

FOREWORD

SISYPHUS' LAMENT, PART V: REINVIGORATING THE *PHILIPPINE LAW JOURNAL* AS THE CRUCIBLE OF LEGAL WRITING *

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"[A]dministering a law journal is like dancing on the edge of a knife. On one hand, a student editor cannot allow the institution to lose its moorings to tradition and lose itself in the tides of time. On the other, he must nevertheless heed the call of impatient, hot-blooded youth and constantly incorporate new ideas and technologies. To paraphrase Dean Roscoe Pound, the JOURNAL must remain stable, but it cannot stand still."

—Oscar Franklin Tan, "Sisyphus' Lament, Part I"

"There are two things wrong with almost all legal writing. One is its style. The other is its content." —Fred Rodell, "Goodbye to Law Reviews"

INTRODUCTION

Nothing could possibly have prepared me for chairmanship of the *PHILIPPINE LAW JOURNAL*. The incomparable bliss soon gave way to harsh reality and the sensation of a great weight settling itself upon my shoulders. Oscar Franklin Tan described this same sensation in 2004:

[T]he incumbent *PHILIPPINE LAW JOURNAL* Chair felt rather incompetent when he first stepped into the Justice Alex Reyes Room,

* *Sisyphus' Lament* was a series of essays written by Oscar Franklin Tan that serve both as a chronicle of his term as Chair of Volume 79 and as instructional tools for future editors, including *Oscar's Little Black Book*, the JOURNAL's citation manual (Oscar Franklin Tan, Foreword, *Sisyphus' Lament, Part III: Citation and the Little Black Book*, 79 PHIL. L.J. 547, append. I (2004)). Cite as Juan Paolo Fajardo, Foreword, *Sisyphus' Lament, Part V: Reinvigorating the Philippine Law Journal as the Crucible of Legal Writing*, 83 PHIL. L.J. 5, (page cited) (2008).

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The author wishes to thank the following professors who encouraged me to pursue the art and craft of legal writing: Dean Raul C. Pangalangan, Dean Marvic MVF Leonen, Jesus M. Disini, Associate Dean Patricia S. Daway, and Rafael Morales, Francis Jardeleza, and the rest of the UP College of Law Class of 1974, whose undying support ensures that the JOURNAL and legal writing in the College will remain forever vibrant.

¹ Oscar Franklin Tan, Foreword, *Sisyphus' Lament, Part I: The Nest Ninety Years and the Transcendence of Legal Writing*, 79 PHIL. L.J. 7, 12-13 (2004), citing Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 475 (1897); ROSCOE POUND, INTERPRETATIONS OF LEGAL HISTORY 1 (1923).

² Oscar Franklin Tan, Foreword, *Sisyphus' Lament, Part IV: Style and the Seduction of the Supreme Court*, 79 PHIL. L.J. 876, 876 (2004), quoting Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936).

opened the first envelope addressed to him, and read the words “Justice Vicente V. Mendoza” on the stationery.³

I began my relationship with my jealous mistress as a freshman intern under the now legendary Chair Tan.⁴ My load only weighs heavier when I realize that it is the same once borne by a great mentor who finished his issues in four months, set the university record of eight Best Paper prizes then delivered the 2007 graduation speech at Harvard Law School. I painstakingly checked the footnotes of hundred-page articles, checked individual words for precision beyond accuracy, bordered on harassing authors via phone and e-mail, and jealously nursed each issue from the time the materials are gathered until the issue is printed and released for distribution.⁵ I remain awestruck by how a student board can bear almost 95 years of tradition and authors of peerless caliber on its largely inexperienced shoulders.⁶ Nevertheless, it is not enough to simply release our required four issues nor to implement the usual cosmetic improvements.

The Journal must represent a more profound tradition of excellence.⁷ I recall how my mentor articulated a threefold vision:

- 1) “handmaiden of jurisprudence ... the academe’s monitor and critic regarding the evolution of the Supreme Court’s doctrine”;⁸
- 2) “vehicle for education, one that stimulates both the academe and the profession”;⁹ and
- 3) “[venue for] the [broader] education of the select few chosen as student editors”.¹⁰

³ Oscar Franklin Tan, Foreword, *Sisyphus’ Lament, Part II: Editing, or the Student’s Art of Not Being One’s Own Worst Enemy*, 79 PHIL. L.J. 233, 235 (2004).

⁴ That first batch of PHILIPPINE LAW JOURNAL interns, in addition to myself, was composed of Leandro Angelo Aguirre (Chair, Vol. 81), Bryan Dennis Tiojanco (Editor, Vol. 80, 82), Mark Parcia (Editor, Vol. 81), Gerard Joseph Jumamil (Editor, Vol. 82) Nestor Molina, Janice Lee, Melissa Telan, Josh Trocino, William Varias and Arthur Alicer.

⁵ Irene Cortes, *Legal Education in the Philippines: The Role of the Philippine Law Journal in the 1990’s*, 65 PHIL. L.J. 1, 1 (1990).

⁶ For discussions of why the legal profession in particular has students administer its academic journals, see Tan, *Sisyphus’ Lament, Part II*, *supra* note 2; Richard Posner, *The Future of Student-Edited Law Review*, 47 STAN. L. REV. 1131 (1995).

⁷ Cortes, *supra* note 5, at 2.

⁸ Tan, *Sisyphus’ Lament, Part I*, *supra* note 1, at 7. Oscar Franklin Tan surveyed the Supreme Court’s citations of the PHILIPPINE LAW JOURNAL from 1991 to 2003 and counted 23 in this period, although these were mostly “appended to a historical or technical point in a preliminary discussion, or suggested for further reference.” *Id.* at 10. In comparison, the Court made 21 *Harvard Law Review* citations in the same period.

⁹ *Id.* at 12.

These remain challenges that the present Editorial Board must meet head on. In this spirit, I hope to continue *Sisyphus' Lament*.¹¹

FURTHER DIRECTIONS FOR THE PHILIPPINE LAW JOURNAL

My mentor, for all his artful prose, outlined highly practical initiatives such as more focused article solicitation, closer editor-author ties, more efficient administration and harnessing visual media.¹² The present Board seeks to build on past boards' contributions and explore new directions.

A. CATALYST FOR SOCIAL RESPONSIBILITY IN THE PROFESSION

In the JOURNAL's 95th year and the University of the Philippines' centennial, beyond being a "handmaiden of jurisprudence,"¹³ this Board seeks to revisit the JOURNAL's role as "a vehicle for education"¹⁴ and to constantly emphasize its context within the state university of a developing democracy. Ideas must give meaning to action and the JOURNAL must actively give voice to advocates in issues such as indigenous peoples rights, social welfare legislation, reproductive health laws and judicial integrity.

I need look no further than my predecessors. Chair Tan, beyond writing extensively on judicial review and human rights,¹⁵ wrote on harnessing intellectual property law to protect developing countries' biodiversity rights, the underlying social justice thrust in interpreting the Securities Regulation Code and mathematical arguments for filling all party-list seats.¹⁶ My co-intern Chair Leandro Angelo Aguirre wrote on legal ethics

¹⁰ *Id.*

¹¹ The title arose from a private joke between Dean Pacifico Agabin and Chair Tan. "Sisyphus is the epitome of hopeless labor, condemned to forever roll a boulder up a slope only to see it rush back down each time. No one else truly understood why I chose this cryptic mythological reference to depict the JOURNAL Chair's lot." Tan, *Sisyphus' Lament*, Part IV, *supra* note 2, at 885. Tan's greatest fear was that a less dedicated Chair interested primarily in a resume entry might soon allow the boulder to quickly roll back down, a sentiment that cast a mighty shadow on the chairman of Volume 80.

¹² Tan, *Sisyphus' Lament*, Part I, *supra* note 1, at 17.

¹³ *Id.* at 7.

¹⁴ *Id.* at 12.

¹⁵ E.g., Oscar Franklin Tan, *Articulating the Complete Philippine Right to Privacy in Constitutional and Civil Law; A Tribute to Chief Justice Fernando and Justice Carpio*, 82(4) PHIL. L.J. 78 (2008) (Volume 82 was erroneously paginated; this article appeared in Issue 4); Oscar Franklin Tan, *The 2004 Canvass: It is Emphatically the Province and Duty of Congress to Say What Congress is*, 79 PHIL. L.J. 38 (2004) (Justice Irene R. Cortes Prize for Best Paper in Constitutional Law, 2005); Oscar Franklin Tan, *Marriage Through Another Lens: Weighing the Validity of Same-Sex Marriages By Applying Arguments to Bisexuals and Transsexuals*, 81 PHIL. L.J. 789 (2006).

¹⁶ Oscar Franklin Tan, *The Mandatory Disclosure Requirement as a Third World TRIPS Riposte: Recognizing Traditional Knowledge, Prior Art, and the Lockean Ideal*, 79 Phil. L.J. 457 (2004) (Esteban B. Bautista Prize for Best Paper in Intellectual Property Law, 2005); Oscar Franklin Tan, *Mandatory Tender Offers as a Tool for the*

issues in corporate law alongside Joe Concepcion, founder of the ACCRALAW litigation department and himself a former JOURNAL Chair, who discussed these issues in a large firm context.¹⁷ These readily illustrate how perceived commercial-oriented fields are equally venues for intellectual advocacy. The JOURNAL must thus constantly remind the profession that the notion of service underlies the practice of law in its myriad aspects.¹⁸

B. NURTURING A POOL OF LEGAL WRITERS AND FUTURE EDITORS

The third role in *Sisyphus' Lament, Part I*, to serve as a venue for student editors' expanded education, is no less important and is intertwined with the broader goal of inspiring excellence in legal writing among the studentry. The JOURNAL must step beyond its already lofty pedagogical duty in classroom learning.¹⁹ It remains rare to see the likes of sophomore Marcelino Veloso III, who wrote a legal paper in his free time and bested seniors enrolled in Supervised Legal Research classes to win the 2008 Araceli T. Baviera Prize for Best in Civil Law.²⁰

The present Board has thus institutionalized the PHILIPPINE LAW JOURNAL Internship Program. This has been formalized in three ways: first, it has the Dean's full support; second, it is open to any UP Law student; and third, the final list of volunteers has the Board's *imprimatur*.²¹ This is an immensely positive development, as Chair Tan was restricted by his faculty

Democratization of Wealth: Articulating the SEC's Broad Precedent in Nat'l Life Ins. Co. v. Cemco Holdings, Inc., 80 PHIL. L.J. 479 (2006) (First awardee, Gonzalo T. Santos Prize for Best Paper in Securities Law, 2005); Oscar Franklin Tan, *The Party-List System Revisited: Uncovering Hidden Pitfalls in Present Reform Proposals*, 82(3) PHIL. L.J. 181, (page cited) (2008); Oscar Franklin Tan, *The Philippine Party-List Experiment: A Tragedy of Flawed Mathematics and Policy*, 78 PHIL. L.J. 735 (2004) (First Awardee, Justice Vicente V. Mendoza Prize for Best Critical Analysis of a Supreme Court Decision, 2005).

¹⁷ Leandro Angelo Aguirre, *From Courtroom to Boardroom: Evolving Conflict of Interest Rules to Govern the Corporate Practice of Law*, 81 PHIL. L.J. 291 (2006); Jose C. Concepcion, *Ethics and Excellence for Young Lawyers in Institutional Law Firms*, 81 PHIL. L.J. 221 (2006).

¹⁸ Cueto v. Jimenez, A.C. No. 5798, 449 SCRA 87, 92, Jan. 20, 2005.

¹⁹ Cortes, *supra* note 5, at 2.

²⁰ Marcelino Veloso III, *Virtual Property Rights: A Modified Usufruct of Intangibles*, 82 Phil. L.J. 37 (2008). This feat was previously accomplished only by Oscar Franklin Tan as a freshman, as a sophomore and as a junior, and by Mark Dennis Joven as a sophomore. Oscar Franklin Tan, *Touch Me Not: Expanding Constitutional Frameworks to Challenge LTO-Required and Other Mandatory Drug Testing*, 76 PHIL. L.J. 620 (2002) (First freshman awardee, Justice Irene R. Cortes Prize for Best Paper in Constitutional Law, 2002); Mark Dennis Joven, *Taxation of Business Profits Under the Philippine Tax Code and Tax Treaties*, 78 PHIL. L.J. 627 (2003); Oscar Franklin Tan, *The International Shoe Still Fits the Virtual Foot: A Due Process Framework for Philippine Internet Personal Jurisdiction Problems*, 79 PHIL. L.J. 1029 (2005) (First awardee, Professor Bienvenido C. Ambion Prize for Best Paper in Private International Law, 2004). Both went on to attend Harvard Law School.

²¹ After rigorous selection, the following comprise the JOURNAL's second batch of interns: Patricia Hernandez, Alain Baguisi, Mary Rhauline Lambino, Karl Landoy, Daniel Luis Convocar, Jo Blanca Labay, Michelle Sabitsana, Patrick Guidote, Donald Segui, Darwin Angeles, Jilliane de Dumo and Francis Baclay.

adviser's refusal to support the first batch of interns, for fear that they would hold themselves out as editors after graduation.

"[A]rticle deliberations actually consume a very small fraction of the total time expended. Far more time is spent ... [on] source checking and formatting. ... [Interns] deload the editors and give the latter more time to review articles and do background research."²² Further, interns provide manpower for administrative tasks and projects, which I feel can be made as significant as the four issues each year. For example, my first batch of interns helped organize the JOURNAL's 2004 Supreme Court Term Review, an unprecedented weeklong symposium where I witnessed an impromptu debate between Dean Pacifico Agabin and Justice Vicente V. Mendoza on the language of *Agabon v. National Labor Relations Commisison*,²³ Professor Araceli Baviera entering the classroom of Professor Eduardo Labitag and telling the latter's students to attend her lecture in the auditorium instead and Court of Tax Appeals Presiding Justice answer highly technical questions of taxation law in rapid succession (including one from an actual trial judge hiding in the audience).

More importantly, however, the unprecedented hands-on training prepares interns for the annual JOURNAL exam. I say this as precisely a product of such training, along with Chair Aguirre. Hopefully, this obvious advantage attracts the most promising lowerclassmen into the pool and, in addition, encourages them to try earlier for a coveted Prize for Best Paper. These promising interns will ideally serve as the JOURNAL's bridge across time, ensuring continuity of the best Chairs' work culture and values.

C. THE PHILIPPINE LAW JOURNAL IN THE DIGITAL AGE

Led by Interns Rhauline Lambino, Patricia Hernandez, and Alain Baguisi, the JOURNAL has finally executed the PHILIPPINE LAW JOURNAL Digitalization Project, originally conceptualized by Justice Antonio Carpio in January 2005 in collaboration with then Dean Pangalangan and then Chair Tan. This project is crucial given how admittedly difficult it is to research JOURNAL articles compared to foreign journals digitized in the Westlaw database.

²² Tan, *Sisyphus' Lament, Part I*, *supra* note 1, at 16.

²³ G.R. No. 158693, 442 SCRA 573, Nov. 17, 2004 (regarding violation of statutory due process in dismissal of workers, overruling a previous decision penned by Justice Mendoza).

With the full support of Dean Leonen and the Supreme Court Library staff under Director Milagros Santos-Ong, the process of digitizing almost a hundred years' worth of JOURNAL articles has begun. These will eventually be featured in the Supreme Court E-Library and made accessible in the UP College of Law through an official PHILIPPINE LAW JOURNAL Website, a project also initiated by this Board. It is a dream come true, and I recall the frustration of gathering impossible seven-figure digitization quotes with Chair Aguirre in 2004, until Chair Tan spoke to Justice Carpio.

CONCLUSION

Oscar Franklin Tan outlined one transcendental vision as the JOURNAL's 90th Anniversary Chair: "to make the JOURNAL even more relevant and effective in the years to come."²⁴ He cited "the need to keep ties with tradition, and the need to innovate for the institution's growth."²⁵ Five years later, at its first dinner meeting, this Board aspires to take the same JOURNAL to even greater heights and fulfill each of its three roles. We resolve not to be content with merely releasing four issues (though this is in itself a formidable challenge and the bar is to release issues showcasing the next Irene Cortes, Jose B.L. Reyes or Antonio Carpio).²⁶ We hope to serve as catalysts of change, to be worthy of answering the clarion call to become not only legal theoreticians but also torchbearers of justice, and not only legal technicians but also trailblazers in every human endeavor.²⁷

When the environment to which a species has become adapted changes, the species must change, or eventually die out. The student-edited law review arose in and became adapted to one environment, that of law conceived as an autonomous discipline centered on the attainment of logical consistency of legal doctrine -- what Max Weber called formal rationality. The environment has changed. Preoccupation with the formal rationality of legal doctrine has given way, in the upper reaches of the legal academy at any rate, to preoccupation with the relation between those doctrines and the larger society that law is supposed to serve.²⁸

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²⁴ Tan, *Sisyphus' Lament, Part I*, *supra* note 1, at 17.

²⁵ *Id.*

²⁶ *Id.* at 12.

²⁷ Conchita Carpio Morales, *The Philippine Law Journal and the Centennial Year of the University of the Philippines*, 83 PHIL. L.J. 1, 4 (2008).

²⁸ Richard Posner, *The Future of the Student-edited Law Review*, 47 STAN. L. REV. 1131, 1138 (1995).