluated and decided upon, and ought not go to the extreme of executing the offender except in cases of absolute necessity: In other words, when it would not be possible otherwise to defend society x x x (which is) very rare, if not practically non-existent."

Although not absolutely banning it, both the Constitution and the Church indubitably abhor the death penalty. Both are pro-people and pro-life. Both clearly recognize the primacy of human life over and above even the State which man created precisely to protect, cherish, and defend him. The Constitution reluctantly allows capital punishment only for compelling reasons involving heinous crimes just as the Church grudgingly permits it only for reasons of "absolute necessity" involving crimes of "extreme gravity," which are very rare and practically non-existent.

In the face of these evident truisms, I ask: Has Congress, in enacting RA 7659, amply discharged its constitutional burden of proving the existence of "compelling reasons" to prescribe death against well-defined "heinous" crimes?

I respectfully submit it has not.

With due respect, I believe that Republic Act No. 7659 and the Court's decision to uphold it collide with the worldwide crusade to abolish the death penalty, as shown in five major international treaties; namely, (a) the 1948 Universal Declaration of Human Rights; (b) the 1966 International Covenant on Economic, Social and Cultural Rights; (c) the 1966 International Covenant on Civil and Political Rights (ICCPR)[47] and (d) the two Optional Protocols to the

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[46] In a letter dated June 27, 2000 addressed to Chief Justice Davide, Secretary General Romulo A. Virola of the National Statistical Coordination Board cited the NSCB Statistics Series showing that rape cases "continued to rise reaching 3,177 in 1999 from a lower figure of 2,346 in 1995, an increase of 35 percent. In 1999, on the average, nine women were raped in the Philippines daily."

[47] The dissenting opinion in *Echegaray v. Secretary of Justice*, G.R. No. 132601, October 12, 1998, 297 SCRA 754, in part noted:

> R.A. No. 8177 Implementing The Death Penalty Violates International Norm.
>
> At the core of the issue of death penalty is the inherent and inalienable right to life of every human being. The recognition of this inherent right to life is one of the self-evident principles that inspired the adoption of five (5) major international covenants: the Universal Declaration of Human Rights in 1948, the International Covenant on Economic, Social and Cultural Rights in 1966, the International Covenant on Civil and Political Rights in 1966, and the two Optional Protocols to the latter Covenant. These legal instruments are collectively called the International Bill of Human Rights.
>
> The universal fight for the recognition of the right to life should never be lost in the mist of history. In December 1948, the United Nations General Assembly adopted without dissent the Universal Declaration of Human Rights. The Universal Declaration is a pledge among nations to promote rights inherent in each and every individual. These rights were distinguished from mere privileges that may be awarded by governments for good behavior and withdrawn for bad behavior. Thus, *Article 3 of the Universal Declaration decrees that "everyone has the right to life, liberty, and security of the person."* The Philippines is a proud signatory to this document.
>
> On December 16, 1966, the United Nations General Assembly went on to adopt the International Covenant on Civil and Political Rights (ICCPR). It was opened for signature on December 19,1966 and entered into force on March 23,1976. With respect to the death penalty, this Covenant provides:
>
> > 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
> >
> > 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
> >
> > x x x
> >
> > 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
> >
> > 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
> >
> > 6. Nothing in these articles shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant. (emphasis in the original)

latter Agreement.[48] All these treaties are collectively referred to as the International Bill of Human Rights. There is also the April 3, 1997 Resolution (No. 1997/12) of the LTN Commission on Human Rights, which calls on all UN members to abolish the death penalty.[49]

(In all fairness, I should add that while the Philippines voted in favor of the Second Protocol to the ICCPR, it has not ratified it.)

Apart from the general arguments leveled against the constitutionality of the Death Penalty Law and the unmistakable e-age trend against it, I daresay that the execution of the first death convict, Leo Echegaray, on February 5, 1999, was legally erroneous. To recall the facts,[50] the information against Echegaray (the offender) alleged that Rodessa (the victim) was the daughter of the accused. However, during the trial, it was proven that the accused was not the "father, stepfather, or grandfather" of the victim. The Supreme Court, nevertheless, affirmed his death penalty, reasoning that "even if he were not the father,

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[48] The dissent elaborated:

> The Optional Protocol to the Civil and Political Rights was adopted by the United Nations General Assembly on December 16, 1966. It entered into force on March 23, 1976. This Protocol provides for the mechanism for checking state compliance to the provisions of international human rights instruments such as a reportorial requirement among governments. The Philippines signed this Protocol on December 19,1966 and ratified it on August 22,1989. As of December 1996, this Optional Protocol has 89 state parties.
>
> The Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty was adopted and opened for signing by the General Assembly on December 15, 1989. It entered into force on July 11, 1991. The Philippines together with 58 other states voted in favor of the adoption of this document, while 26 voted against and 48 abstained. However, the Philippines has not ratified this Protocol. Under this Protocol, States must take all necessary measures to abolish the death penalty. More specifically, it provides that.
>
> 1. No one within the jurisdiction of a State Party to the present Optional Protocol shall be executed.
>
> 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.
>
> As of December 1996, 25 States have ratified this Optional Protocol.
>
> *From its inception, the United Nations has been steadfast in its view that like killings which take place outside the law, the death penalty denies the value of human life.* In United Nations General Assembly Resolutions 2857 (XXVI) and 32/61 of 6 December 1977, and in Economic and Social Council Resolutions 1574(L), 1945 (LIV), and 1930 (LVIII), the abolition of the death penalty was marked as one of the high aims of the assembly of civilized nations.

[49] See *Human Rights and Human Wrongs: Is the US Death Penalty System Inconsistent With International Human Rights Law?*, 67 FORDHAM L. REV. 2793 (1999) in which all five panel discussants agreed that the US system violated international law; and Raissa Katrina Marie G. Ballesteros, Laura C.H. Del Rosario & Maria Celina P. Fado, *From Abolition to a Solution: A Real Alternative to Capital Punishment*, 73 PHIL. L.J. 500 (1999).

[50] People v. Echegaray, G.R. No. 117472, June 25, 1996, 257 SCRA 561, and February 7, 1997, 267 SCRA 682.

stepfather, or grandfather of Rodessa, this disclaimer cannot save him from the abyss where perpetrators of heinous crimes ought to be, as mandated by law. Considering that accused–appellant is a confirmed lover of Rodessa's mother, he falls squarely within the afore–quoted term 'common law spouse' of the parent of the victim."[51]

To repeat, the information alleged that Leo was the father of Rodessa. However, this qualifying circumstance of father–daughter relation was not proven. What was proven was that Leo was the "confirmed lover [not husband] of Rodessa's mother." While Republic Act No. 7659 prescribes the capital punishment for rape committed by "the common law spouse of the parent of the victim,"[52] such qualifying circumstance was not alleged in the information or complaint.

Yet, it is a basic and well–settled doctrine of criminal law that special qualifying circumstances that increase the penalty to death must be alleged in the information and proven during the trial. The Constitution guarantees the accused several inviolable rights, among them the right "to be informed of the nature and cause of the accusation against him."[53]

Consistent with this settled doctrine, the Court, in a resolution promulgated on September 29, 1999,[54] reduced the death penalty it had earlier meted out to Romeo Gallo. Although the decision imposing death had become final, the Court nonetheless reopened the case after the appellant's counsel, the Public Attorney's Office, pointed out that the information had not alleged the appellant's status as the victim's father.

Similarly, in *People v. De los Santos*,[55] the Court granted the death convict's motion for reconsideration. Ruled the Court: "Nowhere in the information is it alleged that accused–appellant is the stepfather of the victim Nanette delos Santos." In spite of the finality of the original judgment, the Court unanimously reopened the case, saved the appellant from lethal injection, and modified his penalty to *reclusion perpetua*.

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[51] People v. Echegaray, G.R. No. 117472, June 25, 1996, 257 SCRA 561,576.
[52] Rep. Act No. 7659 (1993), sec. 11.
[53] CONST., art III, sec. 1, par. (2).
[54] People v. Gallo, G.R. No. 124736, September 29, 1999, 315 SCRA 461.
[55] G.R. No. 121906, April 5, 2000.

Fortunately for convicts Gallo, De los Santos, and many others similarly situated,[56] the death penalty originally meted out was not carried out when the legal error was discovered and corrected. But Echegaray is now in the Great Beyond, and even a *post facto* correction of his sentence will not resurrect him. Truly, the death penalty has no place in our statute books. Errors in its imposition become nightmarishly irreversible once the appellant is executed. Verily, human reversals do not affect the graveyard.

May I add that Time Magazine[57] recently reported that in the United States, nearly 80 convicts by final judgments have later on been exonerated, because subsequent DNA evidence[58] had proven that they were completely innocent of the crimes attributed to them. They are now frantically suing the US government for compensation for their lost years in prison.

The death penalty may soon be a thing of the past in our country. On December 11, 2000, the local dailies bannered President Joseph Ejercito Estrada's announcement that all the death sentences "would be commuted to life imprisonment on the occasion of the jubilee Year."[59] Two days after, on

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[56] For further discussion and other relevant cases, *see* Artemio V. PANGANIBAN, LEADERSHIP BY EXAMPLE 89-94, (1999). *See also* PANGANIBAN, *supra* note 4, at 237-242.

[57] TIME MAGAZINE, November 13, 2000, at 47. For a more detailed nationwide review of the death penalty in the US, *see* Donna Lyons, *Capital Punishment on Trial*, STATE LEGISLATURES, May 2000.

[58] The Philippine Supreme Court has yet to issue a definitive ruling on the admissibility and the weight of DNA evidence. *See* Pacifico A. Agabin, *Admissibility of DNA Evidence in Philippine Courts*, 3 COURT SYSTEMS J. 67 (1998), where it is stated that "[i]n the Philippines, DNA evidence will continue to be on trial, both as to admissibility as well as to weight, until we develop a truly scientific culture not only in our laboratories but also in our courts."

[59] In a letter dated January 3, 2001, Asst. Exec. Sec. Gaudencio A. Mendoza Jr. formally sent to the Director of Prisons the commutations of the death sentences of Vicente Alagaban, Manuel Alitagtag, Rodolfo Arizapa, Hermie Bantilan, Fernando Diasanta, Roberto Gungon, Dominador Mangat, Alberto Nullan, Gregorio Pagupat, Renante Robles Jr., Rustico Rivera, Teofilo Taneo, and Esteban Victor. In another letter dated 5 January 2001, the following were named as recipients of the same commutations:

> Pepito Alama, Alfredo Alba Jr., Armando Alicante, Bemabe Adila Jr., Felimon Alipayo, Loreto Amban, Dante Alfeche, Delfin Ayo, Alfonso Balgos, Carlos Bation, Alfredo Brandares, Emilito Brondial, Felipe Cabancla, Nicson Catli, Eduardo Catap, Jose Carullo, Ernesto Cordero, Alfredo Danganan, Eduardo Danganan, Rommel Deang, Nelson dela Cruz, Ruben delos Reyes, Lorenzo Diaz, Sr., Arnold Dizon, Avelino Dizon, Neil Dumaguing, Pedro Empante, Oscar Escala, Melvin Espiritu , Ramon Flores, Ban Gajo, Amelio Gaviola, Joeral Gaileno, Felizardo Gonzales, Eduardo Gumawa, Ranillo Hermoso, Meledo Hivela, Efren Jabien, Renato Jose, Celestino Juntilla, Henry Lagarto, Vivencio Labuguen, Egmedio Lascuña, Jr., Rodrigo Lasola, Edgardo Lingan, Romeo Llamo, Bonifacio Lopez, Norberto Lopez, Jovito Losano, Danilo Macabalitao, Antonio Magat, Nolino Managaytay, Abundio Mangila, Larry Mahinay, Antonio Marcos, Enrico Mariano, Apolonio Medina, Delano Mendiola, Liberato Mendiona, Roberto Mengote, Jimmy Mijano, Roland Molina, Pacito Ordoño, Eduardo Pabillare, Eulalio Padil, Rolando Paraiso, Marlon Parazo, Alfonso Pineda, Armando Quitatan,

December 13, 2000, the media also announced that the President "would certify to Congress a bill seeking to repeal the Death Penalty Law."

Before ending the discussion on the death penalty, let me say that in *People v. Genosa*,[60] a relatively new variation of self-defense was proposed. In this case, the trial court convicted Appellant Marivic Genosa of killing her husband and sentenced her to death. On appeal, she asked the Supreme Court, through Counsel Katrina Legarda, to "re–evaluate the traditional elements" of self-defense and to consider the "battered woman syndrome" as a species of this defense. She argued that because of the frequent, severe, and cruel beatings she had suffered in the hands of the deceased, she lived in constant danger of harm and death. "Trapped in a cycle of violence and constant terror, she was seized by fear of an existing or impending lethal aggression," blinding her reason and "leading her to kill her tormentor."

Because of the absence of expert testimony on her mental and emotional state at the time of the killing and because of the possible psychological cause and effect of her fatal act, the Court remanded the case to the trial court[61] for the reception of expert psychological and/or psychiatric opinion on the "battered woman syndrome."

Novel Rulings on Due Process

Let me now discuss two new rulings on due process; first, in labor law, and second, in extradition proceedings.

Renedicto Ramos, Augusto Cesar Ramos, David Recreo, Victor Rebola, Wilfredo Riglos, Delfin Rondero, Ernesto Sacapaño, Antonio Salonga, Bernabe Sancha, Noel Sapinoso, Pedro Sasan Bariquit, Cristituto Sasan, Marciano Sayasa, Ernesto Sevilla, David Silvano, Wilfredo Sugano, Godofredo Tahop, Virgilio Tamayo, Procopio Tresballes, Eddie Tompong, Bonifacio Torejos

[60] G.R. No. 135981, September 29, 2000.

[61] The resolution I penned explained this unusual action in these words:

> Indeed, there is legal and jurisprudential lacuna with respect to the so-called "battered woman syndrome" as a possible modifying circumstance that could affect the criminal liability or penalty of the accused. The discourse of appellant on the subject in her Omnibus Motion has convinced the Court that the syndrome deserves serious consideration, especially in the light of its possible effect on her very life. It could be that very thin line between death and life or even acquittal. The Court cannot, for mere technical or procedural objections, deny appellant the opportunity to offer this defense, for any criminal conviction must be based on proof of guilt beyond reasonable doubt. Accused persons facing the possibility of the death penalty must be given fair opportunities to proffer all defenses possible that could save them from capital punishment.

To justify the dismissal of its employees, the employer, during the last ten years, was mandated to prove two requirements: (1) Just or authorized cause and (2) due process. Dismissals without just or authorized cause were always deemed illegal and the sanction was invariably reinstatement plus back wages and an award of damages for the wronged employee. This measure was adopted regardless of whether due process had been observed or not.

However, when just or authorized cause was proven but the employee was not accorded due process, the dismissal was still deemed valid, but the employer was required to pay indemnity or nominal damages ranging from P1,000 to P10,000. To stress, for over ten years from 1989 when *Wenphil v. NLRC*[62] was promulgated, this had been the unbending jurisprudence. A year ago, however, in *Serrano v. NLRC*,[63] the Court decided to review this ten-year rule. It held that the failure of the employer to give prior notice of the dismissal of an employee should be sanctioned with "back wages," not with mere indemnity or nominal damages.

At first blush, this ruling appeared to be a victory for labor because the employer had to pay more money to the dismissed employee for its failure to give prior notice of termination. However, there is a legal hitch. According to this decision penned by Justice Mendoza, the failure to observe the "notice requirement" was not a violation of due process because, *inter alia*, "the due process clause of the Constitution is a limitation on governmental powers. It does not apply to the exercise of private power, such as the termination of employment under the Labor Code." It characterized a dismissal without the benefit of prior notice as merely "ineffectual" and, as such, would not result in reinstatement but only in the payment of back wages.

In my dissent, I welcomed this more generous ruling, which increased the sanction from mere indemnity to back wages. But I took issue with the majority's legal basis for the conclusion that the notice requirement was rooted only in the Labor Code. I contended, *inter alia*, that it was based on the due process clause of the Constitution. In short, a dismissal without prior notice was equivalent to a dismissal without due process; that is, to an illegal dismissal, in which the appropriate sanction was not merely payment of back wages, but reinstatement plus back wages. I emphatically argued that due process was dispensed, not just by courts and public agencies, but by everyone. I wrote:

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[62] G.R. No. 80587, February 8, 1989, 170 SCRA 69.
[63] G.R. No. 117040, January 27, 2000.

> The administration of justice begins with each of us, in our everyday dealings with one another and, as in this case, in the employers' affording their employees the right to be heard. If we, as a people and as individuals, cannot or will not deign to act with justice and render unto everyone his or her due in little, everyday things, can we honestly hope and seriously expect to do so when monumental, life-or-death issues are at stake?

Justice Puno wrote an even more strongly worded dissent. He said that *Serrano v. NLRC*[64] was "a blow on the breadbasket of our lowly employees, a considerable erosion of their constitutional right to security of tenure." After a point-by-point refutation of Justice Mendoza, Justice Puno reserved his most forceful resistance in this language:

> I respectfully submit that the majority cannot revise our laws or shun the social justice thrust of our Constitution in the guise of interpretation especially when its result is to favor employers and disfavor employees. The majority talks of high nobility but the highest nobility is to stoop down to reach the poor.

In sum, the *Serrano* majority granted labor a larger benefit in monetary terms – from a mere indemnity ranging from P1,000 to P10,000 to full back wages. It, however, deprived our workers of a vital right, which even *Wenphil* recognized but did not value enough. Up to now, I am still aghast at the many consequences of these all-embracing dicta from *Serrano*: (1) that workers are not entitled to the due process rights of notice and hearing prior to dismissal; and (2) that due process can be invoked only against the government, but not against private entities and individuals. Such sweeping conclusions, I respectfully submit, overlook the e-age paradigms of globalization and deregulation, in which abuses against individual rights find origin not only in government actions, but also in commercial entities, especially multinational and transnational behemoths that operate across borders and sovereignties.[65]

Due Process in Extradition

To understand fully *Secretary of Justice v. Lantion and Jimenez*,[66] it is necessary to explain the two phases of an extradition proceeding: First, a

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[64] *Id.*

[65] *See* Hans Leo Cacdac, *International Protection of Workers' Rights at a Crossroad: A Social Clause in the WTO*, 44 ATENEO L.J. 309 (2000), and Louis Henken, *That "S" Word: Sovereignty, Globalization, Human Rights, Et Cetera*, 68 FORDHAM L. REV. 5-13, (1999). In recognition of this need to protect labor from commercial abuses, there is a snowballing effort to link labor issues to international trade talks.

[66] G.R. No. 139465, January 18, 2000.

preliminary stage, during which the executive authority of the requested state ascertains whether the extradition request is supported by the documents and the information required under the Extradition Treaty; and second, the extradition hearing, during which the executive authority, after determining that the extradition request is supported by the required documents, files the extradition charge before a court of justice, which in turn determines whether the wanted person should be extradited. The first is essentially an executive determination, while the second is a judicial process.

The main issue in this novel extradition case was as follows: During the evaluation stage undertaken by the executive department, was Mark Jimenez, the prospective extraditee, entitled to be given copies of the extradition documents sent by the US government to our foreign affairs secretary? In other words, was he entitled to the due process rights of notice and hearing during the preliminary or evaluation phase of an extradition proceeding?

On January 18, 2000, by a vote of nine to six, the Supreme Court, in a 40-page decision penned by Justice Jose A. R. Melo,[67] answered the question in the affirmative,[68] on the main theory that an extradition proceeding placed the respondent in jeopardy of losing his liberty. Justice Puno's dissent, which began with a brief review of the history of extradition, urged a "balancing approach" between our international obligations and our Constitution and thereafter argued that Jimenez had not proven his entitlement to due process. He said that, in balancing clashing interests, national interest was "more equal than others." He contended that an extradition proceeding was *sui generis* and not comparable to a criminal proceeding.

My own dissent explained that under the peculiar factual milieu, Jimenez was not in danger of being deprived of "his life, liberty, or property," because the US government had not requested his arrest during the preliminary stage and was thus in no need of due process protection.

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[67] Concurring with Justice Melo were Justices Bellosillo, Vitug, Kapunan, Quisumbing, Purisima, Buena, Santiago, and De Leon. Dissenting were Chief Justice Davide and Justices Puno, Mendoza, Panganiban, Pardo, and Reyes, with Justices Puno and Panganiban writing separate dissents.

[68] These were the reasons given: (1) the initial evaluation process "may result in the deprivation of liberty of the prospective extraditee;" (2) the "evaluation procedure is akin to a preliminary investigation since both procedures may have the same result – the arrest and imprisonment of the respondent x x x;" (3) the "basic rights to notice and hearing" are granted the respondent; (4) Jimenez was entitled to the constitutional right to information; (5) the Philippine Extradition Treaty with the United States and the Philippine Extradition Law did not preclude the "twin due process rights of notice and hearing;" and (6) the grant of such rights "will not violate international law."

Besides, such evaluation stage was executive in nature, not adjudicative or judicial. It is only after the charges are filed in court that Jimenez would be in jeopardy of arrest and detention; hence, it is only then that his due process rights would become available.[69]

On October 17, 2000, the Court, acting on the motion for reconsideration filed by the Secretary of Justice, reversed itself. It now held, by an identical vote of nine to six, that Jimenez was indeed not entitled to the due process rights of notice and hearing during the preliminary or evaluation stage. The reversal was made possible by the change of vote of Justices Quisumbing, Purisima, and De Leon.

The Right to Privacy

Another interesting constitutional paradigm recently upheld by the Court was the right to privacy. *Ople v. Torres*[70] ruled that Administrative Order No. 308, which established a "National Computerized Identification Reference System" or a national ID card, was void because of the following reasons:

> 1. It "involve[d] a subject that [was] not appropriate to be covered by [a mere] administrative order," but by a law enacted by Congress.
>
> 2. In any event, it placed "the right to privacy in clear and present danger."71 By providing for a Population Reference No. (PRN), this presidential issuance opened to government scrutiny the citizens' "physiological and behavioral characteristics" and generated "a comprehensive cradle-to-grave dossier on an individual and transmitted it over a national [computer] network." It "pressured the people to surrender their privacy by giving information about themselves on the pretext that it [would] facilitate the delivery of basic services."

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[69] *See* Jorge Coquia, *On Implementation of the US-RP Extradition Treaty*, LAW. REV. 4-7, (2000), where Dr. Coquia wrote a critique of this decision.

[70] G.R. No. 127685, July 23, 1998, 293 SCRA 141.

[71] While the voting on the *ponencia* was eight in favor (Justices Regalado, Davide, Jr., Romero, Bellosillo, Puno, Vitug, Panganiban, and Martinez) to six against (Chief Justice Narvasa, Justices Melo, Kapunan, Mendoza, Quisumbing, and Purisima), only four (Justices Romero, Bellosillo, Puno, and Martinez) gave their unqualified concurrences. Justice Regalado simply concurred "in the result." Chief Justice Davide joined my separate opinion that the petition should be granted only on the ground that a legislative enactment, not merely an administrative order, was needed. Justice Vitug said that "it was indispensable and appropriate to have the matter specifically addressed by Congress." Bottom line: The ruling on the violation of the right to privacy was not clear-cut.

New Controversies in Political Law

Let me now discuss how the Court resolved cyber problems in political law, starting with recent decisions on citizenship.[72] I remember former Court of Appeals Justice Delfin Fl. Batacan, my political law professor in law school more than forty years ago, who stressed that the doors to Philippine citizenship must open on "reluctant hinges."

Citizenship

Recent technological advances in transportation and communications, however, have made the world one global village. Thus, the rules on citizenship in most countries are slowly being relaxed, especially as they apply to election cases in which the popular will, as much as practicable, is upheld. Thus, in *Frivaldo v. Comelec*,[73] the Court ruled that petitioner, who had been declared to be a non-Filipino by two earlier Supreme Court decisions,[74] was validly repatriated when he took his oath of allegiance on June 30, 1995, pursuant to Presidential Decree No. 725. Equally important, the Tribunal decreed that possession of Philippine citizenship was needed only upon assumption of office of an elected official, not necessarily on the day of the election or at the time of the filing of the certificate of candidacy.[75]

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[72] In *Board of Commissioners v. Dela Rosa*, G.R. Nos. 95122-23 and 95612-13, May 31, 1991, 197 SCRA 853, the Court by a close vote of eight (Justices Gutierrez, Gancayco, Sarmiento, Bidin, Griño-Aquino, and Medialdea; with Chief Justice Fernan and Justice Narvasa concurring only in the result) to seven (Justices Melencio-Herrera, Cruz, Paras, Padilla, Regalado, Feliciano, who wrote the main dissent, and Davide, with a separate concurring and dissenting opinion) may have uncomfortably loosened up the requirements to prove Philippine citizenship. It belabored doctrines on *res judicata*, prescription, and factual assessments to rule in favor of William Gatchalian's Philippine citizenship.

[73] G.R. Nos. 120295 and 123755, June 28, 1996, 257 SCRA 727.

[74] Frivaldo v. Comelec, G.R. No. 87193, June 23, 1989, 174 SCRA 245, and Republic v. Dela Rosa, G.R. Nos. 104654, 105715, and 105735, June 6, 1994, 232 SCRA 785.

[75] In reply to the dissent of then Justice, now Chief Justice, Hilario G. Davide Jr. railing against the Court's too liberal interpretation of election laws, my *ponencia* stated in part:

> At balance, the question really boils down to a choice of philosophy and perception of how to interpret and apply laws relating to elections: literal or liberal, the letter or the spirit, the naked provision or its ultimate purpose, legal syllogism or substantial justice, in isolation or in the context of social conditions, harshly against or gently in favor of the voters' obvious choice. In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms. Indeed, to inflict a thrice rejected candidate upon the electorate of Sorsogon would constitute unmitigated judicial tyranny and an unacceptable assault upon this Court's conscience.

More recently, *Mercado v. Comelec*[76] unanimously validated dual citizenship. It taught that Filipinos would not lose their nationality by the mere fact that, without their application or intervention, the laws of another country consider them its own nationals. The Court differentiated dual allegiance, which is proscribed, from dual citizenship, which is allowed. It explained that dual citizenship "arises when, as a result of the concurrent application of different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* and born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states."

Automated Elections

Let me turn your attention to an even more interesting topic: Elections. More precisely, the counting of automated ballots – something novel in the Philippines.

The last presidential election in the United States, characterized as the "closest" in history, was finally decided in favor of George W. Bush when the US Supreme Court disauthorized a manual count of automated ballots in the State of Florida. A number of issues[77] were decided in that celebrated case, *Bush v. Gore*,[78] but what is probably of immediate interest to us is the ruling that "the use of standardless manual recounts violates the equal protection clause."

Florida voters indicated their choice of candidates through "ballot cards designed to be perforated by a stylus but which either through error or deliberate omission, have not been perforated for a machine to count them. In some cases a piece of the card – a chad – is hanging say by two corners. In other cases there is no separation at all, just an indentation." Because the voters did not write the names of their chosen candidates, the US Court held that it was extremely difficult to determine the "intent of the voter in the absence of specific standards to ensure [the clause's] equal application."[79]

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[76] G.R. No. 135083, May 26, 1999, 307 SCRA 630.

[77] There was a "tangle of six different majority, concurring, and dissenting opinions." *See* TIME MAGAZINE, December 25, 2000, at 30.

[78] No. 00-949, December 12, 2000.

[79] *Id.* Ruled the US Court:

> The law does not refrain from searching for the intent of the actor in a multitude of circumstances; and in some cases the general command to ascertain intent is not susceptible to

We faced a similar problem two years ago in *Loong v. Comelec*,[80] in which the Philippine Supreme Court, as distinguished from its US counterpart, validated the manual recount of automated ballots cast during the gubernatorial race in Sulu province. Please note that Republic Act No. 8436 had mandated an automated election in the Autonomous Region in Muslim Mindanao (ARMM) during the 1998 elections.

After the balloting had taken place, the COMELEC stopped the ongoing automated count in response to a complaint that three ballots in one precinct in the Municipality of Pata in Sulu were not reflected in the machine count for the mayoralty post. Without much ado and admittedly without any express statutory authority, the COMELEC, despite its own resolution to conduct simultaneous automated and manual counts of all the ballots in the province, actually made only a manual tabulation and, on this basis, proclaimed Abdusakur Tan as the provincial governor of Sulu. The Supreme Court upheld the COMELEC and ruled in favor of the manual count. There were several issues raised and I will not have time to discuss all of them today.[81] May I just say that the bottom line of my

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much further refinement. In this instance, however, the question is not whether to believe a witness *but how to interpret the marks or holes or scratches on an inanimate object, a piece of cardboard or paper which, it is said, might not have registered as a vote during the machine count. The fact finder confronts a thing, not a person. The search for intent can be confined by specific rules designed to ensure uniform treatment.* (emphasis supplied)

[80] G.R. No. 133676, April 14, 1999, 305 SCRA 832.

[81] The Court upheld the manual count for the following reasons:

1. Since the automated machine "failed to read correctly the ballots in the Municipality of Pata" and since the "machines rejected and would not count the local ballots" in four other towns due to printing errors in the local ballots, 'it is plain that to continue with the automated count in these five (5) municipalities would result in a grossly erroneous count.'"

2. These failures of automated counting created post election tension in Sulu. Its aftermath could have been a bloodbath. The COMELEC avoided this imminent probability by ordering a manual count of votes. It would be the height of irony if the Court condemns the COMELEC for aborting violence in the Sulu elections.

3. Petitioner Loong and intervenor Jikiri were not denied due process, because "they were given every opportunity to oppose the manual count of the local ballots in Sulu."

4. The evidence is clear that the integrity of the local ballots was safeguarded when they were transferred front Sulu to Manila and when they were manually counted.

5. The evidence also reveals that the result of the manual count was reliable. When the COMELEC ordered a manual count of the votes, it issued special rules as the counting involved a different kind of ballot, albeit, more simple ballots.

6. Because the errors in counting "were not machine related," it was "inutile for the COMELEC to use other machines to count the local votes in Sulu."

7. Since Rep. Act No. 8436 did not provide a remedy for errors that were not machine-related, the COMELEC cannot be prevented "from levitating above the problem," since said law "did not prohibit manual counting when machine count did not work."

8. A special election cannot be ordered because there was no failure of election, as defined in section 6 of the Omnibus Election Code. "The grounds for failure of election – force *majeure*, terrorism, fraud, or other analogous causes – clearly involve questions of fact"

dissent[82] was that automated ballots cast during an automated election could not be counted manually with the use of the rules governing the appreciation of manual ballots ordained by the Omnibus Election Code.[83]

Although new in our country, automated elections are prevalent in the US. In this light, *Bush v. Gore*, even if ordained by a closely-divided US Court, could influence our own Tribunal's ruling next time a similar case is brought for review.

Initiative and Referendum

Let me now discuss new jurisprudence on the "people power" provisions of our Constitution; namely, (1) initiative and referendum, (2) recall, and (3) the party-list system.

Article VI, section 32 of the 1987 Constitution mandated Congress to "provide for a system of initiative and referendum." Accordingly, the latter

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that are beyond the Supreme Court's province. Besides, to hold a special election for the position of governor only "will be discriminatory and will violate the right of private respondent to equal protection of the law" inasmuch as the candidates for other positions (vice-governor, congressman, mayor, etc.) will not be subject to this special election.

9. The Court should decide this case "in cadence with the movement towards empowering the COMELEC in order that it can more effectively perform its duty of safeguarding the sanctity of our elections."

[82] My dissent held that the COMELEC gravely abused its discretion basically in the following:

1. In peremptorily stopping the ongoing automated counting of ballots in the Municipality of Pata and in the entire Province of Sulu, on the flimsy ground that three ballots for a mayoralty candidate in said municipality were not tallied by the counting machine assigned to the town.

2. In changing the venue and the mode of counting from automated to manual, due to alleged imminent danger of violence.

3. In violating its own resolution ordering both an automated count and a parallel manual count by actually holding only a manual count, without giving any reason for completely abandoning the automated system which was already 65 percent complete in the entire province.

4. In counting and appreciating the automated ballots with the use of the rules peculiar to manual elections, not to the automated election system; that is, in manually tallying the ballots differently from how the automated machines would have counted them, thus ending up with manually appreciated results that substantially differed from the machine-generated ones.

5. In issuing, without due process of law, its assailed minute resolutions relating to the change in the manner and the venue of counting.

[83] For an extended discussion, *see* ARTEMIO V. PANGANIBAN, LEADERSHIP BY EXAMPLE 193-249 (1999).

enacted Republic Act No. 6735 in 1989 to institutionalize this species of people power.[84]

In *Garcia v. Comelec*,[85] the Court said that municipal resolutions, not just ordinances, were proper subjects of local initiatives. *Subic Bay Metropolitan Authority v. Comelec*[86] differentiated "initiative" from "referendum" and barred the COMELEC from changing the "substance or the content of local legislation" while conducting an initiative.

The highly controversial *Santiago v. Comelec*[87] held, by a vote of eight to five, that Republic Act No. 6735, the law regulating the people's right of initiative, was "inadequate to cover the system of initiative on amendments to the Constitution and to... provide sufficient standard for subordinate legislation." Speaking through then Associate Justice Davide, the Court prohibited the Commission on Elections and Jesus Delfin from conducting a people's initiative to amend the Constitution, an amendment that would have enabled an incumbent President to run for reelection.

At six to six, the razor-thin vote denied the motion for reconsideration, with two justices[88] inhibiting themselves and another[89] maintaining "that the matter [was] not ripe for judicial adjudication." This outcome did not stop the People's Initiative for Reform, Modernization and Action or PIRMA, led by Alberto and Carmen Pedrosa, from pursuing the people's constitutional right to propose amendments to the Constitution.

On June 23, 1997, PIRMA filed a new petition before the COMELEC. It was accompanied by nearly six million signatures to show compliance with the constitutional requirement that at least twelve percent of all registered voters

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[84]For various theories on people power *vis-a-vis* government power, *see* Bayani D. B. Ponce, *Panimulang Tingin sa Batas ng Karapatang Magpatiuna at Karapatang Magreferendum*, 65 PHIL. L.J. 162 (1990).

[85] G.R. No. 111230, September 30, 1994, 237 SCRA 279.

[86] G.R. No. 125416, September 26, 1996, 262 SCRA 492.

[87] G.R. No. 127325, March 19, 1997, 270 SCRA 106 and Resolution dated June 10, 1997. Written by then Justice, now Chief Justice, Davide, it was concurred in by Chief Justice Narvasa and Justices Regalado, Romero, Bellosillo, Kapunan, Hermosisima, and Torres. Dissenting were Justices Melo, Puno, Mendoza, Francisco, and Panganiban. Justice Padilla took no part and Justice Vitug wrote a separate opinion to "grant the petition." The motion for reconsideration was denied by a vote of six (Chief Justice Narvasa and Justices Regalado, Davide, Romero, Bellosillo, and Kapunan) to six (Justices Melo, Puno, Mendoza, Francisco, Herosisima, and Panganiban). Justice Padilla was on sick leave, Justice Torres inhibited himself, while Justice Vitug maintained his opinion that it is "not ripe for judicial adjudication."

[88] Justices Padilla and Torres.

[89] Justice Vitug.

nationwide, with at least three percent in each legislative district, must initiate a petition to amend the Constitution. However, on July 8, 1997, the COMELEC dismissed the petition "in accordance with the permanent restraining order of the Honorable Supreme Court" earlier issued in *Santiago*.

Acting on the Petition for Certiorari in *PIRMA v. Comelec*,[90] the Supreme Court, in an, extended unsigned resolution, ruled "first, by unanimous vote, that no grave abuse of discretion could be attributed to public respondent COMELEC in dismissing the petition filed by PIRMA." Regarding its ruling that Republic Act 6735 was insufficient for a national initiative to amend the Constitution, seven members[91] of the Court voted that there was no need for a reexamination of this issue. An eighth[92] member agreed with them because "the case at bar [was] not the proper vehicle for that purpose." Five[93] saw the need for such reexamination. This vote, close as it may have been, finally and definitively wrote *finis* to the effort to amend the Constitution through people's initiative.[94]

Recall of Elective Public Officials

Akin to initiative and referendum as a species of people power is the process of recall, a new method that enables the electorate, directly or through the Preparatory Recall Assembly, to remove an elected official on the ground of loss of confidence. In several cases, the Court has ruled thus:

> 1. The issue of whether notices of the meeting of the Preparatory Recall Assembly in Caloocan City had properly been served was factual in nature; and thus, the COMELEC's finding on this point was conclusive.[95]
>
> 2. No recall election of local officials could be held one year before the next regular election of local officials – not of national officials or of the *Sangguniang Kabataan*.[96]
>
> 3. The petition for recall must be initiated by at least 25 percent of the registered voters, not by one voter only, with the COMELEC setting a date for the signing of the petition for the purpose of completing the 25 percent requirement.97

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[90] G.R. No. 129754, September 23, 1997.

[91] Chief Justice Narvasa and Justices Regalado, Davide, Romero, Bellosillo, Kapunan, and Torres.

[92] Justice Vitug.

[93] Justices Melo, Puno, Francisco, Hermosisima, and Panganiban. Justice Mendoza was abroad.

[94] *See* ARTEMIO V. PANGANIBAN, BATTLES IN THE SUPREME COURT 45-57 (1998), for a fun discussion. *See, also,* Raul C. Pangalangan, *Republicanism and its Political Seasons: The Javellana, Freedom Constitution, and PIRMA Cases*, 72 PHIL. L.J. 195 (1997).

[95] Malonzo v. COMELEC, G.R. No. 127066, March 11, 1997, 269 SCRA 380.

[96] Paras v. COMELEC, G.R. No. 123169, November 4, 1996, 264 SCRA 49.

[97] Angobung v. COMELEC, G.R. No. 126576, March 5, 1997, 269 SCRA 245.

> 4. The term "recall," as used in section 74 of the Local Government Code, which states that "[n]o recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election," should be interpreted to refer to the recall election, not to the recall process. Thus, the convening of the PRA in Pasay City and the gathering of the signatures of 25 percent of the voters could be done within this one-year period.[98]

Party-List System of Representative Democracy

Another novel and interesting people power feature introduced by the 1987 Constitution was the party-list system of representations.[99] To implement the constitutional mandate, Republic Act No. 7941 was enacted by Congress.[100] Under this system, a voter is in effect given two votes for the House of Representatives: One to elect a district congressman; the other, a party-list representative.

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[98] Claudio v. COMELEC, G.R. Nos. 140560 and 140714, May 4, 2000. *See*, however, Justice Puno's dissenting opinion. The Court voted eight to six on this issue.

[99] CONST., art. VI, sec. 5, introduced the party-list system of representation in our country, as follows:

> Sec. 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected by a party-list system of registered national, regional, and sectoral parties or organizations.
>
> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

[100] Acting on its mandate to "provide by law" the "selection or election" of party-list solons, Congress enacted Rep. Act No. 7941 (1995) which prescribed, among others, the entitlement to a party-list seat, in this wise:

> Sec. 11. Number of Party-List Representatives. - The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.
>
> For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled, to participate in the party-list system.
>
> In determining the allocation of seats for the second vote, the following procedure shall be observed:
>
> (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each; Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes; Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

In *Veterans Federation Party v. Comelec*,[101] the Court ruled that the Constitution and Republic Act No. 7941 prescribed four parameters that must be observed to determine the winners in the Filipino party-list system. These were:

> *First*, the twenty percent allocation – the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.
>
> *Second*, the two percent threshold – only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives.
>
> *Third*, the three-seat limit – each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.
>
> *Fourth*, proportional representation – the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."

In the 1998 elections, the Commission on Elections did not follow these parameters, particularly the two percent threshold. It proclaimed 39 political parties as winners despite their failure to gather at least two percent of the total valid votes cast for the party-list system during the 1998 elections. Thus, the Court invalidated the assailed COMELEC resolution.[102]

While the Court was unanimous in reversing the COMELEC, it was divided on how to determine the winners in a party-list election. More pointedly, it was divided on how to convert the four parameters, which I mentioned earlier, into a mathematical formula.[103]

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[101] G.R. Nos. 136781, 136786, and 136795, October 6, 2000.

[102] Reasoned the Court:

> The poll body is mandated to enforce and administer election-related laws. It has no power to contravene or amend them. Neither does it have authority to decide the wisdom, propriety or rationality of the acts of Congress.
>
> x x x
>
> Indeed, the function of the Supreme Court, as well as of all judicial and quasi-judicial agencies, is to apply the law as we find it, not to reinvent or second-guess it. Unless declared unconstitutional, ineffective, insufficient, or otherwise void by the proper tribunal, a statute remains a valid command of sovereignty that must be respected and obeyed at all times. This is the essence of the rule of law.

[103] Twelve justices supported my *ponencia* in this case: Chief Justice Davide and Justices Bellosillo, Melo, Puno, Vitug, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and de Leon. Justice Puno wrote a separate concurring opinion, while Justices Bellosillo, Melo, and Vitug concurred in the result.

For lack of time, I will not be able to take up the detailed mathematical discussion which occupied the Court's attention. Suffice it to say that the formula used by the majority was "homegrown" in the sense that it was original, and it was conceived so that all of the four parameters were meticulously observed. The decision, which I had the privilege of writing, observed: "The Philippine style party-list system is a unique paradigm which demands an equally unique formula."

This formula is expressed in a complex fraction as follows:

$$\text{Additional seats for concerned party} = \frac{\dfrac{\text{No. of votes of concerned party}}{\text{Total no. of votes for party-list system}}}{\text{No. of votes of first party}} \times \text{No. of additional seats allocated to the first party}$$

$$\frac{\text{Total no. of votes for party list system}}{}$$

In its simplified form, it is written as follows:

$$\text{Additional seats for concerned party} = \frac{\text{No. of votes of concerned party}}{\text{No. of votes of first party}} \times \text{No. of additional seats allocated to the first party}$$

The majority rejected the so-called Niemeyer formula used in the German *Bundestag* preferred by the dissenters. Said the Court:

> The Niemeyer formula, while no doubt suitable for Germany, finds no application in the Philippine setting, because of our three-seat limit and the non-mandatory character of the twenty percent allocation. True, both our Congress and the Bundestag have threshold requirements – two percent for us and five for them. There are marked differences between the two models, however. As ably pointed out by private respondents,104 one half of the German Parliament is filled up by party-list members. More important, there are no seat limitations, because German law discourages the proliferation of small parties. In contrast, RA 7941, as already mentioned, imposes a three-

[104] In faimess, the Group of 38 explains these differences in the context of its concluding plea to dilute the 2 percent threshold. See Memorandum for private respondents, at 44-46.

> seat limit to encourage the promotion of the multiparty system. This major statutory difference makes the Niemeyer formula inapplicable to the Philippines."
>
> Just as one cannot grow Washington apples in the Philippines or Guimaras mangoes in the Arctic because of fundamental environmental differences, neither can the Niemeyer formula be transplanted in toto here because of essential variances between the two party-list models.

Protection of the Environment

Another constitutional paradigm, one that could even qualify as an ideology[105] of the new age, is the protection of the environment. As early as 1993, then Associate Justice Hilario G. Davide Jr. stressed in *Oposa v. Factoran*[106] the constitutional right to a balanced and healthful ecology,[107] which carried with it "the correlative duty to refrain from impairing the environment." Accordingly, timber licenses, not being property or property rights protected by the due process clause, may be revoked or rescinded by executive action. Similarly, in *Tano v. Socrates*,[108] the Court, also speaking through Justice Davide, upheld the City of

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[105] Environmentalism is probably the single genuinely Western ideological creation of the last 150 years. Indeed, the environmentalist ethic and its vision of the human future run against the grain of dime centuries of Western political thinking." *See* BERNARD SUSSER, POLITICAL IDEOLOGY IN THE MODERN WORLD 253-255 (1999).

[106] G.R. No. 136781, July 30, 1993, 224 SCRA 792.

[107] *See* CONST., art II, sec. 16.

[108] G.R. No. 110249, August 21, 1997, 278 SCRA 154. Dissecting the minutiae of marine life in order to point out the evils of cyanide fishing, Justice Davide wrote:

> The destruction of coral reefs results in serious, if not irreparable, ecological imbalance, for coral reefs are among nature's life-support systems. They collect, retain, and recycle nutrients for adjacent nearshore areas such as mangroves, seagrass beds, and reef flats; provide food for marine plants and animals; and serve as a protective shelter for aquatic organisms. It is said that [e]cologically, "the reefs are to the oceans what forests are to continents: They are shelter and breeding grounds for fish and plant species that will disappear without them."
>
> The prohibition against catching live fish stems, in part, from the modem phenomenon of live-fish trade which entails the catching of so called exotic species of tropical fish, not only for aquarium use in the West, but also for "the market for live banquet fish [which] is virtually insatiable in ever more affluent Asia." These exotic species are coral-dwellers, and fishermen catch them by "diving in shallow water with corraline habitats and squirting sodium cyanide poison at passing fish directly or onto coral crevices; once affected the fish are immobilized [merely stunned] and then scooped by hand." The diver then surfaces and dumps his catch into a submerged net attached to the skiff. Twenty minutes later, the fish can swim normally. Back on shore, they are placed in holding pens, and within a few weeks, they expel the cyanide from their system and are ready to be hatched. They are then placed in saltwater tanks or packaged in plastic bags filled with seawater for shipment by airfreight to major markets for live food fish. While the fish are meant

Puerto Princesa and the Province of Palawan's ordinances that had been issued to protect the environment. It emphasized the duty of the State "to protect the nation's marine wealth" by upholding local measures "imposing appropriate penalties for acts which endanger the environment, such as dynamite fishing..."[109]

The Court's Role in People Power II

A discussion of new paradigms in political law will not be complete without taking up the Court's and, in particular, the Chief Justice's participation in the recent People Power phenomenon. While this matter is still *sub judice* because there are petitions pending in the Court as of the time of the composition of this lecture, a few factual matters stand out.

First, on the morning of January 20, 2001, Vice-President Gloria Macapagal-Arroyo requested the Chief Justice that she be sworn in as President of the Republic of the Philippines. This was followed by a letter dated January 20, 2001 addressed to the Court requesting the same matter.

Second, heeding her request, the Chief Justice actually swore her in as President of the country at 12:29 p.m. on January 20, 2001 at the EDSA Shrine, Quezon City.

Third, the Supreme Court, by a formal resolution in AM No. 01-05- SC dated January 22, 2001,[110] "[r]esolved unanimously to CONFIRM the authority

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to survive, the opposite holds true for their former home as "[a]fter the fisherman squirts the cyanide, the first thing to perish is the reef algae, on which fish feed. Days later, the living coral starts to expire. Soon the reef loses its function as habitat for the fish, which eat both the algae and invertebrates that cling to the coral. The reef becomes an underwater graveyard, its skeletal remains brittle, bleached of all color and vulnerable to erosion from the pounding of the waves." It has been found that cyanide fishing kills most hard and soft corals within three months of repeated application.

The nexus then between the activities barred by Ordinance No. 15-92 of the City of Puerto Princesa and the prohibited acts provided in Ordinance No. 2, Series of 1993 of the Province of Palawan, on one hand, and the use of sodium cyanide, on the other, is painfully obvious. In sum, the public purpose and reasonableness of the Ordinances may not then be controverted. (citations omitted)

[109] *See, also, Mustang Lumber v. Court of Appeals*, G.R. Nos.104988, 123784, and 106424, June 18, 1996, which ruled that the terms "timber x x x or other forest products" include lumber as a prohibited article under Pres. Decree No. 705 (1975).

[110] The Resolution in its entirety reads as follows:

22 January 2001

A.M. No. 01-1-05-SC - In *re*: Request of Vice President Gloria Macapagal-Arroyo to take her Oath of Office as President of the Republic of the Philippines before the Chief Justice. Acting on the urgent request of Vice President Gloria

given by the twelve (12) members of the Court then present to the Chief Justice on January 20, 2001 to administer the oath of office to Vice President Gloria Macapagal-Arroyo as President of the Philippines at noon of January 20, 2001."

Fourth, in the same resolution, the Court expressed its openness to the "disposition of any justiciable case which may be filed by a proper party" in connection with the aforesaid oath-taking.

Fifth, on February 6, 2001, the Court dismissed four Petitions questioning President Arroyo's oath-taking, because they did not present justiciable controversies filed by the proper parties.[111] In one other petition, filed on February 5, 2001 and entitled *Estrada v. Desierto et al.*, the Court required the respondents to comment and set the case for oral argument on February 15, 2001.

I know that the foregoing statements of the Court's involvement in EDSA II leave many questions of many people unanswered. But in view of the petition still pending in the Court, I cannot offer any comment or opinion without risking a violation of the *sub judice* rule. At some future time, when the "justiciable" cases are terminated, it may be appropriate to revisit this interesting topic.

New Developments in Medical Malpractice Cases

Finally, let me now add one more new paradigm in this country. In the United States and other economically developed countries, success in medical malpractice suits are common.[112] But in the Philippines, they are of recent

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> Macapagal-Arroyo to be sworn in as President of the Republic of the Philippines, addressed to the Chief Justice and confirmed by a letter to the Court, dated January 20, 2001, which request was treated as an administrative matter, the Court Resolved unanimously to CONFIRM the authority given by the twelve (12) members of the Court then present to the Chief Justice on January 20, 2001 to administer the oath of office to Vice President Gloria Macapagal-Arroyo as President of the Philippines, at noon of January 20, 2001.
>
> This resolution is without prejudice to the disposition of any justiciable case which may be filed by a proper party.

[111] Soriano v. Estrada, G.R. Nos. 146528, 146549, 146,579, 146631, February 6, 2001. Also on February 6, 2001, the Court received another petition docketed as G.R. No. 146738, *Estrada.v. Macapagal-Arroyo.*

[112] *See* Ramos v. Court of Appeals, G.R. No. 124354, December 29, 1999. The following is an excerpt from this case:

> In the United States alone, a great number of people die every year as a result of medical mishaps. The 13 December 1999 issue of TIME MAGAZINE featured an article on medical negligence entitled "Doctors' Deadly Mistakes" which is quoted in part: "It is hardly news that medical professionals make mistakes – even dumb, deadly

vintage, because physicians have been reticent in testifying against their brethren in the profession. But the 1996 case *Batiquin v. Court of Appeals*[113] blazed jurisprudential trails in finding an obstetrician liable for damages for having left a piece of rubber material inside the uterus of a patient on whom she had performed a Caesarian operation. The judgment was supported by the testimony of Dr. Ma. Salud Kho, who had found what appeared to be the remnant of a surgical glove inside the woman's womb.

On December 29, 1999, another medical malpractice landmark, *Ramos v. Court of Appeals*,[114] was promulgated. In this case, the Court, through Justice Kapunan, ordered a surgeon, an anesthesiologist and a hospital to pay "(1) Pl,352,000 actual damages plus P8,000 monthly up to the time the patient expires or miraculously survives; (2) P2,000,000 as moral damages; (3) PI,500,000 as temperate damages; (4) P100,000 each as exemplary damages and attorney's fees and, (5) costs of the suit." Through the testimony of a nurse and a physician, the

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mistakes. What is shocking is how often it happens. Depending on which statistics you believe, the number of Americans killed by medical screw-ups is somewhere between 44,000 and 98,000 every year – the eighth leading cause of death even by the more conservative figure, ahead of car crashes, breast cancer, and AIDS. More astonishing than the huge numbers themselves, though, is the fact that public health officials had known about the problem for years and hadn't made a concerted effort to do something about it."

[113] G.R. No. 118231, July 5, 1996, 258 SCRA 334. Writing for the Court, then Justice, now Chief Justice, Davide wrote:

> Throughout history, patients have consigned their fates and lives to the skill of their doctors. For a breach of this trust, men have been quick to demand retribution. Some 4,000 years ago, the Code of Hammurabi then already provided: "If a physician make a deep incision upon a man with his bronze lancet and cause the man's death, or operate on the eye socket of a man with his bronze lancet and destroy the man's eyes, they shall cut off his hand." Subsequently, Hippocrates wrote what was to become part of the healer's oath: "I will follow that method of treatment which according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous x x x While I continue to keep this oath unviolated may it be granted me to enjoy life and practice the art, respected by all men at all times but should I trespass and violate this oath, may the reverse be my lot." At present, the primary objective of the medical profession is the preservation of life and maintenance of the health of the people.
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> Needless to say then, when a physician strays from his sacred duty and endangers in- stead the life of his patient, he must be made to answer therefor. Although society today cannot and will not tolerate the punishment meted out by the ancients, neither will it and this Court, as this case would show, let the act go uncondemned.

[114] G.R. No. 124354, December 29, 1999, 320 SCRA 584.

plaintiffs were able to prove that the patient became comatose because of "faulty management" of the anesthesia phase.[115]

In both *Batiquin* and *Ramos*, the Court used the principle of *res ipsa loquitur* ("the thing or the transaction speaks for itself") in finding a presumption of negligence on the part of the defendants. For this principle to apply, the following requisites must be shown:

> 1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
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> 2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
>
> 3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

Under this doctrine, expert medical testimony may be dispensed with, "because the injury itself provides the proof of negligence. Ordinarily, only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. However, testimony as to the statements and acts of physicians and surgeons, external appearances, and manifest conditions which are observable by any one may be given by non-expert witnesses."[116] Hence, in cases where *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient,[117] without the aid of expert testimony, where

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[115] *Garcia Rueda v. Pascasio*, G.R. No. 118141, September 5, 1997, 278 SCRA 769, 772 held that "in order to successfully pursue a [medical malpractice case], a patient must prove that a health care provider, in most cases a physician, either failed to do something that a reasonably prudent provider would have done, or that he or she did something that a reasonably prudent provider would not have done, and that that failure or action caused injury to the patient. Hence, there are four elements involved in medical negligence cases: duty, breach, injury, and proximate causations."

[116] Ramos v. Court of Appeals, G.R. No. 124354, December 29, 1999, 320 SCRA 584.

[117] *See* Cruz v. Court of Appeals, G.R. No. 122445, November 18, 1997, 282 SCRA 188, 200, where it was held that

> Whether or not a physician has committed an "inexcusable lack of precaution" in the treatment of his patients is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science.

the court from its fund of common knowledge can determine the proper standard of care."[118]

EPILOGUE

In closing, let me now summarize.

1. In the profession of law and in the magistracy, a combination of general education and specialized knowledge is essential. In fact, I believe that in no other profession is this more critical. Lawyers and magistrates must not only be experts in the law and its myriad twists and turns, but must also have a well-rounded knowledge of history, literature, philosophy, and the humanities in general; psychology, sociology and other social sciences; ethics; mathematics; information technology; and economics, medicine, biogenics, physics, and other natural sciences.

2. In the e-age, there is an unmistakable shift of power from the state to the private sector. This is very evident in the new global paradigms of globalization, deregulation, liberalization and privatization. And even on the national level, the deranging of centralized state control is manifest in the clamor for more political and fiscal autonomy for local government units. Bottom line: In the 21st century, the role of the state will be reduced.

3. Following the collapse of totalitarianism and colonialism and the victory of freedom worldwide, the focus of the new economy, the cyber age, and the technological revolution is the individual person and whatever exalts individual dignity, liberty, and rights.

4. The Philippines, its judicial branch especially, has been able to meet the challenges of new modes of free expression like exit polls; the loosening of citizenship rules; the advances in people power as expressed in the systems of initiative, referendum, recall, the party-list method of representation and, most recently, the EDSA II People Power paradigm; and the advances in science and medicine.

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[118] The Supreme Court justified the use of this old doctrine of *res ipsa loquitur* in this medical malpractice case because the damage to the patient's brain was caused by the improper administration of anesthesia, and not a consequence of the *cholecystectomy*, which had actually not been performed, because she was brought "out of the operating room already decerebrate and totally incapacitated." Obviously, the brain damage was not sustained during the gall bladder operation, but because of the wrong anesthetic procedure used. Since she was unconscious and totally dependent on her doctors, the patient could not have been guilty of contributory negligence.

I respectfully submit, however, that in two major areas, namely, the death penalty and due process for our workers, the Supreme Court has yet to catch up with the cyber age. It has ignored the international trend to abolish the death penalty. And by ruling that due process is available only against the government and not against private power, it has turned a blind eye to the fact that, under the policy of globalization and deregulation, the role of the state has been reduced and some of its powers ceded to "market forces" that transcend boundaries and sovereignties. Hence, corporate behemoths and private individuals may now be sources of abuses and threats to constitutional rights.

Having said that, I am still happy and satisfied that, at bottom, the Philippine Supreme Court has been able to meet satisfactorily the challenges of the Third Millennium through the use of old but reliable doctrines. And above that, for all the criticisms leveled against it, our 1987 Constitution has proven to be a beacon of light and a rock of stability in the maelstrom of political, social, and economic storms that have lashed our country.

I end this lecture with a paean to our Constitution, as I quote from my *ponencia* in *Tañada v. Angara:*

> Constitutions are designed to meet not only the vagaries of contemporary events. They should be interpreted to cover even future and unknown circumstances. It is to the credit of its drafters that a Constitution can withstand the assaults of bigots and infidels but at the same time bend with the refreshing winds of change necessitated by unfolding events.

I thank you.

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