BREATHING NEW LIFE INTO THE "CRUEL, DEGRADING OR INHUMAN PUNISHMENT" CLAUSE: ENTERTAINING PRISON OVERCROWDING CASES IN THE PHILIPPINES*

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> *"Let us remember that even after conviction, the inmates retain basic rights that are protected by the Constitution. And the Constitution cannot be barred at the doors of our penitentiaries."*[1]
>
> — Chief Justice Reynato Puno

I. INTRODUCTION

> *The whole compound was a scene of one big congestion, made more repulsive by the fact that as one enters its steel gates which lead to the cell buildings, the smell of human flesh and perspiration owing to the congestion contaminates the air.*[2]
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> x x x
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> *There was hardly any space for anyone to move* [...] *A lot of prisoners had to sleep — if they sleep at all — on the cold cement floor. The whole cell itself is one big sleeping, dining, living, toilet and drainage room where some of the*

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[1] Reynato Puno, Speech delivered at the National Summit: Collaborative Partnership towards Enhancing the Dignity of Persons Deprived of Liberty (Nov. 16, 2010) *available at* http://www.bjmp.gov.ph/files/PDLs-chief%20justice%20puno.pdf.

[2] People v. De Los Santos, G.R. No. 19067, 14 SCRA 702 (1965).

> *inmates, finding no space, had to live, sleep and eat in the toilet and drainage rooms of the cell houses.*[3]

On July 30, 1965, the Supreme Court, in *People v. De Los Santos* took judicial notice, for the first time, of the "inhuman conditions then reigning in the [Philippine] penitentiary."[4] Although by way of *obiter*, it quoted the observations of the trial court judge,[5] recounting the realities with which the inmates inside the New Bilibid Prison had to live, describing them to be "subhuman and dantesque".[6]

On February 26, 1999, the U.S. State Department released a report describing in detail the conditions of correctional systems in the Philippines.[7] Essentially mirroring the account in *De Los Santos*, it described prison conditions as "harsh and life-threatening" and prisons as "overcrowded", "provid[ing] prisoners with an inadequate diet"[8] and even rousing their hostile behavior[9].

These characterizations of the New Bilibid Prison would later find their way immortalized in subsequent decisions[10] of the Court. More than half a century since *De Los Santos*, not only do these problems continue to plague prisons but they have also exponentially worsened. Within the last three years, prison population in the Philippines has experienced an alarmingly tremendous growth.

In its 2016 annual audit report, the Commission on Audit (COA) noted that "[t]he country's jails [we]re already overpopulated by 511% as the number of inmates ballooned to 126,946 as of the end of 2016 while the total ideal jail capacity remain[ed] at 20,746 inmates".[11] Conditions only worsened in 2017, with COA recording the congestion rate to have increased to a

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[3] *Id.* at 704.

[4] *Id.* at 712.

[5] *Id.* The trial court judge then assigned to the case was Justice Andres Reyes.

[6] *Id.* at 712.

[7] U.S. State Department, *Philippines Country Report on Human Rights Practices for 1998* (1999), *available at* https://1997-2001.state.gov/global/human_rights/1998_hrp_report/philippi.html (last accessed Dec. 2018).

[8] *Id.*

[9] *Id.*

[10] *See* People v. Simeon, G.R. No. 33730, 47 SCRA 129 (1972); People v. Dahil, G.R. No. 30271, 90 SCRA 553 (1979); People v. Melendres, G.R. No. 38095, 106 SCRA 575 (1981).

[11] Elizabeth Marcelo, *Philippine jails 511% congested, audit finds*, PHIL. STAR, June 16, 2017, *available at* https://www.philstar.com/headlines/2017/06/16/1710620/philippine-jails-511-congested-audit-finds.

staggering 612 %.[12]

Furthermore, the Philippine Center for Investigative Journalism ("PCIJ") reported that the Philippines has become the country with the most overcrowded prison facilities in the world, far ahead of Haiti at 302 percent, the second most crowded.[13]

Despite these glaringly disconcerting figures, President Rodrigo Duterte, in 2017, publicly expressed his satisfaction over such prison conditions, even applauding the Bureau of Jail Management and Penology (BJMP).[14] He remarked that although there was desire to improve jail conditions, budget constraints simply did not permit it.[15] This assertion was made notwithstanding the government's allocation of PHP 900 million as operating budget for the anti-drug campaign of the Philippine National Police that same year.[16]

The inability of the government to keep pace with this rapid growth or its indifference thereto aggravates the situation. The overcrowding in prison facilities all over the country has resulted to a host of related concerns. Due to a lack of space, detainees and veteran inmates alike are made to share the same cell.[17] Inmates die of simple and easy-to-treat diseases, because of lack of ventilation and access to medical care.[18] Thus, once the "guilty" verdict is rendered, it would seem that nary a second thought is given to what happens to the prisoner.

This Note presents a question that is not novel but is necessary. At what point do prison conditions cease to be permissible measures of correction and commence to take the form of a constitutional violation? Particularly, can overcrowding of a prison be deemed a violation of the prisoners' right against "cruel, degrading or inhuman punishment" embodied

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[12] *Id.*

[13] Raymund Narag, *State of the PH in 2018: Our jails are now world's most congested*, July 23, 2018, *available at* https://pcij.org/stories/ph-jails-detention-centers-now-worlds-most-congested/.

[14] *Duterte says satisfied with jail conditions,* ABS-CBN NEWS, Oct. 18, 2017, *available at* https://news.abs-cbn.com/news/10/18/17/duterte-says-satisfied-with-jail-conditions.

[15] *Id.*

[16] Kathrina Alvarez, *Drilon questions spending of P541M of drug war budget for 'supplies'*, GMA News, Nov. 16, 2017, *available at* https: // www. gmanetwork.com/news/news/nation/633 466/drilon-questions-spending-of-p541m-of-drug-war-budget-for-supplies/story/.

[17] Richard Paddock, *Philippine Prison's Crushing Problem,* LA TIMES, June 6, 2005, *available at* https://www.latimes.com/archives/la-xpm-2005-jun-06-fg-jailkids6-story.html.

[18] Narag, *supra* note 13.

in the Constitution? Consequently, what remedies are available to prisoners who suffer from such violation?

II. SCOPE

The author's proposition is that under present conditions, inmates in most Philippine prisons suffer from a violation of their Constitutional right against "cruel, degrading or inhuman punishment", for which they should be afforded legal relief. This proposition is threshed out by addressing three salient questions.

First, does the "cruel, degrading or inhuman punishment" clause[19] in the 1987 Philippine Constitution apply to conditions of confinement? Accordingly, may a prisoner invoke this provision to assail his confinement in an overcrowded prison facility?

The author responds in the affirmative. The first section will demonstrate this position by discerning the constitutional meaning of the "cruel, degrading or inhuman punishment" clause within the framework outlined in *David v. Senate Electoral Tribunal*.[20] The discussion will entail three levels of textual analysis followed by contemporaneous construction. It begins by looking at the language of Section 19, Article III of the 1987 Constitution followed by tracing the historical evolution of the text and thereafter, by examining how the Court has interpreted the provision in jurisprudence. Finally, for contemporaneous construction, records of the deliberations of the 1986 Constitutional Commission will be perused.

Second, when is a prison considered so overcrowded as to violate the Constitutional prohibition against "cruel, degrading or inhuman punishment?"

The discussion under this Section is premised on the fact that Section 19, Article III is an adaptation of the Eighth Amendment to the U.S.

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[19] CONST. art. III, § 19 states: "(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."

[20] David v. Senate Electoral Tribunal, G.R. No. 221538, 803 SCRA 435 (2016).

Constitution.[21] Thus, this Section outlines the standards that have been used by U.S. courts in evaluating prison overcrowding cases. It notes that the lack of uniformity in their standard of review has prompted inconsistent rulings for which reason there arises a need to create a clear standard applicable to the Philippines.[22] Thus, the adoption of a two-tiered analysis for prison overcrowding cases is proposed.

Third, what legal remedies are available to prisoners who suffer from such a violation?

This section proposes three legal remedies available to prisoners seeking to enforce their Constitutional right: (1) a petition for habeas corpus, (2) a tort action under Article 32 of the Civil Code, and (3) a petition for continuing mandamus.

The discussion will be limited to the constitutional violation against cruel, degrading or inhuman punishment premised exclusively on overcrowding. This is in view of the Philippines' status as having the most overcrowded prisons in the world.[23] Thus, the discussion will not delve into other deprivations possibly constituting a constitutional violation (i.e. lack of medical services, inadequate food supply, etc.). For this paper, the terms "prisoners" and "inmates" are used interchangeably to refer to persons under the custody of the Bureau of Corrections already serving sentence for a crime or felony for which he or she is convicted.

III. PRISON OVERCROWDING AS A UNIVERSAL CONCERN

Prison overcrowding, simply stated, is a situation in which the number of persons confined in a prison is greater than the capacity of the prison to provide adequately for their physical and psychological needs.[24] It is a concern shared by many countries becoming a feature of many systems of criminal justice around the world.[25]

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[21] *See* United States v. Borromeo, 23 Phil. 279 (1912).

[22] Eric Woodbury, *Prison Overcrowding and Rhodes v. Chapman: Double-Celling by What Standard?*, 23 B.C. L. REV. 757 (1982).

[23] World Prison Brief, *Highest to Lowest – Occupancy Level (based on official capacity), available at* http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All# tabletop (last accessed Dec. 13, 2018).

[24] CURT TAYLOR GRIFFITHS & DANIELLE MURDOCH, STRATEGIES AND BEST PRACTICES AGAINST OVERCROWDING IN CORRECTIONAL INSTITUTIONS 1 (2009).

[25] *Id.*

While prison overcrowding is a universal concern, the Philippines reportedly suffers from this condition the most. According to the World Prison Brief, of all the countries in the world, the Philippines ranks highest in terms of prison occupancy level.[26] The conditions in Philippine prisons are in fact so dreadful that for some inmates, "making the bed means mopping up sludgy puddles, unfolding a square of cardboard on the tile floor and lying down to sleep in a small, windowless bathroom, wedged in among six men and a toilet."[27]

The problem of overcrowding has, in fact, become so grave in the Philippines that the United Nations Subcommittee on Prevention of Torture, in 2015, called for the government's urgent action to address this concern so as "to protect people deprived of their liberty [PDL's] against torture and cruel, inhuman or degrading treatment."[28]

Prison overcrowding is a multifaceted issue; the circumstances of which vary across jurisdictions. However, most factors have been found to be largely influenced by the country's criminal justice system.[29]

For instance, long-drawn-out prosecutions have caused pre-trial detainees to remain locked up for at least a year while awaiting trial.[30] The "tough on crime" approach taken by most countries have also contributed to congestion by making certain crimes non-bailable or by imposing life imprisonment as penalty therefor.[31] Moreover, an absence of mechanisms to help released offenders successfully reintegrate into the community makes them more likely to return to prison.[32] This is aggravated further by the failure of authorities to construct prison facilities to match the rising number of those

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[26] World Prison Brief, *supra* note 23.

[27] Aurora Almendral, *Where 518 Inmates Sleep in Space for 170, and Gangs Hold It Together*, N.Y. TIMES (2019), *available at* https://www.nytimes.com/2019/01/07/world/asia/philippines-manila-jail -overcrowding.html (last accessed Dec. 13, 2018).

[28] United Nations Human Rights Office of the High Commissioner, *UN experts urge Philippines to tackle "chronic" prison overcrowding* (2015), *available at* https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16033& LangID=E (last accessed Dec. 13, 2018).

[29] NEIL MORGAN, OVERCROWDING: CAUSES, CONSEQUENCES AND REDUCTION STRATEGIES 52, *available at* https://www. unafei.or.jp/publications/pdf/RS_No80/No80_08VE_Morgan1.pdf (last accessed Dec. 14, 2018).

[30] Narag, *supra* note 13.

[31] GRIFFITHS & MURDOCH, *supra* note 24 at 18.

[32] *Id.* at 13.

incarcerated.[33]

A myriad of problems is also inextricably linked to prison overcrowding.[34] These problems significantly impact not only the prisoners but also the prison authorities and the community at large.

For prisoners, overcrowding undermines the ability of prison facilities to meet their basic needs, including healthcare, food, and accommodation.[35] It also increases their chances of violence, self-injury, and suicide.[36] Studies also found that overcrowding affects their mental and physical health "by increasing the level of uncertainty with which they regularly must cope."[37] Juveniles confined in prison facilities with adults run the added risk of sexual assault and exploitation.[38]

As for prison authorities, overcrowding hinders their ability for effective management. A disproportionate ratio between prison officers and inmates increases the risk of violence, creates unsafe working conditions, and leads to a high turnover of personnel.[39] More importantly, overcrowding places the community at an increased risk. By impeding access to treatment and vocational programs during confinement, prisoners are more likely to reoffend upon release.[40]

The problem of overcrowding is, for the most part, a matter of policy development and enforcement, thus, it is largely a concern of the legislative and executive branches of government. However, it is submitted that the judiciary also has a fundamental role, albeit passive, in addressing the problem of prison overcrowding and affording prisoners with appropriate relief. The Court may do so by construing the "cruel, degrading, or inhuman punishment" clause in the 1987 Constitution to embrace prison overcrowding within its ambit of protection.

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[33] *Id.*

[34] *Id.* at 24.

[35] Penal Reform International, *Prison overcrowding* (2007), *available at* http://www.penalreform.org/prison-overcrowding.html (last accessed Dec. 13, 2018).

[36] GRIFFITHS & MURDOCH, *supra* note 24 at 24, *citing* Frances Heidensohn and Martin Farrel, *Crime in Europe* (1991).

[37] Craig Haney, *The Wages of Prison overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions*, 22 J.L.& POL'Y 265–93 (2006).

[38] GRIFFITHS & MURDOCH, *supra* note 24 at 18.

[39] *Id.*

[40] Haney, *supra* note 37.

IV. CONSTITUTIONAL ANALYSIS OF THE "CRUEL, DEGRADING OR INHUMAN PUNISHMENT" CLAUSE

A. Text

In *David v. Senate Electoral Tribunal*, the Court, through Justice Marvic Mario Victor Leonen, explained that discerning the constitutional meaning of a provision begins with the text itself.[41] The language of such provision "is the principal source from which th[e] Court determines constitutional intent".[42] Consequently, words must be given their ordinary meaning, consistent with the "precept of *verba legis*."[43] Citing *Francisco v. House of Representatives*, it noted:

> *We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin.* It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. *They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails.* As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use [...][44]

At the heart of the discussion is Section 19, Article III of the 1987 Philippine Constitution. It provides:

> Section 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*

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[41] David v. Sen. Elect. Tribunal, G.R. No. 221538, 803 SCRA 435 (2016).

[42] *Id.* at 477, *citing* Ang Bagong Bayani–OFW Labor Party v. Comm'n on Elections, G.R. No. 147589, 359 SCRA 698 (2001).

[43] *Id., citing* Chavez v. Jud. & Bar Council, G.R. No. 202242, 696 SCRA 496 (2013) (Leonen, *J., dissenting*).

[44] *Id., citing* Francisco v. House of Representatives, G.R. No. 160261, 415 SCRA 44 (2003). (Emphasis supplied.)

law.[45]

Of particular interest is the phrase "*cruel, degrading or inhuman punishment*" as the substance of the provision is contained therein. While the infliction of cruel, degrading or inhuman punishment is categorically prohibited by the Constitution, "difficulty attends any effort to define with exactness the extent of the limitation imposed by this constitutional provision."[46]

"Cruelty" is understood to be the intentional and malicious infliction of physical suffering upon living creatures.[47] Particularly, it is thought to involve the wanton, malicious, and unnecessary infliction of pain *upon the body, or the feelings and emotions*.[48] On the other hand, the word "degrading" usually denotes a deprivation of dignity such that a person against whom a degrading act is made is held up to public obloquy[49]; it contemplates the lowering of that person in the estimation of the public.[50] Finally, the word "inhuman" is understood to be "brutally cruel or devoid of human compassion."[51] It is often said that inhumanity is "an extreme or aggravated cruelty."

The definitions of these three descriptors, as ordinarily understood, share a common tenor. For one, in qualifying what a punishment should be, they collectively suggest that what is "cruel, degrading or inhuman" must involve, on the part of the actor, some semblance of intent or consciousness that the act is so. Second, the contemporary understanding of these three qualifiers acknowledges that what may be "cruel, degrading or inhuman" does not always have to be physical; it also recognizes the emotional and psychological facets of a "cruel, degrading or inhuman" act.

To contextualize, we look at the word qualified: *punishment*. In criminal law, "punishment" is understood to mean "[a]ny pain, penalty, suffering, or confinement inflicted upon a person by authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for

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[45] CONST. art. III, § 19. (Emphasis supplied.)

[46] Voltaire Rosales, *Can Cruel and Unusual Punishment Exist by Reason of Subhuman Prison Conditions?*, 25 ATENEO L.J. 55 (1981).

[47] BLACK'S LAW DICTIONARY (8th ed., 2004), *citing* Cummings v. Missouri, 71 U.S. 277 (1867).

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

his omission of a duty enjoined by law".[52]

Reading the phrase in its entirety, therefore, suggests that while some form of deprivation or discomfort is necessarily involved in punishment, it should never rise to the level of cruelty, degradation or inhumanity. Stated differently, Section 19, Article III states that a punishment should never involve a conscious effort to inflict wanton pain and deprive a person of his dignity. This is grounded on the notion that "persons are sent to prison *as* punishment, not *for* punishment."[53]

That prison conditions are embraced in the Constitutional guarantee in Section 19, Article III is also but a logical conclusion from a plain reading of the provision. Paragraph 2 thereof specifically provides that *"the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."* The categorical inclusion of this phrase erases any doubt as to whether the provision's breadth extends to prison conditions or not. This is also consistent with the contemporary understanding of punishment earlier mentioned ("[a]ny pain, penalty, suffering, or *confinement*"). Therefore, it is but sound to also apply the same qualifiers, "cruel, degrading or inhuman" in determining whether prison conditions violate the constitutional provision.

At the outset, it appears that there is no need to delve further into contemporaneous construction or to peruse deliberations of the Constitutional Commission to arrive at the same conclusion. The wording of the provision is quite clear. In any case, this conclusion is bolstered by looking at the historical development of Section 19, Article III and by examining how it had been used in jurisprudence.

B. Historical Development

David elaborates that another level of textual analysis looks into how the text has evolved.[54] As Justice Leonen eloquently puts it:

> *Unless completely novel, legal provisions are the result of the re-adoption - often with accompanying re-calibration - of previously existing rules.* Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.

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[52] *Id., citing* Cummings v. Missouri, 71 U.S. 277 (1867).
[53] Battle v. Anderson, 564 F. 2d 388, 395 (10th Cir. 1977). (Emphasis supplied.)
[54] David v. Senate Electoral Tribunal, G.R. No. 221538, 803 SCRA 435 (2016).

> *One may trace the historical development of text by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos* or items in enumerations, *shifting terminologies*, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.[55]

Consistent with this approach, this section reviews the history of the "cruel, degrading, or inhuman punishment" clause in Section 19, Article III and concludes that the definition of "punishment" has actually evolved to encompass conditions of confinement.

As will be explained, Section 19, Article III is actually a reworded iteration of a similar clause found in both the 1973 and 1935 Philippine Constitutions.[56] In those versions, the provision still used the phrase "cruel and unusual punishment" which, accordingly, was based on the Eighth Amendment to the U.S. Constitution.[57] In turn, the Eighth Amendment was transposed from the English Bill of Rights of 1689 where the British refined and codified certain concepts that fell into antiquity, among them being primitive views on punishment.[58] Thus, examining how the provision was originally used in those foreign jurisdictions would furnish some guidance as to how it was intended to be applied.

1. Early Times

Early abstractions of punishment did not delve into the question of cruelty but rather of proportionality.[59] In the *Book of Exodus,* from the Old Testament of the Bible, Yahweh is said to have given Moses the order of *lex talionis*—an eye for an eye, a tooth for a tooth.[60] The *Book of Leviticus* repeats this command in a similar passage: "If a man injures his neighbor, what he has done must be done to him: broken limb for broken limb, eye for eye, tooth for tooth. As the injury inflicted, so must be the injury suffered."[61] Without question, *lex talionis* would be considered cruel by any modern standard. However, it was not deemed to be so then because it was

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[55] *Id.* at 480. (Citations omitted. Emphasis supplied.)

[56] I RECORD CONST. COMM'N, 707-708 (July 17, 1986).

[57] *See* United States v. Borromeo, 23 Phil. 279 (1912).

[58] *See* Anthony Granucci, *'Nor Cruel and Unusual Punishments Inflicted': The Original Meaning,* 57 CAL. L. REV. 844 (1969).

[59] *Id.* at 844.

[60] Exodus 21:25.

[61] Leviticus 24:19-20.

"proportional to the crime".

2. Proportional Punishment under Anglo-American Law

This idea of proportional punishment was eventually assimilated into the laws of the Anglos and the Saxons before the Norman Conquest.[62] Their laws codified certain beliefs that had fallen into antiquity, among them being the order of *lex talionis*. Hence, their penal laws contained a system of fixed penalties, with fines corresponding to an injury for every part of the human body.[63] Under these laws, *lex talionis* was codified:

> "For a wound in the head if both bones are pierced, 30 shillings shall be given to the injured man."
> "If the outer bone [only] is pierced, 15 shillings shall be given [...]"
> "If a wound an inch long is made under the hair, one shilling shall be paid [...]"
> "If an ear is cut off, 30 shillings shall be paid [...]"
> "If one knocks out another's eye, he shall pay 66 shillings, 6 1/3 pence [...]"
> "If the eye is still in the head but the injured man can see nothing with it, one-third of the payment shall be withheld [...]"[64]

After the Norman conquest of England in 1066, this system of penalties disappeared. The arbitrary fines imposed were replaced by a discretionary *amercement*,[65] a sum charged in punishment of some misdeed. This was supposed to be a voluntary offering made to the king to obtain his favor or escape his displeasure.[66] However, as the *amercement* was discretionary, it presented an opportunity for excessive and oppressive fines.[67]

The problem of excessive *amercements* became so prevalent that three chapters of the Magna Carta were devoted to its regulation.[68] For example, Chapter 14 of the Magna Carta provided:

> A free man shall not be amerced for a trivial offence, except in

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[62] Granucci, *supra* note 58, at 845.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *See* FREDERICK POLLOCK & FREDERIC MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD 449-62, 513-18 (2nd ed. 1898).
[67] Granucci, *supra* note 58 at 845.
[68] *Id.*

> accordance with the degree of the offence; and for a serious offence he shall be amerced according to its gravity, saving his livelihood; and a merchant likewise, saving his merchandise; in the same way a villein shall be amerced saving his wainage; if they fall into our mercy. And none of the aforesaid amercements shall be imposed except by the testimony of reputable men of the neighborhood.[69]

An order called the writ *de moderate misericordia* was subsequently created to enforce this provision by setting aside excessive fine.[70] A 14th century document later extended the rule on *amercements* to cover physical punishments.[71] It reads:

> We do not forbid that a person shall be condemned to death for a trifling offense. But for the correction of the multitude, extreme punishment shall be inflicted according to the nature and extent of the offense.

By the 1400s, it was already well-settled in England that punishment should be commensurate to the offense.[72] However, the penalties for serious offenses were still usually harsh as *lex talionis* authorized heinous punishment for heinous crimes.[73]

For instance, during the reign of King Henry VIII, an Act of Parliament authorized that a man be thrown into boiling water and boiled to death for poisoning the family of a Bishop.[74] In 1579, Queen Elizabeth had the right hands of John Stubbs, an author, and William Page, his printer, chopped off for a publication attacking her plans to marry a French nobleman.[75]

The first objection came at the end of the 16th century. In 1583, the Archbishop of Canterbury converted the High Commission into a permanent ecclesiastical court, which soon after resorted to torture to extract

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[69] *Id., citing* JAMES HOLT, MAGNA CARTA 323 (1965).

[70] *Id.* at 846.

[71] *Id., citing* BOYD BARRINGTON, THE MAGNA CARTA AND OTHER GREAT CHARTERS OF ENGLAND, 181, 199 (1900).

[72] *Id.*

[73] *Id.*

[74] Jacinto Jimenez, *The Cruel, the Degrading, and the Inhuman*, 32 ATENEO L.J. 19 (1988), citing State v. Williams, 77 Mo. 310, 312.

[75] *Id., citing* William Hughes Mulligan, *Cruel and Unusual Punishments: The Proportionality Rule*, 47 FORDHAM L.REV. 640 (1979).

confessions[76] Robert Beale, a member of the High Commission, resigned in protest over the use of such methods. He then published a manuscript, *A Book Against Oaths Ministered in the Courts of Ecclesiastical Commission,* condemning the use of torture.[77]

Beale's arguments were unique in that he condemned the use of torturous methods, even those authorized by royal prerogative. This was a significant development beyond other English jurists who would deny the existence of torture and yet would personally inflict it upon royal command. Beale is credited as the founder of the principle that cruel methods of punishment are unlawful.[78]

The reign of the Stuart kings early in the 17th Century was characterized by barbarous punishments. This ended only when James II fled to France. Following the Glorious Revolution, William of Orange then ascended to the English throne.[79] Under his reign, the Parliament adopted the English Bill of Rights of 1689, the tenth clause of which stated:

> That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.[80]

3. Codification in the Eighth Amendment to the U.S. Constitution

In May of 1776, a convention of delegates from Virginia was called to determine whether or not Virginia should declare its independence from the English crown.[81] This resulted to the passage of two resolutions: the first declaring the convention's answer in the affirmative and the second, creating a committee to draft a Declaration of Rights.[82] George Mason, a member of that committee, drafted such a bill, Section 9 of which provided a verbatim copy of the tenth clause of the English Bill of Rights of 1689.[83]

In 1787, the Constitutional Convention approved the United States

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[76] Granucci, *supra* note 58 at 848.

[77] *Id.*

[78] *Id.* at 849.

[79] *Id.* at 852.

[80] *Id., citing* RICHARD PERRY, SOURCES OF OUR LIBERTIES 247 (1959).

[81] *Id.* at 840.

[82] *Id.* at 839.

[83] *Id., citing* ROBERT ALLEN RUTLAND, THE BIRTH OF THE BILL OF RIGHTS 1776-1791 (1955).

Constitution. However, it did not contain a Bill of Rights, sparking a great deal of controversy. Hence, in 1789, Congress adopted the Bill of Rights by approving the first ten amendments, which was then ratified in 1971.[84] Particularly, the Eighth Amendment provides that, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted,"[85] a virtual reproduction of the tenth clause in the English Bill of Rights, with the substitution of "shall" for "ought".

4. Transposition and Modification in the Philippine Constitution

In the Philippines, the provision proscribing cruel and unusual punishment was first found in Section 5, Paragraph 10 of the Philippine Bill of 1902.[86] It said, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."[87]

The history behind the incorporation of this provision in the Philippine Bill of 1902 is aptly explained in *United States v. Borromeo*,[88] which accurately recounted the history of the provision as outlined above.

> The prohibition in the Philippine Bill against cruel and unusual punishments is an Anglo-Saxon safeguard against governmental oppression of the subject, which made its first appearance in the reign of William and Mary of England in "An Act declaring the rights and liberties of the subject and settling the succession of the crown," passed in the year 1689. It has been incorporated into the Constitution of the United States and into most of the constitutions or the various States in substantially the same language as that used in the original statute. The exact language of the Constitution of the United States is used in the Philippine Bill. It follows that punishments provided in legislation enacted by the former sovereign of these Islands must be considered according to the standard obtaining in the United States in order to determine whether they are cruel and unusual.[89]

When the 1935 Philippine Constitution was enacted, the same

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[84] Jimenez, *supra* note 74 at 24.

[85] U.S. CONST. amend. VIII.

[86] U.S. Pub. L. No. 57-235 (1902), § 5, ¶ 10. This is the Philippine Organic Act more commonly known as the Philippine Bill of 1902.

[87] Philippine Bill of 1902, § 5, ¶ 10.

[88] United States v. Borromeo, 23 Phil. 279 (1912).

[89] *Id.* at 285–86.

provision, though differently worded, was incorporated therein. Under Article III, outlining the Bill of Rights, Section 1, Paragraph 19 provided that "[e]xcessive fines shall not be imposed, nor cruel and unusual punishment inflicted.[90] A virtual reproduction was integrated in the 1973 Philippine Constitution.[91]

When the 1987 Constitution was drafted, the "cruel and unusual punishment" clause was retained. The Constitutional Commission, however, refined this prohibition by embracing degrading or inhuman punishment under its definition.[92] It was then worded in this manner:

> Section 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.[93]

Tracing the history of Section 19, Article III not only shows the lexical transformation of the provision but also reveals its colonial influence, it being an adaptation of both Anglo-American and American law. This lays the groundwork for the next section as it provides a rationale for the perusal of cases in those foreign jurisdictions to understand the provision's true breadth. Examining how the interpretation of the provision has evolved in their jurisprudence, at the very least, is helpful in guiding our Court as it undertakes to provide its own nuanced interpretation.

C. Jurisprudence

The third level of textual analysis as outlined in *David* looks into "jurisprudence that has previously considered that exact same text, if any."[94] The Court explained that while jurisprudence is not an independent source of

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[90] CONST. (1935), art. III, § 1, ¶ 19.

[91] CONST. (1973), art. IV, § 21, provides: "Section 21. Excessive fines shall not be imposed nor cruel or unusual punishment inflicted."

[92] I RECORD CONST. COMM'N, 707–08 (July 17, 1986).

[93] CONST. art. III, § 19.

[94] David v. Senate Electoral Tribunal, G.R. No. 221538, 803 SCRA 435 (2016).

law, judicial interpretation is nevertheless deemed written into the text itself as of the date it was originally passed.[95] This is so because "judicial construction articulates the contemporaneous intent that the text brings to effect."[96]

In the Philippines, however, the application of Section 19, Article III has not been fully explored. From a perusal of notable cases, one finds that the Philippine Supreme Court has only ever applied the "cruel, degrading or inhuman punishment" clause to penalties. On the other hand, the Eighth Amendment, from which it was based, has already been applied to conditions of confinement in the U.S.. To illustrate, we undertake a two-fold approach to this level of textual analysis. Here, we juxtapose the U.S. courts' application of the Eighth Amendment with how our own Supreme Court has applied Section 19, Article III.

1. Evolving Interpretations in U.S. Jurisprudence

The Eighth Amendment is worded in a proscriptive manner, limiting on moral grounds what the State may impose as punishment to convicted criminal offenders.[97] Although it prohibits cruel and *unusual* punishment, its proscriptive force is derived chiefly from its use of the word cruel.[98] In fact, Justice Marshall in his concurring opinion in *Furman v. Georgia* noted that "the use of the word 'unusual' in the English Bill of Rights in 1689 was inadvertent, and that there is nothing in the history of the Eighth Amendment to give flesh to its intended meaning."[99]

Thus, the early doctrinal application of the Eighth Amendment dealt with the question of "whether the State [wa]s justified in imposing the punishment or whether it would be *cruel* in light of the crime".[100] Later cases invoking the Eighth Amendment, however, went beyond a review of the constitutionality of sentences imposed by the State. It was later used to review

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[95] *Id.*

[96] *Id., citing* Senarillos v. Hermosisima, 100 Phil. 501, 504 (1956).

[97] Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment,* 84 N.Y.U.L. REV. 881, 883 (2009), *citing* Furman v. Georgia, 408 U.S. 238, 382 (1972) (Burger, *C.J., dissenting*). "The standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment."

[98] Trop v. Dulles, 356 U.S. 86, 100 (1958). "On the few occasions [the] Court has had to consider the meaning of the [Clause], precise distinctions between cruelty and unusualness do not seem to have been drawn."

[99] Furman v. Georgia, 408 U.S. 238, 331 (1972).

[100] Dolovich, *supra* note 97 at 881, 884, *citing* Harmelin v. Michigan, 501 U.S. 957, 1004-05 (1991) (Kennedy, *J., concurring*).

the manner by which the State executed an otherwise constitutional punishment.[101]

i. Protection against "inhumane,
barbarous and torturous punishments"

Originating from the English Declaration of Rights Act of 1689, American courts initially interpreted the amendment to prohibit only those punishments proscribed by the English Act.[102] Citizens therefore could not be subjected to "inhumane, barbarous and torturous" punishments that existed in Stuart England or were unknown at common law.[103]

This restrictive interpretation comported with the prevailing view in the U.S. then that prisoners possessed no justiciable rights. This was encapsulated in *Ruffin v. Commonwealth*,[104] which held that a prisoner "has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the state."[105]

As democracy flourished, the clause was thought to be obsolete.[106] It was outmoded by the civilized norms of American morality that prevailed at the turn of the twentieth century.[107] These norms influenced the kinds of punishments courts meted out, thereby eliminating the use of barbarous cruelties, and thus, the use for the Eighth Amendment.[108]

ii. Application to
Modern Punishments

In 1910, however, the U.S. Supreme Court breathed a renewed meaning into the Eighth Amendment. In *Weems v. United States*,[109] the Court

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[101] *See* Furman v. Georgia, 408 U.S. 238 (1972); Estelle v. Gamble, 429 U.S. 97 (1976); Laaman v. Helgemoe, 437 F. Supp. 269 (D.N.H. 1977); Rhodes v. Chapman, 452 U.S. 337 (1981).

[102] *See In re* Pinaire, 46 F. Supp. 113 (N.D. Tex. 1942).

[103] *Id.*

[104] 62 Va. 790 (1871).

[105] *Id.*

[106] *See* Weems v. United States, 217 U.S. 349 (1910).

[107] Woodbury, *supra* note 22, *citing* THOMAS COOLEY, A TREATISE ON CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE UNITED STATES OF THE AMERICAN UNION 694 (8th ed. 1927).

[108] *Id.*

[109] Weems v. United States, 217 U.S. 349, 371 (1910).

ruled that punishments chosen by the legislature could be just as cruel as those inflicted in Stuart England, though not physically barbarous. It was in this case that the court held that the scope of the clause "must evolve with enlightened public opinion to ensure a humane system of justice".[110]

The U.S. Supreme Court, in *Trop v. Dulles*, [111] made a similar interpretation. In that case, it declared that, "[t]he basic concept underlying the [E]ighth [A]mendment is nothing less than the dignity of man [...] the words of the Amendment are not precise and [...] their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[112]

iii. Hands-off Era

Notwithstanding the expanded scope given to the Eighth Amendment by the *Weems* and *Trop* rulings, there was still hesitation for U.S. courts to assume jurisdiction over petitions assailing prison conditions before the 1960's. This refusal was premised on the "hands-off" doctrine, which considered matters relating to supervision of internal prison affairs as beyond judicial competence.[113]

Generally, if a court adheres to the "hands-off" doctrine, the allegations contained in a prisoner's petition will not be examined, and as a result, no inquiry will be made to determine whether the asserted claims warrant relief.[114] Three related bases, appear to underlie this doctrine: (1) the principle of separation of powers,[115] (2) the lack of judicial expertise in the field of penology,[116] and (3) the fear that judicial review will interfere with the ability of prison officials to carry out the objectives of the penal system.[117]

The hands-off doctrine would continue to pervade U.S. courts many years later.

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[110] *Id.*

[111] Trop v. Dulles, 356 U.S. 86 (1958).

[112] *Id.*

[113] *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. (1963).

[114] *Id.*

[115] *See* Banning v. Looney, 213 F. 2d 771 (10th Cir.). "The Court does not have power to supervise prison administration or to interfere with prison rules."

[116] *See* Gilmore v. Lynch, 319 F. Supp. 105, 112 (N.D. Cal. 1970).

[117] *See* Johnson v. Avery, 393 U.S. 483 (1969).

In *Stroud v. Swope,*[118] in denying the inmate's petition for injunction against the warden, the Court held, "[w]e think it is well settled that it is not the function of the courts to superintend the treatment and discipline of persons in penitentiaries, but only to deliver from imprisonment those who are illegally confined"[119] as the rule otherwise would "open the door to a flood of applications from federal prisoners which would seriously hamper the administration of our prison system."[120]

The Court made a similar ruling in *Banning v. Looney.*[121] It held that, "[c]ourts are without power to supervise prison administration or to interfere with the ordinary prison rules or regulations. Neither [do they] have [...] power to inquire with respect to the prisoner's detention in [...][p]rison".[122]

In *Negrich v. Hohn,*[123] Robert Negrich, a convicted inmate, alleged that he was placed in a jail cell in isolation and had his privileges restricted by prison authorities after he was caught attempting to escape prison with five other inmates. He assailed these conditions as constituting cruel and unusual punishment. The U.S. Supreme Court however ruled that, "to be cruel and unusual punishment, it is first necessary that the hardship suffered be 'punishment'."[124] It continued by saying:

> Not every physical hardship or restraint suffered in the course of governmental activity is to be regarded as punishment. Otherwise much military training in the armed services, and even the space program, would be proscribed. Punishment is a penalty inflicted by a judicial tribunal in accordance with law in retribution for criminal conduct.[125]
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> * * *
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> We lay aside the allegations which relate to the plaintiff's confinement in a cell by himself and his restricted diet and privileges. *These are matters involving prison discipline. They are, moreover, amply justified as precautionary measures to be taken after the inmate's*

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[118] Stroud v. Swope, 187 F. 2d 850 (9th Cir. 1951).
[119] *Id.*
[120] *Id.*
[121] Banning v. Looney, 213 F. 2d 771 (10th Cir. 1954).
[122] *Id.*
[123] Negrich v. Hohn, 246 F. Supp. 173 (WD Pa. 1965).
[124] *Id.*
[125] *Id.*

> *participation in a jailbreak. Such issues do not present any questions as to constitutional rights subject to judicial supervision.*[126]

iv. Application of the
Eighth Amendment to Prison Conditions

The 1960s and the early 1970s proved to be a pivotal turning point for prisoners' rights. Propelled by the civil rights movement, the U.S. Supreme Court, led by then Chief Justice Earl Warren, expanded constitutional protections afforded to prisoners.[127] In fact, in his *ponencia* in *Wolff v. McDonnel*,[128] he asserted that, "[t]hough his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country."[129]

In *Cooper v. Pate*,[130] the U.S. Supreme Court unprecedentedly ruled that under the Civil Rights Act of 1871, prisoners could go to the courts to challenge the conditions of their imprisonment. Cases brought later came to be known as Section 1983 lawsuits because the Court had based itself on Section 1983 of Title 42 of the United States Code.[131]

The eighth amendment was first applied to the treatment of prisoners in *Estelle v. Gamble*.[132] Here, the petitioner alleged that the prison doctor deliberately refused to treat an injury he sustained while engaged in prison work. Although the Court found the evidence insufficient to prove the allegations, it ruled that deliberate refusal to provide medical service to prisoners constituted cruel and unusual punishment. This was the earliest case to extend the scope of the Eighth Amendment beyond the prison sentence.[133]

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[126] *Id.* (Emphasis supplied.)

[127] *See* Wolff v. McDonnell, 418 U.S. 539, 555 (1974).

[128] *Id.*

[129] *Id.* at 555–56.

[130] Cooper v. Pate, 378 U.S. 546 (1964).

[131] 42 U.S.C. 1983 states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[132] Estelle v. Gamble, 429 U.S. 97 (1976).

[133] *Id.*

In *Hutto v. Finney*,[134] the Supreme Court considered whether or not prison conditions could violate the Eighth Amendment and recognized that although individual conditions may not be a violation in itself, these conditions, cumulatively, could infringe on the prohibition against cruel and unusual punishment. For example, in *Hutto*, the Court found that all the conditions including more prisoners in isolation cells than beds, inmate violence and vandalism, the frequent use of nightsticks and mace by guards, and arbitrary length of isolation were a violation of the Eighth Amendment.

These are only some of the many cases that signified the eventual trend of the U.S. court's more radical interpretation of the eighth amendment. This allowed U.S. courts to provide specific reliefs to the prisoners.

v. Reliefs Granted

(a) Grant of transfer to another facility

Significant inroads have been made expanding the scope of a habeas corpus petition in the United States. In a host of decisions, U.S. courts have adhered to the view that habeas corpus is an available remedy for prisoners confined under conditions amounting to cruel and unusual punishment.[135] As Blackstone had phrased it, habeas corpus is "the great and efficacious writ, in all manners of illegal confinement."[136] The office of the writ is "to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints."[137]

In *Coffin v. Reichard*,[138] the writ of habeas corpus was granted where the remedy was not the release of the inmate but rather his transfer to another institution. This 1944 case exemplified a dramatic departure from the traditional limitations of the writ of habeas corpus as a remedy. Here, the U.S. Court of Appeals for the 6th Circuit adopted a broad construction of its statutory authority to use the writ "as law and justice require."

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[134] Hutto v. Finney, 437 U.S. 678 (1978).

[135] *See* Johnson v. Dye, 175 F. 2d 250 (3rd Cir. 1949); Coffin v. Reichard, 143 F. 2d 443 (6th Cir. 1944); Creek v. Stone, 379 F. 2d 106 (D.C. Cir. 1967).

[136] WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND: A FACSIMILE OF THE FIRST EDITION OF 1765-1769. (University of Chicago Press, 1979).

[137] Bryant v. Hendrick, 444 Pa. 83 (1971), *citing* Fay v. Noia, 372 U.S. 391, 401–02 (1963).

[138] Coffin v. Reichard, 143 F. 2d 443 (6th Cir. 1944).

In *Bryant v. Hendrick*,[139] the Pennsylvania Supreme Court made the most categorical declaration that "habeas corpus is available to secure relief from conditions constituting cruel and unusual punishment, even though the detention itself is legal."

Justice Michael J. Eagen, explained in that case that in many jurisdictions, the writ of habeas corpus functioned only to test the legality of one's commitment and detention; the manner of his treatment during confinement was not reviewable in such proceedings.[140] However, the U.S. Supreme Court has ruled, in many cases, that the use of the writ should not be restricted to a determination of the legality of one's detention but should also be utilized to secure relief from any restraint violating freedoms considered basic and fundamental.[141]

Citing *Harris v. Nelson*,[142] Justice Eagen continued:

> The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that `The Privilege of the Writ of Habeas Corpus shall not be suspended...' The scope and flexibility of the writ, its capacity to reach all manner *(sic)* of illegal detention, its ability to cut through barriers of form and procedural mazes have always been emphasized and jealously guarded by courts and lawmakers. *The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.*[143]

Finally, as eloquently worded by the U.S. Court, in *Peyton v. Rowe*, "[the writ of habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose: the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty."[144]

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[139] Bryant v. Hendrick, 444 Pa. 83 (Pa. 1971).

[140] Traditionally in Pennsylvania and in many other jurisdictions, the writ of habeas corpus has functioned only to test the legality of the petitioner's commitment and detention. It was long held that the manner of his treatment and disciplining during confinement was not reviewable in habeas corpus proceedings. *See* e.g. Commonwealth *ex rel.* Milewski v. Ashe, 362 Pa. 48, 66 A. 2d 281 (1949), and Commonwealth *ex rel.* Wright v. Banmiller, 195 Pa. Superior Ct. 124, 168 A. 2d 925 (1961).

[141] *See* Peyton v. Rowe, 391 U.S. 54, 88 S. Ct. 1549 (1968), Fay v. Noia, 372 U.S. 391, 83 S. Ct. 822 (1963).

[142] 394 U.S. 286, 89 S. Ct. 1082 (1969). (Emphasis supplied.)

[143] Bryant v. Hendrick, 444 Pa. 83 (Pa. 1971).

[144] 391 U.S. 54, 88 S. Ct. 1549 (1968).

(b) Damages and Injunctive Relief
under the Federal Civil Rights Act

Section 1983 of the U.S. Federal Civil Rights Act of 1871 allows persons who are deprived of certain rights to sue for civil damages or obtain injunctive relief in federal courts. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.[145]

The Act was originally intended to provide a private remedy for violations of federal law and has subsequently been interpreted to create a species of tort liability.[146] In several cases,[147] U.S. courts have held that an allegation of mistreatment by a prison official gives rise to a cause of action under Section 1983 of the Civil Rights Act.

(c) Reduction of Prison Population

In the 2011 decision of *Brown v. Plata*,[148] the U.S. Supreme Court made a historic directive for California to reduce its prison population from about 200% to 137.5% within two years. The Court noted that California's prisons were designed to house just under 80,000 but at the time of the decision, the population was almost double this figure.[149]

The case involves two consolidated class actions in two Federal District Courts. *Coleman v. Brown* involved the class of prisoners with serious mental disorders; *Plata v. Brown* involved prisoners with serious medical conditions.[150]

In *Coleman*, filed in 1990, the District Court ruled that prisoners with

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[145] 42 U.S.C. 1983.

[146] Memphis Community Sch. Dist. v. Stachura, 477 U.S. 299, 305 (1986).

[147] *Supra* note 113, *citing* Coleman v. Johnston, 247 F. 2d 273 (7th Cir, 1957); McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955); Gordon v. Garrson, 77 F. Supp. 477 (E.D. Ill. 1948), United States *ex rel.* Atterbury v. Ragen, 237 F. 2d 953 (7th Cir. 1956).

[148] Brown v. Plata, 563 U.S. 493 (2011).

[149] *Id.*

[150] *Id.*

serious mental illnesses did not receive minimal, adequate care, for which reason a Special Master was appointed by the district court to oversee remedial efforts.[151] However, it reported 12 years later that the state of mental health care in California's prisons was gravely deteriorating as a result of overcrowding.[152] On the other hand, in *Plata*, filed in 2001, the State conceded that deficiencies in prison medical care violated the prisoners' Eighth Amendment rights and stipulated a remedial injunction.[153] The State failed to comply with said injunction. Hence, the court appointed a Receiver to oversee remedial efforts. Three years later, the Receiver described continuing deficiencies caused by overcrowding which led the court to find that "the California prison medical care system is broken beyond repair."[154]

Believing that a remedy could not be achieved without addressing overcrowding, the *Coleman* and *Plata* plaintiffs, respectively, moved to convene a three-judge court to order reductions in the prison population. The judges in both actions granted the request, and the cases were consolidated before a single three-judge court.[155] After making findings of fact, the court ordered California to reduce its prison population to 137.5% of design capacity within two years.[156] Finding that the prison population would have to be reduced if capacity could not be increased through construction of new prisons, the court did not order the State to achieve this reduction in any particular manner.[157] Instead, the court ordered the State to formulate a plan for compliance and submit its plan for approval by the court.[158]

The Court, in affirming the decision of the three-judge court, concluded that no other relief would effectively remedy the situation. Because of the "political and fiscal reality behind the case, the majority was not persuaded that California would be able to follow through on alternative proposals involving the expenditure of state funds.[159] It likewise held that although the remedy might have the potential for adverse effects on public safety and might result in positive collateral effects for prisoners not part of the aggrieved class, the order was narrowly tailored and did not extend further than necessary.[160]

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[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*

2. Developments and Deficiencies in Philippine Jurisprudence

Despite the categorical directive of the 1987 Philippine Constitution against subjecting prisoners to subhuman prison conditions, it is surprising that not one case seeking to enforce this right has reached the Supreme Court. Philippine jurisprudence remains sparse on the subject and has furnished very little guidance.

i. The "cruel, inhuman and degrading punishment" clause in Philippine jurisprudence

United States v. Borromeo[161] was one of the earlier cases where the issue of cruel and unusual punishment was discussed. In this case, the Court had to decide whether the penalty of 20 years of *reclusion temporal* was cruel and unusual for being out of proportion to the crime of rape.[162] This assertion was based on the appellants' comparison of the crime of rape, for which they had been convicted, and the crime of illegal detention "committed under the pretense of the exercise of public authority, when serious physical injuries are inflicted on the detainee, or when threats are made against his life."[163] Appellants averred "that the physical anguish of a woman abducted against her will with unchaste designs cannot compare to the suffering of a person upon whom serious physical injuries are inflicted, or threats made against his life, while illegally detained."[164]

The Court explained that there were conflicting authorities as to what test to apply to determine whether a penalty violates the cruel and unusual punishment clause.[165] It noted that according to some authorities, the test was not the proportion between the offense and the punishment but the character of the punishment and its mode of infliction.[166] However, it likewise acknowledged authorities asserting that "severity in proportion to the offense" was the deciding factor.[167]

The Court seemed to agree with the latter position, later on citing U.S.

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[161] United States v. Borromeo, 23 Phil. 279 (1912).
[162] *Id.*
[163] *Id.* at 285, *citing* REV. PEN. CODE, art. 482.
[164] *Id.* at 290.
[165] *Id.*
[166] *Id.*
[167] *Id.* at 286.

cases that determined the constitutionality of penalties based on their proportionality to the offense. The prevailing doctrine established in these cases is that, "it is not within the province of the judiciary to declare a penalty fixed by the legislature for a particular crime to be too severe [–] *unless perhaps it be so disproportionate to the offense for which it is inflicted as to meet the disapproval and condemnation of the conscience and reason of men generally, "as to shock [the] moral sense of the people.*"[168] A similar rule also applied to excessive fines. In *McMahon v. State*, cited in *Borromeo*, the Vermont Supreme Court ruled that:

> The fixing of penalties for the violation of statutes is primarily a legislative function, and the courts hesitate to interfere, *unless the fine provided for is so far excessive as to shock the sense of mankind.*[169]

In view of these authorities, the Court ruled that while there is reluctance to interfere with the legislature in a matter where such a large measure of discretion is exercised, it may do so when "the punishment is so severe and out of proportion to the offense as to shock public sentiment and violate the judgment of reasonable people."[170]

In *People v. Estoista*,[171] the Court had to determine whether the penalty of "5 to 10 years of imprisonment and fines"[172] for illegal possession of firearm constituted cruel and unusual punishment. Justice Pedro Tuazon, in resolving the case, did not delve into the Constitutional intricacies of the provision. He qualified that the Court's ruling was not to settle whether the Constitutional prohibition applied both to the form of the penalty and duration of imprisonment.[173] He simply proceeded to rule that confinement from five to 10 years for possessing firearms was not cruel or unusual.[174] He supported this conclusion, not by going into the history of the provision but rather by discussing how possession of firearms was such a pervasive problem in the country.[175] Thus, despite the appellant's invocation of the cruel and

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[168] *Id.* at 287, *citing* People v. Oppenheimer, 156 Cal., 733 (1909); *See also* McDonald v. Commonwealth, 173 Mass. 322 (1898).

[169] *Id.* at 289, *citing* McMahon v. State, 70 Neb. 722 (1904). (Emphasis supplied.)

[170] *Id.* at 286.

[171] People v. Estoista, 93 Phil. 647 (1953).

[172] *Id.* at 650.

[173] *Id.*

[174] *Id.*

[175] *Id.* Justice Tuazon stated: "The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify imprisonment which in normal circumstances might appear excessive. If imprisonment from 5 to 10 years is out of proportion to the present case in view of certain circumstances, the law is not to be declared unconstitutional for this

unusual punishment clause, the Court sidestepped the issue and failed to provide guidelines as to how it should be construed.

It was only in the Court's Resolution [176] of the Motion for Reconsideration that it touched upon the "cruel and unusual punishment" clause. Although sustaining its previous ruling, the Court acknowledged that its earlier decision was in consideration of the appellant's "intention and the degree of his malice, rather than that it infringes the constitutional prohibition against the infliction of cruel and unusual punishment."[177] It reiterated the test mentioned in *Borromeo* with some modification in wording. It stated:

> It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. "The fact that the punishment authorized by the statute is severe does not make it cruel and unusual." (24 C.J.S., 1187-1188.) Expressed in other terms, it has been held that to come under the ban, the punishment *must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community."*[178]

This trend of using proportionality to determine whether a penalty constitutes cruel, degrading or inhuman punishment is found in many subsequent cases.[179] This consistent application would suggest that the Court has already resolved to apply this standard in determining questions pertaining to the constitutionality of a penalty. However, no similar standard is found for when the issue concerns the conditions of one's confinement. In fact, we see from the cases that the 'cruel, degrading or inhuman punishment' clause has only ever been applied to penalties. This observation is made even more apparent by a perusal of Philippine cases that mention subhuman prison conditions. In these cases, the Court describes in detail the conditions prevailing in our penitentiaries but skirts the constitutional issue involved altogether.

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reason. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases. Small transgressors for which the heavy net was not spread are like small fishes, bound to be caught, and it is to meet such a situation as this that courts are advised to make a recommendation to the Chief Executive for clemency or reduction of the penalty."

[176] People v. Estoista, 94 Phil. 655 (1953).

[177] *Id.* at 655 (Emphasis supplied.)

[178] *Id.* at 655.

[179] *See* People v. Echegaray, G.R. No. 117472, 267 SCRA 682 (1997); Harden v. Dir. of Prisons, 81 Phil. 741 (1948); People v. Limaco, 88 Phil. 36 (1951); People v. Camano, G.R. No. 36662, 115 SCRA 688 (1982); People v. Puda, G.R. No. 33841, 133 SCRA 1 (1984).

ii. Cases taking judicial notice
of subhuman prison conditions

Without making any reference to the "cruel, degrading or inhuman punishment" clause, the Court, in *People v. De Los Santos*,[180] took judicial notice of the inhumane conditions in the Philippine penitentiary. It was the first recorded case putting on record the conditions of Philippine prisons. The Court heeded the observations of Justice Andres Reyes, who was then the Presiding Judge who recounted:

> The whole compound was a scene of one big congestion, made more repulsive by the fact that as one enters its steel gates which lead to the cell buildings, the smell of human flesh and perspiration owing to the congestion contaminates the air. The overflow of prisoners in each cell was no ordinary one, total count shown by the prison records reveals that there were 8,304 prisoners all packed up in the six prison buildings which were supposed to house only a little more than 5,000 inmates at it, full capacity. In Brigade 1-B of Building I alone, 263 prisoners were all packed up in a cell house which can take only a load of 116 prisoners. In Brigade 1-D, the bartolina just beneath Brigade 1-B, there were 350 prisoners as compared to its capacity of only 33 inmates.
>
> The cell of Brigade 1-B was a big hall-like structure with six or five grilled gates and a narrow corridor on its right side. Inside the cell were triple decked steel buildings all lined up one after another such that they occupy the whole cell itself. These arrangements were good only for 116 prisoners at most. What happened when 350 prisoners were all made to live within this cagelike confines is unimaginable. There was hardly any space for anyone to move; more so in Brigade 1-D, which houses the bartolina, where a two-man cell was filled with ten or more prisoners. The beddings certainly will not accommodate everybody. A lot of prisoners had to sleep — if they sleep at all — on the cold cement floor. The whole cell itself is one big sleeping, dining, living, toilet and drainage room where some of the inmates, finding no space, had to live, sleep and eat in the toilet and drainage rooms of the cell houses. In the bartolina, conditions were even worse. The prisoners were actually sleeping and stepping over each other like a bunch of canned sardines. And what is more, the food allowances were no allowances at all. Each prisoner has an allocation of thirty centavo, worth of food per day — it is needless to speculate on what a ten-centavo meal could do. The prisoners were given each two or three pairs of clothing, for the cleaning and washing of which they were

[180] People v. De Los Santos, G.R. No. 19067, 14 SCRA 702 (1965).

> made responsible. It is hardly possible, however, to do any washing under the obtaining conditions. Those who were fortunate enough to receive gifts in food and clothing from friends or relatives were hardly able to touch or make use of them for fear that the rage of the less fortunate among the inmates would be turned against them.
>
> Hardened criminals were mixed with light offenders. Extortions and all sorts of crimes were being committed sometimes right under the very noses of the guards who, to top it all, could not maintain even a semblance of order and/or discipline as they were so outnumbered and themselves afraid that they might also be stabbed or liquidated. Because of these situations, helpless inmates by reason of their physical build have been abused and could not complain for fear of reprisal.[181]

On that account, Justice Jose B. L. Reyes, in his *ponencia*, affirmed that "[t]he government cannot evade responsibility for keeping prisoners under such subhuman and dantesque conditions."[182] He continued:

> Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death.[183]

Interesting enough, despite this strong pronouncement, all the Court did was lower the sentence of the prisoner involved from death penalty to *reclusion perpetua*. This trend of using subhuman prison conditions as basis to downgrade the death penalty to a lower sentence is found in a catena of cases.

In *People vs. Simeon*, in setting aside the death penalty and remanding the case to the lower court, Justice Felix Makasiar decried how prison conditions "have [...] reduced [the inmates] into animal packs."[184] It reiterated the earlier observations in *De Los Santos* and imputed the riots and resultant deaths unto these conditions.[185]

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[181] *Id.* at 704.

[182] *Id.* at 712–13.

[183] *Id.* at 713.

[184] People v. Simeon, G.R. No. 33730, 47 SCRA 129, 135 (1972).

[185] *Id.* "He further recalled that the crowded brigades or cells had been the cause of riots among the prisoners, who have been reduced into animal packs by the miserable conditions in prison, resulting in the death of many convicts."

Both cases were cited in the 1979 case of *People v. Dahil*[186] as among the "several cases in the past" [187] where the Court acknowledged the "incredible overcrowding of prison cells that lead inevitably to the formation of wolf packs, and confine prisoners under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death."[188]

In *People vs. Melendres*,[189] the Court categorically stated that "the wretched conditions in the New Bilibid Prison, i.e. congested cells, meager allowance for meals, and sheer boredom of routinary activities, are matters of judicial notice. Such miserable conditions, far from rehabilitating the inmates, only drive the bestial in them."[190] Thus, as in the previous cases, the death penalty against the accused was commuted to *reclusion perpetua.*

An expansion of this doctrine was made in *Enrile v. Sandiganbayan*,[191] where the Court considered the conditions in the New Bilibid Prison as among the factors in granting former Senator Juan Ponce Enrile's bail. Citing *Dela Rama v. The People's Courts*, it explained that a defendant may be released on bail on the ground that he was ill and that his "continued confinement in the New Bilibid Prison would be injurious to [his] health or dangerous to [his] life."[192]

As demonstrated by the said cases, the full potential of Section 19, Article III has not been fully explored by the Court. First, it has restricted the definition of "punishment" in Section 19 only to penalties. This is made clear by two trends in their decision-making. First, they have only applied the provision to petitions assailing the constitutionality of penalties.[193] Second, the conclusion is supported by the fact that since 1965, in the *De Los Santos* case, the Court had already taken judicial notice of the subhuman conditions in Philippine prisons. Despite repeatedly alluding to these conditions, however, no discussion has ever been made as to its constitutional import. The most that the Court has done is use these conditions as basis to downgrade the prisoner's sentence from death to *reclusion perpetua.* In light of the proscription of the death penalty in the Philippines, it may even be said

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[186] People v. Dahil, G.R. No. 30271, 90 SCRA 553 (1979).

[187] *Id.* at 560.

[188] *Id.* at 560.

[189] People v. Melendres, G.R. No. 38095, 106 SCRA 575 (1981).

[190] *Id.* at 586.

[191] Enrile v. Sandiganbayan, G.R. No. 213847, 767 SCRA 282 (2015).

[192] *Id.* at 311, *citing* Dela Rama v. People's Courts, 77 Phil. 461, 462 (1946).

[193] *See* United States v. Borromeo, 23 Phil. 279, 280 (1912); People v. Echegaray, G.R. No. 117472, 267 SCRA 682, 688 (1997); People v. Estoista, 93 Phil. 655 (1953).

that the only relief granted by the Court to prisoners on the basis of subhuman prison conditions has now become virtually useless.

D. Deliberations of the 1986 Constitutional Commission

Finally, after the three levels of textual analysis, the contemporaneous construction of the provision is undertaken. Justice Leonen, in *David*, proceeds to explain that "when discerning meaning from the plain text fails, contemporaneous construction may settle what is more viable." But even when *verba legis* already proves sufficient, contemporaneous construction may still be undertaken to validate the textual meaning of the Constitutional provision. He continues:

> When permissible then, one may consider analogous jurisprudence (that is, judicial decisions on similar, but not the very same, matters or concerns), as well as thematically similar statutes and international norms that form part of our legal system. This includes discerning the purpose and aims of the text in light of the specific facts under consideration. It is also only at this juncture–*when external aids may be consulted - that the supposedly underlying notions of the framers, as articulated through records of deliberations and other similar accounts, can be illuminating.*[194]

This section demonstrates that Section 19, Article III is not a mere transposition from the U.S. and Anglo-American laws. When its adoption in the 1987 Philippine Constitution was proposed, the commissioners actually pointed out some imprecision in the wording of the provision.[195] Particularly, they noted that at the time of their deliberation, the U.S. Supreme Court had already ruled that its equivalent "cruel and unusual punishment" clause in the Eighth Amendment embraced conditions of confinement.[196] This being the case, the commissioners resolved to add an entirely new paragraph that would categorically reflect this development.[197]

Thus, Section 19, Article III is actually an improvement of its previous iterations. By ratifying this provision after its framers deliberately made its scope more expansive, the Philippines effectively took the constitutional

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[194] David v. Senate Electoral Tribunal, G.R. No. 221538, 803 SCRA 435, 449 (2016). (Citations omitted. Emphasis supplied.)

[195] I RECORD CONST. COMM'N, 707-708 (July 17, 1986).

[196] *Id.*

[197] *Id.*

guarantees of the provision a step further. However, there is a glaring disconnect between the intention behind the provision and the application given to it by Philippine courts. To validate this conclusion, we look to the deliberations of the 1986 Constitutional Commission.

The records of the Commission's deliberations put into context at least two important changes in the wording of what was originally the "cruel and unusual punishment" clause.

First, the Records explain the change in the wording of the first paragraph of Section 19, from *"cruel and unusual punishment"*, as worded in the Eighth Amendment, to *"cruel, degrading or inhuman punishment"*. The query was raised by Commissioner Regalado Maambong and was answered by Commissioner Joaquin Bernas in this wise:

> FR. BERNAS: The reason for the change, Mr. Presiding Officer, is this: We avoided the use of the word "unusual" because it tended to give the interpretation that one cannot innovate therefore as far as penology is concerned — that, if a penalty is something that was never used before, then it would be invalid. So, in to allow for the development of penology we decided that we should not prohibit unusual punishments in the sense that they are new or novel.[198]

The change in the wording is likewise consistent with rulings by the U.S. Supreme Court which held that the use of the word 'unusual' in the English Bill of Rights in 1689 "was inadvertent, and that there was in fact nothing in the history of the Eighth Amendment to give flesh to its intended meaning".[199]

Second, the Records provide context for the addition of an entirely new paragraph in Section 19. The "cruel, degrading or inhuman punishment" clause in the 1987 Philippine Constitution is unique in that unlike its American predecessor, it contains a provision that categorically applies to prison conditions.

There was initially some debate as to how the original provision should be construed. Then numbered "section 22", it originally contained only the first paragraph of what is currently in section 19. The second paragraph was only later added after it was insisted that the original version was insufficient to cover subhuman conditions of confinement which then was already a pervasive problem in Philippine prisons.

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[198] *Id.*

[199] Furman v. Georgia, 408 U.S. 238, 382 (1972) (Marshall, *J. concurring*).

Two exchanges were particularly significant for this amendment, one between Commissioners Joaquin Bernas and Teodulo Natividad and another between Commissioners Bernas and Regalado Maambong.

In discussing the proposed resolution,[200] Commissioner Natividad recounted how a United Nations (UN) expert on penology described the country's jails as "penological monstrosities." Agreeing with this depiction, he added that the prevailing prison conditions were "so subhuman that one-half of the inmates lie down on the cold cement floor [...] One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep."[201]

Commissioner Natividad then explained to the body that American jurisprudence already collectively expressed that subhuman prison conditions are an imposition of cruel and unusual punishment proscribed by the Constitution.[202] He continued:

> MR. NATIVIDAD: I would just like to - even without an amendment - convince the Committee that *if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment."* Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to the upliftment of our jails and for the judiciary to act because the judiciary in habeas corpus proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering

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[200] Proposed Res. No. 482, entitled: Resolution to Give Meaning and Substance to the Constitutional Provision against Cruel or Unusual Punishment. Introduced by Hon. Natividad, Maambong, Ople and de los Reyes, Jr.

[201] *Id.*

[202] I RECORD CONST. COMM'N, 707–08 (July 17, 1986), Commissioner Natividad stated: "Courts in the United States in 10 landmark cases—some of these I would like to mention in passing: Halt v. Sarver, Jackson v. Bishop, Jackson v. Handrick, Jordan v. Fitzharris and Rockly v. Stanley—stated that sub-human conditions in a prison is an unconstitutional imposition of cruel and unusual punishment."

> problem of subhuman conditions in our jails and prisons. I submit, Mr. Presiding Officer.[203]

Commissioner Joaquin Bernas, on the other hand, opined that the original provision applied only to cruel, degrading or inhuman punishments prescribed in the statute itself. It did not contemplate a situation "where a person is convicted under a valid statute [...] but is confined under degrading and inhuman circumstances." The exchange is quoted below:

> FR. BERNAS: Mr. Presiding Officer, *although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22.* The purpose of Section 22 is to provide a norm for invalidating a penalty that is imposed by law ...
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> * * *
>
> MR. NATIVIDAD. *My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.*
>
> * * *
>
> MR. NATIVIDAD: So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment. I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply. Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered.

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[203] *Id.*

> FR. BERNAS: Mr. Presiding Officer, as I said, we have no quarrel whatsoever with the objective. *We will await the formulation of the amendment.*
>
> MR. NATIVIDAD: Thank you.[204]

Commissioner Regalado Maambong, for his part, also gave an impassioned plea.[205] He likewise opined that courts of modern nations already accepted that "[c]onfinement itself within a given institution may amount to cruel or unusual punishment [...] where the confinement is characterized by conditions and practices that are so bad as to be shocking to the conscience of reasonably civilized people."[206] He continued that, "[a]lthough inmates are not entitled to a country club existence, they should be treated in a fair manner. Certainly, they do not deserve degrading surroundings and unsanitary conditions."[207]

Commissioner Bernas maintained his original position. To his mind, the purpose of the first paragraph was not to cover cruel and degrading *prison conditions* but only cruel and degrading *sentences*. The resolution was to then incorporate a separate provision that would aptly cover the conditions inside the prison. The exchange[208] between Commissioners Maambong and Bernas is quoted below:

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[204] *Id.*

[205] I RECORD CONST. COMM'N, 778 (July 18, 1986). Mr. Maambong stated: "Mr. Presiding Officer, the clarification being sought or the amendment which may be proposed, if it becomes necessary, reflects the concernof Commissioners Natividad, Ople, de los Reyes and myself, regarding our Proposed Resolution No. 482 which gives meaning and substance to the constitutional provision against cruel or unusual punishment. I do not wish to be expansive about it. I will try to stick to my time limit, but I find this rather emotional on my part because, as a practicing lawyer, I have been going in and out of jails..."

[206] *Id.* Mr. Maambong stated: "... As a lawyer, of course, I would like to call the attention of the Committee to certain things which they already know, that it has been established by courts of modern nations that the concept of cruel or unusual punishment is not limited to instances in which a particular inmate or pretrial prisoner is subjected to a punishment directed to him as an individual, such as corporal punishment or torture, confinement in isolation or in large numbers, in open barracks or uncompensated labor, among other forms. Confinement itself within a given institution may amount to cruel or unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices that are so bad as to be shocking to the conscience of reasonably civilized people..."

[207] *Id.* Mr. Maambong stated: "... It must be understood that the life, safety and health of human beings, to say nothing of their dignity, are at stake. Although inmates are not entitled to a country club existence, they should be treated in a fair manner. Certainly, they do not deserve degrading surroundings and unsanitary conditions."

[208] I RECORD CONST. COMM'N, 779 (July 17, 1986).

MR. MAAMBONG: Just one sentence, Mr. Presiding Officer, so that my train of thought will not be destroyed, if I may.

Unless facilities of the penitentiary are brought up to a level of constitutional tolerability, they should not be used for the confinement of prisoners at all. Courts in other jurisdictions have ordered the closure of sub-standard and outmoded penal institutions. All these require judicial orders in the absence of implementing laws to provide direct measures to correct violations of human rights or institute alterations in the operations and facilities of penal institutions. I may not have to present any amendment but I will ask some clarifications from the Committee. For example, in the case of the words "cruel, degrading or inhuman punishment," my question is: Does this cover convicted inmates and pretrial detainees? That is the first question.

FR. BERNAS: This is a matter which I discussed with Commissioner Natividad. I think the Gentleman has similar ideas on this. I tried to explain to him that the problem he envisions is different from the problem being treated here. In Section 22, we are talking of a punishment that is contained in a statute which, if as described in the statute is considered to be degrading or inhuman punishment, invalidates the statute itself. But the problem that was discussed with me by Commissioner Natividad is the situation where a person is convicted under a valid statute or is accused under a valid statute and, therefore, detained but is confined under degrading and inhuman circumstances. I suggested to him that that will be treated not together with this, because this section has a different purpose, but as a different provision as a remedy for individuals who are detained legally but are being treated in an inhuman way.

MR. MAAMBONG: Are we saying that when a person is convicted under a valid statute and he is inside the jail because of the conviction out of that valid statute when he is treated in an inhuman and degrading manner, we have no remedy at all under Section 22?

FR. BERNAS: My understanding is that this is not the protection he can appeal to. That is why I was asking Commissioner Natividad that if he wants a protection for that, to please formulate something else.

MR. MAAMBONG: All right, then. The second question would be: The words "cruel, degrading or inhuman punishment" do not cover the situation that we contemplate of substandard or

outmoded penal facilities and degrading and unsanitary conditions inside the jail.

FR. BERNAS: Yes, we are referring to cruel, degrading or inhuman punishments which are prescribed in the statute itself. We cannot conceive a situation that the statute would prescribe that. The problem that the Gentleman contemplates again, I think, is about a person who is held under a valid statute but is treated cruelly and inhumanly in a degrading manner. So, we ask for a different remedy for him.

MR. MAAMBONG: Considering that our proposed amendment is very long, I will now propose an amendment by addition after the word "inflicted" on line 29 of Section 22, page 4, which would be very short. It only says: RELIEFS FOR VIOLATIONS OF THIS SECTION SHALL BE PROVIDED BY LAW. Let me explain that in the previous section, we already approved the sentence which says: "Penal and civil sanctions for violation of this section as well as ... shall be provided by law." Perhaps, if the Committee will consider it as a parallel provision akin to Section 21 and insert the short amendment that I have just stated, that could satisfy us immensely.

FR. BERNAS: I think the proposal will not give the relief that the Gentleman wants because if there is a violation of this section, the relief that is needed really is an invalidation of the conviction or of the detention because the law under which he is being held is invalid. Perhaps, we could discuss this sometime in the future.

MR. MAAMBONG: Yes, so that I do not have to waste the time of the body and the Committee, considering that the Committee has understood our purpose, perhaps the Committee could help by giving us just one section to be inserted there or one sentence or one phrase which would satisfy the requirements that we have presented, considering that in the United States, circumstances of this nature which happen inside the jail are considered under the provisions and jurisprudence of the United States as cruel and unusual punishment. Probably, we can have a parallel provision along that line and I hope the Committee will help. Would that be all right?

FR. BERNAS: Yes. And I thought the Gentleman already has the formula which we can discuss.[209]

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[209] *Id.*

1. Analysis

The foregoing discussion proves that the 1987 Philippine Constitution clearly provides prisoners with a cause of action to assail the conditions of their confinement if these conditions fail to satisfy the constitutional threshold. This conclusion is inevitably reached from all levels of Constitutional analysis.

It is contended that the Philippine Supreme Court need not even undertake the task of expanding the application of Section 19 to prison conditions. That it applies thereto is already adequately expressed in the provision itself. The plain reading of Section 19, Article III reveals a categorical reference to "substandard or inadequate penal facilities under subhuman conditions."[210] Tracing the history of the provision contextualizes this phrase even further. While the Eighth Amendment was arguably worded with some obscurity, the 1987 Constitution does not suffer from the same predicament. The framers, taking heed from the Eighth Amendment and foreseeing that a similar quandary might arise, already erased any ambiguity as to the scope of Section 19. By adding a separate paragraph that categorically proscribes "substandard or inadequate penal facilities", any doubt regarding its applicability is dispelled.

Further, its American predecessor, the Eighth Amendment to the U.S. Constitution, had already been declared, in a catena of cases, to apply to prison conditions. From originally construing the provision as only applying to cruel and unusual penalties per se, U.S. courts have expanded this interpretation and have, in fact, granted many forms of relief to prisoners as a result of this expansion. Being derived from the Eighth Amendment, Section 19 of Article III should, thus, have a similar interpretation.

There is, thus, a need for the Court to reexamine the true meaning of the "cruel, inhuman and degrading punishment" clause, lest the protections therein enshrined be deemed hollow covenants without any real use. Only by expanding its application to embrace cruel, degrading or inhuman *prison conditions* can the provision's substance be truly carried out.

Taken together, the first threshold question of whether or not the "cruel, inhuman and degrading punishment" clause applies to conditions of confinement is therefore resolved in the affirmative. Now, we narrow down our proposition by focusing on one particular condition of confinement: overcrowding.

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[210] CONST. art. III, § 19.

V. U.S. STANDARDS FOR EVALUATING PRISON OVERCROWDING CASES

Before any relief is granted to the prisoner assailing the conditions of his confinement, particularly when he alleges overcrowding, the question must first be answered: when is a prison so overcrowded as to rise to a constitutional violation? To answer this threshold question, a standard must be formulated.

On a practical note, a clear standard is essential to guide both the petitioners who argue their cases and the courts in determining the merits thereof respectively. It also assuages the reluctance of Philippine courts to entertain prison overcrowding cases by providing for a narrowly drawn standard. Hence, there is lesser likelihood of opening the floodgates to specious claims that would only unduly clog the court's dockets.

One might remark that such a standard is no longer needed. Considering that congestion rates in Philippine prisons are reportedly the highest in the world, one need only look at the figures to reach the inevitable conclusion. While that may be the case, such fact does not dispense with the need to provide a clear framework for evaluating cases of this nature. In fact, devising such a standard addresses the problems that confronted the U.S. Courts back in the "Hands-off Era". Thus, it effectively prevents Philippine courts from making the same declaration that "matters relating to supervision of internal prison affairs are beyond judicial competence."[211]

With rich jurisprudence on the matter, it would be apropos to review American cases and the standards used therein. Building from these standards and paying heed to the defects of each, Philippine courts are given the advantage of making a sound framework at the very outset.

A common critique of how the U.S. Supreme Court has dealt with prison overcrowding cases is its lack of a bright-line standard to determine when overcrowding becomes a constitutional violation.[212] As a result, circuit courts have applied varying standards.[213] In turn, this has led the courts to inconsistent results. Lower courts in the U.S. appear to have been free to apply their own interpretations of the standards.[214]

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[211] *Supra* note 113.

[212] Woodbury, *supra* note 22.

[213] Susanna Chung, *Prison Overcrowding: Standards in Determining Eighth Amendment Violations,* 68 FORDHAM L. REV. 2351 (2000).

[214] *Id.*

While deference should be accorded to the conclusions of the trier of fact, this deference should not entail giving judges the power to apply unsound law. Furthermore, because of the inconsistency of U.S. cases, district court judges making good faith findings of cruel and unusual punishment usually have their decisions overturned unpredictably on appeal.[215] In other words, the chances of a petitioner's success depend less on the merits of their claim and more on the willingness of a court to read facts in a favorable light and the resourcefulness of counsel to articulate persuasively a workable standard of review.[216]

To resolve this lack of uniformity, there have been propositions to reconfigure these tests or incorporate variations of these tests. One such proposition advocates the use of a two-tiered analysis.[217] According to this framework, the court's evaluation should involve two levels: first, it has to determine which facts and circumstances are to be considered in its evaluation. Thereafter, it has to apply a particular standard of cruel and unusual punishment to the facts obtained from the first tier.[218]

Using this two-tiered framework permits a less complicated discussion of the various tests applied by U.S. courts. Thus, we discuss the tests by dividing them into two categories. Embraced in the first category are the approaches used to determine the broadness of the analysis, i.e. which facts and circumstances to consider. The second encompasses the tests applied to these facts to determine whether or not an Eighth Amendment violation exists. Although U.S. courts have not expressly used this categorization, legal scholars have asserted that Eighth Amendment litigation lends itself to this analysis.[219]

A. First Category: Approaches determining the broadness of examination

In the first tier of the proposed analysis, courts must first determine which set of facts and circumstances it will use to resolve the constitutional question. For this reason, the first of the two-part analysis proposed essentially determines the broadness of the examination to be done by the courts. By resolving this preliminary question, courts will be able to definitively provide

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[215] Woodbury, *supra* note 22.
[216] *Id.*
[217] *Id.*
[218] *Id.*
[219] *Id.*

which allegations may be made and what pieces of evidence a case for overcrowding should include.

U.S. jurisprudence lays down three main approaches to determine the broadness of the Eighth Amendment analysis to be done: (1) the Totality-of-Conditions approach, (2) the Core-Conditions approach, and (3) the Per Se approach.

1. Totality-of-Conditions Approach

The totality-of-conditions approach has allowed U.S. courts to exercise broad discretion in considering which prison conditions are at issue and to determine whether or not, individually, or in combination, these conditions violate the Eighth Amendment.[220]

Under this approach, the courts review all the allegations presented by the petitioner whether they concern medical services, overcrowding or other types of restrictions.[221] Thus, the focus is not only on overpopulation but also on the availability of basic necessities, e.g. food, clothing, safety, shelter, adequacy of staff, recreational opportunities, etc.[222]

The totality-of-conditions approach also allows the courts to combine all the conditions together in order to see if there is an Eighth Amendment violation. Thus, even if no single condition is in itself unconstitutional, several conditions can reinforce each other and subject prisoners to cruel and unusual punishment once combined.[223]

In *Tillery v. Owens*, [224] the totality-of-conditions approach was employed in finding that conditions of confinement at a state correctional facility constituted cruel and unusual punishment. There, the inmates alleged that "double-celling in an overcrowded, dilapidated and unsanitary state prison" violated the Constitution.[225] The Court held that in determining whether such prison conditions constituted such a violation, it "must look at the totality of the conditions within the institution."[226] Thus, aside from

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[220] Pamela Rosenblatt, *The Dilemma of Overcrowding in the Nation's Prisons: What are Constitutional Conditions and What Can be Done?,* 8 N.Y.L. SCH. J. HUM. RTS. 489, 494–95 (1991).

[221] Chung, *supra* note 213 at 2351.

[222] *Id.*

[223] *Id.*

[224] Tillery v. Owens, 907 F. 2d 418 (3rd Cir. 1990).

[225] *Id.* at 420.

[226] *Id.*

prison overcrowding, it considered the facility's lighting, ventilation, plumbing, and fire safety in holding the prison liable.[227]

2. Core-Conditions Approach

Under the core-conditions approach, in order to find an Eighth Amendment violation, the court must identify at least one particular core condition that fails to meet constitutional standards.[228] These core conditions specifically consist of deprivations of "adequate food, clothing, shelter, sanitation, medical care, and personal safety."[229]

The problem with this approach is that it does not view overcrowding as a core condition.[230] Thus, unless overcrowding leads to a deprivation of a core condition, the court cannot rule that an Eighth Amendment violation exists.[231] A court can consider a non-core factor only if it is the source of a deficient core area.[232] Moreover, in contrast to the totality-of-conditions test, this approach does not allow a combination of several weak conditions to amount to an Eighth Amendment violation.[233] Although various prison conditions can be considered together to determine the violation of a single core area, the separate core conditions themselves cannot be combined to constitute cruel and unusual punishment.[234] If each core condition is tolerable upon independent examination, the prison then complies with the constitutional standards.[235]

Unlike the amorphous totality-of-conditions approach, however, the core conditions approach does provide a measure of certainty for analysis because it enumerates a specific checklist of factors that courts may consider in finding an eighth amendment violation.[236]

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[227] *Id.*

[228] Rosenblatt, *supra* note 220 at 500–01.

[229] *Id.*

[230] Chung, *supra* note 213 at 2366, *citing* Wright v. Rushen, 642 F. 2d 1129, 1133 (9th Cir. 1981).

[231] *Id., citing* Hoptowit v. Ray, 682 F. 2d 1237, 1245–47 (9th Cir. 1982).

[232] Rosenblatt, *supra* note 220 at 500–01.

[233] Chung, *supra* note 213 at 2366.

[234] *Id.*

[235] *Id.*

[236] David Gottlieb, *The Legacy of Wolfish and Chapman: Some Thoughts About "Big Prison Case" Litigation in the 1980's, in* PRISONERS AND THE LAW 19 (Ira P. Robbins ed., 1999).

3. Per Se Approach

The *per se* approach considers overcrowding itself to violate the Eighth Amendment.[237] Although U.S. courts have not provided for a clear definition of *per se* prison overcrowding, some have defined it as simply the accommodation of inmates beyond design capacity.[238]

In *Chavis v. Rowe*,[239] the Seventh Circuit found the confinement of five men to a cell measuring five-by-seven feet to be "shock[ing] to the general conscience" and thus results to an Eighth Amendment violation. The court cited U.S. jurisprudence which held that "housing two men in a little 35-40 square foot cubby hole [...] offends the contemporary standards of human decency,[240] and that housing "an average of 4, and sometimes as many as 10 to 11 prisoners" in windowless eight-by-ten foot cells inflicts needless mental or physical suffering.[241]

Of all the approaches, the *per se* approach provides the most protection for prisoners' rights by acknowledging that a lack of living space alone can lead to physical and psychological pain in contravention of the Eighth Amendment guarantee.[242] Such a bright-line rule also provides judges with the most objectivity in their assessment.[243] Prison overcrowding claims are thus less susceptible to the differing views of individual judges.[244]

However, courts have been generally reluctant to declare a prison overcrowded simply on the basis of congestion rate. In *Rhodes v. Chapman*,[245] for instance, the Supreme Court rejected the *per se* approach and said that overcrowding in excess of design capacity will not, in and of itself, produce a constitutional violation. This ruling is perhaps founded on the Court's reluctance to concede that the violation can be established by just a cursory view of cell size and design capacity. Otherwise, all if not a majority of its prisons will be found guilty of such violation.

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[237] Bobby Scheihing, *An Overview of Prisoners' Rights: Part II, Conditions of Confinement Under the First and Eighth Amendments,* 14 ST. MARY'S L.J. 991, 993–94 (1983).

[238] *See* Rhodes v. Chapman, 452 U.S. 337, 347–48 (1981).

[239] Chavis v. Rowe, 643 F. 2d 1281 (7th Cir. 1981).

[240] *Id., citing* Battle v. Anderson, 564 F. 2d 388, 395 (10th Cir. 1977).

[241] *Id., citing* Hutto v. Finney, 437 U.S. 678, 682 (1978).

[242] Chung, *supra* note 213 at 2392.

[243] *Id.*

[244] *Id.*

[245] Rhodes v. Chapman, 452 U.S. 337, 347–48 (1981).

B. Second Category: Standards determining whether the punishment is "cruel and unusual"

Once the court has determined which conditions of confinement to assess using any of the three approaches outlined above, the analysis proceeds to the second tier to resolve the Eighth Amendment claim.

Eight tests have been used by U.S. courts in assessing whether a punishment is "cruel and unusual." [246] These tests ask whether the punishment: (1) is disproportionate to the severity of the crime; (2) exceeds legitimate penological aims; (3) inflicts unnecessary and wanton pain; (4) is totally without penological justification; (5) comports with society's evolving sense of decency; (6) exists by denial of basic necessities; (7) shocks the conscience of the court; or (8) affronts the dignity of man.[247]

Each test hinges its appraisal on a particular criterion it deems most fundamental in a punishment to make it cruel and unusual.[248] It bears noting, however, that these tests were originally used back when U.S. courts applied the Eighth Amendment strictly to penalties. Interestingly, when the constitutional guarantee was later expanded to cover conditions of confinement, the same tests were applied. This is conceivably problematic because the nature of the violation would be different for the two; what makes a penalty cruel and unusual does not necessarily make conditions of confinement similarly so. Furthermore, conditions of confinement involve a broad spectrum of violations. Not all tests would prove appropriate in an overcrowding case. Thus, there is a need to determine a standard for prison overcrowding petitions.

1. Proportionality Test

The proportionality test determines whether a particular punishment is excessive in relation to the severity of the crime committed. [249] The proportionality test was first used by the U.S. Supreme Court in *Weems v. United States*[250] to strike down a sentencing statute that was unconstitutional in degree. The Court, here, ruled that the sentence violated a precept of justice

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[246] Woodbury, *supra* note 22 at 727.
[247] *Id.*
[248] *Id.*
[249] *See* Weems v. United States, 217 U.S. 349 (1910).
[250] *Id.*

inherent in the Eighth Amendment, namely, "that punishment for [a] crime should be graduated and proportioned to the offense."[251]

However, authorities have observed that the proportionality test is not particularly suited to overcrowding cases.[252] This is because overcrowding is not an individual concern; it affects all inmates subjected thereto.[253] Thus, overcrowding cases are usually brought to courts in the form of a class action. This test would therefore be improper where offenders of mixed culpability sue together.[254]

2. "Exceeds Legitimate Penological Aim" Test

Another test applied in Eighth Amendment litigation evaluates *whether or not a given punishment exceeds a legitimate penological aim*, as balanced against the rights of prisoners.[255] This test was applied in *Estelle v. Gamble*[256] where an inmate alleged an Eighth Amendment violation for inadequate treatment of an injury sustained while engaged in prison work. The U.S. Supreme Court held that deliberate indifference by personnel to a prisoner's illness constitutes cruel and unusual punishment. Its conclusion was premised on the assertion that the "denial of medical care may result in pain and suffering which no one suggests *would serve any penological purpose.*"[257] In another case, the Supreme Court held that the restriction on the prisoners' first amendment right to labor union organization was justified by the legitimate penological objective of maintaining security.[258]

However, the legitimate penological aim test presents significant drawbacks as its use has been perceived counterintuitive to the interest of the prisoner. First, it relegates the constitutional guarantees in the Eighth Amendment to secondary importance.[259] By focusing on whether or not the imposition of a penalty may be justified by the State, courts may dismiss the petition regardless of the gravity of the constitutional violation. Second, some

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[251] *Id.*

[252] Woodbury, *supra* note 22, at 727.

[253] *Id.*

[254] *Id.*

[255] *Id.* at 728.

[256] Estelle v. Gamble, 429 U.S. 97 (1976).

[257] *Id., citing* Gregg v. Georgia, 428 U.S. 153 (1976).

[258] Jones v. North Carolina Labor Union, 433 U.S. 119 (1977).

[259] Woodbury, *supra* note 22 at 728, *citing* Bell v. Wolfish, 441 U.S. (1979) at 567 (Marshall, *J., dissenting*). "The test should not look to the purpose of confinement, only the effect."

commentators note that courts have generally been disposed to accept the prison officials' explanation for their challenged practices.[260] Consideration of state interests confers a near presumption of validity on any purported justification for overcrowding. [261] However, such a presumption is unwarranted as overcrowding is usually not because of a conscious design but rather, a result of unresponsiveness or poor planning.[262]

3. "Unnecessary and Wanton Pain" Test

Related to the legitimate penological aim test, the third test assesses *whether or not a punishment inflicts "unnecessary and wanton pain.*[263] This test evaluates whether or not there is rational basis for the punishment and whether or not the sanction is inflicted with the intention of causing distress.[264] It focuses on the justifications offered by prison officials for the punitive conditions and not on the prisoner's plight.[265] Thus, the attendant problems of shifting the focus from prisoners and according deference to state rationalizations are also present.[266]

More importantly, pain connotes immediate physical injury. Prison overcrowding cases usually involve graduated harm that may be partly mental or emotional.[267] Thus, this test is not well suited to the prison overcrowding context.

4. "Totally without penological justification" Test

A fourth test determines whether or not a particular punishment is *"totally without penological justification."* [268] This benchmark implies that punishment may be deemed constitutional even if it lacks a complete justification so long as it is not totally devoid thereof.[269] While U.S. courts

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[260] Ira Robbins & Buser, *Punitive Conditions of Prison Confinement: An Analysis of Pugh v. Locke and Federal Court Supervision of State Penal Administration Under the Eighth Amendment*, 29 STAN. L. REV. 905 (1977), *citing* Irving Kaufman, *Prison: The Judge's Dilemma*, 41 FORDHAM L. REV. 495 (1973).

[261] *Id.*

[262] Woodbury, *supra* note 22 at 728, *citing* Johnson v. Levine, 450 F. Supp. 648, 656 (1978).

[263] *Id., citing* Battle v. Anderson, 564 F. 2d 388, 402 (10th Cir. 1977).

[264] *Id.*

[265] *Id.*

[266] *Id.*

[267] *Id.*

[268] *See, e.g.* Lareau v. Manson, 507 F. Supp. 1177, at 1194 (D. Conn. 1980).

[269] Woodbury, *supra* note 22 at 729.

have traditionally focused on retribution and deterrence as main penological justifications, other forms have also emerged.[270] For instance, a number of cases have mentioned rehabilitation and incapacitation as among the penological goals of the U.S. criminal system.[271]

The court's consideration of other penological goals, however, has made it easier for the state to justify their imposition of penalties. For instance, if the courts were to rely on the purpose of incapacitation in assessing the constitutionality of a punishment, the Eighth Amendment would in effect become a nullity as punishments will most likely always serve the rationale of incapacitation.[272] Further, the aforementioned problems of improper focus and unjust deference to state rationalization remain.

That the "totally without penological justification" test is counterintuitive to the prisoner's interest is properly demonstrated in *Atiyeh v. Capps*.[273] There, Justice William Rehnquist intimated that the "dignity of man" test was not the proper Eighth Amendment benchmark. He continued that the State, being bound by limited fiscal resources, may declare retribution as an equally permissible goal of incarceration as rehabilitation.[274] Therefore, despite the district court's finding that overcrowding existed and caused serious physical and psychological harm, Justice Rehnquist found no Eighth Amendment violation, remarking that prisoners cannot expect "a rose garden."[275]

5. "Evolving Sense of Decency" Test

The *"evolving sense of decency" test* is the most frequently applied test by

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[270] *See* Graham v. Florida, 560 U.S. 48 2028–29 (2010).

[271] *Id.*

[272] *See, e.g.* Richard Gebelein, *Delaware Leads the Nation: Rehabilitation in a Law and Order Society; A System Responds to Punitive Rhetoric*, 7 DEL. L. REV. 1, 2 (2004), stating that incapacitation "is the ultimate form of specific deterrence"); Robert D. Sloane, *The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential of International Criminal Law*, 43 STAN. J. INT'L L. 39, 69 (2007) (explaining that incapacitation "can be conceived as an extreme form of specific deterrence insofar as, if successful, it obviates any recidivism concerns"). *But see* Benjamin B. Sendor, *The Relevance of Conduct and Character to Guilt and Punishment*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 99, 128 (1996) (explaining that "[i]ncapacitation can be seen either as a distinct rationale of punishment or as a form of specific deterrence").

[273] Atiyeh v. Capps, 449 U.S. 1312 (1981).

[274] *Id.*

[275] *Id.*

the U.S. courts.[276] It evaluates *whether or not a punishment comports with enlightened notions of justice and contemporary norms.*[277] What constitutes proper evidence under this test was explained in *Estelle v. Gamble.*[278] In that case, the Court appreciated legislation and correction agency standards as pieces of evidence to determine contemporary norms. Similarly, lower federal courts have applied correctional standards of government and private agencies supported by expert opinion.[279]

Courts have applied two other benchmarks related to the decency test: the *basic necessities test and the shock the conscience test.*

6. The Basic Necessities Test

The basic necessities test provides that the Eighth Amendment is not violated *where a penal facility "furnishes adequate food, shelter, clothing, sanitation, medical care and personal safety."*[280] The adequacy of these provisions is established through the use of the same objective evidence used in the "evolving sense of decency" test, i.e. correctional standards, expert testimony and penological studies.[281] Although this test seems to focus on physical essentials, overcrowding may be deemed to fall under the necessity, adequate shelter, which is evaluated in light of an inmate's cell space needs, among others.[282] Application of the basic necessities test, therefore, should produce a result similar to that of the decency test.

7. "Shock the Conscience" Test

The seventh test of cruel and unusual punishment embodies the evolutionary nature of the eighth amendment. Also related to the decency test, this benchmark determines *whether prison conditions "shock the conscience" of the court.*[283] This test, however, has been deemed better suited to analyzing

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[276] *See, e.g.* Lareau v. Manson, 651 F. 2d 96, 105 (2d Cir. 1981).

[277] Trop v. Dulles, 356 U.S. 86 (1958).

[278] Estelle v. Gamble, 429 U.S. 97 (1976).

[279] *Id.*

[280] *See, e.g.* Lareau v. Manson, 651 F. 2d 96, 105 (2d Cir. 1981).

[281] Woodbury, *supra* note 22 at 732.

[282] *Id., citing* Ramos v. Lamm, 639 F. 2d 559, 566 (10th Cir. 1980).

[283] *Id.* "This test apparently was derived from the phrases 'shock the sensibilities' in Weems v. United States, 217 U.S. 349, 375 (1910) and 'shock[ing] the most fundamental instincts of [a] civilized man' in Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 473 (1947) (Burton, *J., dissenting*)."

instances of gross physical punishments, not everyday conditions of confinement.[284] Psychological, long-term or aggregate harm is not usually so obvious as to be immediately offensive.[285] More importantly, it does not homogenize the mode of evaluation among courts. What punishment shocks the conscience is highly subjective. Thus, prison officials cannot readily adjust their conduct to conform to what a few judges may consider shocking.[286]

8. Dignity of Man Test

The broadest and final test applied by lower federal courts evaluates *whether or not the crowding conditions affront the "dignity of man."*[287] This standard stems from the notion that the Constitution is immortal and therefore the proscription on cruel and unusual punishments must be based on an evolving judicial conscience.[288] Rather than relying on contemporary norms, this test prescribes that courts evaluate whether a punishment "transgresses today's broad and idealistic concepts of dignity, civilized standards, humanity and decency."[289] Although this test appears to require a wholly subjective evaluation, reliance on leading penological opinion coupled with judicial experience have rendered uniform results.[290]

V. PROPOSED STANDARD OF REVIEW FOR PHILIPPINE COURTS

A. A Two-Tiered Analysis to Evaluate Prison Overcrowding

As earlier mentioned, proposals have been made either to reconfigure the standards used in Eighth Amendment analysis or to integrate them to arrive at a consistent framework.[291] One such proposal is the formulation of a two-tiered approach, which involves two levels of analysis: first, the court has to determine which facts and circumstances to consider in its evaluation.

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[284] Woodbury, *supra* note 22 at 733, *citing* Robbins & Buser, *Punitive Conditions of Prison Confinement: An Analysis of Pugh v. Locke and Federal Court Supervision of State Penal Administration Under the Eighth Amendment*, 29 STAN. L. REV. 905.

[285] *Id.*

[286] *Id.*

[287] *Id.* "This phrase is derived from Trop v. Dulles, 356 U.S. 86, 100 (1958)."

[288] *Id.*, *citing* Furman v. Georgia, 408 U.S. 238, 257–306 (1972) (Brennan, *J.*, *concurring*).

[289] *Id.*, *citing* Hutto v. Finney, 437 U.S. 678, 685 (1978).

[290] *Id.*

[291] Woodbury, *supra* note 22.

Thereafter, it has to apply a particular test of cruel and unusual punishment to the facts obtained from the first tier.[292]

Particularly, the proponent of this two-tiered analysis suggests the use of the totality-of-conditions approach in the first tier, and the dignity of man test in the second tier.[293] This standard, as its proponent claims, is sensitive to the individual nature of the Eighth Amendment's guarantee and responsive to the prisoners' needs.[294] This Note proposes that Philippine courts also adopt this framework in its appraisal of prison overcrowding cases.

1. The First Tier: Totality-of-Conditions Approach & the Second Tier: Dignity of Man Test

The application of the *totality-of-conditions approach* in the first tier of analysis entails a review of all the allegations of the prisoner/s in the petition. The review involved is not merely restricted to the issue of overcrowding per se, but rather covers all violations alleged related thereto, such that even if no single condition is itself unconstitutional, a finding of unconstitutionality may still be had when these conditions, combined, are found to result from or be intimately related to overcrowding. For instance, the petitioner may allege that apart from being subjected to congested prison cells, the prison suffers from inadequate medical service and lack of food supply as a result of the overcrowded conditions.

In *Wellman v. Faulkner*,[295] the U.S. Court of Appeals for the 7th Circuit employed the totality-of-conditions approach in a prison overcrowding case. There, the inmates alleged in their petition that they were being subjected to overcrowding, inadequate medical care, high levels of violence, lack of staff, and poor physical conditions of the facility, in violation of their Eighth Amendment right.[296] In ruling in the petitioners' favor, the Court noted the importance of considering prison overpopulation along with other conditions that could worsen its effects.[297] In this case, it found that the effects of overcrowding were aggravated by the age of the facility, lack of staff, and inadequate health care services.

Once the petitioner is able to prove that certain facts and circumstances, as alleged, exist within the prison, the court must proceed to

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[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] Wellman v. Faulkner, 715 F. 2d 269 (7th Cir. 1983).
[296] *Id.*
[297] *Id.*

determine whether or not these rise to the level of a constitutional violation. To make this determination, the use of the *"dignity of man" test* is proposed. This test necessitates judicial sensitivity to the individual prisoner's human dignity in light of society's mores. This sensitivity is hinged on the non-temporal nature of the right; it asserts that the Constitution is immortal and that its guarantee against cruel, degrading or inhuman punishment should be based on an evolving judicial conscience. Rather than relying on contemporary norms, this test prescribes that courts evaluate whether a punishment "transgresses today's broad and idealistic concepts of dignity, civilized standards, humanity and decency."[298]

While this may seem to be a rather subjective yardstick, its application is given more objectivity through the courts' reliance upon a consistent set of evidence in the U.S.. Under this proposed standard of review, in the absence of a law, objective penological studies, expert testimony and correctional standards are used as evidence of what affects an inmate's health and well-being rather than public opinion.[299] Testimony as to the mental and emotional harms is likewise considered relevant in determining whether overcrowding has affronted man's dignity.[300]

To illustrate, we use the U.S. case, *Smith v. Fairman*,[301] where the district court applied the totality-of-conditions approach then the "shocks the conscience", "unnecessary and wanton pain", "evolving sense of decency", and "dignity of man" tests.

The plaintiff in *Smith* claimed that he was deprived of his Eighth Amendment rights by being subjected to cruel and unusual punishment arising from the overcrowded conditions or "double celling" practices at the Pontiac Correctional Center.[302]

In resolving the matter, the court first discussed the history of Pontiac Correctional Center, which was a maximum-security penitentiary for convicted felons serving sentences longer than ten years. It was constructed in 1871 and was *built to accommodate a capacity of 1,200 prisoners.* At the time of the hearing, the inmates were at 1,918.[303]

As to the testimonial evidence, the plaintiff presented witnesses

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[298] *Id.*

[299] Woodbury, *supra* note 22.

[300] *Id.*

[301] Smith v. Fairman, 528 F. Supp. 186 (C.D. Ill. 1981).

[302] *Id.*

[303] *Id.*

experienced in the management of correctional institutions. Among them was an associate professor of administration of justice who had previously been a warden in the Illinois Correctional System. Another was a professor of criminal justice who had worked as superintendent in a maximum-security institution and had also been a Commissioner of the Department of Corrections. Likewise, the court also appointed its own expert witness to (a) survey existing literature on the effects of long-term close confinement of human males, (b) inspect the correctional facility, and (c) report to the court his findings.[304]

Their testimonies went into the conditions of the penitentiary, based on their personal observations and their interviews with the inmates therein. They also evaluated the facilities in light of the federal standards for cell size.[305] Using the totality-of-conditions approach, the court also entertained testimony regarding the length of time prisoners would stay in their cells and the effects of overcrowding on the amount of time for showering, eating, and recreation. Further, the court also appreciated testimony about how extended periods of confinement in cells exacerbated the amount of tension, stress, and anger for inmates. Thus, guards are in greater jeopardy and the inmates are a greater threat to the community once they are released. Taken together, the testimonies overwhelmingly showed that "by current social standards, Pontiac [wa]s overcrowded."[306]

With this clear analytical model in place, courts will be in a better position to confine their review to examining whether the standard is satisfied by the factual allegations rather than be let free to re-characterize their fact-finding.

B. Suitability of the Two-Tiered Approach in the Philippine Context

A perusal of U.S. cases exhibits that U.S. courts have mixed together different standards in their Eighth Amendment analysis. To recall, the court applied the totality of conditions approach then the "shocks the conscience," "unnecessary and wanton pain," "evolving sense of decency," and "dignity of man" tests in *Smith v. Fairman*.[307]

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[304] *Id.*

[305] The National Sheriff's Association Handbook on Jails and the Manual of Standards for the American Corrections Association both provide that each inmate shall have sixty square feet if incarcerated for less than ten hours per day and eighty square feet if incarcerated for more than ten hours per day.

[306] Woodbury, *supra* note 22.

[307] Smith v. Fairman, 528 F. Supp. 186 (C.D. III. 1981).

However, as each test entails an appraisal founded on a distinct set of criteria, aggregating them might prove unfavorable to the prisoner. For instance, the prisoner may be able to make a case that satisfies the "dignity of man" test but is unable to meet the criteria for the "unnecessary and wanton pain" test. Aggregating the two standards would impose a higher burden on the prisoner and effectively preclude him from being afforded legal relief. This is contrary to the essence of the 'cruel, degrading or inhuman punishment' clause.

For this reason, the adoption of the two-tiered approach is advantageous; it restricts the analysis of a prison-overcrowding petition to the use of sequentially applied, non-overlapping standards. The suitability of the approach in the Philippine context is likewise discussed below.

A comprehensive evaluation is involved. Using the totality-of-conditions approach ensures a broader appraisal of the status of Philippine prisons instead of merely doing a cursory measurement of the prison cell and the space allotted for each prisoner.[308] The approach does not limit itself to a measurement of cell space but rather, looks into the aggregate result of several factors that translate to a constitutional violation.[309] For this reason, it also allows some leeway to the government by not necessarily equating overcrowding with cell size. Thus, the petitioner seeking relief from a supposedly overcrowded prison facility needs to go beyond a mere allegation of a lack of space. Otherwise, all prisons in the Philippines, if not a majority of them, would be found to have committed such violation.

Interrelated issues are addressed in a single petition. The issue of prison overcrowding does not exist in a vacuum. Overcrowded jails would also usually suffer from inadequate food supply, inefficient medical services, lack of basic necessities, such as food, clothing, safety, and shelter, adequacy of staff supervision, recreational opportunities, among others. Therefore, the approach allows courts to combine all the various conditions together in order to find a constitutional violation. Hence, even if no single condition is by itself unconstitutional, several conditions, taken together, can prove the violation.

Application is in keeping with the substance of the "cruel, degrading or inhuman punishment" clause. In *Nami v. Fauver*,[310] the Court noted that there is no static

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[308] Rosenblatt, *supra* note 220.

[309] *Id.*

[310] Nami v. Fauver 82 F.3d 63 (3d Cir. 1996).

test by which courts can evaluate whether prison conditions violate the Eighth Amendment. Instead, the Constitution "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[311] Using the dignity of man test is consistent with this principle, as it allows for a dynamic and adaptable standard that is consistent to the non-temporal nature of Constitution.

In the Philippines, the "dignity of man" has likewise been alluded to in relevant laws. The implementing rules of the Bureau of Corrections Act, for instance, provides that the "safekeeping provisions" in Section 4, Paragraph (a) is to "accord the dignity of man to inmates while service sentence."[312] It is only therefore fitting that such standard also guide the courts in determining whether the government complies with the mandate of the law.

VII. RELIEFS PROPOSED

The two threshold questions earlier raised have already been addressed. First, does the "cruel, degrading or inhuman punishment" clause in the 1987 Philippine Constitution apply to conditions of confinement? This question was answered in the affirmative. Section 19, Article III thereof applies to conditions of confinement and overcrowding is one such condition. Thus, prisoners who are subjected to overcrowded prisons have a cause of action under the Constitution to assail such condition.

Second, when is a prison considered so overcrowded as to violate the Constitutional prohibition against 'cruel, degrading or inhuman punishment'? This was addressed with a proposal that the Philippine courts adopt a two-tiered approach. This approach will entail first, the determination of the totality of conditions within the prison as alleged in the petition, and second, the application of the dignity of man test to such conditions.

The question then is, what remedies are available to the prisoners seeking to enforce their constitutional right or seeking indemnification for its violation?

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[311] *Id., citing* Rhodes v. Chapman, 452 U.S. 337 (1981).

[312] Bureau of Corrections (BUCOR) Rev. Impl. Rules & Reg. of Rep. Act No. 10575 (2016).

A. Transfer to Another Prison Facility Through a Habeas Corpus Petition

The writ of habeas corpus provides individuals with protection against arbitrary and wrongful imprisonment.[313] It is not surprising, therefore, that habeas corpus has long been viewed as the "great writ of liberty."[314]

Heralded as "the best and only sufficient defense of personal freedom", the ultimate purpose of the writ is to provide a speedy and effectual remedy to relieve a person from unlawful restraint.[315] Consequently, the Philippine Supreme Court has interpreted the disregard of an accused's constitutional rights as constituting such an illegal restraint.[316] In *Alejano v. Cabuay*,[317] the Court ruled:

> *Nonetheless, case law has expanded the writ's application to circumstances where there is deprivation of a person's constitutional rights.* The writ is available where a person continues to be unlawfully denied of one or more of his constitutional freedoms, where there is denial of due process, where the restraints are not merely involuntary but are also unnecessary, and where a deprivation of freedom originally valid has later become arbitrary.[318]

Such disregard then results in the absence or loss of jurisdiction, invalidating the trial and the consequent conviction of the accused.[319] The void judgment of conviction may thereafter be challenged by collateral attack by the writ of habeas corpus.[320] However, the Court qualifies this doctrine by specifying instances which fall under its scope:

> However, a mere allegation of a violation of one's constitutional right is not sufficient. The courts will extend the scope of the writ only if any of the following circumstances is present: (a) there is a deprivation of a constitutional right resulting in the unlawful restraint of a person; (b) the court had no jurisdiction to impose the

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313 Ilusorio v. Bildner, G.R. No. 139789, 332 SCRA 169, 172 (2000).

314 WILLIAM DUKER, A CONSTITUTIONAL HISTORY OF HABEAS CORPUS (1980).

315 Villavicencio v. Lukban, 39 Phil. 778, 779 (1919).

316 Ilusorio v. Bildner, G.R. No. 139789, 332 SCRA 169, 172 (2000); Moncupa v. Enrile, G.R. No. 63345, 141 SCRA 233, 234 (1986).

317 G.R. No. 160792, 468 SCRA 168 (2005).

318 *Id.* at 200–01.

319 Calvan v. Court of Appeals, G.R. 140823, 341 SCRA 806, 809 (2000).

320 *Id.*

> sentence; or (c) an excessive penalty is imposed and such sentence is void as to the excess.[321]

Whatever situation the petitioner invokes, the threshold remains high. The violation of a constitutional right must be sufficient to void the entire proceedings.[322]

The folly in this proposition lies in its implied assertion that the writ only applies to void judgments. By stating that the resulting violation has to have the effect of voiding the judgment, it restricts the application of the writ by making it inapplicable to instances where the judgment is valid but a constitutional violation occurs thereafter, during its service.

This limitation is laid down no less than by the Revised Rules of Court which says:

> Sec. 4. *When writ not allowed or discharge authorized. - If it appears that the person alleged to be restrained of his liberty is in the custody of an officer* under process issued by a court or judge or *by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed*; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. *Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.*[323]

Whether a petitioner is entitled to the writ is, therefore, usually determined by the Supreme Court's review of the defects in the judgment rendered by the lower court. So long as it does not suffer from any infirmity, the application for the writ's issuance is not granted.

This restrictive interpretation, however, has been abandoned by *by several circuit and district courts in the U.S.* which had already categorically applied the writ of habeas corpus to instances where a prisoner is legally incarcerated. In *Coffin v. Reichard,*[324] it said:

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[321] Andal v. People, G.R. No. 138268, 307 SCRA 650, 651 (1999).
[322] Calvan v. Court of Appeals, G.R. 140823, 341 SCRA 806, 809 (2000).
[323] RULES OF COURT, Rule 102, § 4. (Emphasis supplied.)
[324] 143 F. 2d 443 (1944). (Emphasis supplied.)

> When a man possesses a substantial right, the courts will be diligent in finding a way to protect it. *The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights.*[325]

A prisoner's conviction and incarceration is said to deprive him only of such liberties as the law has ordained he shall suffer for his transgressions.[326] A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits.[327]

While the government has the absolute right to hold prisoners for offenses against it, it likewise has the correlative duty to protect them against assault or injury while so held.[328] Failure to discharge this duty would constitute unlawful restraint of the prisoner's personal liberty for which reason habeas corpus may be applied for.[329]

The Pennsylvania Supreme Court, in *Bryant v. Hendrick*,[330] made the most categorical declaration that "habeas corpus is available to secure relief from conditions constituting cruel and unusual punishment, even though the detention itself is legal."[331]

Justice Michael J. Eagen, in that case, explained that in many jurisdictions, the writ of habeas corpus functioned only to test the legality of one's commitment and detention; the manner of his treatment during confinement was not reviewable in such proceedings.[332] However, the U.S. Supreme Court has ruled, in many cases, that the use of the writ should not be restricted to a determination of the legality of one's detention but should also be utilized to secure relief from any restraint violating freedoms

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[325] *Id.* at 445.

[326] *Id.*

[327] Logan v. United States, 144 U.S. 263 (1892).

[328] *Id.*

[329] *In re* Bonner, 151 U.S. 242 (1894).

[330] 444 Pa. 83 (1971).

[331] *Id.* at 90.

[332] *See e.g.* Commonwealth *ex rel.* Milewski v. Ashe, 362 Pa. 48, 66 A. 2d 281 (1949); Commonwealth *ex rel.* Wright v. Banmiller, 195 Pa. Superior Ct. 124, 168 A. 2d 925 (1961). "Traditionally in Pennsylvania and in many other jurisdictions, the writ of habeas corpus has functioned only to test the legality of the petitioner's commitment and detention. It was long held that the manner of his treatment and disciplining during confinement was not reviewable in habeas corpus proceedings."

considered basic and fundamental.[333]

Citing *Harris v. Nelson*,[334] Justice Eagen continued:

> The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that 'The Privilege of the Writ of Habeas Corpus shall not be suspended…' The scope and flexibility of the writ, its capacity to reach all manner *(sic)* of illegal detention, its ability to cut through barriers of form and procedural mazes have always been emphasized and jealously guarded by courts and lawmakers. *The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.*[335]

With the author's proposition that the "cruel, degrading or inhuman punishment" clause likewise prohibits overcrowding, a similar interpretation of the writ is entailed. It is noteworthy that in the U.S., courts did not question the legality of the judgment in petitions alleging overcrowding. Nevertheless, they still issued the writ upon the prisoners' showing of a constitutional violation during his confinement.

Misgivings to apply the same doctrine in the Philippines are assuaged by relinquishing the notion that release is the only remedy granted by the writ. The Rules of Court is perhaps responsible for this limitation of the writ's vast powers. Section 15, Rule 102 thereof states that, *"[w]hen the court or judge has examined into the cause of caption and restraint of the prisoner, and is satisfied that he is unlawfully imprisoned or restrained, he shall forthwith order his discharge from confinement."* Section 17 further provides that, *"[a] person who is set at liberty upon a writ of habeas corpus shall not be again imprisoned for the same offense[.]*Again, these provisions assume that the reason for the illegal restraint is a void judgment. As such, the petitioner must be completely discharged as a result of such infirmity.

However, the U.S. Supreme Court makes clear that release is not the only remedy that is given by the writ of habeas corpus. In *Coffin v. Reichard*,[336]

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[333] *See* Peyton v. Rowe, 391 U.S. 54, 88 S. Ct. 1549 (1968); Fay v. Noia, 372 U.S. 391, 83 S. Ct. 822 (1963).

[334] Bryant v. Hendrick, 444 Pa. 83, *citing* Harris v. Nelson 394 U.S. 286, 89 S. Ct. 1082 (1969).

[335] *Id.* at 89.

[336] 143 F. 2d 443 (1944).

the writ was granted where the remedy was not the release of the inmate but rather his transfer to another institution. This 1944 case exemplified a dramatic departure from the traditional limitations of the writ of habeas corpus as a remedy. Here, the U.S. court adopted a broad construction of its statutory authority to use the writ "as law and justice require."[337] The Court here said:

> The judge is not limited to a simple remand or discharge of the prisoner, but he may remand with directions that the prisoner's retained civil rights be respected, *or the court may order the prisoner placed in the custody of the Attorney General of the United States for transfer to some other institution.*[338]

This interpretation is in keeping with the grand purpose of the writ of habeas corpus as eloquently stated in *Peyton v. Rowe.*[339] In that case, the Court said that, "[the writ of habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose: the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty."[340]

The current language of the revised rules of court may be said to impede the use of this remedy. However, this stumbling block is resolved by the Court's proper revision of the pertinent sections therein on the writ of habeas corpus pursuant to its rule-making powers.[341]

B. Damages for Constitutional Tort under Article 32 of the Civil Code

In the United States, petitions challenging a prisoner's conditions of confinement were usually in the form of what became known as "Section 1983 lawsuits".[342] Section 1983, Title 42 of the United States Code, culled from the Federal Civil Rights Act of 1871, allows persons who are deprived of certain rights to sue for civil damages or obtain injunctive relief in federal courts.[343] The section provides:

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[337] *Id.*

[338] *Id.* (Emphasis supplied.)

[339] 391 U.S. 54, 88 S. Ct. 1549 (1968).

[340] *Id.*

[341] CONST. art. VIII, §5(5).

[342] *Supra* note 113.

[343] *Id. See also* Federal Judiciary Center, Civil Rights Act of 1871, https:// www.fjc .gov/history/timeline/civil-rights-act-1871.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.[344]

The Act was originally intended to provide a private remedy for violations of federal law, and has subsequently been interpreted to create a species of tort liability.[345] In several cases,[346] U.S. courts have already held that mistreatment of an inmate by a prison official gives rise to a cause of action under this provision. In *McCollum v. Mayfield*,[347] for instance, an inmate confined in a state prison sued those in charge of the prison for damages under this Act. He alleged failure to furnish medical care after receiving personal injuries while in prison. The court noted that he did not claim that defendants caused his original injury but "aver[s] that by solitary confinement and refusal to grant him the right to receive food or medical aid, defendants, by their neglect and negligence, caused him to suffer permanent injuries of a serious nature."[348] In ruling in favor of the inmate, the court held that:

> A refusal to furnish medical care when it is clearly necessary, such as is alleged here, could well result in the deprivation of life itself; it is alleged that plaintiff suffered paralysis and disability from which he will never recover. This amounts to the infliction of permanent injuries, which is, to some extent, a deprivation of life, of liberty and of property. Since these rights are protected by the Fourteenth Amendment to the Federal Constitution, the complaint sufficiently alleges the deprivation of a right, privilege or immunity secured by the Constitution and laws of the United States.[349]

The court, therefore, affirmed that a deprivation of a Constitutional guarantee gives the inmate a cause of action for damages enforceable through a Section 1983 lawsuit.[350]

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[344] Civil Rights Act of 1871, 42 U.S.C. § 1983 (1871).

[345] Memphis Community School Dist. v. Stachura, 477 U.S. 299, 305 (1986).

[346] *Supra* note 113, *citing* Coleman v. Johnston, 247 F. 2d 273 (7th Cir, 1957); McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955); Gordon v. Garrson, 77 F. Supp. 477 (E.D. Ill. 1948); United States *ex rel.* Atterbury v. Ragen, 237 F. 2d 953 (7th Cir. 1956).

[347] 130 F. Supp. 112 (1955).

[348] *Id.* at 114, *citing* Gordon v. Garrson, 77. F. Supp 477, 478 (E.D. Ill. 1948).

[349] *Id.* at 115.

[350] *Id.*

In the Philippines, an analogous provision of Section 1983 is found in Article 32 of the Civil Code.[351] It provides that:

> Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
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> (1) Freedom of religion;
> (2) Freedom of speech;
> (3) Freedom to write for the press or to maintain a periodical publication;
> (4) Freedom from arbitrary or illegal detention;
> (5) Freedom of suffrage;
> (6) The right against deprivation of property without due process of law;
> (7) The right to a just compensation when private property is taken for public use;
> (8) The right to the equal protection of the laws;
> (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
> (10) The liberty of abode and of changing the same;
> (11) The privacy of communication and correspondence;
> (12) The right to become a member of associations or societies for purposes not contrary to law;
> (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
> (14) The right to be a free from involuntary servitude in any form;
> (15) The right of the accused against excessive bail;
> (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
> (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
> *(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and*

[351] CIVIL CODE, art. 32. (Emphasis supplied.)

> (19) Freedom of access to the courts.
>
> In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.
>
> The indemnity shall include moral damages. Exemplary damages may also be adjudicated.
>
> The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Article 32 was patterned after the concept of tort in American law.[352] This fundamental innovation in the Civil Code was intended to create a distinct cause of action in the nature of a tort for the violation of constitutional rights, irrespective of the motive or intent of the defendant.[353] Its enactment sought to give added meaning and dimension to the principle of accountability of public officials enshrined in the Constitution.[354]

As a liability rule, it is designed to operate more aggressively than

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[352] *Report of the Special Joint Committee of the Congress on the Amendments to the New Civil Code*, 5 XVI LAW. J. 259 (1951).

[353] Vinzons-Chato v. Fortune Tobacco Corp., G.R. No. 141309, 525 SCRA 11, 14 (2007), *citing Report of the Special Joint Committee of the Congress on the Amendments to the New Civil Code*, 5 XVI LAW. J. 259 (1951). In the report on the Special Joint Committee of the Congress on the Amendments to the New Civil Code, Dean Bocobo expressed that while the defendant may not be exonerated on the basis solely of good faith, the inherent justifiability of his/her act, which is up to the courts to decide under the peculiar circumstance of each case, may be the basis of absolution. Thus:

> CONGRESSMAN DE LEON: So that Mr. Justice, under the provisions [Article 32] of the new Civil Code, there is no more plea of acting in good faith?
>
> DEAN BOCOBO: It would not be good faith but it would be inherent justifiability of the act, which is up to our courts to decide under the peculiar circumstance of each case, because we had back in our minds the old saying that Hell is paved with good intentions.

[354] Aberca v. Ver, G.R. No. 69866, 160 SCRA 590, 595 (1988).

Section 1983, Title 42 of the United States Code.[355] For one, Article 32 does not require bad faith or malicious intent. Dean Jorge Bocobo of the Code Commission explained that the very nature of Article 32 is that the wrong may be civil or criminal.[356] Hence, to make malice or bad faith a requisite would defeat the main purpose of the provision, which is the effective protection of individual rights.[357] He continued that public officials in the past have abused their powers "on the pretext of justifiable motives or good faith in the performance of their duties."[358] The object of Article 32 is precisely to put an end to this abuse.[359]

Another notable difference is that Article 32 covers a wider range of respondents.[360] Section 1983 limits its scope to, "person[s] [who act] [...] under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory[.]" Therefore, in the U.S., the provision applied only to wrongdoers clothed with the authority of state law and whose actions are therefore taken under color of state law. On the other hand, the protection extended by Article 32 focuses on the constitutional norm and not on the offender; thus, regardless of the status of the violator, whether a public officer, employee or a private individual, he may be the subject of the action so long as he is found to violate a Constitutional guarantee.

Third, Article 32 has a lower evidentiary threshold for establishing accountability. An action arising from Article 32 may be filed independent of a criminal prosecution.[361] Being an independent civil action, it therefore lowers the standard from proof beyond reasonable doubt to preponderance of evidence.[362]

This was sought to address the problem aptly discussed by the Code Commission, that is, even when the prosecuting attorney files a criminal action, the requirement of proof beyond reasonable doubt often prevented appropriate punishment.[363] Burdened by a full load of cases, the public prosecutor is less likely to be able to focus on a constitutional claim. Thus, by making the action civil in character, it effectively releases the offended party

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[355] FLORIN HILBAY, UNPLUGGING THE CONSTITUTION (2010).
[356] *Supra* note 352, at 258.
[357] *Id.*
[358] *Id.*
[359] *Id.*
[360] HILBAY, *supra* note 355.
[361] *Id.*
[362] *Id.*
[363] *Id.*

from the institutionalized limitations of having a public prosecutor.[364]

In the case of overcrowded prison conditions, Article 32 allows prisoners to go after the erring public officer in charge of managing the prison. For instance, in the case of the New Bilibid Prison, the inmates may go after the Director of the Bureau of Corrections.

Vinzons-Chato v. Fortune Tobacco Corporation[365] is insightful on this matter. In that case, the respondent filed a complaint for damages against the Commissioner of Internal Revenue, in her private capacity alleging that the latter should be held liable for issuing an administrative issuance that violated its constitutional right against deprivation of property without due process of law and the right to equal protection.

In that case, the Court held that "in determining whether a public officer is liable for an improper performance or nonperformance of a duty," it must be determined whether the duty is owing to the public collectively (the body politic), or owing to particular individuals.[366] In the former, "an individual cannot have a cause of action for damages against the public officer, even though he may have been injured by the action or inaction of the officer. In such a case, there is damage to the individual but no wrong to him."[367] The Court continued that in such improper performance or nonperformance of the public duty, the officer has touched his interest to his prejudice; but the officer owes no duty to him as an individual.[368] Thus, "[t]he remedy in this case is not judicial but political."[369] A contrary precept, the Court notes, would lead to a deluge of suits. If such were the case, no one would serve a public office.[370]

The exception to this rule is when the public officer's improper performance or nonperformance of his public duty causes the individual to suffer a particular or special injury. Otherwise restated, the rule is that an individual cannot have a particular action "against a public officer without a particular injury, or a particular right, which are the grounds upon which all

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[364] *Id.*

[365] G.R. No. 141309, 575 SCRA 23 (2008).

[366] *Id.* at 31, *citing* FLOYD MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS 386-387 (1890).

[367] *Id.* at 31.

[368] *Id.* at 31.

[369] *Id.* at 31.

[370] *Id.*

actions are founded."[371]

In *Cojuangco, Jr. v. Court of Appeals*,[372] for instance, the Court upheld the right of the petitioner to recover damages under Article 32 against the Philippine Charity Sweepstakes Office Chairperson because he sustained a personal injury on account of the latter's illegal withholding of his prize winnings.

In the case of prison overcrowding, the public officer who continuously subjects the prisoners to such cruel, degrading or inhuman conditions commits a particular injury to its inmates. There is a specific class of people who suffer a direct and personal injury by reason of his inaction. The remedy is, therefore, judicial and enforceable through Article 32. It is of no moment that the petitioners are great in number. Article 32 gives them a cause of action. The prisoners of the New Bilibid Prison, housed in a particular Brigade suffering from overcrowded conditions, for instance, may therefore bring an action for damages against the Chief of the Bureau of Corrections.

Article 32 also relieves the prisoners from the burden of establishing that the "prison officials knowingly maintained" the conditions.[373]

The problem with Article 32 as a remedy is the difficulty of assigning culpability. Prison overcrowding is usually an aggregate result of protracted non-action from the head of the Bureau in charge of maintaining the penitentiary. Thus, one cannot determine with particularity who is responsible for the overcrowding situation. It would also be a dangerous precedent to merely sue for damages whoever is the incumbent head. Nevertheless, this remedy warrants further exploration.

C. Setting a Maximum Population Limit by a Petition for Continuing Mandamus

The final remedy proposed is a petition for the issuance of a writ of mandamus. In general, the writ lies to require the execution of a ministerial duty, which entails neither the exercise of official discretion nor judgment.[374] "It connotes an act in which nothing is left to the discretion of the person

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[371] *Id.* at 32, *citing* Butler v. Kent, 19 Johns. 223, 10 AM. DEC. 219 (1821).

[372] G.R. No. 119398, 309 SCRA 602, 604 (1999).

[373] Stringer v. Rowe, 616 F. 2d 993 (7th Cir. 1980).

[374] Angchangco, Jr. v. Ombudsman, G.R. No. 122728, 268 SCRA 301, 301 (1997).

executing it."[375]

Any doubt in favor of the grant of a writ of mandamus seeking to compel a prison officer to do an act in relation to prison management has much to do with the notion that prison administration involves an exercise of discretion. Therefore, it is assumed that a writ of mandamus cannot lie. However, as will be explained, one's obligation to perform a duty, as defined by law, is different from how that person carries out such duties.[376] While the latter goes into the implementation of that mandate and thus may entail some form of discretion, the act of doing what the law exacts to be done is ministerial and may thus be compelled by mandamus.[377]

In *Metro Manila Development Authority v. Concerned Residents of Manila Bay,* [378] an analogous issue was presented before the Court, that is, a government agency allegedly neglecting its duties as mandated both by the Constitution and by statute. Particularly, the respondents filed a petition for mandamus for the "cleanup, rehabilitation and protection of Manila Bay," alleging that its water quality had fallen below the allowable standards set by law.[379] They asserted that the continued neglect of petitioners in abating the pollution in Manila Bay constituted a violation of their constitutional right to life, health, and a balanced ecology and a number of laws including the Environment Code and the Pollution Control Law. Interestingly, their prayer was for the petitioners to clean up Manila Bay *and to submit to the RTC a concerted plan of action for the purpose.*[380]

In ruling in their favor, the Court first had to address the issue of whether a writ of mandamus was proper. Petitioners argued that MMDA's duty to maintain adequate solid waste and liquid disposal systems necessarily involved policy evaluation and the exercise of judgment. Thus, MMDA could not be compelled to carry out its mandate a certain way. On the other hand, the respondents countered that "the statutory command is clear and that petitioners' duty to comply with and act according to the clear mandate of the law does not require the exercise of discretion."[381] Thus, MMDA had no discretion as to whether or not to alleviate the problem of waste disposal; it

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[375] Metro. Manila Dev. Auth. v. Concerned Residents of Manila Bay, G.R. No. 171947, 574 SCRA 661, 670–71 (2008).

[376] *Id.*

[377] *Id.*

[378] *Id.*

[379] *Id.* at 673.

[380] *Id.*

[381] *Id.* at 671.

was its "ministerial duty to attend to such services."[382]

The Court agreed with the respondents. After examining the pertinent laws, including MMDA's charter, it concluded that the duty to put up a proper waste disposal system could not be characterized as discretionary.[383] It held:

> First off, we wish to state that *petitioners' obligation to perform their duties as defined by law, on one hand, and how they are to carry out such duties, on the other, are two different concepts. While the implementation of the MMDA's mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by mandamus* [...][384]

The Court reiterated that "discretion presupposes the power given by law to public functionaries to act officially according to their judgment or conscience."[385] Stated differently, "a discretionary duty is one that 'allows a person to exercise judgment and choose to perform or not to perform.'"[386] This prerogative was clearly not given to MMDA in light of the laws that specified its solid waste disposal-related duties.

The case of *Metro Manila Development Authority v. Concerned Residents of Manila Bay* is authority for at least three important propositions.

First, it illustrates that a Mandamus petition may be granted even when the action sought to be compelled is not provided by statute. A constitutional provision, even in itself, may be invoked to compel that action.

Section 3, Rule 65 of the Rules of Court provides:

> Section 3. *Petition for Mandamus. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station*, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain,

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[382] *Id.* at 671.

[383] *Id.* "A perusal of other petitioners' respective charters or like enabling statutes and pertinent laws would yield this conclusion: *these government agencies are enjoined, as a matter of statutory obligation, to perform certain functions relating directly or indirectly to the cleanup, rehabilitation, protection, and preservation of the Manila Bay. They are precluded from choosing not to perform these duties.*" (Emphasis supplied.)

[384] *Id.* at 671.

[385] *Id.* at 672, *citing* 2 FERIA, NOCHE CIVIL PROCEDURE ANNOTATED (2013).

[386] *Id.* at 672–73, *citing* BLACK'S LAW DICTIONARY (8th ed., 2004).

> speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.[387]

The provision, therefore, requires that for a writ of mandamus to be granted, it should be the duty of the respondent to perform the act because it is mandated by law. However, the Court in the *MMDA* case made the pronouncement that if the duty or action sought to be compelled is already commanded by the Constitution, this, in itself, is sufficient for the writ to be granted.

The Court there cited Republic Act No. 9003 or the Ecological Solid Waste Management Act which it held to implement Section 16, Article II of the 1987 Constitution, invoked by respondents.[388] The Court was quick to qualify, however, that even assuming that no legal provision categorically demanded that petitioners clean up the bay, they could not "escape their obligation to future generations of Filipinos to keep the waters as clean as humanly possible, as this obligation was enshrined in Section 16. Anything less would be a betrayal of the trust reposed on them."[389]

Second, the case likewise illustrates that the government cannot shirk from its duty simply by alleging a lack of funds. The *MMDA* case is, therefore, radical in this sense; it illustrates the power of the court to order the Department of Budget and Management (DBM) to set aside public funds for the implementation of its Order.

The Court explained that the DBM is mandated by the 1987 Administrative Code to ensure "the efficient and sound utilization of government funds and revenues so as to effectively achieve the country's

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[387] RULES OF COURT, Rule 65, § 3. (Emphasis supplied.)

[388] *Id.* at 692, *citing* Rep. Act No. 9003 (2000). Ecological Solid Waste Management Act of 2000.

[389] *Id.* at 692.

development objectives."[390] This being the case, DBM was ordered by the Court to provide for adequate budget for the expenses to be incurred in the Manila Bay cleanup. It ordered:

> (11) *The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay*, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.[391]

Third, the case shows that the Court may require government agencies to submit progress reports of the activities they undertake in accordance with the Court's decision.[392] These directives are founded on what the Court termed as a "continuing mandamus". Justice Presbitero Velasco explained that the execution of the decision is but an integral part of the adjudicative function of the Court. Therefore, in issuing the directive to submit progress reports, it was merely making sure "that its decision would not be set to naught by administrative inaction or indifference." Justice Velasco adds:

> It thus behooves the Court to put the heads of the petitioner-department agencies and the bureaus and offices under them *on continuing notice about, and to enjoin them to perform, their mandates and duties* towards cleaning up the Manila Bay and preserving the quality of its water to the ideal level. *Under what other judicial discipline describes as "continuing mandamus": the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference.*[393]

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[390] *Id.* at 682, *citing* REV. ADMIN. CODE, tit. XVII, § 1. Declaration of Policy. - The national budget shall be formulated and implemented as an instrument of national development, reflective of national objectives and plans; supportive of and consistent with the socio-economic development plans and oriented towards the achievement of explicit objectives and expected results, to ensure that the utilization of funds and operations of government entities are conducted effectively; formulated within the context of a regionalized governmental structure and within the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of government-owned or controlled corporations; and prepared within the context of the national long-term plans and budget programs of the Government.

[391] *Id.* at 697. (Emphasis supplied.)

[392] *Id.* "(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing mandamus", shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision."

[393] *Id.* at 688. (Emphasis supplied.)

The Court elaborated that their issuance was not an encroachment over the powers and functions of the Executive Branch. Instead, it was simply an exercise of its judicial power under Article VIII of the 1987 Constitution.

Following the framework in the *MMDA* case, a writ of mandamus should likewise be granted in favor of prisoners who allege a violation of their Constitutional right against cruel, degrading or inhuman punishment by reason of overcrowded prison conditions.

The Court can take heed from *Brown v. Plata*,[394] where the U.S. Supreme Court imposed a maximum prison population limit which it ordered the State to enforce. In the same manner, the Philippine Supreme Court may impose a similar population limit, after considering the evidence presented. The compliance of the Bureau of Corrections with the imposed limit will then be the subject of the writ of mandamus.

In determining this limit, the Court may find guidance by looking at international standards, such as those set in the Nelson Mandela Rules laid out by the UN. It may likewise examine the Bureau of Corrections Act of 2013 and its implementing rules.

Section 4, Paragraph (a) of the Bureau of Corrections Act of 2013 likewise provides that the Bureau of Corrections shall be in charge of safekeeping national inmates sentenced to more than three (3) years. This safekeeping shall include "decent provision of quarters in compliance with established United Nations standards." This mandate was likewise repeated in the Implementing Rules of the Bureau of Corrections Act which included a reference as to the prescribed cell capacity.[395] Section 7, Rule VII noted that the ideal habitable floor area per inmate was 4.7 square meters and that the maximum number of inmates per cell was ten. These figures may thus also be considered in evaluating the maximum population limit.

The Court's ruling in the subsequent *MMDA Resolution*[396] was met with strong dissent from some of the justices who believed that the majority's ruling was "an intrusion of the Judiciary into the exclusive domain of the Executive."[397] Nevertheless, the *MMDA* case still provides a strong precedent

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[394] 563 U.S. 493 (2011).

[395] Dep't of Env't & Natural Res. (DENR) Adm. Order No. 2001-34 (2001). Impl. Rules & Reg. of Rep. Act. No. 9003, Rule VII, § 7.

[396] Metro. Manila Dev. Auth. v. Concerned Residents of Manila Bay, G.R. No. 171947, 643 SCRA 90 (2011).

[397] *Id.* at 119 (Carpio *J. dissenting*).

for the invocation of the writ of continuing mandamus.

VIII. CONCLUSION

> *"Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death."*
>
> —Justice J.B.L. Reyes

The present conditions of Philippine prisons are a sad commentary on bureaucratic efficiency and commitment. By subjecting inmates to extremely overcrowded prisons, the government effectively relegates them to the status of animals and strips them away of any semblance of dignity. The fact that the government does not seem at all disconcerted by the plethora of reports indicating that the Philippines has the most overcrowded prisons in the world signifies a troubling indifference. Its continued crusade against criminality, without the corresponding provision for more prison facilities, will only exacerbate the problem.

Thus, it is imperative for the Court to step in, if only to ensure that the constitutional guarantees to which the prisoners remain entitled are not reduced to hollow covenants that will eventually fall into obsolescence.

The author has outlined how the Court may do exactly that. By extending the scope of Section 19, Article III as to embrace conditions of confinement, the Court may now look into the constitutionality of the prisoners' living conditions and determine whether they are "cruel, degrading or inhuman". This interpretation breathes a renewed life into the provision that is consistent not only with its historical evolution or with the intent of the framers but also with the notion that the words of the Constitution are not ever static.

When the framers of the 1987 Constitution ruminated on the "cruel, degrading or inhuman punishment" clause, they had already recognized

certain jurisprudential milestones in the U.S. extending the scope of the Eighth Amendment. This was precisely why they added an entirely separate paragraph to make clear that even prison conditions are within the purview of the constitutional guarantee. This modification effectively makes the scope of the protection more expansive, more precise and more powerful. It is, therefore, interesting how not one case has reached the Supreme Court seeking to enforce this right.

In any case, this Note would prove helpful in the Court's disposition as it proposes the use of a two-tiered analysis that builds and improves on the standards used in U.S. courts. In particular, the analysis proposed involves two levels: first, the use of the totality-of-conditions approach in determining which circumstances to consider in its evaluation and second, the application of the dignity of man test to the facts obtained from the first tier. By adopting the two-tiered analysis proposed, a consistent framework is formulated to guide both the petitioners and the courts.

The author also forwards three legal remedies available to the prisoners upon a finding of such violation: (1) a petition for a writ of habeas corpus, (2) an action for damages under Article 32, and (3) a petition for a writ of continuing mandamus. Through these remedies, prisoners may finally enforce their constitutional right and obtain the proper indemnification for the protracted violation thereof.

The Philippine Supreme Court had already made the strong pronouncement that the government cannot simply shirk from its obligations to perform a constitutionally mandated duty by alleging a lack of funds. The Court had already ruled that it is empowered to order the DBM to set aside public funds in the General Appropriation Act for the performance of such constitutional duty. This erases any doubt as to the justiciability of the issue on the premise that it has become an institutionalized reality which would require a large amount of money to transform.

The implications of this Note are vast and far-reaching. It is not lost on the author that the proposal will undoubtedly result in an increased number of petitions before the courts. This expanded application will create great inconvenience to both courts and prison officers. They would have to contend with the demands on time and facilities that would result from calling the inmate-petitioner, his witnesses, guards, doctors or wardens to testify. The government will likewise have to devote a hefty portion of public funds to the creation of more prison facilities and in indemnifying the prisoners. However, these inconveniences should not deter the enjoyment of prisoners of a basic right enshrined in no less than the Constitution. It is not only a legal duty but

also a moral one to afford them with the most basic virtue of human dignity.

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