FOREWORD*

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> *"[Law is] an odd profession that presents its greatest scholarship in student-run publications."*[1]

Law school is a deeply hierarchical place.[2] There is an established pecking order where the professors sit atop the hierarchy, deciding the fate of our nascent foray into the legal profession. The students, acutely aware of this imposing order, adjust to this newfound culture of subservience with immediacy. One need only recall the trauma of our first encounter with the Socratic method and the profound changes it foisted on our lives thereafter. The apparent goal of this elaborate ritual is to acculturate students into a profession mired in a tradition of power and domination, a difficult initiation into the alleged reality of law practice.[3]

But beneath this patina of authority and order lies an oasis of subversion, an anomaly of sorts against this imposing hierarchy. This island of student independence amidst an ocean of infantilization and subjugation is the humble student-edited law review. Here, in a remarkable reversal of the legal hierarchy, the student editors reign supreme. They are the gatekeepers of legal scholarship. They can choose to accept or reject article submissions, regardless if the author is a prominent professor, an experienced practitioner, or even a magistrate. They and they alone determine which articles make the cut.

No other academic discipline can lay claim to this unique arrangement. Not in the natural or social sciences, not in the humanities, not in business. In those fields, only peer-reviewed publications count and only professors sit on editorial boards of scholarly journals.

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[1] Morton J. Horwitz, NEWSWEEK, Sept. 15, 1975.

[2] *See* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUCATION 591 (1982).

[3] *Id.* at 603–608.

The historical accident in law, where student-edited publications are the norm, is borne of ambition, persistence, and, oddly enough, cooperation between law faculty and students.

The first student-edited law review was the Albany Law School Journal.[4] It published articles, legal news, and activities in the law school.[5] However, it ceased operations after only a year when critics sharply lashed at the fact that the journal was edited by students.[6] Later, students at the Columbia Law School published the Columbia Jurist,[7] which unfortunately suffered the same fate as the Albany Law School Journal after only a few issues.[8]

The oldest student-edited law review that is still in existence today is the Harvard Law Review.[9] It started after several law students of the Langdell Club formed the publication with the encouragement of Professor James Barr Ames.[10] Ames even contributed one of the first articles of the law review, which was published in 1887.[11] Soon after, the prestige of the Harvard Law Review grew as more faculty published their work in the journal. Because of its success, the system was replicated in other law schools. At present, most accredited American law schools have their own student-edited flagship and specialist law reviews.

Over a hundred years ago, the same ambitious tradition of student-edited law reviews was replicated in the Philippines. The PHILIPPINE LAW JOURNAL was established in 1914 under the guidance of the UP College of Law's first Dean, George A. Malcolm, and the law faculty. It became the first English-language legal publication, not only in the Philippines, but in the whole of Asia. Much like its American predecessors, it was envisioned as a

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[4] Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 764 (1985).

[5] Cameron Stracher, *Reading, Writing, and Citing: In Praise of Law Reviews*, 52 N.Y.L. SCH. L. REV. 350, 352.

[6] *Id.*

[7] *Id.* at 353.

[8] *Id.*

[9] Erwin N. Griswold, *The Harvard Law Review—Glimpses of Its History as Seen by an Aficionado*, in HARV. L. REV.: CENTENNIAL ALBUM I (1987) *available at* http://harvardlawreview.org/1987/01/glimpses-of-its-history-as-seen-by-an-aficionado.

[10] *Id.*

[11] Bernard J. Hibbits, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 616 (1996).

training ground for future legal professionals, as well as a forum for academic discussion among faculty, students, and practitioners.[12]

From its founding over a century ago, the JOURNAL has become the most cited legal periodical by the Supreme Court.[13] And as a serious academic publication, articles published in the JOURNAL have also been cited in various edited books, peer-reviewed journal articles, and doctoral dissertations.[14]

These accomplishments solidify the status of the JOURNAL as the pre-eminent legal publication in the country. The JOURNAL has achieved this status because of, and not despite, its assiduous student editors.

There are others who do not agree with this arrangement. They often ask: how can law students, who are not (yet) our "peers," judge the work of lawyers? As a former student editor myself, I heard this line of criticism before, especially when we rejected article submissions or requested substantial revisions from authors. Lawyers and law professors, entrenched in the hierarchical view, are offended that mere law students decide the fate of their paper.

Now that I have crossed over to the other side as an author, I learned that the hostility wrought against student-edited law reviews often arises from

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[12] Cayetano S. Arellano, *Greetings! From the Chief Justice of the Supreme Court*, 1 PHIL. L.J. 1 (1914).

[13] *See* Oscar Franklin B. Tan, *Sisyphus' Lament, Part VII: The Death of the Philippine Law Journal*, 88 PHIL. L.J. 539 (2014). I counted twenty-four (24) citations by Supreme Court justices to Philippine Law Journal articles from 2010 to 2020. By contrast, there are only three (3) citations to articles published in the Journal of the Integrated Bar of the Philippines, perhaps the most prominent peer-reviewed law journal, for the same period.

[14] *See, e.g.*, Yasser M. Gadallah, *The applicability of diminishing returns law to the patent system*, *in* METHODS AND PERSPECTIVES IN INTELLECTUAL PROPERTY (Graeme B. Dinwoodie ed. 2013). Escresa Laarni & Garoupa Nuno, *Judicial Politics in Unstable Democracies: The Case of the Philippine Supreme Court, An Empirical Analysis 1986–2010*, 3 ASIAN J. OF L. & ECON. 1. Jayeel Serrano Cornelio, *Religious Freedom in the Phlippines: From Legalities to Lived Experience,* 11 The Review of Faith & International Affairs 36. Rhoderick John S. Abellanosa, *Discursive Detours and Weak Gate-keeping: The Deficit of the Philippine Bishop's Church of the Poor Discourse,* 16 POLITICAL THEOLOGY 226. Ran Hirschl, *Comparative Constitutional Law and Religion in Asia*, *in* COMPARATIVE CONSTITUTIONAL LAW IN ASIA (Rosalind Dixon & Tom Ginsburg eds. 2014.) Marilyne Antonette Adiova, Music, Dance, and Negotiations of Identity in the Religious Festivals of Bicol, Philippines (2014) (unpublished Ph.D. dissertation. Music: Musicology, University of Michigan). Alejandro N. Ciencia Jr., *The Philippine Supreme Court's Ruling on the Mining Act: A Political Science Perspective*, 32 PHIL. POLITICAL SCIENCE J. 1. Alvin Almendrala Camba, *From Colonialism to Neoliberalism: Critical reflections on Philippine mining in the "long twentieth century,"* 2 THE EXTRACTIVE INDUSTRIES AND SOCIETY 287, among others.

arrogance that masquerades as authority. This fallacy, which is rooted in misplaced seniority in the legal professional hierarchy, is anathema to scholarly discourse. We are not, by mere fiat of our membership in the bar, inoculated from criticism or rejection.

But there are other compelling reasons why student-edited law reviews, like the PHILIPPINE LAW JOURNAL, should remain as established institutions in legal academia.

First, it compels us authors to explain our arguments with simplicity and elegance, so much so that a law student with sufficient discipline and dedication would be able to understand our point. It forces us to provide as much background material as possible to make our articles accessible to a wider audience. For instance, the JOURNAL caters to all, even those from other academic disciplines. Hence, if law students (who, lest we forget, are postgraduate students), despite serious effort, fail to grasp the arguments presented by a paper, then it may not be worth publishing at all.

Second, student editors have the requisite ambition, dedication, and free time to run a law review. For the JOURNAL in particular, its editorial board comprises academically excellent students, who hurdled an anonymous and competitive examination that tested their mettle in editing and writing. As students, they also have the time and commitment for administrative matters that form the bulk of law journal management.

Finally, and perhaps most importantly, the existence of student-edited law journals is a constant reminder that we are all students of the law. It is a humbling admonition in a profession that reeks of hubris. Us lawyers may suffer the sting of rejection in the hands of law students. But the student-edited law review is an important space of subversion, a space that is worth keeping, if only to exorcise this false notion of self-importance that one feels upon admission to the bar.

With all these in mind, it is my honor to introduce the articles and notes in this issue, which include excellent contributions from law students and lawyers alike.

In *Crisis Management: The Overlooked Implications of Section 17, Article XII*, Joseph Benjamin B. De Leon talks about the takeover provisions under Art. XII, Sec. 17 of the 1987 Constitution. The author contextualizes this provision by looking at Republic Act No. 11469 or the "Bayanihan to Heal as One" Act. He argues that the takeover clause, which is viewed as an exercise of police power, may also be characterized as an exercise of eminent domain.

This characterization puts forward different arguments and defenses for litigants, as well as implies the need for just compensation for the business owners.

In her Article, *A Tale of Interest: Examining the Rules on the Imposition of Interest*, Anna Teresita A. Marcelo traces how the rules on the imposition of interest have developed—from the landmark ruling of *Eastern Shipping Lines v. Court of Appeals*, the 2013 case of *Nacar v. Gallery Frames*, and to the recently promulgated *Lara's Gifts & Decors v. Midtown Industrial Sales*. She explains that the conflicting jurisprudence arising from such rules is brought about by disagreements relating to the scope of the term "forbearance of money, goods, or credits," an issue which has only been clarified by the Court in *Lara's Gifts & Decors*.

Nico Robert R. Martin's Article *Plugging a Hole in the Ship: Reviewing the Constitutional Validity of the Final and Executory Nature of NLRC Decisions* tackles the final and executory nature of NLRC decisions and judicial review of the same via a petition for certiorari under Rule 65 by the Court of Appeals and/or the Supreme Court. In many cases, the higher courts reversed the findings of the NLRC that a seafarer is entitled to disability benefits or other monetary claims from their employer, and instead ruled that he is entitled to less, if not at all, monetary award. Martin argues that the treatment of NLRC decisions by the Labor Code is unconstitutional, for not only does it limit the authority of the courts to review the decisions of the NLRC, but also encroach on the exclusive power of the Supreme Court to promulgate rules concerning pleading, practice, and procedure in all courts.

In *Command Responsibility—A Contemporary Exposition*, Aparajitha Narayanan extensively traces the evolution of the doctrine of command responsibility, from its conception following the atrocities of World War II to its modern treatment in the Rome Statute. Narayanan provides a comprehensive discussion on how jurisprudence gradually developed the various standards for the application of command responsibility and introduces the reader to various issues which continue to surround the doctrine, especially in light of rapid advancements in technology and warfare.

Raphael A. Pangalangan's Article *Treaty Termination and the Faults of Philippine Formalism* treats the unexplored topic of treaty termination under Philippine Law. The 1987 Constitution expressly requires Senate approval for a treaty to become "valid and effective" but is silent on treaty withdrawal. In a recent case, some senators argued that their concurrence as a body is necessary. The Office of the Solicitor General, however, asserted that treaty termination is within the President's residual powers and sole discretion.

Pangalangan's article presents a non-hyper-textualism approach and outlines the unspoken limits to presidential treaty power free from the faults of Philippine formalism. In so doing, he defines the unspoken rules of treaty termination under Philippine constitutional order.

In *A Pound of Flesh for Foreign Investment: A Study on the Constitutionality of Liberalizing Foreign Ownership of Public Utilities Through Legislative Action*, Julia Therese D. Pineda looks into whether the Constitution intended to allow liberalization of the constitutional restriction on foreign ownership of public utilities through legislative action. This is in light of the Eighteenth Congress' attempt to pass the New Public Service Act, which aims to define the term "public utility." Pineda also discusses how the judiciary interpreted "public utility" in its decisions. She concludes that the Congress has no authority to statutorily define public utility as it was the intent of the constitutional framers to restrict foreign ownership given the critical role of public utilities.

In their Note, *Resisting Redistricting: Giving Life to the Standard of Uniform Progressive Ratio and the State Policy of Anti-Gerrymandering*, Juan Paolo M. Artiaga and Jermaine Q. Garcia discuss the importance of enacting a general reapportionment law. The 1987 Constitution provides in Article VI, Section 5 the standard of uniform progressive ratio in relation to the composition of the House of Representatives. However, in clear contrast to what the provision requires and instead of providing for a general reapportionment law, legislators have merely crafted "piecemeal legislations" to the prejudice of their constituents. Artiaga and Garcia argue that this current practice of legislators is tantamount to gerrymandering—done in order to retain political power. They propose that the enactment of a general reapportionment law is the only way to faithfully adhere to the vision of the 1987 Constitution as regards uniform progressive ratio and anti-gerrymandering.

In his Note, *Clarifying the Conflicting Construction on the Irrevocability Rule of Tax Credits*, Jonas Miguelito P. Cruz provides an analysis of Section 76 of the Tax Code, which provides a taxpayer with excess income tax credit the option to carry such over in the taxable quarters of succeeding years, or to apply for a refund or issuance of a tax credit certificate. He gives particular focus to the so-called "Irrevocability Rule", which dictates that once the carry-over option has been chosen, such is irrevocable, and no refund claim shall be allowed. Cruz evaluates the history of the provision, as well as conflicting interpretations of said rule by the Supreme Court, which has held in a string of decisions that both carry-over and refund options are irrevocable once chosen. Cruz then concludes that despite the Court's conflicting interpretations, the text of the law is clear and unambiguous in that the Irrevocability Rule applies only to the carry-over option. He ends his

discussion by illustrating the application of the Irrevocability Rule, as ideally interpreted, to theoretical scenarios to aid in laying down a framework that would provide a uniform and consistent procedure in our tax system.

In Paulo Romeo J. Yusi's Note, *Tearing Down the Great Wall: Rethinking the State Action Doctrine With Respect to the Right to Privacy*, he shifts the lens toward private actors as violators of the right to privacy. The Note suggests that it is no longer just the state which has the machinery to encroach on individuals' right to privacy—because of the complexities of modern times, private actors are likewise capable of doing the same. The existing legal framework of laws and jurisprudence based on the state action doctrine is inadequate to sufficiently protect the privacy of individuals; hence, there is a need for a reformulation. The Note then proposes two alternative frameworks—abandoning the state action doctrine altogether or dissecting the notion of the state as a body politic.

These articles prove once again that the JOURNAL is not a mere sandbox for student research. Rather, it is a critical nexus for legal contemplation and discussion from lawyers and law students alike. Indeed, these articles affirm that student editors and authors, far from being relegated as mere spectators in scholarly discourse, are the serious peers of lawyers in the fight for legal reform.

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