

FOREWORD: THE DEFENSE OF THE STUDENT-REVIEWED JOURNAL*

*Philippine Law Journal Volume 93 Student Editorial Board***

When the PHILIPPINE LAW JOURNAL was established in 1914 by Justice George A. Malcolm, it was markedly intended to serve as a platform for the discussion of issues and developments in law and jurisprudence. In line with this vision, the JOURNAL—for over a century-long tradition—has taken on the holistic role of being both descriptive and prescriptive in nature. Through the works it publishes, the JOURNAL undertakes to highlight the state of the Philippine legal system without foregoing the responsibility of members of the legal profession to demand for its continuous improvement.

Chairperson Oscar Franklin B. Tan¹ summarized it best when he wrote that the role of the JOURNAL is essentially threefold. *First*, “the JOURNAL must serve as a handmaiden of jurisprudence” in that “[i]t must be the academe’s monitor and critic regarding the evolution of the Supreme Court’s doctrine.”² *Second*, “the JOURNAL must also serve as a vehicle for education, one that stimulates both the academe and the profession.”³ *Third*, the JOURNAL must serve to “further the education of the select few chosen as student editors, giving them

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¹ Chairperson, Philippine Law Journal Volume 79; LL.B., University of the Philippines (2005); B.S. Management Engineering and A.B. Economics Honors, *cum laude*, Ateneo de Manila University (2001).

² Oscar Franklin B. Tan, Foreword, *Sisyphus’ Lament, Part I: The Next Ninety Years and the Transcendence of Academic Legal Writing*, 79 PHIL. L.J. 7, 7 (2004) *citing* Scott Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1095 (1986); Charles Hughes, *Foreword*, 50 YALE L.J. 737, 738 (1941); Bart Sloan, Note, *What are We Writing For? Student Works as Authority and Their Citation by the Federal Bench (1986-1998)*, 61 GEO. WASH. L. REV. 221, 226-27 (1992); Jane Schachter, *Form, Function and Feminist Law Journals*, 12 COLUM. J. GENDER & L 574, 576 (2003); Michael Closen & Robert Dzeilak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 22-23 (1996).

³ Tan, *supra* note 2, at 12 *citing* Scott Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1097 (1986).

a venue to sharpen their English skills, build critical thinking, and take a broader view of law.”⁴

These roles go hand-in-hand with what we call the defense of the student-reviewed journal, and ultimately, why we believe that students may very well be the best people to carry out the JOURNAL’s vision.

First, as editors who are first and foremost students of the College of Law, we are at the unique stage of our professional careers wherein we are at our most idealistic *and* our most critical. We tend to be prescriptive in our appreciation of laws and doctrines in that we often find ourselves dissatisfied with the legal system we navigate in throughout our legal education. We owe this largely to our professors who have committed to teaching us law in the grand manner, and who more often than not end recitations with questions of: “What is wrong with this case?” or “Does this law make sense?”

Second, even as idealists, there is the obvious need to keep ourselves educated and properly updated on the current state of the Philippine legal system. This being what perfectly addresses the descriptive component of the JOURNAL, the goal is accomplished through the student’s study and analysis of Supreme Court cases, emerging legal trends, and new legislation. Quite frankly, the need comes about in its most pragmatic sense, as this descriptive compartment is ultimately met by the student’s need to pass his or her classes and, eventually, the bar exams.

Third, and at the risk of over-simplifying the entirety of the editorial process, student-editors have the privilege of time. Unfortunately, this is an aspect of membership in the JOURNAL’s editorial board that is often overlooked. When it comes to the nitty gritty of editorial work, which is a far cry from the glamour and fanfare that a superficial understanding would cultivate, the JOURNAL boasts of an intricate, rigorous, and comprehensive editorial process. The laborious demands of this process notwithstanding, the Board prides itself in allowing its editors the opportunity to fully defend and/or criticize the works that come before us, as well as ensuring that each published work meets the highest standards imposed the JOURNAL’s tradition.

⁴ *Id.*, citing John Noonan, Jr., *Law Review*, 47 STAN. L. REV. 1117, 1117-8 (1995); E. Joshua Rosenkranz, *Law Reviews’ Empire*, 39 HASTINGS L.J. 859, 877 (1988); James Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1272-72 (1998); Wendy Gordon, *Counter-Manifesto: Student Law Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 541 (1994); Ronald Rotunda, *Law Reviews – The Extreme Centrist Position*, 62 IND. L.J. 1, 4 (1987).

Lastly, editorial boards of the JOURNAL—both past and present alike—are no strangers to the external pressures of publication. Thus, cultivated alongside the legal tradition birthed by the JOURNAL is the student-editor’s training ground for remaining independent and impartial in any and all matters, even when all roads signal that giving way to such pressures would be much, much easier.

We believe that it is the marriage of these circumstances that allows the student-editor the opportunity to, on the one hand, see and know things as they are, and on the other hand, spark discussions on the changes we think are necessary in order to attain what we believe must be. Admittedly, the fruits of these discussions often remain unrealized. In other instances, however, they are able to serve as catalysts in the progression and development of the Philippine legal system as a whole. We hope that through the publication of Volume 93, the Student Editorial Board is able to help these visions of the JOURNAL be pursued, promoted, protected, and most of all, celebrated.

For Volume 93’s first issue, the JOURNAL is proud to be publishing eight pieces—four notes and four articles—covering a wide array of legal topics and issues.

In his article *Divorcing a Per Se from an Object Violation under the Philippine Competition Act: Reconciling the Dissonance in Separating Two Systems Cut from the Same Cloth*, Amos Mikhail Adriano explains the apparent “dissonance” found in Section 14 of the Philippine Competition Act (“PCA”). After reviewing the US per se rule and the EU object standard, and by tracing the legislative history of the PCA, the Article concludes that Section 14 represents a “fusion” of the two systems. To reconcile these, the author suggests that the PCC’s power to determine object violations must be “interpreted in a restrictive manner” to prevent the “sweeping generalizations brought about by object characterization.”

Meanwhile, in *The Timor Sea Dispute: A Note on the Process, Resolution, and Application in the West Philippine Sea*, Gemmo Bautista Fernandez notes how the usual recourse of bilateral negotiations in maritime disputes involve a lengthy process. When these negotiations fail, a claimant state may resort to arbitration or litigation; however, arbitration or litigation also runs the risk of being futile as the opposing party may still except itself from the dispute settlement procedure. As such, conciliation may offer the solution which the other options fail to do. In this article, Fernando reviews the use of provisional agreements and conciliation procedures in the case of the Timor Sea dispute and proposes that the same may offer significant insights in settling current issues in the West Philippine Sea.

In *The Rainbow Flag Among the Flags of Nation: Are LGBTQ Rights International Human Rights?*, Michael T. Tiu, Jr. analyzes whether or not the rights of LGBTQ persons are considered human rights from the perspective of international law. Tiu answers in the affirmative, arguing that basis may be found in the language of the United Nations Charter as well as the International Bill of Rights. Tiu likewise argues that the universal character of human rights further supports this conclusion. In providing the legal foundation for his arguments, the author uses textual, purposive, and holistic approaches in reading relevant international laws.

Continuing the theme of human rights-related works, Ruby Roselle L. Tugade's piece entitled *Beyond Legal Transformation: Assessing the Impact of Transitional Justice Mechanisms in the Philippines* discusses the emergence of different institutions for transitional justice after the enactment of the 1987 Constitution. The article also tackles how the country's legal system resorted to formalism absent a push for reconciliation and the establishment of truth commissions.

Moving on to the issue's student-written publications, Christopher A. Capulong's note entitled *Unregulated Virtual Money: Defining the Undefined* seeks to define and explain unregulated virtual money (UVM) as those forms that do not fall under the definition of e-money or virtual currency. Capulong notes that only e-money and virtual currency are currently regulated by the Bangko Sentral ng Pilipinas (BSP), and argues that since the BSP does not consider UVM as falling under its regulatory jurisdiction, these can be the subject of illegal transactions and general misuse. The virtual world in which UVM operates is a world that should be statutorily recognized, lest we become subject to their abuse. For this purpose, Capulong then recommends the creation of a new agency to monitor UVM.

Next is Aireen Keith S. Macalalad's note entitled *Hunger for Justiciability and Judicial Exigibility: Claiming the Human Right to Adequate Food Before Philippine Courts*. Macalalad argues that a human right, to be complete and fully realized, must have the capacity to be claimed by right-holders and the capacity to hold duty-bearers accountable. Although without textual basis in the 1987 Constitution or any specific legislation enacted by Congress, the human right to adequate food is demandable and actionable. For one, since the Philippines is a state-party to a number of international human rights treaties and conventions that recognize the right to adequate food, it is effectively duty-bound to apply these international instruments domestically. Macalalad further argues that the 1987 Constitution implicitly protects said right through the affirmation of the right to life, right to health, and other interrelated rights. Thus, the unwritten human right to adequate food can be legally actionable before domestic courts through the recommendations of the author, such as invoking treaty obligations which are legally binding in our jurisdiction, invoking the correlated rights expressly

protected under the Constitution, or banking on the jurisprudential recognition of international human rights instruments in our jurisdiction.

In *Setting Boundaries on the Definition of 'Practice of Law' in the Philippines*, Emir-Deogene Mendoza and Maria Selina Golda Fortun critique the seminal case of *Cayetano v. Monsod*. In this note, Mendoza and Fortun trace the rationale for the Court's pronouncement in the case which defined the term "practice of law." The authors discuss the necessary implications of this definition, which, among others, include the resulting chilling effect which effectively goes against the State interest of the people's right to information and the freedom of expression. Mendoza and Fortun then craft a modified definition of the "practice of law," which they argue would pave the way for a more transparent and active citizenry wherein the people's constitutional rights to life, liberty and property may be better protected.

In *Third-Party Arbitration Funding in the Philippines: Evolving a Local Framework from Global Perspectives*, Gabriela Victoria A. Timbancaya discusses the economic benefits as well as the global trends in the legal treatment of third-party arbitration funding (TPAF), a dispute resolution mechanism that is relatively foreign to Philippine jurisdiction. By closely examining the Philippine arbitration system and related jurisprudence, Timbancaya makes the compelling argument that TPAF would hurdle any foreseeable challenge under the current legal system of the Philippines, even without new legislation for it.

Finally, in addition to the works discussed so far, the JOURNAL is publishing a new segment in each Issue featuring recent jurisprudence in varying areas of law. This segment highlights relevant Supreme Court decisions across several topics, which were organized in the order of each Bar Exam weekend, i.e. Political and International Law, Labor Law and Social Legislation, Civil Law, Taxation Law, Mercantile Law, Criminal Law, Remedial Law, and lastly, Legal and Judicial Ethics. With this new segment, the JOURNAL hopes to equip readers, and in particular students looking to soon take the Bar, with a quick, go-to guide when updating their jurisprudential repertoire. Volume 93's first issue focuses on recent jurisprudence in Political and International Law and Labor Law.