

JUDICIAL ACTIVISM IN THE PHILIPPINES*

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I am deeply honored that, along with United States Court of Appeals Justice Harris Hartz and Thai Supreme Court Justices Vichai Vivitasevi and Navarat Klinratana, I have been invited to articulate the Filipino perspective on the *Constitutional Foundation for the Exercise of Judicial Power and the Appropriate Limits to Judicial Activism*. It is indeed rare when all the appellate jurists of this country -- all the members of the Supreme Court, the Court of Appeals, the Sandiganbayan, and the Court of Tax Appeals -- gather in one single forum to discuss this burning issue.

In 1961, after finishing his term but still savoring public acclaim for his successful presidency, Dwight D. Eisenhower was asked by CBS news producer Fred Friendly whether he had made any great mistakes as the leader of the most powerful country in the world. Immediately and without hesitation, the World War II hero snapped, "Yes, two, and they are still sitting on the Supreme Court."¹

* Address delivered during the "Justice-to-Justice Dialogue" sponsored by the Supreme Court of the Philippines in cooperation with the American Bar Association-Asia Law Initiative, June 25, 2004 at the Westin Philippine Plaza Hotel, Pasay City. This article continues Volume 79's judicial review discussion. Vicente V. Mendoza, *Implementing an Effective Certiorari Jurisdiction*, 79 PHIL. L.J. 27, (2004); Franklin Drilon, *Judging Congress*, 79 PHIL. L.J. 35 (2004); Oscar Franklin Tan, *The 2004 Canvass: It is Emphatically the Province and Duty of Congress to Say What Congress Is*, 79 PHIL. L.J. 39 (2004); Reynato Puno, *Judicial Review: Quo Vadis?*, 79 PHIL. L.J. 249 (2004).

Cite as Artemio Panganiban, *Judicial Activism in the Philippines*, 79 PHIL. L.J. 265, (page cited) (2004).

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¹ ED CRAY, CHIEF JUSTICE: A BIOGRAPHY OF EARL WARREN 337 (1997). Eisenhower exclaimed as early as June 17, 1957, that the appointment of Warren as Chief Justice "was the biggest damn fool thing I ever did."

I. JUDICIAL ACTIVISM IN THE UNITED STATES

Eisenhower was referring to Chief Justice Earl Warren and Justice William Brennan, both of whom he had appointed to the highest American court with the expectation that they would allow the government widest latitude in policymaking. The two teamed up with Justices Hugo Black and William Douglas to form a quartet² that led the Warren Court in overhauling American jurisprudence and expanding the reach of civil rights and personal liberties, to the dismay of Eisenhower who wanted a more restricted role for the judiciary.

Though initially despised by liberals as a "bluff," a "mediocre, outgoing politician" with no judicial experience and no intellectual *gravitas*, Warren was heralded at his retirement by the same erstwhile critics as one of the greatest Chief Justices of the United States Supreme Court. He is credited for navigating such earthshaking decisions as *Brown v. Board of Education*,³ *Terry v. Ohio*,⁴ and *Miranda v. Arizona*.⁵ These, together with other comparable rulings such as *Mapp v. Ohio*,⁶ *NY Times v. Sullivan*,⁷ *Gideon v. Wainwright*,⁸ and *Baker v. Carr*,⁹ defined American freedoms and spelled out famous phrases such as "separate is not equal," "read him his rights," "one-man-one-vote," and "fruit of the poisonous tree."

The activist Warren Court had its own internal opposition, however. Some of the most revered names in jurisprudence -- like Felix Frankfurter, the acclaimed master of the "Harvard School" of jurisprudence; and Robert Jackson, the renowned former prosecutor during the Nuremberg war crimes trials -- never tired of lecturing the radicals on their theory of judicial restraint and condemning them for periodically entering the "political thicket."

The Frankfurter-led conservatives believed that the Supreme Court existed "to establish rules of law, not to provide justice" and solutions to every problem of the nation. Thus, they mastered rules of procedure, ruled

² The four were joined later on by Justices Thurgood Marshall and Abe Fortas.

³ 347 U.S. 483 (1954).

⁴ 88 S. Ct. 1868 (1968).

⁵ 86 S. Ct. 1602 (1966).

⁶ 81 S. Ct. 1684 (1961).

⁷ 84 S. Ct. 710 (1964).

⁸ 372 U.S. 335 (1963).

⁹ 82 S. Ct. 691 (1962).

narrowly, and seldom granted certiorari. They left policymaking to the elected leaders of the country.¹⁰

On the other hand, the activists thought that the Harvard School was "too mechanical" and excised "all heart out of the law." They contended that the threat to the State did not come from liberal justices usurping the prerogatives of the president and Congress, but from justices abdicating their responsibility to protect the people from the tyrannies of the establishment.¹¹

II. CONSTITUTIONAL DUTY OF THE PHILIPPINE JUDICIARY

This stirring American debate on the rightful role of the judiciary finds reverberations in the Philippines, which prides itself of being a remake of the doctrine of separation of powers and of the system of checks and balances. Unlike the American Constitution, however, the present Philippine Constitution is more explicit on judiciary's role in the tripartite allocation of judicial powers and responsibilities. Thus, Art. VIII, § 1 of our Constitution states:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

The foregoing constitutional provision has two parts. The first lays down the ordinary power of judicial review, which is "to settle actual controversies involving rights which are legally demandable and enforceable." The second articulates the extraordinary or certiorari or, as some would call it, the expanded responsibility of the judiciary -- to decide

¹⁰ How the activist streak of the Warren Court was dismantled, and how Richard Nixon – who championed "strict constructionism" – schemed to force Justice Abe Fortas (Lyndon Johnsons' choice to succeed Earl Warren) to resign from the Court is quite another story. Encouraged by its success in unseating Fortas, the Nixon administration next targeted William O. Douglas. Gerald Ford was the Republican leader chosen to chase Douglas. Though the effort failed, Nixon nonetheless succeeded in appointing conservatives to replace the liberals who retired, including Hugo L. Black, Thurgood Marshall, and (later) William Brennan. Over the past 30 years, the philosophical orientation of the United States Supreme Court, especially under the strong leadership of incumbent Chief Justice William Renquist, has shifted profoundly from activist to passivist. See JOHN DEAN, *THE RENQUIST CHOICE* (2001).

¹¹ CRAY, *supra* note 1, at 305-06.

issues involving grave abuse of discretion on the part of any branch or instrumentality of government, including the legislative and the executive departments.

By imposing upon all judges (not just the appellate justices) the duty to determine issues of grave abuse of discretion, our Constitution -- in my view -- has thereby mandated them to be activists.¹² I repeat, the Constitution imposes this intervention as a duty, not just as a power or as an authority. A power can be relinquished but a duty cannot, under any circumstance, be evaded. The judiciary, especially the Supreme Court, must uphold the Constitution at all times. It cannot shirk, waver, or equivocate. Otherwise, it will be censured with dereliction and abandonment of its solemn duty. Verily, it will be guilty of the much lamented judicial cop-outs of the martial law years that our 1987 Constitution abhors.

Thus, in *Tañada v. Angara*,¹³ the Supreme Court emphatically ruled that "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial rather than political. The duty (to adjudicate) remains, to assure ... the supremacy of the Constitution Once a controversy as to the application or interpretation of a constitutional provision is raised before the Court, it becomes a legal issue which the Court is bound by constitutional mandate to decide."

The judicial review power, whether it be the ordinary or the extraordinary variety, was not expressly conferred upon judges by the American Constitution. Rather, it was "set at rest by popular acquiescence for a period of more than one and a half centuries."¹⁴ This tradition was firmly established by the great Chief Justice John Marshall in *Marbury v. Madison*,¹⁵ which declared that the "phraseology" of the United States Constitution granted the courts the authority to void a law "repugnant to the Constitution."

¹² See, however, the Separate Opinion of Justice Reynato S. Puno in *Francisco v. House of Representatives*, *infra*, in which he opines that between judicial restraint and judicial activism, there is a middle ground -- the "coordinacy theory," which he espouses.

¹³ G.R. No. 118295, 272 SCRA 18, May 2, 1997.

¹⁴ *Id.* at 47-48.

¹⁵ 5 U.S. (1 Cranch) 137, 176 (1803).

III. COMPARISON OF PHILIPPINE AND AMERICAN JUDICIAL ACTIVISM

To stress, the clear and express activist mandate of our fundamental law is not found in the United States Constitution. Thus, American magistrates are accorded the luxury of choosing between being passivists or activists in their philosophical approach to judicial controversies. This luxury is not granted to Philippine judges, who must decide all legitimate issues of grave abuse of discretion. In this regard, a relevant question is frequently asked: why should unelected judges be able to reverse the actions of the elected? The answer is simple: The sovereign people expressly mandated them to do so through the Constitution, which the electorate overwhelmingly voted for.

The foregoing difference in the textual provisions of our Constitution explains why much of American jurisprudence delving on judicial review is not applicable to Philippine cases. The unequivocal teaching of *Garcia v. Comelec*¹⁶ is that our courts "should not be beguiled by foreign jurisprudence," which has "been dictated by different constitutional settings and needs." As the venerable Father Joaquin Bernas loves to say, our new Constitution has "cut the umbilical cord" to American jurisprudence. After all, art. VIII, § 1 was born out of our own unique political history.

Former Chief Justice Roberto Concepcion, the author of this provision, explained that this expanded mandate is "actually a product of our experience during martial law."¹⁷ To bar the judiciary from passing upon

¹⁶ G.R. No. 111511, 227 SCRA 100, 112, Oct. 5, 1993.

¹⁷ I RECORD OF THE CONSTITUTIONAL COMMISSION 434-36 (1986). The revered Chief Justice, in sponsoring art. VIII, § 1 of the Constitution, said in part:

"Fellow Members of this Commission, *this is actually a product of our experience during martial law*. As a matter of fact, it has some antecedents in the past, but *the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it*. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: 'Well, since it is political, we have no authority to pass upon it.' *The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime ... Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final*

and striking down the repressions committed during this sad period of our history, the dictatorship invariably set up the defense of political question. It argued that under the separation of powers doctrine, courts had no jurisdiction to review the sovereign actions of the legislative and the executive departments. Since the Constitution at the time had no express provision on the matter, the Supreme Court simply agreed and refused to intervene in such cases.

Because of this judicial handwashing, the martial law tyrannies were left unchecked. The judiciary's hands-off stance effectively "encouraged further violations" of the people's fundamental rights.

IV. THE THEORY OF "POLITICAL QUESTION"

But what, in the first place, is a political question? *Tañada v. Cuenco*¹⁸ spelled out its classic definition as follows:

The term 'political question' connotes in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum*, it refers to 'those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government.' It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.¹⁹

As to source, there are two types of political questions: (1) those that are decided directly by the people themselves -- like the wisdom of electing movie stars, media practitioners and sports personalities; and (2) those delegated to Congress and the Presidency, like the wisdom of enacting more tax laws, or of pardoning certain convicts.

With the activist mandate firmly embedded in the Constitution, is the "political question" principle no longer an available defense at present? Are the courts required to pass upon each and every act of the political branches of government?

arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature." (emphasis added)

¹⁸ 103 Phil. 1051 (1957).

¹⁹ *Id.* at 1067.

To be sure, the answer to this question has defied a precise universal answer. Constitutional scholars -- depending on their orientation and philosophical moorings -- cite an equal number of cases, both recent and old, in which our Supreme Court has either acceded or refused to entertain political disputes.

V. CONDITIONS, LIMITATIONS OR RESTRICTIONS ON POLITICAL POWER

This rule has guided me: when the Constitution grants absolute discretion to the legislative or the executive department in the exercise of a specific constitutional prerogative, then the judiciary may not restrict or limit the actions or impose its own standards of wisdom or convenience upon them. On the other hand, when the Constitution provides conditions, limitations or restrictions in the exercise of a power vested in a specific agency of government, the courts may pass upon the exercise of such power -- but only to determine whether the constitutionally imposed conditions, limitations or restrictions have in fact been observed. Here, the question to be reviewed is no longer political; it becomes constitutional or legal in character.

A recent case in point is *Francisco v. House of Representatives*,²⁰ in which the Supreme Court was called upon to stop the bigger House of Congress from continuing with the second impeachment complaint against Chief Justice Hilario G. Davide, Jr.

Indisputably, the Constitution has given the House of Representatives the "exclusive power to initiate all cases of impeachment,"²¹ and the Senate the "sole power to try and decide all cases of impeachment."²² Furthermore, "Congress shall promulgate its rules on impeachment to effectively carry out"²³ this prerogative.

However, it is equally true that the Constitution has also imposed certain restrictions or limitations on the exercise of this congressional prerogative, such as the manner of filing the impeachment complaint, the required number of votes to impeach, and the one-year bar on the impeachment of one and the same official.

²⁰ G.R. No. 160261, Nov. 10, 2003.

²¹ CONST. art. XI, § 3(1).

²² § 3(6).

²³ § 3(8).

Specifically, under § 3(5) of Art. XI of the Constitution, "no impeachment proceeding shall be initiated against the same official more than once within a period of one year." Inasmuch as the second impeachment charge had been initiated within one year from the initiation of the first, the Court stopped the House of Representatives from hearing the second complaint. The Court resolved only the main issue of whether the second impeachment proceeding transgressed "the constitutionally imposed one-year time bar." Beyond this, it did not "indiscriminately turn justiciable issues out of decidedly political questions."

In contrast to the above disposition, the Court in *Lopez v. Senate of the Philippines*²⁴ refused to nullify the creation by Congress of a 22-person joint committee to "preliminarily" canvass the votes of the candidates for President and Vice President in the May 10, 2004 elections. It ruled that the petition "failed to show that Congress gravely abused its discretion in creating such Joint Committee," adding significantly that the "Court has no authority to restrict or limit the exercise of congressional prerogatives granted by the Constitution."²⁵

The ruling of the Court in *Lopez* was short and narrow, because I believe it did not want to discuss a congressional canvass that was still ongoing. It did not want to preempt or prejudge questions that might still arise from the canvass-in-progress at the time, and that might be brought later on to the Court. But in my opinion, the Supreme Court strongly delivered the message that it would not intervene in the exercise of political prerogatives, unless petitioners could ably demonstrate a violation of a constitutional limitation or restriction on such exercise.

VI. JURISDICTION OVER POLITICAL QUESTIONS

Another contentious issue in connection to the political question controversy is jurisdiction. Some legal scholars opine that when a litigation raises matters challenging the exclusive political prerogatives of a co-equal branch of government, the judiciary should immediately and simply dismiss the petition on the ground of lack of jurisdiction.

The Supreme Court, however -- voting 10-3-1 in *Santiago v. Guingona*²⁶ -- ruled that when a petition sufficiently alleges serious prima

²⁴ G.R. No. 163556, Jun. 8, 2004.

²⁵ *Id.*

²⁶ G.R. No. 134577, 298 SCRA 756, Nov. 18, 1998. Voting with the majority were Chief Justice Andres R. Narvasa; and Justices Florida Ruth P. Romero, Hilario G.

facie infringements of the Constitution or the law or jurisprudence, the Court acquires jurisdiction over the subject matter. The Tribunal explained: "It is well-within the power and jurisdiction of the Court to inquire whether indeed the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives."²⁷ If, after assuming jurisdiction, the Court determines that -- contrary to the allegations of the petition -- there was in fact no constitutional or legal infirmity in the legislative or the executive action, then the petition shall be dismissed on the ground that no grave abuse of discretion has been established by petitioners.

This ruling was recently reiterated in *Lopez v. Senate of the Philippines*,²⁸ in which the Court unanimously held as follows:

At the outset, the Court stresses that it has jurisdiction over the subject matter of this controversy, because the herein Petition contains sufficient allegations claiming violations of the Constitution. Basic is the rule that jurisdiction is determined by the allegations of the initiatory pleading, like the complaint or petition.

The expanded certiorari power of the judiciary has been used not only in deciding political questions, but also in curtailing excesses by other constitutional bodies like the Commission on Elections (COMELEC), the Commission on Audit (COA), the Civil Service Commission (CSC), the Ombudsman, and other government agencies.

VII. GRAVE ABUSE OF DISCRETION IN ECONOMIC GOVERNANCE

During the last few years, the Supreme Court has invoked its expanded certiorari duty to strike down several government contracts and actions that were entered into with grave abuse of discretion by the agencies

Davide, Jr., Jose A.R. Melo, Reynato S. Puno, Jose C. Vitug, Artemio V. Panganiban (*ponente*), Antonio M. Martinez, Leonardo A. Quisumbing and Bernardo P. Pardo. Dissenting on this issue was Justice Vicente V. Mendoza, joined by Justices Santiago M. Kapunan and Fidel P. Purisima. Justice Josue N. Bellosillo took no part.

²⁷ *Id.*

²⁸ G.R. No. 163556, Jun. 8, 2004. On this same issue of jurisdiction, see also *Macalintal v. Comm'n on Elections*, G.R. No. 157013, Jul. 10, 2003, which affirmed the power of the judiciary to review acts of the legislature; and *Tañada v. Angara*, G.R. No. 118295, 272 SCRA 18, May 2, 1997, which stated that "where an action of the legislature is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact, the duty of the judiciary to settle the dispute." *Id.* at 47-48.

concerned. Notable among these were the Manila Electric Co. rate increases authorized by the Energy Regulatory Commission,²⁹ the reclamation of certain portions of Manila Bay,³⁰ the construction and the operation of Terminal III of the Ninoy Aquino International Airport,³¹ the computerization of the 2004 elections,³² and the private operation of online Internet gambling.³³

In voiding all these agreements, the Court invoked its duty to uphold the Constitution and the law, pointing out that the rule of law was an essential ingredient of good governance and economic progress. It stressed that public biddings must be transparent and evenhanded. In some of these transactions, shades of corruption and wrongdoing were hinted at by the Court. In one case, it even openly criticized the contract for being the "grandmother of all scams."

Because of these actions, the Supreme Court has often been pulverized in the media and other public fora by certain sectors in the business community. Some defenders of the Court have attributed this reaction to massive lobbying by the defeated litigants, who wanted to shift the litigation forum from the courts to the bar of public opinion. I can grant that, like Eisenhower -- and even before him, Franklin Roosevelt and the "New Deal" *laissez-faire* advocates -- some of our critics may sincerely believe that judicial interference in business is anathema to private investment and eventually to economic development.

However, I also hope that they would understand that our judges -- unlike their American counterparts -- are duty-bound "to afflict the comfortable and to comfort the afflicted." I respectfully recommend that, in order to acquire a wider understanding of the activist role of our judiciary in our tripartite government, our critics need only to read *Francisco v. House of*

²⁹ *Freedom from Debt Coalition v. Energy Regulatory Comm'n*, G.R. No. 161113, Jun. 15, 2004; *Republic v. Manila Electric Co.*, G.R. No. 141314, 391 SCRA 700, Nov. 15, 2002 and 401 SCRA 130, Apr. 9, 2003.

³⁰ *Chavez v. Public Estates Authority*, G.R. No. 133250, Jul. 9, 2002, 384 SCRA 152, May 6, 2003, 403 SCRA 1, and 415 SCRA 403, Nov. 11, 2003.

³¹ *Agan v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, May 5, 2003, 402 SCRA 612, and Jan. 21, 2004.

³² *Information Technology Foundation v. Comm'n on Elections*, G.R. No. 159139, Jan. 13, 2004 and Feb. 17, 2004; and *Brilliantes Jr. v. Comm'n on Elections*, G.R. No. 163193, June 17, 2004.

³³ *Jaworski v. Philippine Amusement and Gaming Corp.*, G.R. No. 144463, January 14, 2004.

*Representatives.*³⁴ I am certain they will delight poring over the incisive *ponencia* of Mme. Justice Conchita Carpio Morales and the equally sagacious Separate Opinions of Justices Josue N. Bellosillo, Reynato S. Puno, Jose C. Vitug, Consuelo Ynares-Santiago, Angelina Sandoval-Gutierrez, Romeo J. Callejo Sr., Adolfo S. Azcuna, Dante O. Tinga and -- if I may be permitted to add -- my Separate Opinion as well.

VIII. DEFINITION OF "GRAVE ABUSE OF DISCRETION"

Traditionally, the meaning of the phrase "grave abuse of discretion" has been confined to "capricious and whimsical exercise of judgment ... by reason of passion or personal hostility, [in a manner] so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law."³⁵

This definition is frequently used in striking down interlocutory orders in connection with Rule 65 of the Rules of Court. As worded, the coverage of the phrase would be limited, as it refers to the subjective frame of mind of the author of the allegedly abusive action.

Lately, however, this definition has been expanded to include any action done "contrary to the Constitution, the law or jurisprudence."³⁶ This later expansion of the definition does not require any subjective whimsical motivation. It is enough that the act contravenes the Constitution, the law or jurisprudence,³⁷ regardless of the reason therefor. This later definition is usually resorted to when the expanded jurisdiction of the Supreme Court is invoked in original petitions to nullify governmental acts.

IX. MEASURES TO STRENGTHEN JUDICIAL INDEPENDENCE

Consistent with the desire of the Constitutional Commission to strengthen the judiciary and to help it curtail grave abuse of discretion, the Constitution contains several provisions to guarantee the independence and the integrity of the Supreme Court as an institution, and of its members as individual officials. Some of these provisions are the following:

³⁴ G.R. No. 160261, Nov. 10, 2003.

³⁵ *Benito v. Comm'n on Elections*, G.R. 134913, 349 SCRA 705, Jan. 19, 2001.

³⁶ *Republic v. Philippine Coconut Producers Federation Inc.*, 423 Phil. 735 (2001).

³⁷ *See Freedom from Debt Coalition v. Energy Regulatory Comm'n*, G.R. No. 161133, Jun. 15, 2004.

- (1) The judiciary enjoys fiscal autonomy.³⁸ Congress cannot reduce the judicial appropriation below the amount given the previous year. Such amount, when approved, must be "automatically and regularly released" by the executive department;
- (2) Up to age 70,³⁹ members of the judiciary enjoy security of tenure and also security of compensation,⁴⁰ neither of which can be reduced by Congress or the President;
- (3) Supreme Court justices cannot be removed from office except by a stringent process of impeachment;⁴¹
- (4) The other branches cannot abolish or restrict the Supreme Court's powers that are laid out in the Constitution.⁴²

³⁸ CONST. art. VIII, § 3. "The judiciary shall enjoy fiscal autonomy. Appropriations for the judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall automatically and regularly be released."

³⁹ art. VIII, § 11. "The members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon."

⁴⁰ art. VIII, § 10. "The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased."

⁴¹ art. IX, § 2. "The President, the Vice President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment."

⁴² art. VIII, § 5. "The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari* as the law or the rules of court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

X. EXPANSION OF THE JUDICIARY'S ROLE

Again, to enable the Supreme Court to discharge its functions independently and effectively, the Constitution has vested it with additional prerogatives, aside from its ordinary and extraordinary review authority, as follows:

(1) It administratively supervises all lower courts. In many countries, this administrative responsibility is discharged by the executive department through the Ministry of Justice. But in our country, the executive power over magistrates ends with their appointment. Once they begin discharging their offices, judges look up to the Supreme Court not only for *stare decisis*, but also for administrative leadership. Lower-court magistrates and court personnel can be fined, suspended or ousted from the service -- after proper hearing and due process -- only by the Supreme Court.

Conversely, along with administrative supervision, the training of judges (and other judicial personnel) and the enhancement of their on-the-job education is a responsibility that resides in the Supreme Court. This responsibility is undertaken by the Philippine Judicial Academy, an attached agency of the Supreme Court.

(2) The Supreme Court also controls admission to the practice of law and the discipline of erring lawyers. By conducting the annual

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- (c) All cases in which the jurisdiction of any lower court is in issue.
 - (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
 - (e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the judiciary in accordance with the civil service law."

bar examinations, it ultimately determines the content and the direction of legal education. Through its superintendence of the Mandatory Continuing Legal Education (MCLE) Program, it is able to elevate the standards of the legal profession by requiring lawyers to undergo periodic refresher seminars. Through this same power, it has required all lawyers to become compulsory members of one unified association -- the Integrated Bar of the Philippines.

(3) The Constitution has also authorized the Supreme Court to prepare and promulgate rules of procedure for all courts in the country. Alongside this rule-making power, the Court has been given constitutional authority to promulgate rules concerning the protection and the enforcement of constitutional rights. Normally, the work of issuing laws to enforce such rights is reserved for Congress. But as a special measure of protection for human rights, this additional power has been granted by the Constitution to our high court.⁴³

XI. SUMMATION

During the past 25 minutes or so, I endeavored to define the concept and the practice of judicial activism in the Philippines and to compare it with that of the United States. Within the time limit given me, I cited instances when the Court has used activism to curb governmental abuses and economic excesses, as well as to uphold the rule of law. I have also tried to explain how our Constitution has empowered both the judiciary as an institution, and its members as individuals, so that they can discharge their responsibilities effectively and efficiently.

Even with its expanded certiorari duty and the clear constitutional intent to strengthen it, the judiciary remains the weakest of the three great branches of government. The legislature derives its strength from its power over the purse, while the executive flexes its muscles through its control of the police powers of the State and its command of the armed forces of the country.

But in every confrontation, on every occasion in which the judiciary is called upon to wade into "grave abuse" disputes, it must take courage and perform its constitutional duty objectively and independently. True, the judiciary does not command the army or the police or, for that matter, the "raging mob"; neither does it have the money or the inclination to grease

⁴³ ARTEMIO PANGANIBAN, *THE BIO-AGE DAWNS ON THE JUDICIARY* 41-43 (2003).

political patronage. By itself, it cannot even enforce its own pronouncements.

I respectfully submit, however, that the very same weakness of the judiciary becomes its strength when it dares speak through well-reasoned decisions that rightfully uphold the supremacy of the Constitution and the rule of law. The strength of the judiciary lies not in brute power, but in its moral courage to perform its constitutional duty at all times against all odds. Its might is in its being right.⁴⁴

I thank you.

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⁴⁴ See *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003 (Panganiban, J., *separate opinion*).