TREATY TERMINATION AND THE FAULTS OF PHILIPPINE FORMALISM*

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ABSTRACT

The 1987 Constitution expressly requires Senate approval for a treaty to become "valid and effective" but is silent on treaty withdrawal. President Rodrigo Duterte has seized upon the textual gap to withdraw the country from the Visiting Forces Agreement with the United States of America, without Senate approval. On March 20, 2020, the Senate majority bloc, for the first time in history, opposed Dutertian rule and argued that because the Constitution requires Senate concurrence for treaty conclusion, senatorial imprimatur is likewise needed for treaty termination. Neither of these views finds its place in Philippine constitutional order. But while their ends conflict, the error is shared: an overreliance on legal text. On one hand, the Senate rightfully invokes the separation of powers, yet unduly limits that constitutional principle to constitutional provisions. On the other hand, the President ignores how the gray in-betweens of black letter law have long been filled by an unwritten yet time-honored principle. This paper provides a third approach. By shifting the focus from the written text to the unwritten tenet, the paper defines the limits to a presidential treaty power free from the faults of Philippine formalism.

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> *Auxiliaries [...] may be useful and good in themselves, but for him who calls them in they are always disadvantageous; for losing, one is undone, and winning, one is their captive.*
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> —Nicollo Machiavelli[1]

INTRODUCTION

The Philippine democratic experiment continues to disconnect legal text from its underlying tenet.

Article VII, Section 21 of the 1987 Constitution expressly requires Senate approval for a treaty to become "valid and effective," but is silent on treaty withdrawal. President Rodrigo Duterte has seized upon the textual gap to withdraw the country from the Visiting Forces Agreement (VFA) with the United States of America (US), and to do so on his own without Senate approval. On March 20, 2020, through Resolution No. 39, the Philippine Senate tasked the Supreme Court to interpret the meaning of silence.[2]

Senate President Vicente C. Sotto III argues that because "the Executive and the Legislative branches of government have a shared competency on treaty-making [...] the concurrence of the Senate is [likewise] necessary [for] its abrogation."[3] Just two years prior, in *Pangilinan v. Cayetano*—the *ICC Withdrawal Case*—the Office of the Solicitor General (OSG) advanced an opposing school of thought. The OSG argued that because the Constitution expressly requires Senate concurrence for ratification but is silent on withdrawal, treaty termination is within the President's residual jurisdiction and sole discretion.[4]

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[1] NICCOLO MACHIAVELLI, THE PRINCE 57 (Penguin Books, 2004) (1532).

[2] S. Res. No. 39 18th Cong. 1st Sess. (2020). Resolution Asking the Honorable Supreme Court of the Philippines to Rule on Whether or Not the Concurrence of the Senate is necessary in the Abrogation of a Treaty Previously Concurred in by the Senate.

[3] Address by Vicente Sotto III, *Speech of Senate President Vicente C. Sotto III on Proposed Senate Resolution 337 asking the Supreme Court of the Philippines to rule on whether or not the concurrence of the Senate is necessary in the abrogation of a treaty previously concurred in by the Senate*, SENATE WEBSITE, Mar. 2, 2020, *at* https://www.senate.gov.ph/press_release/2020/0302_prib2.asp

[4] Office of the Sol. Gen. Consol. Comment (On the Petitions for *Certiorari* and *Mandamus* dated May 16, 2018 and June 8, 2018) [hereinafter "OSG Comment"], ¶ 60, Pangilinan v. Cayetano, G.R. No. 238875 & G.R. No. 239483, July 6, 2018.

The Senate and the Solicitor General stand on opposite sides of the same coin. They recognize that the Constitution is silent on treaty withdrawal but construe that void differently. Their ends conflict, yet their error is shared: hyper-textualism.

This paper adopts a third approach. By shifting the focus from the written text to the unwritten tenet, it defines the unspoken limits to presidential treaty power free from the faults of Philippine formalism.

Part I looks at the history and treaty status of the VFA. Part II continues by summarizing the opposing views advanced by the Senate and OSG regarding treaty withdrawal. Part III reviews the 1987 Constitution's treaty regime as interpreted in Philippine Supreme Court jurisprudence. Lastly, Part IV confronts the crux of the issue: *first*, by addressing whether legislative imprimatur is needed for treaty withdrawal; and *second*, by identifying in which legislative body the authority is lodged.

I. THE VFA IN A NUTSHELL

Though Article VII, Section 21 provides for the general paradigm of treaty entry, the 1987 Constitution codifies a special provision that applies to treaties which involve the presence of foreign military bases, troops, or facilities in the Philippines.[5]

> Article XVIII, Section 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

Article XVIII, Section 25 of the 1987 Constitution disallows foreign military bases, troops, or facilities in the country, unless the agreement is: (a) entered into by treaty; (b) duly concurred in by the Senate and, when so required by Congress, ratified by a majority of the votes cast by the people in

[5] Bayan v. Zamora [hereinafter "Bayan"], G.R. No. 138570, 342 SCRA 449, 482, Oct. 10, 2000.

a national referendum; and (c) recognized as a treaty by the other contracting state.[6]

Pursuant to this provision, on October 5, 1998, then President Joseph Estrada ratified the VFA between the Philippines and the US. In line with Article VII, Section 21 of the 1987 Constitution,[7] the treaty was transmitted to and concurred in by the Senate on May 27, 1999.

The VFA consists of two documents: the "Agreement Regarding the Treatment of US Armed Forces Visiting the Philippines" and the "Agreement Regarding the Treatment of RP Personnel Visiting the USA" ("Counterpart Agreement"). Generally speaking, the VFA regulates the visits of Philippine and US military personnel and further defines matters of criminal jurisdiction *inter alia*.[8] According to the Department of Foreign Affairs Secretary Theodore Locsin, the treaty affects Philippine legal order by:

1. Ensuring operability of other Philippines-US defense arrangements and modalities of cooperation;

2. Allowing the US to provide a total-package approach on defense articles that would be compatible with equipment, assets, and systems that are already in place;

3. Promoting interoperability between the Philippines' forces and law enforcement agencies and their US counterparts; and

4. Allowing for the continued support for addressing non-traditional security threats.

The constitutionality of the VFA was challenged and upheld by the Philippine Supreme Court.[9] In *Bayan v. Zamora* and *Nicolas v. Romulo*, the

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[6] Nicolas v. Romulo [hereinafter "Nicolas"], G.R. No. 175888, 578 SCRA 438, 456, Feb. 11, 2009.

[7] CONST. art. VII, § 21. "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

[8] *Bayan*, 342 SCRA 449, 484. *See, generally*, Agreement between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines, arts. V, VII, VIII, Feb. 10, 1998, Phil.-U.S., *available at* https://www.officialgazette.gov.ph/1998/02/10/agreement-between-the-government-of-the-republic-of-the-philippines-and-the-government-of-the-united-states-of-america-regarding-the-treatment-of-united-states-armed-forces-visiting-the-philippines-f

[9] *Id.*; *Nicolas*, 578 SCRA 438, 456; Arigo v. Swift, G.R. No. 206510, 735 SCRA 102, Sept. 16, 2014; Laude v. Jabalde, G.R. No. 217456, 775 SCRA 408, Nov. 24, 2015.

respective petitioners therein claimed that the VFA was *not* recognized by the US as a treaty but as an executive agreement, thus failing to satisfy the third treaty-requisite enshrined in Article XVIII, Section 25 of the 1987 Constitution.

With much controversy, the Supreme Court rejected the contention. In stark conflict with the language of the Constitution which requires a military-base agreement to be "recognized as a *treaty* by the other contracting State," the Court ruled that it was "not the intention of the framers of the 1987 Constitution, in adopting Article XVIII, Sec. 25, to require the other contracting State to convert their system to achieve alignment and parity with ours."[10] All that was required was for the agreement to be recognized in order to be legally binding. The fact, therefore, that the US recognized the VFA as an executive agreement was sufficient.[11] The Court ruled:

> [I]t is inconsequential whether the United States treats the VFA only as an executive agreement because, under international law, an executive agreement is as binding as treaty. To be sure, as long as the VFA possesses the elements of an agreement under international law, the said agreement is to be taken equally as a treaty.[12]

The Supreme Court ignored the difference between a treaty and an executive agreement recognized in Philippine legal order. Interestingly, it further implied that the VFA did not need to undergo a senate ratification process at all because the VFA was, in truth, but an implementing agreement of a pre-existing compact, the Mutual Defense Treaty (MDT).

> Accordingly, as an implementing agreement of the RP-US Mutual Defense Treaty, it was not necessary to submit the VFA to the US Senate for advice and consent, but merely to the US Congress under the Case-Zablocki Act within 60 days of its ratification. It is for this reason that the US has certified that it recognizes the VFA as a binding international agreement, *i.e.*, a treaty, and this substantially complies with the requirements of Art. XVIII, Sec. 25 of our Constitution.[13]

According to the Supreme Court, the VFA's form was a moot issue. Having merely implemented the provisions of the MDT, the VFA could have been entered into as an Executive Agreement *ab initio*.

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[10] *Nicolas*, 578 SCRA 438, 466-467.
[11] *Id.* at 467.
[12] *Bayan*, 342 SCRA 449, 488.
[13] *Nicolas*, 578 SCRA 438, 461.

The VFA being valid and effective, the Philippines and the United States subsequently entered into the Enhanced Defense Cooperation Agreement (EDCA) via executive agreement,[14] which "authorizes the US military forces to have access to and conduct activities within certain 'Agreed Locations' in the Philippines."[15] The EDCA was likewise challenged before and upheld by the Supreme Court for failing to comply with Article XVIII, Section 25 of the 1987 Constitution. The Court rejected the contention, ruling that the EDCA merely enforced the provisions of the VFA and the MDT and could thus come in the form of an executive agreement.[16]

On January 23, 2020, a day after presidential ally Senator Ronald "Bato" dela Rosa's US visa was confirmed to have been cancelled,[17] Duterte threatened to withdraw the Philippines from the VFA. A Notice of Withdrawal was sent to the US Embassy on February 11, 2020. Pursuant to Article IX of the VFA, the termination would have taken effect 180 days thereafter, or on August 2, 2020.[18]

In "light of political and other developments in the region," on June 1, 2020 Duterte ordered the suspension of the Philippines' withdrawal from the VFA for a period of six months.[19]

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[14] Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America on Enhanced Defense Cooperation, Apr. 28, 2014, Phil.-U.S., *available at* https://www.officialgazette.gov.ph/downloads/2014/04apr/20140428-EDCA.pdf

[15] Saguisag v. Ochoa, G.R. No. 212426, 779 SCRA 241, 317, Jan. 12, 2016.

[16] *Id.* at 403.

[17] Aika Rey, *Dela Rosa confirms U.S. visa canceled*, RAPPLER, Jan. 22, 2020, *at* https://www.rappler.com/nation/249936-bato-dela-rosa-confirms-us-visa-canceled-january-2020

[18] Agreement between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines, art. 9, Feb. 10, 1998, Phil.-U.S., *available at* https://www.officialgazette.gov.ph/1998/02/10/agreement-between-the-government-of-the-republic-of-the-philippines-and-the-government-of-the-united-states-of-america-regarding-the-treatment-of-united-states-armed-forces-visiting-the-philippines-f. Duration and Termination This agreement shall enter into force on the date on which the parties have notified each other in writing through the diplomatic channel that they have completed their constitutional requirements for entry into force. This agreement shall remain in force until the expiration of 180 days from the date on which either party gives the other party notice in writing that it desires to terminate the agreement.

[19] DFA Note Verbale No. 2020-2622 (June 1, 2020), *available at* https://www.pna.gov.ph/articles/1104738

II. A BATTLE OF THE BRANCHES

Senate Resolution 39, series of 2020 marks the first occasion the majority bloc of the Philippine Senate challenged Dutertian rule. Through the Resolution, the Senate asked the Supreme Court to order Duterte to obtain Senate concurrence to validly withdraw from the VFA. Senate President Sotto invoked what may be referred to as the *acte contraire* theory—or more plainly, the "mirror principle"—which requires treaty termination to "reflect" the procedure of treaty conclusion. This rule of construction suggests "[t]he same degree of legislative participation [be] legally required to exit from as to enter an international commitment."[20]

Interestingly, Senate Resolution 39 is a 180-degree turn-around from the majority bloc's sentiment less than two years prior.[21] Today, the majoritarian sentiment echoes the minority opposition's views in the *ICC Withdrawal Petitions*.

A. Majoritarian Echo of Minority Views

The VFA debacle is a familiar story. On March 17, 2018, Duterte ordered the Philippines' withdrawal from the Rome Statute.[22] Opposition senators Francis N. Pangilinan, Franklin M. Drilon, Paolo Benigno Aquino IV, Leila M. De Lima, Risa Hontiveros, and Antonio F. Trillanes IV—a minority bloc—challenged the constitutionality of the withdrawal before the Philippine Supreme Court in the *ICC Withdrawal Case*.[23] Like the majority bloc after them, they likewise argued that because the 1987 Constitution expressly requires Senate concurrence to make a treaty "valid and effective,"[24] treaty-termination requires concomitant senatorial imprimatur[25]—an argument echoed in two subsequent petitions filed by the Philippine Coalition for the International Criminal Court (PCICC)[26] and the Integrated Bar of the

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[20] Harold Hongju Koh, *Presidential Power to Terminate International Agreements*, 128 YALE L.J. 432 (2018).

[21] S. Res. No. 289, 17th Cong. 1st Sess. (2017). Resolution expressing the sense of the Senate the Termination of, or Withdrawal from, Treaties and International Agreements concurred in by the Senate shall be valid and effective only upon Concurrence by the Senate. *See also* S. No. 63, 17th Cong. (2017).

[22] *ICC Statement on The Philippines' notice of withdrawal: State participation in Rome Statute system essential to international rule of law*, ICC Press Release, ICC WEBSITE, Mar. 20, 2018, *at* https://www.icc-cpi.int/Pages/item.aspx?name=pr1371.

[23] Pangilinan v. Cayetano, G.R. No. 238875, May 16, 2018.

[24] CONST. art. VII, § 21.

[25] Pangilinan v. Cayetano, G.R. No. 238875, May 16, 2018.

[26] Petition for Certiorari and Mandamus [hereinafter "PCICC Petition"], ¶ 1, Phil. Coal. for the Intl Criminal Court (PCICC) v. Exec. Sec'y, G.R. No. 239483, June 8, 2018. The

Philippines (IBP), respectively[27] (collectively, the *ICC Withdrawal Petitions*). All three petitions build off a fundamental constitutional law doctrine: the *separation of powers*.

Under the Philippine legal framework, "legislation belongs to Congress, execution to the executive, and settlement of legal controversies to the judiciary."[28] The PCICC argues:

> [O]nce a treaty has been submitted to the Senate for its concurrence and has in fact received the Upper House's concurrence, it likewise ceases to be the subject of the exclusive prerogative of the office of the Chief Executive. It becomes a shared duty of the Executive and the Legislature; it becomes subject to the system of checks and balances inherent in the very notion of the separation of powers.[29]

Invoking the case of *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Duque*,[30] the PCICC argues that "[t]reaties become part of the law of the land through transformation under Article VII, Section 21 of the Constitution" and are thus "transformed into municipal law that can be applied to domestic conflicts."[31] Since the Rome Statute has been "transformed into domestic law via the concurrence of at least two-thirds of all members of the Senate in an appropriate resolution,"[32] the Supreme Court is asked to declare the unilateral withdrawal void, and to compel "the Executive Department to submit the question of the constitutional necessity and propriety of such withdrawal to the Senate of the Philippines for its concurrence."[33]

PCICC "is an NGO of individuals and corporate entities that campaigned for the Philippines to become a State Party to the Rome Statute and is duly established under the laws of the Republic of the Philippines." *See also About the PCICC,* PCICC WEBSITE, *at* https://pcicc.wordpress.com/about.

[27] *See generally* Petition for Certiorari and Mandamus, Integrated Bar of the Phil. (IBP) v. Exec. Sec'y [hereinafter "IBP Petition"], G.R. No. _____, Aug. 22, 2019. *See also About Us*, PCICC WEBSITE, *at* www.ibp.ph/about.html

[28] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 678 (3d, 2009); Angara v. Electoral Comm'n, 63 Phil. 139, 156 (1936).

[29] *PCICC Petition*, ¶ 70.

[30] G.R. No. 173034, 535 SCRA 265, Oct. 9, 2007.

[31] *PCICC Petition*, ¶ 94.

[32] *Id.* ¶ 95.

[33] *Id.* at 2.

The same theory is further nuanced in the IBP Petition:

> The constitutional doctrine of separation of powers co-exists with equally important constitutional doctrine of sharing of powers. The doctrine of sharing of powers is reflected in the various provisions of the 1987 Constitution requiring two branches of government to act together in order to take the required legal action… "One of the mechanisms of sharing of powers is the power to enter into treaties or international agreements as provided in Sec. 21, Article VII[.][34]

The IBP petition likewise rightfully distinguishes treaty-sourced rules, which "have the force and effect of the provisions of a statute enacted by Congress,"[35] from mere executive agreements, which "do not have the force and effect of the statutory provisions" and "must [thus] conform to existing statutes."[36] Because treaties are given equal juridical status with traditional legislation, "withdrawal from a treaty is tantamount to the repeal of a domestic law"[37] in "violation of Section 2, Article VI of the 1987 Constitution[,] which vests the legislative power in the Congress."[38]

The petitions conclude with the *acte contraire* doctrine: the power to do confers the power to undo.[39] What is thus "required to withdraw from the Rome Statute is the same action that the legislature performed to make the Rome Statute valid and effective in the first place, i.e. through a concurrence of at least two-thirds of members of the Senate."[40]

The petitions cite the South Africa High Court's *Democratic Alliance Case*[41] and the United Kingdom Supreme Court's *Miller v. Secretary of State*[42] to support their common cause. In the former, the High Court of Gauteng (Pretoria) "declared the withdrawal procedure initiated by the Republic of

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[34] *IBP Petition*, ¶¶ 34-35.

[35] *Id.* ¶ 40.

[36] *Id.* ¶ 42.

[37] *Id.* ¶ 59.

[38] *Id.* ¶ 59.

[39] Maria Frankowska, *Competence of State Organs to Denounce a Treaty: Some Internal and International Legal Problems*, in 7 POLISH Y.B. INTL L. 277, 278 (1975).

[40] *IBP Petition*, ¶ 64.

[41] Democratic All. v. Minister of Intl Rel. and Cooperation and Others (Council for the Advancement of the South African Constitution Intervening) [hereinafter "*Democratic All.*"], (83145/2016) [2017] ZAGPPHC 53; 2017 (3) SA 212 (GP); [2017] 2 All SA 123 (GP); 2017 (1) SACR 623 (GP), Feb. 22, 2017.

[42] R (on the application of Miller and another) (Respondents) v. Secretary of State for Exiting the European Union (Appellant) [hereinafter "R (Miller)"], (2017) UKSC 5, Jan. 24, 2017.

South Africa in October 2016 null and void as it had not been approved by Parliament."[43]

The Court therein ruled:

> It would have been unwise if the Constitution had given power to the executive to terminate international agreements, and thus terminate existing rights and obligations, without first obtaining the authority of parliament. That would have conferred legislative powers on the executive: a clear breach of the separation of powers and the rule of law.
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> In sum, since [...] the national executive requires prior parliamentary approval to bind South Africa to an international agreement, there is no cogent reason why the withdrawal from such agreement should be different. The national executive did not have the power to deliver the notice of withdrawal without obtaining prior parliamentary approval.[44]

The High Court declared the notice of withdrawal made without parliamentary imprimatur to be unconstitutional and invalid. It thus ordered "the President of the Republic of South Africa [...] to forthwith revoke the notice of withdrawal."[45] An instrument of "withdrawal of notification of withdrawal" was thereafter filed on March 7, 2017 with the UN Secretary General.[46]

On the other hand, the UK Supreme Court in *Miller* ruled that because EU Treaties are a source of domestic legal rights, "the change in the law must be made in the only way in which the UK constitution permits, namely through Parliamentary legislation."[47]

Notably, these cases relied on by the *ICC Withdrawal Petitions* build off on the same theory of separation of powers in two ways. *Democratic Alliance* highlights the procedural aspect, invoking the steps to do in order to undo, while *Miller* examines the separation of powers substantively—that the

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[43] *Democratic All.*, (83145/2016) [2017] ZAGPPHC 53; 2017 (3) SA 212 (GP); [2017] 2 All SA 123 (GP); 2017 (1) SACR 623 (GP), Feb. 22, 2017.

[44] *Id.* at ¶¶ 56-57.

[45] *Id.* at ¶ 84.

[46] *See* Intl Criminal Court, South Africa: Withdrawal of Notification of Withdrawal, C.N.121.2017.TREATIES-XVIII.10 (Depositary Notification) (Mar. 7, 2017), *available at* https://treaties.un.org/doc/Publication/CN/2017/CN.121.2017-Eng.pdf

[47] *R (Miller)*, UKSC 5, at ¶ 121.

amendment of legal order is fundamentally a parliamentary, that is, legislative, prerogative.

B. The OSG Theory

In the *ICC Withdrawal Case*, the OSG adopted a textualist approach and argued that "the language employed in the Constitution must be given their ordinary meaning"—*verba legis non est recedendum*.[48] It claimed that Article VII, Section 21 of the 1987 Constitution is clear: Senate concurrence is required for treaty ratification and for ratification alone.[49] It argued:

> [T]he decision to withdraw from a treaty is tacitly an executive function. Had the framers of the Constitution intended to put a limitation on the power to withdraw from a treaty, they would have expressly required Senate participation in such act. But, they did not.[50]

Diametrically opposing the petitioner's allegations, the OSG defends the President's exclusive and plenary jurisdiction over treaty termination through the same fundamental but unspoken principle: the separation of powers.[51] "[H]ad it likewise been intended that treaty process be a legislative act…such process would have been provided under Article VI of the Constitution on the Legislative department, instead of Article VII on the Executive department."[52] Instead, Article VII, Section 1 of the 1987 Constitution "confers the Executive power upon the President," under which he acts as the "sole organ and authority in external affairs."[53] As "the Chief Executive and architect of the nation's foreign policy, the President withdrew from the Rome Statute sans the concurrence of the Senate"[54]—a question of policy and inherently a political determination.[55]

The OSG argues treaty withdrawal is not, therefore, tantamount to "an abrogation or repeal of a law, which is the sole function of the legislature."[56] On the contrary, it is fundamentally executive in nature,

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[48] *OSG Comment*, ¶ 150.
[49] *Id.* ¶ 152.
[50] *Id.* ¶ 60.
[51] *Id.* ¶¶ 64-65.
[52] *Id.* ¶ 60.
[53] *Id.* ¶ 58, *citing Bayan*, 342 SCRA 449, 494.
[54] *Id.* ¶ 59.
[55] *Id.* ¶ 61.
[56] *Id.* ¶ 95.

considering Duterte was merely effecting what the Rome Statute expressly allows:[57]

> [I]n giving the Instrument of Withdrawal dated 15 March 2018, the President simply exercised his power to enforce and implement laws, specifically Article 127 of the Rome Statute. The President, thus, acted in full accordance with the terms of the treaty itself. Verily, the President does not need Senate concurrence in the implementation of laws, including treaties.[58]

The OSG likewise dismissed the petitioners' reliance on the *Democratic Alliance* and *Miller* cases by simply pointing out how "the structure and design of the Philippine Constitution is vastly different[.]"[59] Unlike in these foreign contexts, the OSG claims that the 1987 Constitution, "in clear and unambiguous terms, has given the President, as the head of the State *and* government, the exclusive prerogative to conduct the country's foreign affairs and serve as sole representative to foreign nations."[60]

The Philippines' withdrawal from the ICC came into force on March 17, 2019 pursuant to the one-year period codified in Article 127 of the Rome Statute. As with the VFA, the question *a priori* remains: Was the withdrawal valid?[61]

III. THE PHILIPPINE TREATY REGIME

A. Treaty Ratification: Historically a Shared Power

The first official codification of a Philippine treaty clause in the country's legal history was through the *Malolos Constitution of 1899*:

> Article 66. Peace treaties shall not be definitive unless *approved by the Assembly* through a vote.
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> Article 68. The President of the Republic *needs to be authorized by a special law*.

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[57] *See* ROME STATUTE, art. 127.2.

[58] *OSG Comment*, ¶ 106.

[59] *Id.* ¶ 115.

[60] *Id.* ¶ 151.

[61] *See* Raphael Lorenzo Pangalangan, *Mishearing the Sound of Constitutional Silence: Unspoken Limits to Presidential Treaty Power*, ATENEO L.J. (forthcoming).

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> 4. To ratify treaties of offensive and defensive alliance, special commercial treaties, treaties that stipulate subsidies to a foreign power, and any other treaty that compels Filipinos to perform any individual obligation.[62]

The clauses would be overtaken by history. After the Philippines switched hands from the Spanish colonial regime to the American colonizing power through the *Treaty of Paris of 1898*,[63] the Philippines would be denied treaty-making power. Under the 1902 Organic Act[64] and 1916 Jones Law,[65] the Philippines was treated as a *sui generis* adjunct to US legal order. The country's legislation, jurisprudence, and treaty obligations were thus, effectively, colonial creations.[66]

Sovereign autonomy and the powers thereof would only once again be vested in an independent Philippine government, at least in principle, under the 1935 Constitution. Article VII, Section 11(7) thereof reflects the modern language of the Philippine treaty clause: "The President shall have the power, with the *concurrence of a majority of all the Members of the National Assembly*, to make treaties[.]"[67]

The 1935 Constitution would be amended to raise the voting threshold from majority to a two-thirds supermajority standard,[68] similar to that of the US Constitution.[69] Though briefly suspended under the 1943 Constitution of the Japanese imperial era,[70] the first post-colonial constitution

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[62] CONST. (1899), art. 66, 68. (Emphasis supplied.)

[63] Treaty of Peace Between the United States and the Kingdom of Spain (Treaty of Paris), Dec. 10, 1898, Spain-U.S., *available at* https://www.officialgazette.gov.ph/1898/12/10/treaty-of-peace-between-the-united-states-of-america-and-the-kingdom-of-spain-treaty-of-paris-signed-in-paris-december-10-1898

[64] PHIL. ORGANIC ACT (1902).

[65] JONES LAW (1916).

[66] *See e.g.* Kuroda v. Jalandoni, 83 Phil. 171 (1949).

[67] CONST. (1935), art. VII, §11(7). (Emphasis supplied.)

[68] CONST. (1935), *as amended*, art. VII, § 10(7). "The President shall have the power, with the concurrence of two-thirds of all the Members of the Senate to make treaties[.]"

[69] U.S. CONST. art. II, § 2, cl. 2 "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur[.]" *See* S. PRT. 106-71, 106th Cong. 2nd Sess. (2001). Treaties and Other International Agreements: The Role of the United States Senate, A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress, *available at* https://www.govinfo.gov/content/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf

[70] CONST. (1943), art. II, § 12. "The President, with the concurrence of majority of all its members, conclude treaties[.]"

would be ultimately revived after the second world war and remain until the dictatorship of Ferdinand E. Marcos, Sr. During his dictatorial regime, Marcos attempted to reinvent Philippine legal order through the "New Society." A new constitution—the 1973 Constitution—was put in place, under which the legislative body, the *Batasang Pambansa*, likewise shared in the treaty-making process: "Except as otherwise provided in this Constitution, no treaty shall be valid and effective unless concurred in by a majority of all the Members of the *Batasang Pambansa*."[71]

It was not until the 1986 People Power Revolution that the dictator Marcos was "forced out of office and into exile after causing twenty years of political, economical and social havoc."[72] Corazon C. Aquino was declared the President of the Philippine revolutionary government,[73] through which the 1973 Constitution was abolished. In its void, Aquino issued Proclamation No. 3 creating the Provisional 1986 Freedom Constitution.[74] The Freedom Constitution did not codify a rule on treaty-making, though it has been jurisprudentially recognized that the Philippines remained bound by principles of international law.[75]

The Freedom Constitution would be later replaced by the present-day 1987 Constitution, which declares that, "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."[76]

Since the inception of Philippine constitutional sovereign order, notwithstanding veering political winds and concomitant shifts in legal provision, treaty-making has remained a joint exercise of executive and legislative power.[77]

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[71] CONST. (1973), art. VII, § 14(1).

[72] Marcos v. Manglapus, G.R. No. 88211, 177 SCRA 668, 683, Sept. 15, 1989. *See generally* Raphael Lorenzo Pangalangan, Gemmo Bautista Fernandez & Ruby Rosselle Tugade, *Marcosian Atrocities: Historical Revisionism and the Legal Constraints on Forgetting*, 19 ASIA-PAC. J. HUM. RTS. & L. 140 (2018).

[73] *Id.* at 681.

[74] Proc. No. 3 (1986), adopting a Provisional Constitution.

[75] *See* Republic v. Sandiganbayan, G.R. No. 104768, 407 SCRA 10, 58, July 21, 2003.

[76] CONST. art. VII, § 21.

[77] Philippine treaty practice has not consistently complied with Article 7, Section 21. For example, Optional Protocol 2 (OP2) to the International Covenant on Civil and Political Rights is considered to be ratified, although no such concurrence was given by Senate. Senators explain that the OP2 was considered "impliedly concurred in" through the passage of RA 9346 abolishing the death penalty under Philippine penal laws. Notably, even legal digressions recognize the need for legislative action. *See* S. No. 63, 17th Cong. (2017).

Under the 1987 Constitution, the power to ratify treaties remains vested in the President, subject to the concurrence of the legislature. In its current formulation, the acting legislative body is the Senate whose role is limited to giving or withholding its consent to the ratification of treaties.[78] Once that consent is given, the treaty is automatically conferred the force and effect of municipal law. Indeed, international law and municipal law are so tightly entwined in Philippine legal tradition that, in case of express or implied conflict, one would repeal another through the principle of *lex posterior derogat priori*.[79] As will be shown in Part IV, this doctrine is one of two ways of effecting treaty withdrawal.

B. Distinguishing Treaty from Executive Agreement

Two types of international agreements[80] are recognized under Philippine law: (i) treaties; and (ii) executive agreements. Executive Order 459, series of 1997 draws a thin delineation between the two:

> *Treaties* – international agreements entered into by the Philippines which require legislative concurrence after executive ratification.[81]
>
> *Executive Agreements* – similar to treaties except that they do not require legislative concurrence.[82]

The "distinction" is circular and says nil on the ontological nuances between the two species of interstate compacts. The Philippine Supreme Court has attempted to fill that lacuna through two thresholds: *substantiality* and *political intent*.

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[78] Pimentel v. Exec. Sec'y, G.R. No. 158088, 462 SCRA 622, 637, July 6, 2005.

[79] Sec'y of Justice v. Lantion, G.R. No. 139465, 322 SCRA 160, 197, Jan. 18, 2000. "[A] treaty may repeal a statute and a statute may repeal a treaty."

[80] Exec. Order No. 459 (1997), providing for the Guidelines in the Negotiation of International Agreements and its Ratification, § 2(a). "International agreement shall refer to a contract or understanding, regardless of nomenclature, entered into between the Philippines and another government in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments."

[81] § 2(b).

[82] § 2(c).

First, in the 1961 case of *Commissioner of Customs v. Eastern Sea Trading*,[83] the Supreme Court ruled:

> International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties [while] those embodying adjustments of detail carrying out well established national policies and traditions and those involving arrangements of a more or less temporary nature take the form of executive agreements.[84]

The test of *substantiality* echoes the traditional separation of powers framework: the creation of new law must come with legislative imprimatur and, thus, be in treaty form. On the other hand, the mere "carrying out" or the implementation of policies and traditions comes in the form of executive agreements, which does not require legislative action.

Jurisprudence of more recent vintage has, however, taken a different view. In *Bayan Muna v. Romulo*,[85] the Supreme Court expressly departed from *Eastern Sea Trading*:

> The categorization of subject matters that may be covered by international agreements mentioned in *Eastern Sea Trading* is not cast in stone. There are no hard and fast rules on the propriety of entering, on a given subject, into a treaty or an executive agreement as an instrument of international relations[...] Verily, the matter of form takes a back seat when it comes to [the] effectiveness and binding effect of the enforcement of a treaty or an executive agreement.[86]

Bayan Muna essentially echoes the EO 459 framework. What distinguishes treaty from executive agreement is a question of political intent. Indeed, EO 459 expressly vests the Department of Foreign Affairs, acting on behalf of the President, the authority to determine and distinguish one from the other.[87] Because the Constitution does not classify any subject to be within or beyond the realm of treaty-form, "[t]he primary consideration [...] is the parties' intent and desire to craft an international agreement in the form they

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[83] G.R. No. L-14279, 3 SCRA 351, Oct. 31, 1961.

[84] *Id.* at 356.

[85] G.R. No. 159618 [hereinafter "Bayan Muna"], 641 SCRA 244, Feb. 1, 2011.

[86] *Id.* at 260-261.

[87] Exec. Order No. 459 (1997), § 9. "The Department of Foreign Affairs shall determine whether an agreement is an executive agreement or a treaty."

so wish in order to further their respective interests."[88] It is only when the parties involved agree to enter into a treaty, in contrast to any other type of agreement, that the Constitution prescribes the "need [for the] concurrence of the Senate by a vote defined therein to complete the ratification process."[89] Once that political choice is made through the President's and Senate's ratifying acts, the treaty status is binding. Thus:

> [A]n executive agreement that does not require the concurrence of the Senate for its ratification may not be used to amend a treaty that, under the Constitution, is the product of the ratifying acts of the Executive and the Senate. The presence of a treaty, purportedly being subject to amendment by an executive agreement, does not obtain under the premises.[90]

C. Treaty Amendment: *Adolfo v. CFI*

The VFA Withdrawal Petition may be a recent problem, but that is not to say it is a novel one. Half a century ago, the Philippine Supreme Court faced a similar issue in *Adolfo v. CFI*,[91] a case involving the US-RP Military Base Agreement of 1947 and the custody over one Albert L. Merchant, who was then charged for less serious physical injuries through reckless imprudence.

> Article 13(5) of the 1947 Military Bases Agreement provides:
>
> 2. The Philippines shall have the right to exercise jurisdiction over all other offenses committed outside the bases by any member of armed forces of the United States.
>
> * * *
>
> 5. In all cases over which the Philippines exercises jurisdiction the custody of the accused, pending trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing that such accused has been delivered to him for custody pending trial in a competent court of the Philippines and that he will be held ready to appear and will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a

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[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] Adolfo v. Ct. of First Instance of Zambales [hereinafter "Adolfo"], G.R. No. L-30650, 34 SCRA 166, July 31, 1970.

> copy of the information against the accused upon the filing of the original in the competent court.[92]

Merchant did not dispute that the crime he was charged with was committed outside a military base in Barrio Manggahan, Subic, Zambales. He claimed, however, that as a civilian component of the US Naval Base at Subic Bay, he was not a member of the US armed forces within the purview of the Bases Agreement. The petitioner, Municipal Judge of Subic Hon. Nicolas C. Adolfo, rejected Merchant's claim, Article XIII(5) of the Base Agreement having already been amended by the RP-US Mendez-Blair Agreement of August 10, 1965. Allegedly, in its amended state, the Bases Agreement would embrace military officers and civilian components alike. In his Order, the petitioner advanced the view that:

> [E]ven if the right of custody of a commanding officer over the person of an accused civilian component of the base is not prescribed by the original Base Agreement, nonetheless such a right is now provided for in paragraph 5 of the Agreed Official Minutes of the Agreement, entered into between the Philippines and the United States on August 10, 1965, to wit: '5. In all cases over which the Republic of the Philippines exercises jurisdiction, *the custody of an accused* member of the United States' armed forces, *civilian component*, or dependent, *pending investigation, trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base.*[93]

The Order was subsequently annulled by the respondent Court of First Instance (CFI). Echoing the doctrine of the separation of powers, the Supreme Court upheld the CFI Decision on the ground that the Mendez-Blair Agreement had not been submitted to the Senate for ratification. Because the President's treaty-making power is subject to the concurrence of the Senate, the power to amend the same treaties is similarly vested in those organs. "The Chief Executive, with all his vast powers, cannot suspend the operation of a statute, *a fortiori* he cannot exercise the greater power to amend or to revoke a statute."

Absent senate concurrence, the Mendez-Blair "Agreement" remained as a mere proposal. The making of the treaty having been undertaken under the joint auspices of the President and the Senate, its amendment or revision

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[92] Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases, art. XIII, Mar. 14, 1947, Phil.-U.S., 61 Stat. 4019, T.I.A.S. No. 1775.

[93] *Adolfo*, 34 SCRA 166, 168.

must similarly be undertaken by both agencies of the State as directed by the Constitution.

Though *Adolfo* was decided under the 1935 Constitution, it remains good case law. But as will be shown in Chapter IV(B), that is not to say that it is the *only* law applicable to amending treaty limits.

IV. UNSPOKEN LIMITS TO PRESIDENTIAL TREATY POWER

A. Treaty Termination: Ontological Query

Under the principle of separation of powers, the making of laws is allocated to the legislative department, its enforcement to the executive department, and the settlement of disputes to courts of justice.[94] In the *ICC Withdrawal Case*, the OSG had argued that treaty-withdrawal is a policy decision falling within the President's exclusive jurisdiction as chief architect in foreign relations. The OSG is mistaken. Considering how international law, may it be conventional or customary, is given equal juridical status with municipal law under the 1987 Constitution,[95] its modification is fundamentally legislative in character.

Placed left, right, and center of the *VFA Withdrawal Case* is thus a question of ontology. The status of the VFA as a treaty determines not only how we bind, but also, how we unbind ourselves from it. The OSG would argue that the judicial branch should defer to presidential prerogative and rule in favor of the withdrawal's validity. The OSG is only partially correct. When the President submitted the VFA to the Senate for its approval, he lifted the agreement from the executive realm to the legislative realm and thus subjected it to legislative processes. For the Supreme Court to now decide that treaty withdrawal requires legislative imprimatur would be to engage in neither judicial overreach nor judicial activism. On the contrary, it would be an exercise of judicial restraint. For the Court to decide that legislative approval is required to abrogate a treaty previously concurred in by the Senate, the Court is giving full effect to the President's decision to bring in the congressional arm in the treaty-making process. It is the Supreme Court standing by the executive's characterization of an international agreement *qua* treaty law within the system of checks and balances.

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[94] Santiago v. Guingona, G.R. No. 134577, 298 SCRA 756, 773, Nov. 18, 1998, *citing* Javellana v. Exec. Sec'y, G.R. No. L-36142, 50 SCRA 30, 84, 87, Mar. 31, 1973.

[95] Poe-Llamanzares v. Comm'n on Elections, G.R. 221697, 786 SCRA 1, Mar. 8, 2016, *citing* Razon v. Tagitis, 621 Phil 536, 600 (2009).

Declaring the unilateral withdrawal from the VFA unconstitutional is deference to, and not a disregard of, the separation of powers.

It is a jurisprudentially recognized rule that an executive agreement cannot amend a treaty,[96] yet Duterte now attempts to withdraw from the VFA by mere presidential say-so. The President may be "the chief architect of foreign policy,"[97] but when foreign policy crystalizes into international law—which is of equal juridical status to municipal law under the 1987 Constitution—then its amendment or repeal is no longer only executive but fundamentally legislative in character. Article VII, Section 21 of the 1987 Constitution codifies that framework by requiring the consent of two-thirds of all the members of the Senate to give a treaty the force and effect of law.[98] Though constitutional text provides only for treaty conclusion, it is the same underlying constitutional principle—the separation of powers—that requires legislative imprimatur for treaty termination. Duterte himself has subscribed to this rule by time and again submitting treaty amendments for Senate concurrence.[99]

Under the 1987 Constitution, treaty limits cannot be altered by mere executive agreement.[100] Having established that the principle of the separation affords Congress a role in treaty conclusion and termination alike, all that is left to be determined is the form legislative imprimatur must take. In this respect, the 1987 Constitution is no longer silent.

B. Legislative Imprimatur: Senate or Bicameral Action?

Invoking the principle of *acte contraire*, Senate President Sotto argues that the Senate is the proper legislative body to "concur" in treaty withdrawal. So the argument goes: "If a treaty in force has the status of municipal law, it follows by necessary implication that the Senate—as part of the legislative branch—should have a say on its fate."[101]

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[96] *Bayan Muna,* 641 SCRA 244, 263.

[97] Akbayan v. Aquino, G.R. No. 170516, 558 SCRA 468, 534, July 16, 2008, *citing Bayan*, 342 SCRA 449, 494.

[98] *See* Tañada v. Angara, G.R. No. 118295, 272 SCRA 18, 81, May 2, 1997, *but see* MERLIN MAGALLONA, THE PHILIPPINE CONSTITUTION AND INTERNATIONAL LAW 64 (2013) on the doctrine of transformation.

[99] *See e.g.* S. Res. No. 95, 17th Cong. 2nd Sess. (2018). Resolution Concurring in the Accession to the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the protocol, of 1978 Relating Thereto.

[100] *Id.*

[101] Ryan Hartzell Carino Balisacan, *Was President Duterte's unilateral withdrawal of the Philippines from the Rome Statute legally valid?* CAMBRIDGE INT'L L.J. (2018). *See also* Ryan Hartzell

Though syllogistically sound, a real problem remains: filed before the courts is a question of law, not logic. Unfortunately, these two realms are not necessarily co-extensive.[102] As observed by Professor Hannah Woolaver, Associate Professor in International Law at the Public Law Department of the University of Cape Town, of those states that have codified rules on treaty withdrawal, most "apply distinct rules to joining and leaving treaties." Interestingly, these states leave treaty withdrawal to the sole discretion of the executive.[103] The mirror principle thus lacks legal footing not only in the Philippines, but also beyond its borders in state practice.

Petitioners rightfully argue that upon ratification by the Senate, a "treaty acquires the status of a municipal law" and may thus "amend or repeal a prior law and vice-versa[.]"[104] As a form of *law*, the treaty's amendment or repeal should be subject to the *same* rules of law. Under the 1987 Constitution, legislative power is vested in *Congress*, "which consists of a Senate and a House of Representatives."[105] Following the legal submission to its logical conclusion, the legislative role in treaty withdrawal cannot be claimed by the Senate *per se* but by the legislature in general.

Legislative power having been vested in a bicameral Congress, the legislative role in treaty termination cannot be claimed solely by the Senate. Absent a special provision conferring treaty withdrawal power to any particular body, the general rules of law-making apply. Legislative imprimatur must, therefore, take either one of two forms: (i) a statute passed by *both* the Senate and the House of Representatives; or (ii) a subsequent treaty through the principle of *lex posterior derogat priori* (a later law repeals an earlier one).

Carino Balisacan, *Potential Legal Challenges to President Rodrigo Duterte's Decision to Withdraw the Philippines from the Rome Statute*, 91 PHIL. L.J. 774, 783 (2018). "If a treaty in force has the status of municipal law, does it not follow that the Senate, as part of the *legislative* branch, should have a say in its fate? Giving the President the unfettered discretion to terminate treaties vests him with *legislative* power that he could not otherwise exercise *vis-à-vis* ordinary municipal laws. While considerations of foreign policy and matters of state, which are within the province of the executive, might urge this differential treatment for treaties, [...] the solution most consistent with the constitutional order is for the President and the Senate to *share* treaty-termination powers, as they do treaty making."

[102] *See* OLIVER WENDELL JR. HOLMES, THE COMMON LAW 1 (1881). "The life of the law has not been logic; it has been experience." *See also Prosecutor v. Ruto and Sang*, Separate Opinion Judge Eboe-Osuji, ICC-01/09-01/11, April 5, 2016, para. 314.

[103] Hannah Woolaver, *From Joining to Leaving: Domestic Law's Role in the International Legal Validity of Treaty Withdrawal*, 104 EUR. J. INT'L L. 73, 76 (2019).

[104] Suplico v. Nat'l Econ. and Dev. Auth. [hereinafter "Suplico"], G.R. No. 178830, 558 SCRA 329, 376, July 14, 2008, *citing* Sec'y of Justice v. Lantion, 379 Phil. 165, 170, Jan. 18, 2000.

[105] CONST. art. VI, § 1. *See also* §§ 26-27.

To summarize, while the nature of the agreement may be a political question, the political answer has long been given. Had the President chosen to keep the VFA within his sole domain as Chief Executive, he could have signed it as an executive agreement. The President could have signed it on his own, and thus withdraw from it on his own as well. But when he decided to treat the agreement as a treaty, he proclaims the need to go to the Senate hat in hand for its approval. Once concurred in, the treaty is conferred the force and effect of law equal to domestic legislation. Its amendment and repeal are thus, likewise, subject to the rules of domestic and international law-making under Article VI, Section 1 and Article VII, Section 21 of the 1987 Constitution.

V. CONCLUSION

The constraints on the President's power to withdraw from a treaty may not be expressly imposed by constitutional text, but they are echoed throughout Philippine constitutional tradition. Philippine jurisdiction has long recognized that it is for the legislature to make laws, for the executive to enforce them, and for the judiciary to settle disputes arising therefrom. In that constitutional scheme, the Chief Executive cannot impair substantive rights. No president, not even a populist leader such as Duterte, has the constitutional authority to unilaterally withdraw from a treaty—a source of substantive law equal to legislation under the Philippine domestic legal framework.

Treaty withdrawal thus requires more than a mere executive act, but legislative imprimatur. The issue that remains is determining the proper legislative body. This paper submits that power is lodged with either: (i) the bicameral Congress under traditional legislative processes; or (ii) the Senate acting under Article VII, Section 21 of the 1987 Constitution. Like treaty conclusion, and as is in line with the general framework of Philippine constitutional tradition, treaty withdrawal is a shared power between the executive and legislative branches—through a bill passed by both houses of Congress and signed by the President,[106] or in the form of a subsequent treaty made by the President and duly concurred in by the Senate.[107]

Given all our troubles, one real problem is that we have the wrong legal theory. Extreme formalism makes us see only what is familiar; we fail to recognize old problems that come in new forms and different faces. The

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[106] Art. VI, § 26. *See also* § 27.

[107] Art. VII, § 21. *See also Suplico*, 558 SCRA 329, 376.

separation of powers may be long-established, yet we remain blind to the fact that the alleged *lacuna legis* in the provision has long been filled by age-old principle. Yet in that same breath, we confine tenet to the text, failing to distinguish between spirited legal interpretation and the wanton invocation of a phantom provision.

Both the OSG and the Senate claim to champion the spirit of the Constitution. They claim to uphold the *ratio legis* by invoking *verba legis* interpretations of silence. Their formalism is flawed. The OSG claims that silence leaves the matter to presidential discretion, ignoring the separation of powers. The Senate, on the other hand, claims a role in treaty termination by clinging to the same constitutional provision the OSG relies on. They feign fidelity to both constitutional text and tradition, yet have revealed how true loyalties lie with rote recitations of legal provisions.

The *Withdrawal Cases* is symptomatic of a larger issue at play—one that has permeated every level of legal order, from bar exam-fixated classroom education to mechanized courtroom litigation: an infatuation with legal text.[108] Philippine legal thinking has processed the otherwise complex by attempting to unapologetically compartmentalize growing debates within the confines of predefined codes, as if a lawyer's highest calling is to match trenchant social problems with humdrum legal provisions. We should realize that the issues of our time are rarely ever so simple. Legal jousting is not simply a battle of text against tenet, *verba* versus *ratio*—it is the interminable *pas de deux* of provision and principle.

Philippine legal order does not lack in doctrine; the Philippine legal formalist lacks indoctrination. For the Philippine justice project to pave a way forward, we must realize it is not enough for the law to be recapitulated, reinterpreted, or redefined.

A legal culture must be reinvented.

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[108] *See* Raphael Pangalangan, *Raising the Bar*, PHIL. DAILY INQUIRER, May 2, 2020, *available at* https://opinion.inquirer.net/129413/raising-the-bar