CORPORATIONS AS CRIMINALS: PROBLEMS AND PROGRESS IN PHILIPPINE LAW*

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ABSTRACT

In the Philippines, corporations are important economic actors. Yet, when they commit crimes through the acts of their agents, they remain virtually exempt from prosecution: prosecutors are not guided by uniform rules in investigating and charging corporations, there are no clear procedural rules that guide courts in trying corporations as criminal defendants, and there is scarcity of authorities that categorically identify the rights protections afforded to accused corporations. This Note identifies the laws that impute corporate criminal liability, evaluates the current state of procedural rules as they relate to corporate defendants, and analyzes textually, historically, and comparatively the constitutional provisions that afford protections to those accused of committing crimes. Clarity in how corporations are investigated, prosecuted, and tried leads to a stable and consistent application of criminal law, ensures a level playing field for businesses, and contributes to the promotion of the rule of law in the Philippines.

INTRODUCTION

Corporations rule the world.[1] Raw economic data backs that up. As of yearend 2018, there are 43,342 globally listed corporations, or those whose

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[1] Parag Khanna, *The New World Order Is Ruled by Global Corporations and Megacities—Not Countries*, FAST COMPANY, Apr. 20, 2016, *available at* https://www.fastcompany.com/3059005/the-new-world-order-is-ruled-by-global-corporations-and-megacities-not-countries (last visited Dec. 15, 2019).

shares are traded in exchanges.[2] If the revenues of the top ten largest corporations in the world are combined, it would be bigger than the income of some 180 countries.[3]

Meanwhile, there are 566,033 active corporations registered in the Philippines as of June 2019.[4] Their contribution to government coffers is likewise considerable. By yearend 2019, the total revenue from the collection of corporate income tax alone in the Philippines stands at 335 billion pesos, which is roughly around 15% of the total tax collection for that period.[5]

Yet for all the roles that they play in people's everyday lives, corporations remain as "poltergeists"[6] whose presence and actions are physically felt. More than just spooking fear, corporate actions have real-life consequences. A corporation might have been formed for fraudulent purposes,[7] or during its lifetime, it may conduct criminal behavior through its agents.[8] At first, it was difficult for legal theorists to accept that corporations can be held criminally liable, for a "corporation [has no] conscience, [...] no soul to be damned, and no body to be kicked."[9] But the evolution of the corporate form through its increasing role in social and economic life,[10] its

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[2] World Bank, *Listed domestic companies, total*, WORLD BANK WEBSITE, *at* https://data.worldbank.org/indicator/CM.MKT.LDOM.NO (last visited Dec. 15, 2019).

[3] Zlata Rodionova, *World's largest corporations make more money than most countries on Earth combined*, INDEPENDENT, Sept. 13, 2016, *at* https://www.independent.co.uk/news/business/news/worlds-largest-corporations-more-money-countries-world-combined-apple-walmart-shell-global-justice-a7245991.html (last visited Dec. 15, 2019).

[4] Sec. & Exchange Comm'n (SEC), *Number of Registered Corporations and Partnerships as of 31 December 2018*, SEC WEBSITE, *at* https://www.sec.gov.ph/wp-content/uploads/2020/05/2019ERTD_Cumulative-Number-of-Registered-Corporations-and-Partnerships-as-of-30-June-2019.pdf.

[5] Bureau of Internal Revenue, *2019 Annual Report*, BIR WEBSITE, *at* https://www.bir.gov.ph/images/bir_files/annual_reports/annual_report_2019/dist/assets/bir-2019-annual-report.4d0e1c382d83dfc1504f3eddc27e0ba6.pdf (last accessed Oct. 30, 2020).

[6] Lawrence Friedman, *In Defense of Corporate Criminal Liability*, 23 HARV. J.L. & PUB. POL'Y 833, 833 (2000).

[7] For which the idea that the corporation's separate juridical personality may be "pierced" to avoid any injustice. *See* Int'l Academy of Mgmt. & Econ. v. Litton & Co., Inc., G.R. No. 191525, 848 SCRA 437, 444-45, Dec. 13, 2017.

[8] Kathleen Brickey, *Corporate Criminal Accountability: A Brief History and an Observation*, 60 WASH. U. L.Q. 393, 394 (1982).

[9] Michael Tigar, *It Does the Crime But Not the Time: Corporate Criminal Liability in Federal Law*, 17 AM. J. CRIM. L. 211, 211-12 (1990).

[10] The 1987 Constitution itself recognizes the role of corporations in the development of the national economy. *See* CONST. art. XII, §§ 1, 6.

subsequent anthromorphization,[11] and ultimately the declaration that, as persons, they likewise enjoy certain rights under the law,[12] formed corporate criminal liability as it is today.

Corporate criminal liability has a, more or less, defined concept in the United States (U.S.). This started when the U.S. Supreme Court promulgated in 1909 its seminal decision in the case of *New York Central & Hudson River Railroad Co. v. United States*,[13] where it ruled that a criminal act of an employee while in the performance of his duties is imputable to the corporation. Since then, the United States has had the benefit of a century to develop the concept, and it has paid off: there are now various statutes that impose corporate criminal liability,[14] as well as guidelines on prosecution and sentencing,[15] and rules of criminal procedure applicable to corporations.[16]

The Philippines, which is a recipient of America's exports in corporate[17] and constitutional law,[18] sadly has had no such benefit to develop its own concept of corporate criminal liability. In fact, it has not found a thorough discussion here. While there are a number of penal laws that impose liability on corporations, there is a wide absence—or lacuna *legis*—in the overall legal framework on how corporations are prosecuted, tried, and punished.

The purpose of this Note is to address the said gap by discussing the concept of corporate criminal liability, and its applicability in the Philippines, including an examination of certain rights protections that may be afforded to corporate defendants. This Note is thus divided into five parts: Part I is a

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[11] Brickey, *supra* note 8, at 395 n.13.

[12] *See* Kent Greenfield, *In Defense of Corporate Persons*, 30 CONST. COMMENT. 309, 316 (2015).

[13] [Hereinafter "*New York Central*"], 212 U.S. 481 (1909).

[14] *See* U.S. Congressional Research Service, Corporate Criminal Liability: An Overview of Federal Law (Oct. 30, 2013), *at* https://crsreports.congress.gov/product/pdf/R/R43293 (last visited Dec. 28, 2019).

[15] *See* U.S. JUSTICE MANUAL, title 9-28.000, *available at* https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.010 (last visited Dec. 28, 2019). The Principles of Federal Prosecution of Business Organizations.

[16] *See* U.S. FED. RULES OF CRIM. PROC. (2019).

[17] Phil. First Insurance Co., Inc. v. Hartigan, G.R. No. 26370, 34 SCRA 252, 262, July 31, 1970. "American authorities [...] have persuasive force here [...] because our corporation law is of American origin, the same being a sort of codification of American corporate law[.]"

[18] The Philippine Bill of Rights, for one, is primarily patterned after the U.S. Bill of Rights. *See* Robert Aura Smith, *The Philippine Bill of Rights*, 4 FAR E.Q. 170, 172-73 (1945).

discussion of the history and overview of the corporate form and corporate criminal liability. Part II is concerned with how corporate criminal liability is applied in the Philippines. Part III is an analysis of how corporations are to be prosecuted under current Philippine law. As a criminal defendant, corporations are expected to enjoy certain rights. Part IV is a discussion of the protections enjoyed by corporate defendants as enshrined in the Bill of Rights. All of these discussions are integrated in Part V, where recommendations are proposed to policymakers on how to address the gap in the law.

I. HISTORY AND OVERVIEW

A. History of the Corporation

During the 14th century, the English corporation was a well-defined form whose existence can be attributed to the privilege granted by the crown or an act of parliament.[19] Medieval corporations were formed for ecclesiastical purposes before they evolved into lay associations, municipal corporations, and merchant guilds.[20] The 16th and 17th centuries saw the growth of the corporate form,[21] particularly the "joint stock company". It became the most useful tool in the expansion of businesses, but many remained unincorporated, and soon the form acquired a bad reputation as one used by many to defraud customers while incurring limited to no liability.[22] It would be in the 19th century that the corporation and the joint stock company would gain "legal and commercial recognition and acceptance" commensurate to their social and economic roles.[23]

In the US, the corporate form was likewise initially seen as a privilege granted only by an act of the legislature, and the license to form one was primarily given to businesses imbued with public interest, such as banks and railway companies.[24] In fact, the participation of corporations was so negligible that there were only seven corporations registered during the

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[19] Brickey, *supra* note 8, at 397.

[20] *Id.* at 397-98.

[21] *Id.* at 398.

[22] *Id.* at 398-99 n.33. "Joint stock companies, like corporations, enjoyed some measure of limited liability for their debts. As early as the fifteenth century it was established that individual shareholders were not personally liable for a corporation's debts."

[23] *Id.* at 399-400.

[24] David McBride, *General Corporation Laws: History and Economics*, 74 L. & CONTEMP. PROBS. 1, 2-3 (2011).

American colonial period.[25] But similar to the European experience, corporations began to grow during the nineteenth century, specifically after the American civil war, that the states afforded the benefits of the corporate form to more industries for the simple purpose of pooling capital necessary for reconstruction.[26] By the end of the century, the "privilege" of incorporation had become a "right" available to the various industrialists of the era.[27]

Perhaps the most critical advancement in the growth of the corporation is the establishment of the legal doctrine of limited liability.[28] The principle has the practical effect of shielding shareholders from the risk of assuming unlimited liability for the obligations of the business, thereby making the pooling of funds easy and accessible for small investors.[29] This doctrine has become the bedrock of corporate law not just in the US, but also in the Philippines,[30] and has resulted in the consolidation of much larger capital by producing layers upon layers of corporate structure, thereby insulating a parent corporation from the obligations of its various subsidiary corporations.[31]

Here, the modern corporation can be traced to the corporate form established by the Americans. Under the recently enacted Revised Corporation Code, a corporation is "an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence."[32]

The statutory definition of the corporation has remained the same, word for word, since the enactment of the Philippines' first corporation law in 1906.[33] Before this law, what operated were the provisions of the Code of Commerce that sanctioned the formation of the *sociedad anonima*, which was "something very much like the English joint stock company, with features resembling those of both the partnership and the corporation."[34] However,

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[25] *Id.* at 3.

[26] *Id.*

[27] *Id.* at 4.

[28] *Id.* at 3.

[29] *Id.*

[30] Phillip Blumberg, *Limited Liability and Corporate Groups*, 11 J. CORP. L. 573, 574 (1985-86). "The limited liability of the corporate shareholder is a traditional cornerstone both in Anglo-American corporation law and in the corporation law of the civil system."

[31] *Id.*

[32] Rep. Act No. 11232 (2019), § 2.

[33] Act No. 1459 (1906), § 2.

[34] Harden v. Benguet Consol. Mining Co., 58 Phil. 141, 146 (1933).

the *sociedad anonima* was incompatible with the American economic system, thus the concept of the corporation was introduced as a replacement.[35]

The next major reform came with the enactment of the Corporation Code embodied in Batas Pambansa (BP) Blg. 68. The Code provided for provisions not found in the old law, such as those pertaining to mergers and consolidations, to address the absence of these usual corporate transactions.[36] However, the underlying principle behind the corporation and its statutory definition remained the same as the Corporation Code practically carried over the same concepts found in the Corporation Law of 1906,[37] and the recently enacted Revised Corporation Code likewise did not deviate from the Corporation Code of 1980.

To further extend the benefits of the corporate form, particularly that provided by limited liability, to micro, small, and medium enterprises, the "one-person corporation" was thus introduced in the Philippine legal system.[38] At present, even a single natural person can become a corporation.[39] The visible trend is to expand the ease of doing business, especially for investors who possess capital but are burdened by naming nominees who have no real interest in the business venture yet are required to comply with the requirement of acquiring the minimum number of incorporators.[40]

Today, the corporation, aside from its primary function as a capital-pooling device,[41] has morphed into a "person" that enjoys constitutional and statutory rights similar to those enjoyed by "real" individuals.[42] The "personification" of the corporation is traced to the decision of the U.S. Supreme Court in *Santa Clara County v. Southern Pacific Railroad Co.*,[43] wherein it was held that a corporation is a "person" covered by the protections of the 14th Amendment.[44] That decision, colored in its history,[45] would become the

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[35] *Id.*

[36] *See* Bank of Commerce v. Radio Phils. Network, Inc., G.R. No. 195615, 722 SCRA 520, 543, Apr. 21, 2014.

[37] Batas Blg. 68 (1980), § 2.

[38] S. Journal 726, 17th Cong., 1st Sess. (Dec. 13, 2016).

[39] REV. CORP. CODE, § 116.

[40] S. Journal 724, 17th Cong., 1st Sess. (Dec. 13, 2016).

[41] Tigar, *supra* note 9, at 212.

[42] *See* Beth Stephens, *Are Corporations People? Corporate Personhood Under the Constitution and International Law*, 44 RUTGERS L.J. 1 (2013).

[43] 118 U.S. 394 (1886).

[44] Stephens, *supra* note 42, at 10.

[45] *See* Adam Winkler, *'Corporations Are People' Is Built on an Incredible 19th-Century Lie*, ATLANTIC, Mar. 5, 2018, *available at* https://www.theatlantic.com /business/archive/2018/03/corporations-people-adam-winkler/554852/ (last visited Dec. 28, 2019).

basis of further rulings extending other constitutional rights to corporations on the basis of their "personhood." In the recent cases of *Citizens United v. Federal Elections Commission*[46] and *Burwell v. Hobby Lobby Stores, Inc.*,[47] the U.S. Supreme Court held that corporations enjoy the right to free speech and the free exercise of religion, respectively. In fact, as law professor Adam Winkler traces in his book, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS, corporations have had a civil rights movement of their own.[48] With the promulgation of the decisions in *Citizens United* and *Hobby Lobby*, the examination of corporate rights was given new public attention, but long before these two decisions, as far back as 1886 when *Santa Clara County* was promulgated, corporations have been extended rights originally pertaining to "We the People."[49]

B. History of Corporate Criminal Liability

In 1765, renowned English jurist William Blackstone claimed that any criminal sanction involves an "abuse of that free will, which God has given to a man[.]"[50] Blackstone subscribed to the belief that the commission of any crime is *personal*,[51] that, literally, it can only be done by *natural persons*. A corporation, on the other hand, being a creature "existing only in intendment and consideration of law,"[52] cannot commit crimes, nor can they be punished when such crimes are committed. He argued:

> A corporation cannot commit treason, or felony, or other crime, in its corporate capacity: though its members may, in their distinct individual capacities. Neither is it capable of suffering a traitor's or felon's punishment, for it is not liable to corporal penalties, nor to attainder, forfeiture, or corruption of blood.[53]

The prevailing legal thought of Blackstone's time was that a felon must "be morally blameworthy and have the capacity to suffer from

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[46] 558 U.S. 310 (2010).

[47] 134 S. Ct. 2751 (2014).

[48] ADAM WINKLER, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS 395 (2018).

[49] *Id.* "We the People" is the starting phrase of the preamble of the U.S. Constitution, signifying the sovereignty of the people in ordaining their constitution.

[50] Albert Alschuler, *Two Ways to Think About Punishment of Corporations*, 46 AM. CRIM. L. REV. 1359, 1363 (2009), *citing* IV WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 27 (1770).

[51] BLACKSTONE, *supra* note 50.

[52] I WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 476 (1765).

[53] *Id.*

punishment."[54] Thus, the first obstacle that limited the application of criminal law was the problem of assigning the *physical* commission of a felony to an *artificial* person.[55] The second obstacle was how to wrap one's head around the idea that corporations cannot possess the required criminal intent.[56] An artificial being has no soul, so it could not be blamed.[57] How, then, could a legal abstraction, which "lacked physical, mental, and moral capacity to engage in wrongful conduct, or to suffer punishment,"[58] be a subject of criminal law? The third obstacle was surmounting the *ultra vires* doctrine,[59] which restrained the courts from imposing sanctions for actions committed outside of the corporation's authority.[60] The last obstacle was the court's limited leeway in practically hauling corporations to its jurisdiction, as "judges required the accused to be brought physically before the court."[61]

However, the changing social and economic landscape gradually paved the way for the application of criminal law to corporations. In the landmark case of *New York Central*,[62] the U.S. Supreme Court recognized not only the legislature's power to criminally sanction corporations, but also praised its exercise of this power, adding that the rule articulated by Blackstone was an "old and exploded doctrine."[63] Under U.S. federal law, a criminal act by the employee performing his functions and intended to benefit the corporation is enough to assign criminal liability to the latter.[64] Unlike in some U.S. states where corporate liability is limited to only when the commission of the crime was authorized by the board of directors or by a high ranking corporate officer, such qualification is immaterial in federal law.[65]

Thus, the rule of *respondeat superior*, primarily applied in torts cases, has become a viable criminal law theory since the promulgation of *New York Central*.[66] Under this principle, a corporation can be made criminally liable if the following conditions are met: (a) a corporate agent acted with the required

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[54] V.S. Khanna, *Corporate Criminal Liability: What Purpose Does It Serve?*, 109 HARV. L. REV. 1477, 1482 n.26 (1996).

[55] *Id.* at 1479.

[56] *Id.* at 1479-80.

[57] Brickey, *supra* note 8, at 396.

[58] *Id.*

[59] *See* Land Bank of the Phils. v. Cacayura, G.R. No. 191667, 696 SCRA 861, 875, Apr. 17, 2013.

[60] Khanna, *supra* note 54, at 1480.

[61] *Id.*

[62] 212 U.S. 481 (1909).

[63] Alschuler, *supra* note 50, at 1363, *citing New York Central*, 212 U.S. 481, 496.

[64] *Id.* at 1364.

[65] *Id.*

[66] Robert E. Wagner, *Criminal Corporate Character*, 65 FLA. L. REV. 1293, 1298 (2013).

mental state; (b) the agent acted within the scope of his employment; and (c) the agent's act intended to benefit the corporation.[67]

However, some U.S. courts have adopted a theory of collective *mens rea*, or where there is no identified individual culpable for the crime, but for which liability is still imposed on the corporation.[68] An example of this is the renowned case against Arthur Andersen LLP, for a time the world's largest auditing firm, where it was convicted by a trial court of destroying records when it shredded, in large-scale, documents in the middle of the investigation conducted by the U.S. Securities and Exchange Commission against Enron.[69] Although the conviction was overturned by the U.S. Supreme Court on procedural lapses,[70] the case showed "institutional blameworthiness," and not "mere agency relationships," in imposing criminal liability.[71]

Criminal prosecution of corporations forms part of the U.S. Department of Justice's (DOJ) regular operations, as a former high-ranking official once quipped in a speech, "crime is crime," whether it be committed by a natural or juridical person.[72] From 2004 to 2014, there was an average of 298 criminal charges against corporations filed in federal courts annually.[73] For the same period, there was an average of 176 criminal convictions.[74] These facts reflect that "the prosecution of corporate crime is a high priority" of the U.S. DOJ.[75]

The Philippines, on the other hand, has a blank legal canvas when it comes to corporate criminal liability. There are numerous laws for which a corporation may be held to account for committing criminal acts. For

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[67] *Id.* at 1303.

[68] *Id.*

[69] Samuel W. Buell, *The Blaming Function of Entity Criminal Liability*, 81 IND. L.J. 473, 479 (2006). *See* Michael W. Peregine, *Enron Still Matters, 15 Years After Its Collapse*, N.Y. TIMES, Dec. 1, 2006, *available at* https://www.nytimes.com /2016/12/01/business/dealbook/enron-still-matters-15-years-after-its-collapse.html for an overview of the Enron scandal.

[70] *See* Arthur Andersen LLP v. United States, 544 U.S. 696 (2005).

[71] Buell, *supra* note 69, at 490.

[72] Sally Quillian Yates, *Deputy Attorney General Sally Quillian Yates Delivers Remarks at New York University School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing*, U.S. DEP'T OF JUSTICE WEBSITE, Sept. 10, 2015, *at* https://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-new-york-university-school (last visited Dec. 29, 2019).

[73] TRAC Reports, *Justice Department Data Reveal 29 Percent Drop in Criminal Prosecutions of Corporations*, TRAC REPORTS WEBSITE, *at* https://trac.syr.edu/ tracreports/crim/406/ (last visited Dec. 29, 2019).

[74] *Id.*

[75] U.S. JUSTICE MANUAL, § 9-28.010. Foundational Principles of Corporate Prosecution.

example, the Court of Tax Appeals (CTA) has convicted corporations for violation of the National Internal Revenue Code (NIRC).[76] Yet, with these rulings, there is still an absence of clear guidelines on how corporations are prosecuted and tried in court. Unlike in the U.S., there is no prosecutorial manual on how corporations are investigated and indicted in the Philippines. Moreover, there is no definite judicial pronouncement by the Philippine Supreme Court as to what rights and protections are accorded to accused corporations in the Philippines. Thus, even if the laws allow for the imposition of corporate criminal liability, there is practical absence of rules on how it is applied.

C. Rationale for Imposing Corporate Criminal Liability

The primary goal of criminal punishment is the protection of society, and the three traditional purposes to support this view are: deterrence, retribution, and reformation.[77] Criminal law becomes a behavioral tool when it establishes fear that committing a prohibited act will bring about a concomitant punishment.[78] While some are not deterred, criminal law likewise acts as a punitive instrument when people are removed from society, and thereafter rehabilitated so that they may be re-integrated.[79] However, for purposes of corporate criminal liability, the main focus of legal commentators has been deterrence and retribution, as "[rehabilitation] is not generally thought of in connection with corporations."[80]

In terms of retribution, some legal commentators have criticized the punitive function of corporate criminal liability as it "punishes innocent people" or unassuming shareholders who have no participation in the criminal act done by corporate agents.[81] Other commentators have criticized the deterrence function, saying that it is incompatible with corporate criminal liability as a corporation is a legal fiction, and thus cannot be deterred.[82] What the law actually aims to deter are the acts of corporate agents, not those of the corporation itself, for corporate acts are committed by its agents.[83] As a

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[76] *See, e.g.,* People v. Enviroaire, Inc., Crim Case No. O-408 (Ct. of Tax Appeals, Nov. 18, 2019); Kingsam Express Inc. v. People, EB Crim No. 054 (Ct. of Tax Appeals, Oct. 24, 2019).

[77] Bruce Coleman, *Is Corporate Criminal Liability Really Necessary?*, 29 SW. L.J. 908, 919 (1975).

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.* at 920.

[82] Khanna, *supra* note 54, at 1494.

[83] *Id.*

substitute for corporate criminal liability, these commentators have argued that corporate civil liability would serve the same purpose of deterring unlawful corporate acts.[84]

The concept of institutional responsibility is part and parcel of modern life.[85] Some entities have become big enough to exist independently of individual actors[86], such as modern-day multinational corporations. Unlawful conduct that is condoned on a corporation-wide scale, which may span generations of corporate officers, would mean that not only those officers are criminally liable, but also is the corporation. Group psychology produces conduct that an individual would not commit if not for being part of a certain group or institution.[87] As discussed, Arthur Andersen LLP is a good example why "institutional blameworthiness" is an apt subject of corporate criminal liability.[88]

Retribution through corporate criminal sanction is no less different than corporate civil sanction. Imposing, say of, a fine on a corporation for criminal acts done by corporate agents has the same effect as imposing a tort liability on the corporation.[89] Both may punish an unassuming shareholder by suffering from the same monetary loss in the value of their shares, but the subordinate public interest of punishing a crime detrimental to society will be served by imposing corporate criminal liability.[90] By its retributive function, corporate criminal liability, even though in the form of a fine or similar resource-specific penalty, "expresses the community's condemnation of the wrongdoer's conduct."[91]

Deterrence, on the other hand, is said to be the primary motivation behind corporate criminal liability.[92] Deterrence is intended to "catalyze" the adoption of compliance policies, internal disciplinary controls, and preventive standard operating procedures.[93] But perhaps the most consequential effect of deterrence is the infliction of reputational stigma that influences the motivations of corporate agents[94] The decline in the corporation's goodwill,

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[84] Friedman, *supra* note 6, at 838.

[85] Buell, *supra* note 69, at 491.

[86] *Id.* at 492.

[87] *Id.* at 493.

[88] *Id.* at 490.

[89] Coleman, *supra* note 77, at 920-21.

[90] *Id.*

[91] Friedman, *supra* note 6, at 843.

[92] Brent Fisse, *Reconstructing Corporate Criminal Law: Deterrence, Retribution, Fault, and Sanctions,* 56 S. CAL. L. REV. 1141, 1146 (1983).

[93] *Id.* at 1160-63.

[94] *Id.* at 1166.

by sending a message that it is "flawed, unreliable, and apt to generate future harm," is signaled when corporate criminal liability is imposed.[95] Simply, no one wants to work at, invest in, or deal with an entity that is known to foster criminal conduct.[96]

II. CORPORATE CRIMINAL LIABILITY IN THE PHILIPPINES

Perhaps the legal thought enunciated by Blackstone pervaded Philippine criminal law, at least during the colonial period. As early as 1914, the Philippine Supreme Court, in the case of *West Coast Life Insurance Co. v. Hurd*,[97] ruled that the penal laws inherited from Spain, and those prevailing during the period of early American occupation, did not provide for the concept of corporate criminal liability.[98] The inapplicability of corporate criminal liability during the colonial period was thereafter affirmed in the case of *People v. Tan Boon Kong*,[99] wherein the Court held that "[a] corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable."[100]

The Revised Penal Code,[101] which was promulgated in 1930, was only a "modified version" of the Spanish Penal Code of 1870.[102] As the old Penal Code did not provide for corporate criminal liability as explained in *West Coast Life*, so too did the Revised Penal Code not. The Code Committee, which was tasked with the revision of the old Penal Code, did not introduce new theories in Philippine criminal law,[103] such as that of corporate criminal liability, even though the case of *New York Central* had been promulgated by the U.S. Supreme Court at that time. Commentators of the Revised Penal Code have amplified the idea that corporate criminal liability is inapplicable, at least for crimes listed therein.[104]

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[95] Buell, *supra* note 69, at 501.

[96] *Id.* at 503.

[97] 27 Phil. 401 (1914).

[98] *Id.* at 407-08.

[99] 54 Phil. 607 (1930).

[100] *Id.* at 609.

[101] Act No. 3815 (1930).

[102] I RAMON AQUINO & CAROLINA GRIÑO-AQUINO, THE REVISED PENAL CODE 1 (2008).

[103] *Id.* at 2.

[104] *Id.* at 452-53. *See also* I LUIS REYES, THE REVISED PENAL CODE: CRIMINAL LAW 506-07 (2012).

However, there are numerous special penal laws that prescribe criminal liability to corporations. Notable laws that specifically impose corporate criminal liability include, but are not limited to, Section 256 of the NIRC for corporations that evade the payment of taxes; Section 36 of Republic Act (RA) No. 7653, as amended, or the New Central Bank Act, for violation of banking laws, rules and regulations, in conjunction with other special banking laws;[105] Section 30 of RA No. 10667 or the Philippine Competition Act, for corporations which entered into anti-competitive agreements; and RA No. 9160, as amended, or the Anti-Money Laundering Act, which provides for the revocation of licenses of those found to have violated the said statute.

Aside from these statutes which have superseded *West Coast Life* and *Tan Boon Kong*, the Court has likewise affirmed the applicability of corporate criminal liability in the Philippines. In the case of *Ching v. Secretary of Justice*,[106] the Court categorically stated that a corporation may be charged and prosecuted for a crime.[107] Essentially, the Court provided a two-level screening process in applying corporate criminal liability. The first level involves the question of whether the applicable law of the case provides for a crime that can be imputed to a corporation. As explained by the *ponencia*:

> When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished.[108]

Thus, the first level is satisfied when it is found that the law may impute a criminal act to a corporation. If the law does not specifically provide that its violation warrants a penal sanction to a corporation, or when the law provides that criminal liability is to be exclusively imposed on or suffered by the responsible corporate agents, then corporate criminal liability is inapplicable.

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[105] *See, e.g.,* Rep. Act No. 7353 (1992), § 28. The Rural Bank Act; Rep. Act No. 7906 (1995), § 21(e). The Thrift Banks Act; Rep. Act No. 8367 (1997), § 23(c). The Revised Non-Stock Savings and Loan Association Act; Rep. Act No. 8556 (1998), § 14. The Financing Company Act; Rep. Act No. 9505 (2008), § 17. Personal Equity and Retirement Account Act; Rep. Act No. 11127 (2018), § 20. The National Payment Systems Act.

[106] [Hereinafter "*Ching*"], G.R. No. 164317, 481 SCRA 609, Feb. 6, 2006.

[107] *Id.* at 636.

[108] *Id.*

The second level is concerned with the type of punishment that can be imposed. At this stage, the principle of *nullum crimen nulla poena sine lege* comes into play; there is no crime when there is no law punishing it.[109] A penal statute must then contain the proscribed act and the penalty for the commission of such act. If the law prescribes no penalty, then the commission of the proscribed act shall not produce any criminal liability.

For the purpose of corporate criminal liability, penalties are classified into two categories: (a) imprisonment; and (b) fine. Aside from the Revised Penal Code, most special penal laws provide for these two types of penalties. Imprisonment, in its common usage, is the "act of confining a person, especially in prison."[110] It has been the most common form of criminal penalty in various jurisdictions.[111] A fine, on the other hand, is a "pecuniary criminal punishment [...] payable to the public treasury."[112] A fine is an "economic penalty"[113] because it deprives a person of his or her economic resources, specifically money, as compared with imprisonment which deprives a person of his or her individual liberty. The distinction between imprisonment and fine is important in the imposition of corporate criminal liability because corporations, as artificial beings under law, are not physically susceptible of being imprisoned. On this score, Blackstone is correct. However, criminal law has so developed over the centuries that imprisonment is not the only penalty that may be imposed. Since a corporation has its own legal personality, it can own, possess, and dispose of properties under its name.[114] Such corporate properties may thus be used in the satisfaction of criminal liability through the payment of fines.

Ching provides the second level of scrutiny, as follows:

> If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime

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[109] *See* REV. PEN. CODE, art. 21. "No felony shall be punishable by any penalty not prescribed by law prior to its commission." *See also* Evangelista v. People, G.R. No. 108135, 337 SCRA 671, 678, Aug. 14, 2000.

[110] BLACK'S LAW DICTIONARY 825 (9th ed. 2009).

[111] UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK OF BASIC PRINCIPLES AND PROMISING PRACTICES ON ALTERNATIVES TO IMPRISONMENT 3 (2007).

[112] *Id.* at 708.

[113] *Id.* at 29.

[114] REV. CORP. CODE, § 35(g).

> if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.[115]

What the second level provides is that when a penal law prescribes that only imprisonment is the penalty, then corporate criminal liability is not applicable. However, when a penal law states that the payment of fine is the only penalty, then corporate criminal liability may be imposed. In case the penal law provides for both imprisonment and payment of fine, corporate criminal liability may still be imposed, but the imposable penalty is just the payment of fine.

Thus, corporate criminal liability is applicable when the two-level screening process provided for in *Ching* is met, *viz.*: (a) the law imposes the penalty to the corporation itself, and not exclusively to its officers; and (b) the penalty is economic in nature, such as payment of fine or, in certain instances, forfeiture of the franchise or permit to operate a business activity.

III. PROSECUTION OF CORPORATIONS IN THE PHILIPPINES

Criminal prosecution starts when the offender becomes in contact with the law, which may commence when the law enforcement authorities have arrested the offender, under either a duly issued warrant of arrest or a valid warrantless arrest.[116] An artificial being like a corporation, as Blackstone said, cannot be physically arrested. Given the sheer impossibility of corporations being physically arrested, when does a corporation, then, become in contact with the law to answer for its criminal liability?

A. Preliminary Investigation

The conduct of preliminary investigation has been part and parcel of criminal prosecutions in this country. The purpose of preliminary investigation is to "free a respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed upon[.]"[117]

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[115] *Ching*, 481 SCRA 609, 635-36.

[116] WILLARD B. RIANO, CRIMINAL PROCEDURE: THE BAR LECTURE SERIES 5 (2016).

[117] Ledesma v. Ct. of Appeals, G.R. No. 113216, 278 SCRA 656, 673-74, Sept. 5, 1997.

Preliminary investigations are governed by Rule 112 of the Rules of Court. Specifically, Section 3 thereof provides for the procedure on how they are conducted. The starting point of the preliminary investigation is the filing of the complaint with the officer authorized to conduct preliminary investigations,[118] usually the city or provincial prosecutor. Thereafter, the prosecutor shall examine the complaint and decide whether to dismiss it for lack of ground to continue the investigation, or to issue a subpoena to the respondent.[119] If the defendant is a corporation, how is the subpoena then served?

Item II(C), Part IV of the Revised Manual for Prosecutors promulgated in 2007 for the National Prosecution Service (NPS) of the DOJ provides for the guidelines on the service of subpoenas in preliminary investigations. Examination of such Item shows that there is no specific provision on how subpoenas are to be served on a corporation. It is possible that a subpoena served on the responsible corporate agent may likewise be considered as service of subpoena on the corporation. However, to follow this reasoning goes against the very idea that the corporation is a separate juridical entity from its officers and shareholders. Not all officers and shareholders are considered corporate agents, but only in limited and specified instances where there is a specific provision of law.[120] An individual is considered a corporate agent when he or she has been validly delegated as such by the corporation's board of directors;[121] absent such delegation, the individual is exercising functions that are considered *ultra vires*.[122] But the

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[118] *See* RULES OF COURT, Rule 112, § 2.

[119] § 3(b).

[120] *See* RULES OF COURT, Rule 14, § 12, *amended by* A.M. No. 19-10-20-SC (2019). The following corporate officers are considered agents of the corporation with respect to service of summons in civil cases: president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel, or in their absence or unavailability, on their secretaries. *See also* Cagayan Valley Drug Corp. v. Comm'r of Internal Revenue [hereinafter "*Cagayan Valley*"], G.R. No. 151413, 545 SCRA 10, 17-18, Feb. 13, 2008. "[A]n individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. [...] [W]e have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case."

[121] *Cagayan Valley*, 545 SCRA at 17.

[122] Twin Towers Condo. Corp. v. Ct. of Appeals, G.R. No. 123552, 398 SCRA 203, 218, Feb. 27, 2003. "The term *ultra vires* refers to an act outside or beyond corporate powers, including those that may ostensibly be within such powers but are, by general or special laws, prohibited or declared illegal. The Corporation Code defines an *ultra vires* act as one outside the powers conferred by the Code or by the Articles of Incorporation, or beyond what is necessary or incidental to the exercise of the powers so conferred."

service of subpoena should not depend on whether the board of directors has validly authorized a person to act as the corporation's agent to receive subpoenas, because if such was the case, there could be no speedy disposition of any preliminary investigation as the respondent corporation could always assail that its agent did not receive any kind of service. The rules governing preliminary investigation, both under the Rules of Court and the Revised Manual for Prosecutors, are lacking in this area.

It must be noted that the conduct of preliminary investigation is an executive function under the sole direction of the prosecutor.[123] As such, the prosecutor may, on a case-by-case basis, improvise, in the meantime, on how service of subpoena can be done for a respondent corporation without offending the respondent's cardinal rights to due process, and subject to judicial review if there is found to be grave abuse of discretion amounting to lack or excess of jurisdiction.[124] However, the Secretary of Justice exercises, under law, supervision over the NPS,[125] and therefore he or she is empowered to promulgate uniform guidelines on how preliminary investigations are to be conducted for corporations in conformity to Rule 112 of the Rules of Court and established jurisprudence. The importance of receiving a valid service of subpoena cannot be gainsaid as failure of service may constitute a violation of the respondent's right to due process.[126]

B. Charging a Corporation

Once preliminary investigation has been conducted, and the prosecutor has found probable cause to indict the corporation for violation of law, an *information* shall then be filed before the competent court which has jurisdiction over the case.

Section 6, Rule 110 of the Rules of Court provides that for an information to be sufficient, the name of the accused must be stated therein. Therefore, it is important that the name of the corporation be included in the information, aside from the names of the responsible officers who committed the crime. It is an elementary rule in criminal law that a person, even an artificial one, cannot be held criminally liable if he or she is not impleaded in the information.[127]

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[123] People v. Ct. of Appeals, G.R. No. 126005, 301 SCRA 475, 483, Jan. 21, 1999.

[124] Aguilar v. Dep't of Justice, G.R. No. 197522, 705 SCRA 629, 638, Sept. 11, 2013.

[125] *See* Rep. Act No. 10071 (2010). The Prosecution Service Act of 2010.

[126] *See* Labay v. Sandiganbayan, G.R. No. 235937, July 23, 2018.

[127] RULES OF COURT, Rule 110, § 4. "An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court."

Section II(J)(3)(b), Part IV of the Revised Manual for Prosecutors provides that the name of the corporation be included in the resolution finding probable cause and the corresponding information:

> In the case of a corporation or juridical entity, its corporate name or identity shall be indicated and written as follows, "'X' Corporation, represented by its (position title), (name of corporate officer)".

Hence, aside from naming the responsible corporate officer, the name of the corporation shall be properly indicated. This is a formal requirement that has procedural consequences. It must be noted that a defect subject to a motion to quash must be evident on the face of the information.[128] If there is probable cause to charge a corporation for violation of law, but the information did not evidently state the name of the corporation as one of the accused, then there is a defect in the information which is subject to a motion to quash for failure of the information to conform substantially to the prescribed form. The remedy, then, is for the prosecution to be allowed to amend the information.[129]

C. Jurisdiction of Courts

The three important requisites in criminal jurisdiction are: (a) jurisdiction over the subject matter; (b) jurisdiction over the territory over which the offense was committed; and (c) jurisdiction over the person of the accused.[130] How these requisites are met has an impact on corporate criminal liability because there are obvious differences on the treatment of an accused individual compared to an accused corporation. For example, an accused individual is subject to arrest for the court to acquire jurisdiction over his or her person, but an accused corporation cannot be subject of arrest *per se*.

1. Jurisdiction Over the Subject Matter

It is elementary that the jurisdiction of a court over the subject matter of an action is conferred by law, the absence of which cannot be cured by the acquiescence or consent of the parties.[131] Under BP Blg. 129, as amended, the Municipal Trial Court (MTC), Metropolitan Trial Court (MeTC), and Municipal Circuit Trial Court (MCTC) exercise exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six years,

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[128] Dio v. People, G.R. No. 208146, 792 SCRA 646, 664, June 8, 2016.
[129] RULES OF COURT, Rule 117, § 4.
[130] People v. Vanzuela, G.R. No. 178266, 559 SCRA 234, 242, July 21, 2008.
[131] *Id.*

regardless of the amount of fine. This means that when the State prosecutes the corporate agents for violation of law over which the MTC, MeTC or MCTC has subject matter jurisdiction, the corporation may likewise be charged together with the responsible officers in the said courts, and the MTC, MeTC or MCTC may convict the corporation of paying the fine within the range provided for by law. If the offense is punishable with imprisonment exceeding six years, then the corporation, together with the responsible corporate officers, may be charged before the Regional Trial Court (RTC), and the RTC may likewise impose the penalty of fine against the corporation.

Prosecuting corporations should never be a substitute for prosecuting the liable corporate officers. In the US, Section 9-28.010 of the U.S. Justice Manual provides that the prosecution of the accountable individuals is still one of the most effective ways against corporate misconduct. As such, the corporation should not be charged alone, but together with the responsible corporate agents before the court of competent jurisdiction as provided for by law. For example, if the liable corporate officers are found to have violated a law imposing a penalty of 12 years imprisonment over which the RTC has criminal jurisdiction, then the corporation should likewise be indicted alongside the liable officer in the same case before the RTC.

It must be noted that when a special law provides that a specific court shall have criminal jurisdiction for specific offenses, then such court shall exercise jurisdiction. For example, specific cases of tax evasion under Section 255 of the NIRC are triable before the CTA and not the RTC.[132]

2. Jurisdiction Over the Person of the Accused

Jurisdiction over the person of the accused is acquired upon: (a) the arrest of such accused, whether under a warrant or a valid warrantless arrest; or (b) the voluntary appearance or submission to the jurisdiction of the court by such accused.[133] Rule 113 of the Rules of Court provides for the procedural rules on how arrests are made and executed. Jurisprudence has likewise provided for the different forms of valid warrantless arrests. It is easy to understand if a corporation is criminally charged and it voluntarily appears, through its counsel, before the court to answer the charge. But if jurisprudence provides that it is only through arrest that a court acquires jurisdiction over an unwilling accused, does that mean that corporations, under the present rules, cannot be hauled to court to answer for their criminal liability?

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[132] Rep. Act No. 1125 (1954), *amended by* Rep. Act No. 9282 (2004), § 7(b).

[133] Inocentes v. People, G.R. No. 205963, 796 SCRA 34, 49, July 7, 2016.

Applying the present Rules, it seems that the only way for a court to acquire jurisdiction over the person of the accused corporation is, aside from voluntary appearance, when there is an arrest made. But who shall be arrested? When the responsible corporate officer is arrested, that means that the court has acquired jurisdiction over his or her person, but it is unclear whether the court has acquired jurisdiction over the person of the corporation at the same time. If such was the case, it is apparent that the doctrine of separate juridical personality is frustrated. Under such principle, the corporation is considered to have a legal personality separate and distinct from those acting for and on its behalf.[134] Through the piercing of the corporate veil, the separate personality of the corporation may nevertheless be disregarded if it is used as a means to perpetrate a fraud or an illegal act.[135]

In *Sarona v. National Labor Relations Commission*,[136] the Supreme Court stated that piercing the veil only applies in three (3) basic areas, one of which is in "fraud cases or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime."[137] Under this area, piercing the corporate veil may be used when a corporation is used to defend a crime. However, as discussed, the concept of corporate criminal liability is premised on the notion that the corporation itself is a party to the crime, through the act of its agents, and it is not solely a means where the corporation is "used" to "defend a crime." Any piercing of the corporate veil should not be done wantonly by any court, but with caution, considering that "any wrongdoing must be clearly and convincingly established."[138] In issuing an arrest warrant, the court only determines probable cause that an offense was committed and that the accused committed it; it does not need the presence of "clear and convincing" evidence of guilt.[139] Piercing the veil is an equitable remedy,[140] and it is unimaginable that in every issuance of an arrest warrant against a corporate agent to acquire jurisdiction over the person of the corporation the court is exercising this equitable remedy.

As compared with the US, their Federal Rules of Criminal Procedure, as amended on December 1, 2019, provides for the processes by which a court

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[134] Heirs of Uy v. Int'l Exch. Bank, G.R. No. 166282, 690 SCRA 519, 525, Feb. 13, 2013.

[135] *Id.* at 526.

[136] G.R. No. 185280, 663 SCRA 394, Jan. 18, 2012.

[137] *Id.* at 417.

[138] Phil. Nat'l Bank v. Hydro Res. Contractors Corp., G.R. No. 167530, 693 SCRA 294, 306, Mar. 13, 2013.

[139] Unilever Phils., Inc. v. Tan, G.R. No. 179367, 715 SCRA 36, 49-50, Jan. 29, 2014.

[140] Virata v. Ng Wee, G.R. No. 220926, 830 SCRA 271, 363, July 5, 2017.

can acquire personal jurisdiction over an "organizational defendant,"[141] which includes accused corporations. Rule 4(c)(3)(C) thereof provides that a corporation must be served summons, instead of a warrant, by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. Rule 4(c)(3)(D), on the other hand, provides for service of summons on a foreign corporation. Thus, under the Federal Rules, the arrest of the responsible officer does not automatically mean that the court likewise acquires jurisdiction over the person of the corporation, similar to the personal jurisdiction over the responsible officer. The Federal Rules require the separate service of summons, not a warrant, unto the corporation. This, in turn, respects the separate legal personality of the corporation. A summons is a "writ or process commencing the plaintiff's action and requiring the defendant to appear and answer."[142] Thus, the Federal Rules adopted the rules in civil procedure with respect to corporations, recognizing the physical impossibility of arresting a corporation.

Arrest, aside from being a mode wherein jurisdiction is acquired by the court, also serves as a limit on the accused to evade jurisdiction, or a restraint depriving him or her of liberty so that he or she may continue to appear before the court in the course of the proceedings. For an individual, this happens when the accused continues to be detained for the duration of the trial until his or her acquittal. In the case of corporations, detention of the corporation *per se* is physically impossible, though the responsible corporate officers can be detained. Thus, upon service of summons to a corporation, the court should have acquired jurisdiction over the person of the corporation, and the corporation is then required to appear before the court. Under Rule 4(a) of the U.S. Federal Rules of Criminal Procedure, if a corporation "fails to appear in response to a summons, a judge may take any action authorized by United States law." To ensure appearance of the corporation during trial, and in lieu of detention, the broad language of the Federal Rules allows the court to take any remedial action to ensure compliance with the summons. This is a relatively new provision added to the Federal Rules in 2016,[143] and there has not been any decided case outlining what these remedial actions are. Some commentators have opined that this is

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[141] 18 U.S.C. §18. "[T]he term "organization" means a person other than an individual."

[142] *Supra* note 110, at 1574.

[143] Committee Notes to the Federal Rules of Criminal Procedure, *available at* https://www.law.cornell.edu/rules/frcrmp/rule_4 (last accessed Apr. 27, 2020). For a history of the amendments to Rule 4 of the Federal Rules, *see In re* Pangang Group Co., 901 F.3d 1046 (9th Cir. 2018).

cause to cite the corporation's officers or counsel in contempt of court.[144] Likewise, as authorized in certain states in the US,[145] a corporation that fails to appear following summons shall automatically register a "not guilty" plea, and trial shall commence as if the corporation was in default.[146]

3. Territorial Jurisdiction

Territorial jurisdiction is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused.[147] Section 10, Rule 110 of the Rules of Court provides where territorial jurisdiction lies: it is where the offense was committed or some of the essential ingredients occurred. Venue, therefore, is jurisdictional in criminal cases.[148]

A corporation acts through its agents, and as creatures of legal fiction, it may only commit a crime through its agents. It has been a rule that obligations incurred as a result of the directors' and officers' acts as corporate agents are the direct responsibility of the corporation they represent.[149] Members of the board of directors, who are elected by the shareholders, "exercise corporate powers, conduct all business, and control all properties of the corporation."[150] On the other hand, "the officers of a corporation are enumerated in its charter or by-laws[.]."[151] But aside from those enumerated in the by-laws, the officers of the corporation mandated by law include the president, treasurer, secretary, and, in the case of corporations vested with public interest, a compliance officer.[152] Members of the corporation's board of directors and the duly-designated officers may thus be aptly considered as agents of the corporation.

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[144] Lester B. Orfield, *Warrant or Summons Upon Indictment or Information in Federal Criminal Procedure*, 23 MO. L. REV. 308, 314 (1958).

[145] *See, e.g.,* MONT. CODE ANN. 2019, § 46-6-212; ALASKA RULES OF CRIM. PROC., Rule 4(3); TENN. RULES OF CRIM. PROC., Rule 9(f).

[146] Similar to trial *in absentia*, but it is unclear whether such principle applies to corporations in the Philippines, since one of the constitutional and jurisprudential requirements for trial *in absentia* is that the accused has already been arraigned. Here, the question is precisely whether the corporation's non-appearance during arraignment may be a ground for trial *in absentia* to commence. *See* Bernardo v. People, G.R. No. 166980, 520 SCRA 332, 343, Apr. 3, 2007.

[147] Navaja v. De Castro, G.R. No. 182926, 759 SCRA 487, 497, June 22, 2015.

[148] Unionbank of the Phils. v. People, G.R. No. 192565, 667 SCRA 113, 122, Feb. 28, 2012.

[149] Polymer Rubber Corp. v. Salamuding, G.R. No. 185160, 702 SCRA 153, 160, July 24, 2013.

[150] REV. CORP. CODE, § 22.

[151] Gurrea v. Lezama, 103 Phil. 553, 556 (1958).

[152] REV. CORP. CODE, § 24.

Most crimes require the performance of an overt act—a "physical activity or deed"—which if carried into completion will ripen into the corporate offense.[153] The requirement that a "physical activity or deed" constitutes an overt act devolves upon the corporate agent, for the simple reason that the corporation is a mere legal fiction which cannot perform a physical act but through its agents. In an English case, the intimacy between the agent and the corporation is described as follows: "[T]he person who acts is not speaking or acting for the company. He *is* acting as the company and his mind which directs his acts *is* the mind of the company."[154] Hence, when an agent commits a crime which imposes criminal liability on the corporation, the court which has territorial jurisdiction where the crime was committed by the agent, or where its "essential ingredients" occurred, can try the case against the corporation. As compared with civil cases where the "residence" of the corporation can be chosen by the plaintiff as a possible venue,[155] the principal place of business found in the corporation's charter would have no bearing on the issue of territorial jurisdiction in criminal cases.

D. Arraignment and Plea

Arraignment is a mechanism to implement an accused's constitutional right to be informed of the nature and cause of the accusation against him or her.[156] The purpose of arraignment is to apprise the accused of the penalty he or she is to suffer upon conviction, and at the very least inform him or her why the prosecuting arm of the State is going after him or her.[157]

Section 1(b), Rule 116 of the Rules of Court provides that the accused must be personally present at his or her arraignment. But for an accused corporation, how is this provision implemented? It is the common view that a corporation is incapable of personally appearing in any action,[158] so who must be physically present during arraignment to represent the corporation and make a plea? When the responsible corporate officer is arrested, does this mean that he or she must also make the plea for and on behalf of the corporation, aside from making a plea for himself or herself personally?

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[153] Rimando v. People, G.R. No. 229701, 847 SCRA 339, 354, Nov. 29, 2017.

[154] Tesco Supermarkets Ltd. v. Nattrass, 2 WLR 1166 (1971).

[155] RULES OF COURT, Rule 4, § 2. *See also* Clavecilla Radio Sys. v. Antillon, G.R. No. 22238, 19 SCRA 379, 381, Feb. 18, 1967. "Settled is the principle in corporation law that the residence of a corporation is the place where its principal office is established."

[156] CONST. art. III, § 14(2).

[157] People v. Pangilinan, G.R. No. 171020, 518 SCRA 358, 371, Mar. 14, 2007.

[158] *Appointment of Counsel for a Defaulting Corporation in a Criminal Proceeding*, 1960 DUKE L.J. 649, 650.

Under Rule 43(b)(1) of the U.S. Federal Rules of Criminal Procedure, the attendance of the defendant is not required in initial arraignment when the defendant is a corporation represented by counsel who is present. Therefore, under the Federal Rules, it is sufficient that the corporation's counsel is present during arraignment, and he or she makes the plea on behalf of the corporation. If the corporation's counsel fails to appear, the court shall enter a plea of not guilty, as provided in Rule 11(a)(4). In essence, the Federal Rules provides that the separate juridical personality of the corporation is respected when it authorizes the appearance of the corporation's representative—its counsel—to act on its behalf for purposes of arraignment. The arrest of the responsible corporate officer, and his or her subsequent arraignment, would only be limited to the making of a plea for himself or herself, and would not bind the corporation.

In the Philippines, it is unclear how arraignment of a corporation is conducted. For example, in a CTA case for violation of the NIRC, the said court conducted an arraignment of the responsible officers who personally appeared and who voluntarily submitted to the jurisdiction of the court. The said officers pleaded "not guilty," and in the end, the CTA convicted the said responsible officers, as well as the corporation they represented.[159] There was no indication that the arraignment involved the counsel of the corporation. Seemingly, the arraignment of the corporate officers was enough to constitute arraignment of the corporation. The lack of uniform rules and the seeming improvisation of the courts on this issue is a cause of concern for it collides with established principles of corporate and criminal law.

E. Trial, Judgment and Appeal

As provided in Rule 43 of the U.S. Federal Rules of Criminal Procedure, every stage of the trial requires the presence of the defendant, except for when the accused is a corporation where the presence of counsel is enough. Section 1(c), Rule 115 of the Rules of Court likewise provides that the accused has to be present at every stage of the proceedings, except when his or her presence is waived pursuant to the stipulations of the bail. However, Rule 115 of the Rules of Court, as compared with Rule 43 of the Federal Rules, does not provide for an exception in the case of corporations standing trial.

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[159] *See* People v. Enviroaire, Inc., Crim. Case No. O-408 (Ct. of Tax Appeals Nov. 18, 2019).

Section 17, Rule 119 of the Rules of Court likewise provides for the qualifications when an accused can be turned into a state witness. The purpose of this rule is to "impose conditions whereby an accused, already charged in the information, may not [be] arbitrarily and capriciously excluded therefrom, [...] and to remedy the evil consequence of an unreasonable and groundless exclusion which produces the real impunity perhaps of the most guilty criminal and subjects to prosecution the less wicked[.]"[160] So the question comes: can a corporation be considered a state witness as against the other accused, say, its corporate officers?[161]

The discharge of an accused as a state witness is left to the sound discretion of the court.[162] As the current Rules are silent, it is thus left to the trial court to determine whether or not a corporation can qualify as a state witness. How can a corporation testify as to facts which it personally knows[163] if not through its agents? Does this mean that the personal knowledge of a corporate agent redounds to the benefit of the corporation? To this end, there is the theory of imputed knowledge which ascribes the knowledge of the agent to the principal,[164] and which has been applied in the Philippines at least in the context of corporate law where the Supreme Court held, in the case of *Rovels Enterprises, Inc. v. Ocampo*,[165] that the president is considered an agent of the corporation, and as such his knowledge of a transaction is charged to the corporation as his principal.

It may thus seem that an officer or employee of the corporation who obtains personal knowledge of the facts may be called by the corporation to testify on its behalf. However, it must be noted that when a corporation calls such employee or officer, who is not a party to the offense being charged, to testify on its behalf, it is in essence offering the testimony as if it is also the corporation's. In the criminal charge against the responsible officers alongside the corporation, the latter may argue that it is not the "most guilty" of them all. The provision does not require that a state witness should appear to be the "least guilty" among the accused, only that he or she "does not appear to be the most guilty."[166] The corporation may aver that it has instituted internal

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[160] United States v. Enriquez, 40 Phil. 603, 608 (1919).

[161] The breakdown of the requirements to be considered a state witness is provided for by the Rules of Court and by jurisprudence. *See* Jimenez v. People, G.R. No. 209195, 735 SCRA 596, 613, Sept. 17, 2014.

[162] Chua v. Ct. of Appeals, G.R. No. 103397, 261 SCRA 112, 120, Aug. 28, 1996.

[163] RULES OF COURT, Rule 130, § 36.

[164] Sunace Int'l Mgmt. Services v. Nat'l Labor Rel. Comm'n [hereinafter "*Sunace*"], G.R. No. 161757, 480 SCRA 146, 154-55, Jan. 25, 2006.

[165] G.R. No. 136821, 391 SCRA 176, 191, Oct. 17, 2002.

[166] People v. Dela Cruz, G.R. No. 173308, 555 SCRA 329, 341, June 25, 2008.

control policies in place to prevent the commission of the crime, or that the responsible officers were acting *ultra vires*, to provide a frame of mind that it is not the "most guilty" among all the accused.

However, going back to the legal principle that a corporation may only act through its agents, the other school of thought proposes that a corporation cannot become a state witness. The criminal liability of a corporation is intimately linked to the acts of its corporate officers. If the responsible officer's acts are considered the acts of the corporation, then how can the corporation not appear to be the guiltiest? Applying the doctrine of *respondeat superior*, one of the requirements for corporate criminal liability is that the agent's act was intended to benefit the corporation. There would be a seeming incongruence that the corporation then tries to turn the tables against its agents after benefiting from the commission of the unlawful act. It would then be an easy excuse to evade corporate criminal liability altogether when the responsible officers are held liable but the corporation is not, because it offered the testimony of another agent who is not a party to the offense. The doctrine of imputed knowledge has never been applied liberally this way in criminal cases in the Philippines.[167] In fact, the other responsible officers charged may invoke the doctrine as well, in that by committing the very offense there is imputed knowledge of such crime to the corporation.

Another provision in the Rules of Court requiring personal appearance by the accused is during the promulgation of judgment.[168] As with the requirement that the accused appear personally during arraignment, the current Rules are silent as to how it applies to corporations. If the trial court finds the accused corporation guilty, and the corporation is not physically present (as it cannot *be* physically present) during the promulgation of judgment, does that mean that the corporation is forever barred to avail the remedy of appeal? If not, does the presence of the responsible officers during promulgation enough to constitute presence of the corporation? Or is the presence of the corporation's counsel during promulgation sufficient to satisfy the requirement? At least in the US, Rule 43(b)(1) of the Federal Rules of Criminal Procedure merely requires the presence of the corporation's counsel during return of verdict and sentencing. No such similar or analogous provision is provided in our Rules of Court.

Since Section 1, Rule 122 of the Rules of Court provides that "any party" may appeal the judgment, then there is no reason to preclude that

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[167] *See Sunace*, 480 SCRA at 154-55. *See also* APQ Ship Mgmt. Co., Ltd. v. Caseñas, G.R. No. 197303, 725 SCRA 108, June 4, 2014.

[168] RULES OF COURT, Rule 120, § 6.

remedy to a corporation convicted of committing a crime. What is not applicable for corporations is the remedy of automatic review since such is only for convictions for death (currently not imposable),[169] *reclusion perpetua*, and life imprisonment:[170] penalties that can only be imposed on individuals. Therefore, corporations who wish to overturn their convictions may file an ordinary appeal under the Rules.

IV. RIGHTS EXTENDED TO CORPORATIONS

Since the promulgation of *Santa Clara County*, corporations have enjoyed rights parallel to those of natural persons. It could have been unthinkable at first that mere artificial beings created under law would have the rights to free speech or of free religion, but the state of law, as previously discussed, has now been construed to extend such protections to any "person," including corporations.

In the Philippines, the applicability of certain protections accorded by the Bill of Rights has been extended to corporations since the early days of American occupation. In the 1919 case of *Smith, Bell & Co. (Ltd.) v. Natividad*,[171] the Supreme Court declared, even citing *Santa Clara County*, that "private corporations [...] are 'persons' within the scope of the guaranties of the [due process and equal protection clauses] in so far as their property is concerned."[172] From then on, the courts have consistently ruled that corporations are persons covered by due process and equal protection. So now the question comes—what about other substantive rights? Specifically, can the protections afforded to an accused be extended to artificial beings such as corporations?

A. Right Against Unreasonable Searches and Seizures

Even though the right against unreasonable searches and seizures is not one that is directly related to the prosecution of criminal offenses, it is still relevant to discuss its applicability to corporations since a search or seizure of corporate properties may become a precursor to subsequent prosecution, which may be instituted by the government once evidence has been validly obtained.

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[169] Rep. Act No. 9346 (2006). Act Prohibiting the Imposition of Death Penalty.

[170] CONST. art. VIII, § 5(d). *See also* People v. Mateo, G.R. No. 147678, 433 SCRA 640, July 7, 2004.

[171] 40 Phil. 136 (1919).

[172] *Id.* at 145.

Section 2, Article III of the Constitution, which provides for the right against unreasonable searches and seizures, uses the term "people" instead of "individuals" or "citizens," thus effectively paving the way for the rights to due process and equal protection to extend to corporations. But the jurisprudential mooring on whether corporations may invoke the said constitutional protection is provided in the seminal case of *Stonehill v. Diokno*.[173] That case is best remembered for introducing into the Philippine legal system the exclusionary rule,[174] which prohibits the use in evidence of objects illegally seized, and which overturned the infamous *Moncado* ruling.[175]

In *Stonehill*, the Supreme Court ruled that, with regard to those things seized in the offices of the corporation, it is the corporation, which has a separate and distinct personality from its officers, that possesses the right to object to the admission of seized documents.[176] The Court said, in essence, that for the objects seized from the offices of the corporation, it is the corporation that has *standing* to question the legality of the seizure. In conferring standing to the corporation, the Court has pronounced that corporations have a cause of action with regard to search warrants issued against them. To have a cause of action is to possess a legal right that may have been violated,[177] and this legal right, as implied in *Stonehill*, is one that is provided for by the Constitution itself.

However, the Court has clarified, in a subsequent case, the applicability of the *Stonehill* doctrine. In *Santos v. Pryce Gases, Inc.*,[178] the Court declared that the manager of the corporation is a "real party-in-interest [who can] seek the quashal of the search warrant for the obvious reason that the search warrant, in which petitioner was solely named as respondent, was directed against the premises and articles over which petitioner had control and supervision."[179] The Court ruled that *Stonehill* is not applicable because assuming that the corporation owned the seized items, estoppel would apply in that the authority of the manager to possess and control the things subject of the search had been previously recognized by the respondents.[180] To harmonize the two cases, it can thus be summarized that it is the general rule that only a corporation may question the validity of a search warrant issued

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[173] [Hereinafter "*Stonehill*"], G.R. No. 19550, 20 SCRA 383, June 19, 1967.
[174] The exclusionary rule is now a constitutional dictum. *See* CONST. art. III, § 3(2).
[175] *See* Moncado v. People's Ct., 80 Phil. 1 (1948).
[176] *Stonehill*, 20 SCRA at 390.
[177] Relucio v. Lopez, G.R. No. 138497, 373 SCRA 578, 581-82, Jan. 16, 2002.
[178] G.R. No. 165122, 538 SCRA 474, Nov. 23, 2007.
[179] *Id.* at 482.
[180] *Id.*

against corporate properties, except when the applicants to the warrant have recognized the authority of the corporate officer to possess and control the items to be seized, in which case the corporate officer is afforded legal standing to question the search.

B. Right Against Warrantless Arrest

Section 2, Article III of the Constitution does not only provide for protection against unreasonable searches and seizures, but also against warrantless arrest. Arrest is defined as "the taking of a person into custody in order that he may be bound to answer for the commission of an offense."[181] Since arrest involves the physical act of "taking" a person, and corporations are mere fictions of law, there can be no instance wherein a corporation can literally be arrested. The responsible corporate officers, of course, can be subject to arrest and detention, but the corporation *per se* can never be. Similar to the discussion on personal jurisdiction, for the court to obtain jurisdiction over the person of the corporation, there must be clarity on how such is operationalized—is the arrest of the responsible officers sufficient or is there a need to issue and serve separate summons—for the court to acquire personal jurisdiction over the corporation.

C. Rights of the Accused

Section 14(1), Article III of the Constitution ensures that the accused enjoys due process of law. It has long been held that corporations enjoy due process protections. As succinctly put by former Chief Justice Reynato Puno: "A day in court is the touchstone of the right to due process in criminal justice. It is an aspect of the duty of the government to follow a fair process of decision-making when it acts to deprive a person of his liberty."[182]

On the other hand, Section 14(2), Article III of the Constitution provides for the specific rights that an accused enjoys, namely: (a) right to be presumed innocent until proven guilty; (b) right to be heard by himself and counsel; (c) right to be informed of the nature and cause of the accusation against him; (d) right to speedy, impartial and public trial; (e) right to meet witness face to face; and (f) right to have compulsory process to secure the attendance of witnesses and the production of evidence in his or her behalf. Each of these shall be discussed hereunder.

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[181] RULES OF COURT, Rule 113, § 1.

[182] People v. Verra, G.R. No. 134732, 382 SCRA 542, 544, May 29, 2002.

1. Right to Presumption of Innocence

In its essence, the right to be presumed innocent provides that in all criminal prosecutions, it is the duty of the government to establish the guilt of the accused, and not the other way around. As explained by the Supreme Court, "[t]he presumption of innocence dictates that it is for the [p]rosecution to demonstrate the guilt and not for the accused to establish innocence. Indeed, the accused, being presumed innocent, carries no burden of proof on his or her shoulders."[183]

In the case of *Feeder International Line, Pte., Ltd. v. Court of Appeals*,[184] the Court stated that a corporation has no personality to invoke the right to be presumed innocent because the right is only available to an individual. However, the Court did not elaborate nor explain the reason behind this statement, and thus such statement may be considered as mere *obiter dictum*. To presume that corporations are guilty at the outset would run counter to the constitutional principle of due process of law, since conviction would no longer require that the reasonable doubt standard be met.[185]

Section 14(2), Article III of the Constitution provides that the right to presumption of innocence is enjoyed by all those who are *accused* of committing a crime. An "accused" is "anyone who has been formally charged a crime; a person against whom legal proceedings have been initiated."[186] A textual analysis shows that the right to be presumed innocent is not foreclosed to corporations by the mere fact that a corporation can become an accused in a criminal charge. Extending the presumption of innocence to corporations would bolster the right as a foundation of the criminal justice system that treats all criminal defendants, whether natural or artificial persons, equally in the eyes of the law.

However, some commentators have argued that the right of presumption of innocence should not be applied wholesale to corporations. Professor Roger Shiner argues that "reverse onus" offenses,[187] which are

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[183] People v. Wagas, G.R. No. 157943, 705 SCRA 17, 35-36, Sept. 4, 2013.

[184] G.R. No. 94262, 197 SCRA 842, 849, May 31, 1991.

[185] Macayan v. People, G.R. No. 175842, 753 SCRA 445, 457, Mar. 18, 2015. "An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged."

[186] *Supra* note 111, at 25.

[187] In "reverse onus" cases, the burden shifts to the defendant to prove that it is innocent of the crime charged. *See also* K.E. Dawkins, *Statutory Presumptions and Reverse Onus*

naturally and traditionally contradictory to the presumption of innocence, may be applied in the case of corporate defendants. Professor Shiner argues that the presumption of innocence, as applied to natural persons, would give "maximal protection" to any accused. However, giving that "maximal protection" to corporations would be detrimental to society since corporations, as creatures of the State, are subject to more regulations, and most of these rules are intended to ensure the safety and welfare not just of corporate customers, but the public at large.[188]

In the Philippines, the concept of reverse onus finds no application in criminal law except in self-defense cases.[189] In *People v. Macaraig*,[190] the Court explained that "[w]hen the accused [...] admits [to] killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence. Well-settled is the rule that [...] self-defense shifts the burden of proof from the prosecution to the defense."[191]

Reverse onus likewise applies in the case of ill-gotten wealth. Under the law, there is a *prima facie* presumption of ill-gotten wealth when a public officer acquired during his or her incumbency certain amounts or properties that are manifestly out of proportion to his or her salary as a public officer and to his or her other lawfully acquired income.[192] The reverse onus application of this presumption under the law is to shift the burden of proof to the public officer or employee.[193] However, it should be noted that forfeiture of ill-gotten wealth is a civil proceeding, particularly an action *in rem*, and does not involve the presumption of innocence,[194] even though such forfeiture proceeding may be closely related to criminal actions involving graft and corruption.

Even the concept of reverse onus itself is becoming less accepted. Article 14(2) of the International Covenant on Civil and Political Rights

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Clauses in the Criminal Law: In Search of Rationality, 3 CANTERBURY L. REV. 214, 214-15 (1987)."[W]here the statute states that on proof of the basic fact, a further fact shall be presumed 'until/unless the contrary is proved', a persuasive burden [a 'reverse onus'] is shifted to D[efendant]. In order to rebut the statutory inference D[efendant] must adduce proof to the contrary on a balance of probabilities."

[188] *See* Roger A. Shiner, *Corporations and the Presumption of Innocence*, 8 CRIM. L. & PHILO. 485 (2014).

[189] REV. PEN. CODE, art. 11.

[190] G.R. No. 219848, 827 SCRA 43, June 7, 2017.

[191] *Id.* at 50.

[192] Rep. Act No. 1379 (1955), § 2. Act declaring forfeiture in favor of the state any property found to have been unlawfully acquired by any public officer or employee.

[193] Ong v. Sandiganbayan, G.R. No. 126858, 470 SCRA 7, 16-17, Sept. 16, 2005.

[194] *Id.*

(ICCPR), to which the Philippines is a party to,[195] provides for the presumption of innocence, which, as compared to other human rights protections such as the right to life, prohibition of torture, or the right to vote, is one that is readily applicable to corporations.[196] Moreover, there are practical considerations in upholding the presumption of innocence in that it operates by assigning the risk of non-persuasion to the prosecution, thereby improving the fact-finding process, compensating systemic bias against the prosecution, and ultimately leading to reduced wrongful convictions.[197] Thus, as presently existing, the right to be presumed innocent remains a bedrock of Philippine criminal law, and there is no compelling reason why this right is to be abandoned by the mere fact that a criminal defendant is a corporation.

2. Right to Counsel

The right to counsel has been in the statute books of the Philippines since the early days of American occupation.[198] The so-called "Miranda rights", first enunciated in the seminal U.S. case of *Miranda v. Arizona*,[199] has found its way in Philippine law.

The Philippine version of the Miranda rights requires that: (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires.[200] These are rights afforded to an accused during custodial investigation,[201] but since a corporation *per se* may not be physically subjected to custodial investigation, these rights may not necessarily be applicable as they are now understood.

Note, however, that one of the primary Miranda rights is the right to counsel, which is not only limited to custodial investigations, but extends to

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[195] U.N. Office of the High Commissioner for Human Rights, *Status of Ratification Interactive Dashboard*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS WEBSITE, *at* https://indicators.ohchr.org/ (last visited Feb. 20, 2020).

[196] Stephen G. Wood & Brett G. Scharffs, *Applicability of Human Rights Standards to Private Corporations: An American Perspective*, 50 AM. J. COMP. L. 531, 546 n.78 (2002).

[197] Dawkins, *supra* note 187, at 215.

[198] *See* People v. Bermas, G.R. No. 120420, 306 SCRA 135, 145, Apr. 21, 1999.

[199] 384 U.S. 436 (1966).

[200] People v. Cabanada, G.R. No. 221424, 831 SCRA 485, 493, July 19, 2017.

[201] *See* People v. Tan, G.R. No. 117321, 286 SCRA 207, 214, Feb. 11, 1998. "Custodial investigation involves any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner."

trial. In support of this, Section 1(c), Rule 115 of the Rules of Court requires that the accused be defended by counsel at every stage of the proceedings, from arraignment up to promulgation of judgment. In case the accused does not have counsel, he or she shall be provided with one. Section 7, Rule 115 of the same Rules provides for the appointment of a counsel *de oficio*, or a court-appointed counsel.[202] Hence, the question comes: does a corporation possess the right to counsel?

There is no definite judicial pronouncement on the applicability of the right to counsel to corporations in the Philippines, as such, the rulings of the U.S. courts may be instructive. Rule 43 of the U.S. Federal Rules of Criminal Procedure requires the presence of the defendant in every stage of the trial, but an organizational defendant may appear by presence of its counsel. In the case of *United States v. Crosby*,[203] the U.S. District Court for the Southern District of New York ruled that it has the power to appoint any one of the corporation's attorneys or officers so that trial against the corporation may commence.[204] However, it must be noted that in such decision, the corporation was said to be in default; it had been validly summoned, yet it failed to appear during trial. The district court then appointed the counsel who represented the corporation in civil bankruptcy cases within the same court. The appointment of counsel in this case was to secure the appearance of the accused for purposes of making a plea, not necessarily to have counsel. In fact, the district court ruled that even the officers of the corporation may be appointed or summoned to represent the corporation, since "there is an identity of interest in the corporation, as such, and its officers that should insure the presentation of an adequate defense."[205]

The 6th Amendment provides for the right to effective assistance of counsel. This means that, aside from the appointment of counsel to secure appearance of a corporation as provided in *Crosby*, the counsel representing the corporation must do so competently to ensure a fair trial and a just outcome.[206] In the case of *United States v. Rad-O-Lite of Philadelphia*,[207] the U.S. Court of Appeals for the Third Circuit ruled that the right to effective counsel is not precluded to a corporation since it may become an "accused" under the 6th Amendment. It also held that a corporation requires much the same competent legal representation as an individual in a criminal proceeding.

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[202] *See supra* note 111, at 401. "An attorney appointed by the court to represent a person, usu. an indigent person."

[203] 24 F.R.D. 15 (S.D.N.Y. 1959).

[204] *Id.* at 16.

[205] *Supra* note 159, at 653.

[206] *See* Lafler v. Cooper, 566 U.S. 156 (2012).

[207] 612 F.2d 740 (3rd Cir. 1979).

In the Philippines, the requirement of having a "competent and independent" counsel is constitutionally mandated. A "competent" counsel is one who is "willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would be merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights."[208] An "independent" counsel, on the other hand, is one who can advise the client without being burdened by any conflict of interest.[209] In decided cases by the Supreme Court, it is observed that almost always, the appointment of a "competent and independent" counsel is applied in custodial investigations. But generally, a "competent" counsel is one who is "expected to understand the law that frames the strategies he or she employs in a chosen legal remedy[,] [...] lays down the procedure that will effectively and efficiently achieve his or her client's interests[,] [...] [has] a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued."[210] Thus, similar to the 6th Amendment right to "effective assistance of counsel," a corporation is entitled to receive "competent and independent" counsel under the Philippine Constitution.

Notwithstanding the applicability of the right to effective assistance of counsel, the common view is that corporations do not have the right to court-appointed counsel.[211] In *United States v. Unimex, Inc.*,[212] the U.S. Court of Appeals for the Ninth Circuit held that "[b]eing incorporeal, corporations cannot be imprisoned, so they have no constitutional right to appointed counsel. [...] The 6th Amendment accordingly does not provide for appointment of counsel for corporations without sufficient assets to retain counsel on their own. [...] Thus, corporations have a right to counsel, but no right to appointed counsel, even if they cannot afford to retain their own."[213]

Under the *Unimex* ruling, it was clear that corporations do not enjoy the right to have counsel appointed by the court, even though it does not possess the required resources to procure one. This was later adopted in the

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[208] People v. Rapeza, G.R. No. 169431, 520 SCRA 596, 624, Apr. 4, 2007, *citing* People v. Deniega, 321 Phil. 1028, 1041 (1995).

[209] *See* People v. Velarde, G.R. No. 139333, 384 SCRA 646, July 18, 2002.

[210] Ong Lay Hin v. Ct. of Appeals, G.R. No. 191972, 748 SCRA 198, 207-08, Jan. 26, 2015.

[211] JAMES T. O'REILLY, JAMES PATRICK HANLON, RALPH F. HALL, STEVEN L. JACKSON & ERIN REILLY LEWIS, PUNISHING CORPORATE CRIME: LEGAL PENALTIES FOR CRIMINAL AND REGULATORY VIOLATIONS 37 (2009).

[212] 991 F.2d 546 (9th Cir. 1993).

[213] *Id.*

case of *United States v. Hartsell*,[214] wherein the U.S. Court of Appeals for the Fourth Circuit similarly held that corporations are not entitled to publicly appointed counsel under federal statute.

The same view may be adopted in the Philippines. Under RA No. 7438, a person under custodial investigation is entitled to have competent and independent counsel, preferably of his or her own choice; if none, he or she shall be provided with one. But, as discussed, a corporation *per se* may not be subject of custodial investigation, hence, the inapplicability of the said law in providing for an assisting counsel by the government. Under RA No. 9406, the Public Attorney's Office is mandated with rendering, free of charge, legal representation, assistance and counselling to "indigent" persons. Who qualifies as an "indigent" litigant is provided for under the Rules of Court[215] and has been clarified by jurisprudence.[216] But in *In re Exemption from Legal and Filing Fees of the Good Shepherd Foundation, Inc.*,[217] the Supreme Court ruled that a corporation, even though formed as non-stock and non-profit, cannot be considered as an "indigent" that is exempt from the payment of legal fees, holding that only a natural person may be considered an indigent party litigant as poverty is a condition only a natural person may suffer. Thus, even though a corporation does not have the resources to procure counsel, it is not entitled to be represented by a public defender for it cannot be considered an "indigent."

3. Right to be Informed of the Nature and Cause of the Accusation

The right to be informed of the nature and cause of the accusation requires that every element that constitutes the offense must be alleged in the complaint or information so as to enable the accused to prepare for his or her defense.[218] This right is part and parcel of criminal due process, and for which there has been a long line of jurisprudence providing that corporations are entitled to due process, criminal or otherwise, thus there is no evident reason why this right should not be extended to a corporate defendant.

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[214] 127 F.3d 343 (4th Cir. 1997).

[215] RULES OF COURT, Rule 3, § 21; Rule 141, § 18.

[216] *See* Sps. Algura v. Local Gov't Unit of the City of Naga, G.R. No. 150135, 506 SCRA 81, Oct. 30, 2006.

[217] A.M. No. 09-6-9-SC, 596 SCRA 401, Aug. 19, 2009.

[218] Canceran v. People, G.R. No. 206442, 761 SCRA 293, 302, July 1, 2015.

4. Right Against Self-incrimination

The right against self-incrimination is enshrined in Section 17, Article III of the Constitution, which provides that, "No person shall be compelled to be a witness against himself." Corollary to this is the right to remain silent provided in Section 12(1) of the same Article in the Constitution. The primary difference between the two is that the former is applicable to any person under custodial investigation, while the latter applies to all types of cases, whether criminal, civil or administrative.[219] The purpose of the latter right is to provide an "option of refusal to answer incriminating questions, not a prohibition of inquiry."[220]

The U.S. Supreme Court has ruled, as early as 1906, in the case of *Hale v. Henkel*,[221] that corporations do not enjoy the right against self-incrimination. It held that:

> There is a clear distinction between an individual and a corporation, and the latter, being a creature of the State, has not the constitutional right to refuse to submit its books and papers for an examination at the suit of the State; and an officer of a corporation which is charged with criminal violation of a statute cannot plead the criminality of the corporation as a refusal to produce its books.[222]

Moreover, in the case of *Wilson v. United States*,[223] the U.S. Supreme Court held that:

> An officer of a corporation is protected by the self-incrimination provisions of the Fifth Amendment against the compulsory production of his private books and papers, but this privilege does not extend to books of the corporation in his possession.
>
> An officer of a corporation cannot refuse to produce documents of a corporation on the ground that they would incriminate him simply because he himself wrote or signed them, and this even if indictments are pending against him.[224]

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[219] Suarez v. Tengco, G.R. No. 17113, 2 SCRA 71, 73, May 23, 1961.
[220] *Id.*
[221] 201 U.S. 43 (1906).
[222] *Id.* at 44.
[223] 221 U.S. 361 (1911).
[224] *Id.* at 362.

Moreover, the U.S. Supreme Court held, in the case of *Braswell v. United States*,[225] that when a corporate officer produces documents in compliance with a court order, he or she is acting in a representative capacity, for which he or she cannot claim the personal privilege against self-incrimination. The Court also ruled that when the corporate officer produces records, it may be used against the individual, since the presentation of documents was done in the officer's representative capacity as a corporate agent.[226]

However, unlike in the US, the right against self-incrimination in the Philippines is limited only to the giving of testimony.[227] So when a corporate officer is subpoenaed to produce corporate records, such corporate officer may not excuse himself or herself from the said legal duty on the ground that it incriminates the corporation, precisely because the corporation does not enjoy such right, and when the corporate officer is subpoenaed to testify on the existence and authenticity of the corporate records, the ruling in *Braswell* may serve as guide, in that the act is one that pertains to the corporation, for which the officer cannot claim the privilege for himself or herself.

5. Right to Speedy, Impartial, and Public Trial

The right to speedy, impartial, and public trial, or right to speedy trial in short, is one that is provided under Section 14(2), Article III of the Constitution. It is supplemented by legislation, such as RA No. 8493 or the Speedy Trial Act of 1998, and the recently promulgated Revised Guidelines for Continuous Trial in Criminal Cases.[228]

The right to speedy trial is subjective in that it depends on the circumstances of the case. It is a "flexible concept" and a "mere mathematical reckoning" of the time the case has been pending in court would not suffice to constitute violation of the right.[229] When this right is violated, it is a ground for the dismissal of the case,[230] and it is equivalent to an acquittal for which double jeopardy attaches.[231]

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[225] 487 U.S. 99 (1988).

[226] *Id.* at 117-18.

[227] People v. Fieldad, G.R. No. 196005, 737 SCRA 455, 477, Oct. 1, 2014.

[228] A.M. No. 15-06-10-SC (2017).

[229] Barcelona v. Lim, G.R. No. 189171, 724 SCRA 433, 463, June 3, 2014.

[230] *See* Coscolluela v. Sandiganbayan [hereinafter "*Coscolluela*"], G.R. No. 191411, 701 SCRA 188, July 15, 2013.

[231] Condrada v. People, G.R. No. 141646, 398 SCRA 482, 486, Feb. 28, 2003.

It must be noted that the right to speedy trial is one that is processual, or that which is dependent on the nature and duration of the proceedings. It is not the accused's duty to bring himself to trial, as that burden is borne by the State.[232] Due to the fact that this right hinges on the nature and duration of the proceedings, and which does not highlight any difference between an accused individual and an accused corporation, the right to speedy trial may thus be extended to corporations. The ruling of the Court of Appeals of Texas in the case of *State v. Empak, Inc.*[233] is instructive on this matter. It held that corporations enjoy the right to speedy trial since "a corporation faced with pending criminal charges is vulnerable to many of the interests that have been recognized historically as being protected by the speedy trial right[.]"[234]

D. Right to Bail

Bail is the security given for the release of a person in custody of the law, furnished by the accused personally or by a bondsman to guarantee his or her appearance before any court as required under certain specified conditions.[235] For bail to apply, a person must first be in custody of the law.[236] Custody of law is accomplished either by the defendant's arrest or voluntary appearance before the court, and it "signifies restraint on the person, who is thereby deprived of his [or her own] will and liberty, binding him [or her] to become obedient to the will of the law."[237] It is literally "custody over the body of the accused."[238]

As discussed earlier though, a corporation may *never* be subject to physical arrest and detention, so it can never be under the custody of law. Hence, the provisions on bail found in the Constitution and the Rules of Court are inapplicable to corporations.

E. Right to Cross-Examination

The right to cross-examine the witnesses against the accused, or the right to confrontation, is constitutionally enshrined, with the purpose of "[testing] his or her credibility, [exposing] falsehoods or half-truths, [uncovering] the truth which rehearsed direct examination testimonies may successfully suppress, and [demonstrating] inconsistencies in substantial

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[232] *Coscolluela*, 701 SCRA at 199.
[233] 889 S.W.2d 618 (Tex. App. 1995).
[234] *Id.* at 622.
[235] RULES OF COURT, Rule 114, § 1.
[236] Miranda v. Tuliao, G.R. No. 158763, 486 SCRA 377, 388, Mar. 31, 2006.
[237] *Id.* at 388-89.
[238] *Id.* at 389.

matters which create reasonable doubt as to the guilt of the accused [.]".[239] It is important to note that the right to cross-examination is essential to due process.[240] It is not required that there be an actual cross-examination, but the opportunity to conduct one has at least been afforded to the defendant.[241] There is no evident reason why this right should not be extended to a corporation, who is also entitled to the protections of criminal due process.

F. Right to Appeal

Appeal is a statutory right considered as a fundamental tenet of the criminal justice system insofar as once it is granted by law, its suppression is tantamount to a violation of due process protections.[242] Section 1, Rule 122 of the Rules of Court provides that "any party" may appeal from a judgment or ruling, unless the accused is placed in double jeopardy. A textual interpretation of the provision does not preclude a corporation from exercising the right to appeal, for it can be a party defendant in a criminal case. In civil and administrative cases, corporations have enjoyed this right. Therefore, there exists no evident reason why this right should also be proscribed just because an appeal is lodged by a corporate defendant.

G. Right Against Excessive Fines and Cruel, Degrading and Inhuman Punishment

Section 19(1), Article III of the Constitution states that, "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted." The provision was derived from the 8th Amendment, which provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The provision has two main parts involving the prohibition on: (a) the imposition of excessive fines; and (b) the infliction of cruel, degrading or inhuman punishment.

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[239] People v. Ortillas, G.R. No. 137666, 428 SCRA 659, 668-69, May 20, 2004.

[240] Dy Teban Trading, Inc. v. Dy, G.R. No. 185647, 832 SCRA 533, 549, July 26, 2017.

[241] *Id.* at 550.

[242] Hilario v. People, G.R. No. 161070, 551 SCRA 191, 209, Apr. 14, 2008.

1. Imposition of Excessive Fines

Various cases have expounded on the Excessive Fines Clause of the Constitution,[243] but there has never been a case that ultimately resolved whether or not such right is applicable to corporations. A textual analysis of the Clause shows that it is a mere prohibition on the part of the State to impose excessive fines through legislation. It is, as what some scholars call, a "negative right" which is a proscription on the part of the State to commit something, as compared to a "positive right" for which the Constitution imposes on the State a duty or obligation to do something. [244] The distinction is essential because the general prohibition on the part of the State to impose excessive fines does not discriminate against whom it shall be imposed, be it an individual or a corporation.

Recently, the U.S. Supreme Court has denied to hear a petition for a writ of *certiorari* in a case decided by a state supreme court that recognized a corporation's entitlement to the Excessive Fines Clause under the 8th Amendment.[245] In *Colorado Department of Labor and Employment v. Dami Hospitality, LLC*,[246] the Colorado Supreme Court ruled that corporations are entitled to the protection of the Excessive Fines Clause for the following reasons: (a) the text of the Clause on its face does not limit it to natural persons; (b) the Clause protects corporations even if the other clauses in the 8th Amendment do not apply to corporations;[247] and (c) the payment of monetary penalties is something that a corporation can do as an entity.

In *Austin v. United States*,[248] the U.S. Supreme Court succinctly described the purpose of the Excessive Fines Clause, which is to "prevent the government from abusing its power to punish, [...] and therefore [...] was intended to limit only those fines directly imposed by, and payable to, the government[.]"[249] Section 19(1) of the Philippine Bill of Rights is derived from

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[243] *See* United States v. Borromeo, 23 Phil. 279 (1912); People v. Dela Cruz, 92 Phil. 906 (1953); People v. Estoista, 93 Phil. 647 (1953); People v. Dacuycuy, G.R. No. 45127, 173 SCRA 90, May 5, 1989.

[244] *See* David P. Currie, *Positive and Negative Constitutional Rights*, 53 U. CHI. L. REV. 864 (1986).

[245] *See* U.S. Supreme Ct., *No. 19-719*, U.S. SUPREME CT. WEBSITE, *at* https://www.supremecourt.gov/docket/docketfiles/html/public/19-719.html (last visited Mar. 7, 2020).

[246] 442 P.3d 94 (Colo. 2019). *See also* 133 HARV. L. REV. 1492 (2020).

[247] *See* Austin v. United States, 509 U.S. 602 (1993), which was used by the Colorado Supreme Court to justify its position that the three clauses of the Eighth Amendment must not be interpreted to have the same and uniform reach.

[248] 509 U.S. 602 (1993).

[249] *Id.* at 607.

the same Excessive Fines Clause of the U.S. Bill of Rights. Sharing the same underlying objective, it is evident that both the Excessive Fines Clauses of the U.S. and Philippine Constitutions do not preclude their applicability to corporations.

2. Infliction of Cruel, Degrading, or Inhuman Punishment

The second part of Section 19(1) talks about the prohibition on the imposition of "cruel, degrading or inhuman" punishment. If a textual analysis is used, it is evident that any such punishment is likewise prohibited to be imposed on a corporation. Professor Robert Wagner argues that the 8th Amendment's prohibition should likewise be applied to corporations since it serves as a protection from the over-deterrence function of penalties.[250] However, the text of Section 19(1) has evolved from its early beginnings found in the Philippine Bill of 1902[251] and the 1935 Constitution which prohibited "cruel and unusual" punishments, then the 1973 Constitution which changed to "cruel *or* unusual" punishments, and to what we have now in the 1987 Constitution, which proscribes the infliction of "cruel, degrading or inhuman" punishments.[252] The reason for the new terminology is explained in the records of the Constitutional Commission, where the framers clarified that the prohibition is premised not because a penalty is new or novel, but it offends the sensibilities of society that it is considered "degrading" and "inhuman."[253]

"Inhuman treatment" is defined as "physical or mental cruelty so severe that it endangers life or health."[254] Any punishment to an artificial being such as a corporation can never be considered equal to a punishment to a human person. For instance, the revocation of a corporate charter would never amount to the imposition of lethal injection to a natural person, even though both have the intention of extinguishing the life of the convict. It is said that a human's right to life is grounded on natural law, inherent in a person, and transcends even the laws of men,[255] while the life of a corporation

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[250] Robert Wagner, *Cruel and Unusual Corporate Punishment*, 44 J. CORP. L. 559, 589 (2019).

[251] 32 Stat. 691, 693 (1902), § 5. An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands.

[252] *See* Echegaray v. Sec'y of Justice, G.R. No. 132601, 297 SCRA 754, 778-79, Oct. 12, 1998.

[253] 1 RECORD CONST. COMM'N No. 32, 707-08 (July 17, 1986).

[254] *Supra* note 111, at 854.

[255] Imbong v. Ochoa, G.R. No. 204819, 721 SCRA 146, 292, Apr. 8, 2014.

is one that is merely provided for by statute,[256] evidenced by a piece of paper issued by the SEC. Thus, any punishment on a corporation's life pales in comparison with that imposed on an individual person.

In fact, the words "cruel," "degrading," and "inhuman" are the very terms used in Article 5 of the Universal Declaration of Human Rights, Article 7 of the ICCPR, and Article 1(1) of the Convention Against Torture. The development of these international agreements shows, in the case of the ICCPR and Convention Against Torture, that the prohibition has always been applied to individuals accused of committing crimes, and not to corporations.[257]

H. Right Against Double Jeopardy

Section 21, Article III of the Constitution provides for the right against double jeopardy, which prohibits the trial and conviction of a person for the same offense. Section 7, Rule 117 of the Rules of Court likewise provides for this right. The elements and exceptions of double jeopardy are enumerated in jurisprudence.[258]

The legal history of the right against double jeopardy is best explained in the case of *People v. Velasco*.[259] It can be culled from the said case that the policy behind this right is premised on affording the accused a "safeguard" to his or her fortune, safety and peace of mind, which would be "entirely at the mercy of the complaining witness who might repeat his accusation as often as dismissed by the court."[260] Thus, the right is grounded on the consideration that endless suits may be instituted to the damage and prejudice of an accused who has been acquitted based on evidence. There is no evident reason why this right cannot be applied to corporations, which can also be subject of multiple criminal suits, coupled with the fact that a textual analysis of Section 21, Article III of the Constitution does not preclude its invocation by a corporation.

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[256] REV. CORP. CODE, § 18. "A private corporation organized under this Code commences its corporate existence and juridical personality from the date the [Securities & Exchange] Commission issues the certificate of incorporation[.]"

[257] *See* Matthew Lippman, *The Development and Drafting of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 17 B.C. INT'L & COMP. L. REV. 275 (1994).

[258] *See* Rural Bank of Mabitac, Laguna, Inc. v. Canicon, G.R. No. 196015, 868 SCRA 391, 408, June 27, 2018; People v. Alejandro, G.R. No. 223099, 851 SCRA 120, 128, Jan. 11, 2018.

[259] G.R. No. 127444, 340 SCRA 207, Sept. 13, 2000.

[260] *Id.* at 233-34.

Some commentators, however, have argued that double jeopardy should be inapplicable to corporations. One such personality is Professor Robert Wagner who contended that:

> [C]orporations have fewer of the interests designed to be protected by the Double Jeopardy Clause, the interests they do have are lessened; the harms resulting from corporate crimes are harder to prosecute and potentially more damaging than individual crimes; and the history of the clause and the interests it protects do not apply to corporations, the Supreme Court should conclude that they do not have this right.[261]

In summary, there are some rights that are evidently not applicable to corporations because of their very nature as artificial creatures. However, the extension of certain rights which may be applicable to corporations remains in the gray area of the law. The Philippine Supreme Court has not had the occasion to definitively rule on these issues, precisely because the concept of corporate criminal liability has not found a good foundation in the Philippine legal system, although the current state of the law allows for it.

V. RECOMMENDATIONS

Philippine corporations have grown to become indispensable actors in today's economy. The law has recognized the "personhood" of these artificial beings, enjoying rights originally belonging to the individual. Yet the current state of criminal law treats them differently—individuals are prosecuted, while corporations are not. When an oil spill happened some time ago along the shores of Guimaras Province, no corporation was made liable, even though investigation by the relevant government agency placed responsibility on the shipper, one of the country's top petroleum companies, and the carrier.[262] When a pre-need company failed to honor its contractual obligations *en masse* to all its policyholders, that corporation was not made liable, even though the Securities Regulation Code,[263] as the applicable law at that time, permitted the imposition of criminal penalties to the corporation itself, and the corporation continues to exist today under rehabilitation while

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[261] Robert Wagner, *Corporate Criminal Prosecutions and Double Jeopardy*, 16 BERKELEY BUS. L.J. 205, 247 (2019).

[262] Senate of the Phil., *Sen. Pia hits gov't inaction on legal cases in Guimaras oil spill*, SENATE OF THE PHIL. WEBSITE, July 26, 2007, *at* https://www.senate.gov.ph/press_release/2007/0726_cayetano1.asp (last accessed Apr. 28, 2020).

[263] Rep. Act No. 8799 (2000).

not all policyholders have been paid.[264] When one of the largest banks in the country was embroiled in a massive hack of a foreign central bank, and the money stolen was subsequently laundered, the lowly bank manager was criminally charged, but the bank was not.[265] These well-known examples show that the Philippines has not been immune to corporate misconduct, but the corporations involved remain in operation today, as if the incidents were mere transactions that affected their financial statements. But they were not mere transactions; they were crimes.

Punishing corporations is an effective measure to exert pressure on shareholders, now facing the risk of share devaluation because of the institutional stigma caused by criminal conviction, to demand that the corporation institute stricter internal control policies to avoid any future corporate misconduct. The imposition of fines would also serve as a retributive measure on the social costs incurred due to the corporate misconduct as, for example, the fines paid by the corporation polluting the country's seas may be utilized for conservation and rehabilitation efforts in those areas.

Moreover, analyzing which rights may be extended to corporations facing criminal prosecution is important for policymakers to recognize the protections afforded by law to the accused. The discussion in this Note would serve as useful guideposts in the crafting of principles, rules and regulations on how corporations may be prosecuted. It is now up to policymakers in Congress, DOJ, and the Judiciary to fill the gaps in the law.

A. For the Department of Justice

It is within the mandate of the Secretary of Justice, as principal law officer of the government,[266] to promulgate rules and regulations concerning the prosecution of offenses.[267] Thus, the Secretary should be able to issue amendments to the Revised Manual for Prosecutors to include the procedure and processes that would guide prosecutors in investigating, charging and

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[264] Rea Cu, *PHL pre-need insurance industry: Reconciling past for brighter future*, BUSINESSMIRROR, Dec. 4, 2017, *available at* https://businessmirror.com.ph/2017/12/04/phl-pre-need-insurance-industry-reconciling-past-for-brighter-future/ (last accessed Apr. 28, 2020).

[265] Karen Lema, *Philippine court orders jail for former bank manager over Bangladesh central bank heist*, REUTERS, Jan. 10, 2019, *at* https://www.reuters.com/article/us-cyber-heist-philippines/philippine-court-orders-jail-for-former-bank-manager-over-bangladesh-central-bank-heist-idUSKCN1P40AG (last accessed Apr. 28, 2020).

[266] REV. ADM. CODE, book IV, title III, § 3.

[267] Rep. Act No. 10071 (2010), § 4.

negotiating a plea for corporations accused of committing crimes. In 1999, the U.S. DOJ issued the Principles of Federal Prosecution of Business Organizations, and which has been incorporated in Title 9-28.000 of the U.S. Justice Manual. Such Principles have been an integral part of the operations of the various U.S. Attorneys that guide them on how to prosecute corporations. It would be prudent for the Philippine DOJ to do the same in order to have such uniform rules that shall be used by prosecutors all throughout the country.

B. For Congress

In the drafting of bills, it is incumbent upon Congress to be more precise and concise with the language used in the penal provisions of laws that impute criminal liability to corporations, thereby bypassing the analysis provided in *Ching*. To avoid any uncertainty, laws must be categorical whether violations thereof are applicable to corporations, and what type of punishment may be imposed, *e.g.* fine, cessation to conduct business, and revocation of license, among others, which could help in the determination of which laws are applicable against corporations accused of committing crimes.

C. For the Supreme Court

The Supreme Court has the exclusive authority to promulgate rules concerning pleading, practice and procedure in all courts.[268] Amendments are needed in the current Rules of Court, particularly in criminal procedure, that may provide for clarity on how corporations are to be tried of criminal charges. The most critical areas in the Rules that require amendments include, but are not limited to: (a) summons of corporations, in lieu of arrest; (b) arraignment and plea, and who must appear on behalf of the corporation during the course of the trial and promulgation of judgment; and (c) corporate agents acting on behalf of the corporation who may be considered as state witnesses. The determination of which rights protections may be extended to corporations would depend on the cases that would be brought to the courts that involve such issues. But the discussion in this Note may be of help in considering the metes and bounds of the procedural rules the Court may promulgate.

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[268] CONST. art. VIII, § 5(5).

CONCLUSION

Corporations have become so intertwined with the modern Philippine economy as important actors therein. Yet when they commit crimes through their agents, they virtually remain exempt, even with the presence of various penal laws that provide for corporate criminal liability.

This Note has shown that there are legal bases to punish corporations when they act in contravention of law, but there are gaps on why prosecutions have been dismal, if not nil. The absence of corporate prosecutions may be sourced from the lack of clear rules from the important pillars of the criminal justice system, namely: (1) the Congress on ascertaining clarity in the laws that impose corporate criminal liability; (2) the Department of Justice on the conduct of preliminary investigation and criminal indictment of corporations; and (3) the Supreme Court on providing uniform procedure in the criminal trial of corporations.

When prosecutions commence, corporations are, as criminal defendants, likewise entitled to certain Bill of Rights protections, but not all those are readily applicable to corporations. Using textual, historical and comparative analysis, it may be argued that corporations enjoy some rights afforded to an accused, but the extension of these rights is not definitive until they have been incorporated into jurisprudence. It is now up to policymakers to clarify the guidelines and procedure on how to operationalize the concept of corporate criminal liability in the Philippines. It is well to remember that the effective prosecution of offenders, whether natural or artificial persons, fosters respect and observance of the rule of law, and clarity in how corporations are criminally charged and tried would achieve such purpose.

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