Philippine Journal of Public Administration, Vol. XXXIV, No. 3 (July 1990)

An Overview of the Policymaking Role, Functions and Processes of the Judiciary

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There is more to judiciary than being a mere arbitrator of legal (policy) controversies. In the course of deciding legal questions, the judiciary makes policies and often gets to implement such policies too. Likewise outlined in this article are the various policymaking mechanisms and processes governing the judiciary's power to make and execute policies as well as the effects and consequences of judicial policies.

Introduction

Policymaking in government has been the subject of numerous studies especially after it has been recognized as a distinct and separate field of Public Administration. A review of the various studies in policymaking, however, reveals that they are mostly concentrated on the legislative department as the lawmaking branch of government and the executive department as the implementing arm of government.

These studies, which are mostly western in origin, have invariably disclosed that the Congress, as the legislative or lawmaking branch of government, primarily makes policy in government. The executive branch of government, on the other hand, implements such policies enunciated by Congress. However, there are times that Congress gets to implement their laws and the executive branch of government, primarily through the Office of the President, sometimes makes policies in government.

There is a third branch of government--the judiciary--which appears to have been largely neglected in the study of policymaking in government. All previous studies on this branch of government merely indicate that the judiciary decides controversies on what the law (policy) is and whether the law is applicable to a certain situation.

But there is more to the judiciary than being a mere arbitrator of legal (policy) controversies. In the course of deciding legal controversies, the judiciary makes policies and often gets to implement such policies too.

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This paper was submitted in partial fulfillment of the course requirements in PA 241 under Professor Ledivina V. Cariño, Second Semester, Academic Year 1989-90.

Any student interested in the field of policymaking and public administration cannot help therefore but ask the following questions in dealing with the judiciary: Do judges make policy? How do judges make policy? How does the policymaking process in the judiciary differ from those of the executive and legislative branches of government? How does the judiciary implement and enforce its policies? Should the judiciary be allowed to make policy?

The policies handed down by the judiciary--principally through the Supreme Court--in the course of deciding legal (policy) controversies brought before it have far-reaching effects on the lives of citizens and society. Decisions of judges interpreting the laws (policies) and the rules and regulations of both the legislature and the executive form part of the laws (policies) of the land.

The importance and the far-reaching effect of policies handed down by judges underscore the need to undertake a study of the policymaking process in the judiciary to enable us to understand how this particular branch of government works and how its policies affect our lives as citizens of this country and members of society.

The need to have a study on how the judiciary makes policies becomes even more important in the light of our apparent ignorance and lack of knowledge on the workings and processes of this branch of government.

Background of the Study

In the past, it was always assumed that the work of a judge is simply a matter of resolving conflicting claims between individuals and groups of people. The work of the judge only gets a little more complicated when a number of people are involved in the dispute or when large groups of people get into the picture.

However, it appears that this preconception of the work of judges and the function of the judiciary has been slowly transformed in recent years. As society grew and expanded, and relationships among government, institutions and people became more complex, judges were made to resolve controversies involving these complex relationships among government, institutions and people. Today, therefore, it is not uncommon to hear of controversies among people in government or among agencies, bodies and other instrumentalities of government or between government and people being referred to the judiciary for dispute resolution. "Let the courts decide," people are prone to say. The judiciary has become an indispensable part of the day to day working relationship among people in government, between government and people, and among people in society.

The growing involvement of the judiciary in the relationships among people in government, between government and people and among people themselves is particularly evident today. The Marcos family petition to return to the Philippines, the petition

to stop the Roponggi property sale, the Enrile petition for *habeas corpus* and bail, and the libel suits being filed left and right are only some of the many cases being referred to the judiciary for resolution. The heavy involvement of the judiciary in conflict resolution of different sectors of society--evidenced by a monstrous and continuous backlog of pending cases in the courts--has undoubtedly resulted in numerous new "laws" and "policies" being handed out by the judiciary. But, surprisingly, we know very little about the workings and processes of the judiciary.

Conceptual Framework

Central to the study is the concept of policymaking. Other concepts which are important to a better understanding of the concept of policymaking, especially in the study of the policymaking processes in the judiciary, are: decisionmaking and rulemaking.

Policymaking. A policy may usefully be considered as a course of action or inaction rather than specific decisions or actions (Heclo 1972). It may also be defined as consisting of a web of decisions and actions that allocate values (Easton 1953). Others see it as "a set of interrelated decisions concerning the selection of goals and the means of achieving them within a specified situation" (Jenkins 1978). While others argue that "policy is essentially a 'stance' which, once articulated, contributes to the context within which a succession of future decisions will be made" (Friend 1974).

A policy decision might be defined as an effective choice among alternatives about which there is, at least initially, some uncertainty. This uncertainty may arise because of inadequate information as to (a) the alternatives that are thought to be "open"; (b) the consequences that will probably ensue from choosing a given alternative; (c) the level of probability that these consequences will actually ensue; and (d) the relative value of the different alternatives, that is, an ordering of the alternatives from most preferable to the least preferable, given the expected consequences actually occurring. An effective choice refers to the selection of the most preferable alternative accompanied by measures to insure that the alternatives selected will be acted upon (Dahl 1970: 417). The whole process is referred to as policymaking.

Decisionmaking. Decisionmaking is a process of narrowing down a body of information, identifying primary problems, and choosing among alternative solutions (Chandler and Plano 1982: 114). It is a process in which events, circumstances, and information precipitate a choice designed to achieve some desired results (Chandler and Plano 1982: 114). The process involves the conscious or unwitting selection of particular values or courses of actions among several alternatives, to bring about a particular future state of affairs as envisaged by the participants in the process (De Guzman 1967: 3). It is choosing among alternatives in cases where there are some uncertainties about the final result of such possible courses of action (Dale in Abueva and De Guzman 1967: 92).

Specifics of the decisionmaking process vary with the context, but the fundamental steps generally include: (1) a careful analysis of objectives; (2) a search for possible alternative solutions; (3) an estimate of total costs for each alternative; (4) an estimate of the effectiveness of each alternative; and (5) a comparison and analysis of each alternative. The last step leads to the selection of a preferred alternative. These steps are often modified, rearranged, changed, or deleted, but the basic outline remains the same (Chandler and Plano 1982: 114).

Decisions are made in a variety of ways and may vary in scope. This is especially true in government. In the case of the legislative and executive branches of government, they make decisions when they select values and goals to be shared in public affairs. On the part of the judiciary, they make decisions when they determine the applicability of general principles to specific cases. The decisions these agencies of government make may only affect a single person, or a group of persons or just a small community. In some instances, the decisions they make affect the whole country.

Rulemaking. Rules and regulations are usually formulated by regulatory agencies to fill in gaps within the framework of the policy enumerated in the law (Abueva and De Guzman 1967: 204). Being "subordinate legislations," these rules must be anchored on some legislative act and must be within the limits established in the act. Rules may be classified into two types: First, rules intended to regulate the internal management of the agencies themselves; and second, rules supplementing a statute and intended to affect persons and entities outside the government made subject to agency regulation (Abueva and De Guzman 1967: 205).

The power to make rules and regulations is referred to as rulemaking power. When applied to the judiciary and other quasi-judicial bodies, the rulemaking power refers to the power to promulgate procedures and rules of practice and procedure before these bodies.

Statement of the Problem

This study was undertaken to determine the policymaking function, if any, of the judiciary and to identify the procedures, mechanics, practices and processes of this policymaking function.

Specifically, the study sought answers to the following questions:

(1) Do judges make policies?

(2) How do judges make policies?

(3) If the judicial branch of government makes policies, how does its policymaking function and processes differ from those of the legislative and executive branches of government?

(4) What sort of influence peddling or pressures, if any, are judges subjected to when they make policy decisions?

(5) If there are influences and pressures impinging on the policymaking processes of the judiciary, are they different from those forces influencing policy decisions of other branches of government?

(6) How does the judiciary implement its policies?

(7) How does it get involved in carrying out its policies?

(8) How do the policy decisions of the judiciary affect us as citizens of this country and members of Philippine society?

(9) Should the judiciary involve itself in policymaking and policy implementation?

(10) Are judges accountable to the public for their policies?

(11) Should judges be made accountable for their policy decisions?

The study undertaken is envisioned to contribute and enhance knowledge about the judiciary and its policymaking functions. The data collected can be utilized as a reference point or baseline information upon which further and more detailed studies and research on judicial policymaking may be undertaken.

Scope and Limitations of the Study

This study covers only a general overview of the policymaking function and processes of the judiciary. Lack of time and limited resources prevented a more detailed and exhaustive research on the policymaking processes of this branch of government.

In the light of the aforecited constraints, the following are the study's most obvious limitations:

(1) This study establishes only a general outline of the major policymaking processes in the judiciary. While the judiciary engages in policymaking through various procedures, mechanisms and processes, only the four policymaking processes are dealt with, namely: judicial review, rulemaking through precedent (*stare decisis*), rulemaking by promulgating decisions and interpreting statutes, and rulemaking by the Supreme Court as supervising is exercised over all lower courts.

(2) The study utilized mostly foreign materials on the policymaking processes of the judiciary because of the dearth of local literature on the subject.

(3) Admittedly, many factors and variables are involved in the making of policies in the judiciary. However, this study limited itself to identifying the major processes and procedures in the making of policy by judges.

(4) Courts inferior to the Supreme Court also make policies in their own way, but the study limits itself to the policymaking processes of the Supreme Court whose policies (decisions) are final and become part of the laws of the land.

Significance of the Study

Despite its limitations, the study is significant and important in at least five respects: (1) it provides a clear picture of the policymaking function of the judiciary; (2) it demonstrates the different ways in which the judiciary makes policies; (3) it illustrates the different processes such as procedures, influences, pressures, etc., involved in the policymaking process of the judiciary; (4) it demonstrates a different process involved in policy formulation and implementation; and, (5) it shows the effects of the policies enunciated by the judiciary on society.

At the very least, the study describes the functions and the major processes involved in policymaking in the judiciary. Such knowledge may be the theoretical springboard to, if not baseline knowledge for, effective understanding, study and research on the judiciary.

Definition of Terms

The following operational definitions are given to facilitate communication with the reader.

Narrowly defined, a *policy* consists of a web of decisions and actions to allocate values (Ham and Hill 1983: 11). It is also defined as a set of interrelated decisions concerning the selection of goals and the means of achieving them within a specified situation (Ham and Hill 1983: 11).

A *case* is a question contested before a court of justice. It is also defined as an action or suit at law or in equity (Bouvier 1914: 425).

Court refers to a government body to which the administration of justice is delegated (Bouvier 1914: 695).

Judge is a public officer lawfully appointed to decide litigated questions according to law (Bouvier 1914: 425).

The Judiciary

The judiciary is one of the major branches of government. Its primary function involves the adjudication of disputes between individuals or between individuals and the state. In deciding disputes it must not only ascertain the facts but also apply the law to such facts and determine and construe the law. In performing its primary function, it frequently deals with cases in which the meaning of the law is ambiguous or with those not entirely covered by law. In such instances, it has a wide discretion in determining the precise meaning of the law, in elaborating its detail, and in applying principles of justice which reflect the prevailing moral sentiment of the community (Aumann 1956: 34). In addition, the judiciary has wide powers of interpretation. It may also be called upon to prevent infractions of law and violations of rights, to determine the rules of judicial procedure, to act as an agency to enforce the law, and to perform a wide range of other functions in relation to its judicial duty. The ability of the judiciary to perform this variety of functions rests on what is termed as judicial power.

Judicial Power

Judicial power refers to the authority exercised by that department of government which is charged with the declaration of what the law is and its construction (Bouvier 1914: 1741). It is "the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction."[1] It is also defined as "the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights."[2]

Judicial power has been generally held to include also the incidental powers necessary to the effective performance of the function. It also includes the power of judicial review, by which is meant the power to pass upon the constitutionality of the acts of other departments of the government. Thus, the 1987 Constitution declares that:

> 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 (Article VIII, Section 1).

Courts are given judicial power, nothing more. Hence, by virtue of the principle of separation of powers, courts may neither attempt to assume nor be compelled to perform nonjudicial functions. Thus, a court may not be required to act as a board of arbitrators.[3] Nor may it be charged with administrative functions except when reasonably incidental to the fulfillment of judicial duties.[4] Neither is it the function of the judiciary to give advisory opinion.[5]

Judicial power, however, is never exercised for the purpose of giving effect to the will of the judge. It must be exercised for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.[6] As a consequence, courts cannot exercise judicial power when there is no applicable law. Thus, in the case of Channie Tan vs. Republic,[7] the Supreme Court ruled that it has no authority to entertain an action for judicial declaration of citizenship because there was no law authorizing such a proceeding. Similarly, the Supreme Court in Santiago vs. Bautista,[8] declared that an award of honors to a student by a board of teachers may not be reversed by a court where the awards are governed by no applicable law.

The Organization of the Judiciary in the Philippines

Under Article VIII, Section 1 of the 1987 Constitution, "judicial power is vested in one Supreme Court and in such lower courts as may be prescribed by law."

Although the Constitution provided for a Supreme Court, it did not specify what lower courts there would be. It was left to Congress to create them. As a consequence, the exact structure of the judiciary in the Philippines has varied over the years.

Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. At the lowest level of the Philippine Judiciary are the Metropolitan Trial Courts in Metropolitan cities like Metro Manila, the Municipal Trial Courts in other cities and municipalities and Municipal Circuit Trial Courts in some municipalities that are grouped together. There are about 1,500 of these single judge courts scattered all over the country. The jurisdiction of these courts is limited to small claims and cases involving light offenses.

Regional Trial Courts. These are single judge courts of general and original jurisdiction. Their jurisdictions are much broader than those of the Metropolitan, Municipal and Municipal Circuit Trial Courts. There are at present thirteen (13) Regional Trial Courts corresponding to the thirteen (13) regions of the country with around 772 Regional Trial Court judges.

Court of Appeals. It is a collegiate court where appeals from courts of general jurisdiction are usually made. The Court of Appeals is composed of a Presiding Justice and 50 Associate Justices. It is divided into seventeen (17) divisions composed of three (3) Justices each. The Court of Appeals usually does not sit *en banc*, and if it does, it is only for the purpose of administrative, ceremonial and other non-adjudicatory matters.

Supreme Court. It is the highest court of the land and the final arbiter of all justiciable disputes. It is also a constitutional court since it is established by and its jurisdiction is defined by the Constitution. It is also a collegial court composed of a Chief Justice and fourteen (14) Associate Justices. It may sit *en banc* or in three (3) divisions

composed of five Justices each. Cases decided by the Supreme Court *en banc* or in division "shall be decided with the concurrence of a majority of the members who actually take part in the deliberations on the issues in the case and vote thereon" (RP 1987: Article VIII, Section 4(2)) and, in case of a division, "in no case without the concurrence of at least three of such members" (RP 1987: Article VIII, Section 4(3)).

In addition to the abovenamed courts, other laws have created what are sometimes known as special courts, such as the *Sandiganbayan* created by Presidential Decree (PD) 1486 on 11 June 1978, pursuant to a specific provision of the 1973 Constitution (Art. XIII, Sec. 5); *Shari'a* Courts, created by PD 1083 on 4 February 1977, otherwise known as the Code of Muslim Personal Laws of the Philippines; and the Court of Tax Appeals, created by Republic Act (RA) 1125 on 16 June 1954 (Bacungan and Tadiar 1988: 169).

The Judiciary as a Policymaking Agency

Our present system of government is theoretically organized as a division of labor in terms of functions. The legislative branch of government makes laws, the executive branch applies and implements the laws while the judicial branch settles the disputes arising from laws--both disputes arising from what the laws mean in certain cases and disputes over whether the law has been properly applied.

The primary function of the executive branch of government, through the President and heads of various agencies and instrumentalities of government, is to implement the laws while the legislative branch, through the Congress of the Philippines, is tasked with making laws. There are times, however, when the executive branch of government, through the President and heads of various agencies and instrumentalities of government, also makes laws and the legislature, through the Congress of the Philippines, is involved in the task of implementing the laws.

This dual system of functions of lawmaking and implementation also applies to the judicial branch of government. While the judiciary normally concentrates on settling disputes of law brought before it, in the course of deciding such disputes, it makes laws and to some extent gets involved in the task of enforcing and implementing them. It is in the exercise of this lawmaking function that judges enunciate and make policies.

Unlike the other branches of government, however, the judiciary makes policies in a different way. Before policies can be made in the judiciary, a case involving a dispute between two or more parties must be brought before the court for adjudication. After the parties are given a chance to present their respective evidences in support of their claims and contentions, the trial court judge renders a decision on them on the basis of the facts of the case, the evidence presented by the parties, and what it perceives to be the law applicable to the case. It is in the process of decisionmaking by the judge that the Constitution or statute is invoked, interpreted or construed. If not appealed by the parties,

the decision, which is now the policy rendered by the judge on the matter, becomes final and executory. The decision (policy) of the trial court, however, is binding only between the parties to the case.

In many instances, however, the case does not end with the rendition of a decision by the trial court. One or both of the parties may be dissatisfied with the decision (policy) rendered by the trial court and, as a consequence, may appeal the decision to a higher court otherwise known as the appellate court. In the case of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, the appellate court is the Regional Trial Courts. In the case of the latter, it is the Court of Appeals while in the case of the Court of Appeals, the appellate court is the Supreme Court. Thus, a case can go up all the way to the Supreme Court for the final decision (policy) on the issue.

It is the decision rendered by the Supreme Court that finally becomes the law or policy on a certain issue. Under Article 8 of the Civil Code of the Philippines, such "judicial decisions applying or interpreting the law or the Constitution shall form part of the legal system of the Philippines." They are considered legal doctrine binding on everyone and not only to the parties to the case where the decision was laid down. In some cases, however, decisions of the Court of Appeals (the second highest court of the land) on points of law not yet decided by the Supreme Court serve as guide to the lower courts. Such pronouncements (policies) of the Court of Appeals are raised to the status of doctrines once approved by the Supreme Court.[9]

The judiciary likewise implements its decisions (policies) in its own unique way. Unlike the legislature which may require the participation and involvement of the executive branch of government in the implementation of its policies, the judiciary has its own processes for the implementation of its decisions. Aside from the assistance of some law enforcement agencies in some instances, the judiciary does not generally involve the other branches of government. Thus, in those cases which require execution of the decision, for example, the court may issue a writ of execution which is enforced by the Sheriff of the Court. In cases where policies, doctrines or pronouncements are laid down which have the force of law, everyone, including judges of courts inferior to the Supreme Court, are obliged to follow under pain of censure and contempt.

Policymaking Mechanisms and Processes in the Judiciary

There are several ways in which the judiciary makes policies. Some of the judiciary's policymaking functions and processes are evident and well known while others are subtle and are relatively unknown. Some may involve complex legal processes and procedures while others may involve only simple proceedings.

The most important way by which the judiciary makes policy is through the process of interpreting the Constitution and the statutory laws of the land in the settlement of

disputes brought before it for adjudication. This is called the power of judicial review. The judiciary also makes laws through the rule of precedent *(stare decisis)* in the sense that judges make law by making decisions binding on other judges. Their decisions stand as law unless they are overruled or overturned by a superior court or superceded by a subsequent statutory law.

In areas where statutory law is vague, imprecise and insufficient, judges also make laws by promulgating decisions interpreting the statutes which are binding to other judges. In the same manner, and in their own subtle and unobtrusive way, the Supreme Court also makes policies through their rulemaking power in the process of exercising their power of supervision over all lower courts and the practice of law.

There are other policymaking functions and processes in the judiciary. However, in view of the aforementioned limitations, the study limits and concentrates its discussion on the four policymaking functions of the judiciary mentioned in the preceding paragraphs which have been identified as the major policymaking mechanisms and processes in the judiciary.

Moreover, while judges of lower courts also make policies in the course of deciding disputes brought before them, only decisions (policies) of the Supreme Court, as the highest court of the country and, in some specific instances where their decisions are not brought to the Supreme Court for review, decisions of the Court of Appeals, about authoritative rules that govern our society and the rights and powers of different officials, agencies and instrumentalities of government, become part of the laws of the land. Hence, the study also limits itself to the policymaking functions, mechanisms and processes in the Supreme Court and, when applicable, of the Court of Appeals and the decisions they have laid down.

The Power of Judicial Review

The most important and far-reaching influence the judiciary exercises vis-a-vis policymaking is through its power of judicial review.

The power of judicial review is defined as the Supreme Court's power to declare a law, treaty, executive agreement, executive order, or ordinance unconstitutional (Bernas 1981: 148). Stated otherwise, the power of judicial review is the power to pass upon the constitutionality of the acts of other departments of government (Aruego and Aruego-Torres 1979: 169). Under Section 5.2, Article VIII of the Constitution, this power is explicitly granted to the Supreme Court. Thus:

> Sec. 5. The Supreme Court shall have the following powers:
>
> x x x
>
> (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.

It must be clarified, however, that while the Constitution vests the power of judicial review on the Supreme Court, such power is not a power exclusive to the Supreme Court. It may also be exercised by inferior courts. This conclusion can be inferred from the fact that since the power of judicial review flows from judicial power, and since inferior courts are likewise possessed of judicial power, inferior courts can likewise exercise the power of judicial review (Bernas 1981: 151). The same conclusion may be inferred from the fact that the same aforequoted provision of the Constitution confers on the Supreme Court appellate jurisdiction over judgments and decrees of inferior courts in all cases in which the constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation is in question.[10] In the light of the constitutional requirement on the number of votes needed to declare a law unconstitutional (RP 1987: Article VIII, Section 4.2), however, lower courts must bear in mind "that a becoming modesty of inferior courts demands conscious realization of the position they occupy in the interrelation and operation of the integrated judicial system of the nation."[11] Moreover, while a declaration of unconstitutionality made by the Supreme Court constitutes a precedent binding on all, a similar decision of an inferior court binds only the parties to the case (Bernas 1981: 152).

In the course of resolving the constitutionality of a law, treaty, executive agreement, executive order, ordinance, or regulation, judges make policy by interpreting the meaning of the constitutional provision in question and declaring whether a particular disputed act is within the purview of the Constitution. The interpretation of constitutional provisions in the form of decisions become policy since they are determinations of what the Constitution and the law means. Such determinations of the courts of a constitutional provision or law constitutes, in a way, part of the law since the court's construction establishes the contemporaneous legislative intent that the interpreted constitutional provision or law desired to effectuate.

In many instances, in the course of interpreting the meaning of a constitutional provision, new laws are created in the form of rights and obligations which are derived from what the courts perceive as the "spirit" of the Constitution as interpreted by them. A classic example of this kind of policymaking by the courts is the case of Grisworld vs. Connecticut (Fleming 1974: 94) which was decided in 1965 in the US. In the Grisworld case, the defendants therein, who ran a clinic giving information to married persons about means of preventing conception, challenged the Connecticut laws, which forbade the use of contraceptives and forbade the giving of contraceptive advice, as contrary to the due process clause of the Fourteenth Amendment. In invalidating the questioned laws, the

US Supreme Court declared that the Constitution included not only specifically named rights but also peripheral rights, and that particular amendments had penumbras which surround their particular guarantee:

> The foregoing cases suggest that specific guarantees in the bill of rights have penumbras, formed by emanations from these guarantees that help give them life and substance.

The Court found that the Connecticut statutes on contraception violated the zone of privacy surrounding the marriage relationship protected by the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments of the US Constitution.

The Philippine Supreme Court, on numerous occasions, also "amended" the Constitution and made laws in the process of adjudicating cases brought before it. One such case is the celebrated case of Pimentel vs. the Commission on Elections (Comelec) et al.,[12] which is a clear example of the Supreme Court's policymaking power. Under the provisions of the then existing 1973 Constitution, the Comelec was the "sole judge of all contests relating to the election returns, (Section 2, Article XII-C). . . ." Under such authority, the power to canvass the election returns and count the ballots resided solely with the Comelec. Moreover, under Section 160 of the 1978 Election Code, which was then in effect, the power to order the opening of ballot boxes and to count votes after their integrity has been shown was vested in the Commission. After he received an adverse decision from the Comelec, petitioner (now Senator) Pimentel filed an "Urgent Motion with a Prayer for Contempt" with the Supreme Court questioning the inclusion by the Comelec of some ballots in the canvassing of official returns. Under the Rules of Court, such a pleading filed by the petitioner is not allowed especially since it questions the merits of a case or the errors of judgment of the Comelec.

The Supreme Court, in an unprecedented move allegedly in the exercise of its equity jurisdiction, considered petitioner Pimentel's motion as a petition for *certiorari* from the adverse decision of the Comelec and ordered "that the ballot boxes containing 228 election returns be brought to the Supreme Court. . . for the purpose of counting the votes in the presence of counsel for both parties and thereafter determine in accordance with applicable law who is entitled to the office of Assemblyman for Cagayan de Oro City." In effect, the Supreme Court virtually constituted itself not only as a citizen election committee but as a board of canvassers as well (Lazaro 1985: 189). In issuing the said resolution, which, by the way, also suspended the provisions of the Rules of Court on the ground that public interest was involved, the Supreme Court clearly arrogated unto itself the powers to canvass the election returns, open the boxes and to arithmetically count the votes which is beyond its constitutionally assigned duty. This is a classic example of the Supreme Court's power to "amend" the Constitution and the law (in this case the 1978 Election Law) and in the process create new policy.

Recently, the Philippine Supreme Court again demonstrated a similar kind of policymaking in the celebrated case of Ferdinand E. Marcos *et al.* vs. Hon. Raul Manglapus *et al.*[13] In this case, a petition for *mandamus* and prohibition on behalf of the Marcoses was filed before the Supreme Court asking the Court to order the respondents to issue travel documents to Mr. Marcos and the immediate members of his family and to enjoin the implementation of President Aquino's decision to bar their return to the Philippines. The case for the petitioners (the Marcoses) was founded on the assertion that the right of the Marcoses to return to the Philippines is guaranteed under the Bill of Rights (RP 1987: Art. III, Secs. 1 and 6) and under International Law [14] and, this being the case, they contend that the President is without power to impair the liberty of abode of the Marcoses because only a court may do so "within the limits of the law" nor may the President impair their right to travel because no law has authorized her to do so. On the other hand, the respondents (Manglapus *et al.*) raised the argument that the issue in the case involves a political question which is non-justiciable and argued for the primacy of the right of the state to national security over individual rights.

The Court did not see the resolution of the case on the determination of the issues raised by the parties--after determining that the issue to be resolved is not actually one involving the right to travel but the right to return--but viewed the resolution of the case on the issue of whether or not the President has the power to bar the Marcoses from returning to the Philippines. In support of their basic contention, the petitioners advanced the view that the President's powers are limited to those specifically enumerated in the 1987 Constitution. On this issue, the Supreme Court enunciated a policy when it declared that the President has other powers other than those specifically enumerated under the Constitution. Thus:

> ... we hold the view that although the 1987 Constitution imposes limitations on the exercise of specific powers of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.... The power involved is the President's residual power to protect the general welfare of the people.[15]

Evidently, what the Supreme Court has done was to grant to the Executive wide range of powers which were not heretofore granted to the said office. This is a clear example of reading into the Constitution what is not explicitly written there. Having laid down the policy, the Supreme Court proceeded to treat the petition of the Marcoses as "a matter that is appropriately addressed to those residual unstated powers of the President which are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare."[16]

While one would think that the exercise of the power of judicial review appears to be unrestricted, the exercise of such power is actually subject to certain rules. Firstly,

since the power of judicial review is merely an aspect of judicial power, the first requisite for the exercise of judicial review is that there must be an actual case calling for the exercise of judicial power before the court (Bernas 1981: 148). Secondly, the question before the court must be ripe for adjudication, that is, the governmental act being challenged must have had an adverse effect on the person challenging it.[17] Thirdly, the person challenging the act must have "standing" to challenge, that is, he must have "a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement."[18]

In addition to the foregoing essential requisites for the exercise of the power of judicial review, jurisprudence has also evolved other additional rules for the exercise of such power. They are: (1) As a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if it is not raised in the pleadings, ordinarily, it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal.[19] This particular rule, however, has not been applied rigidly since the courts, in the exercise of sound discretion, may determine the time when a question affecting the constitutionality of a statute should be presented; and (2) The Court will not touch the issue of constitutionality unless it is really unavoidable or is the very *lis mota*.[20]

Whether the judiciary follows the aforementioned guidelines for the exercise of the power of judicial review is subject to speculation. But as late Justice John Marshall Harlan of the US Supreme Court put the point directly in speaking to some law students: "I want to say to you young gentlemen that if we don't like an act of Congress, we don't have much trouble to find grounds for declaring it unconstitutional (Hilsman 1979: 150)."

The Rule of Precedent (Stare Decisis)

The judiciary also makes policies through the rule of precedent (*stare decisis*).

The doctrine that requires a judge to look into prior cases for guidance is often referred to as the doctrine of precedent. Stripped of its legal trappings, it is merely an expression of a logical principle that "(e)xperience is the best teacher," and the doctrine of precedent says that judges should look to judicial experience, their own and that of other judges, as the best guides to decisions (Cataldo *et al.* 1973: 13).

When applied to law, however, the doctrine of precedent, which *per se* would merely ask the judge to refer to prior experience, acquires special force and meaning. It is given special weight. Here it is called the doctrine of *stare decisis*, actually a part of a longer phrase, "*stare decisis et non quieta movere*" which literally means "let the decision stand and don't move what has been settled" (Lee 1985: 152). Under this context, the policy of *stare decisis* simply means that a decision of a court on a point

necessary to the decision in a case and consistent with reason and in harmony with the spirit of the times, should not be departed from that court or any court subordinate to it in the judicial hierarchy within its jurisdiction. The lower courts in each of these systems must follow the decisions of their own highest courts. The highest courts themselves are, by the doctrine of *stare decisis*, impelled to follow their own prior decisions unless some strong reason appears to the contrary (Cataldo *et al.* 1973: 13).

As a result of the rule of precedent--where judges are supposed to make their decisions consistent with what they have decided before, with what earlier judges have decided in similar cases, and with what superior courts have already decided--judges, in those cases where statutory law is imprecise, vague, inadequate, or insufficient, can make law (policy) by making decisions that are binding to other judges involving exactly the same point at issue. These decisions stand as law unless they are overturned by a superior court or superceded by a new statutory law.

In the Philippines, we adhere to the doctrine of *stare decisis* for reasons of stability (Paras 1978: 41).

The rule of precedent, however, is not that rigid and restrictive. While stability of the law is eminently to be desired, idolatrous reverence for precedent, simply as precedent, no longer rules. More pregnant than anything else is that the court shall be right.[21] Thus, judges can go against precedent by reinterpreting the precedent which usually happens when courts reverse themselves or their predecessors. This is especially true when there is a conflict between precedent and the law.[22]

The Inevitable Necessity of Interpreting the Law

Another way in which judges make policies is by interpreting the law.

It is the duty of judges to decide cases brought before them for adjudication. When a case is brought before them for resolution by contending parties, judges must decide it. Thus, Article 9 of the Civil Code of the Philippines expressly states:

> No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.

Thus, where the law is silent, the judge must speak out; where it is obscure, he must illuminate; and where it is inadequate, he must fill in the vacuum (Lazaro 1985: 188). As pointed out by Justice Cardozo, the judge "legislates . . . between the gaps. He fills the open spaces of the law (Lazaro 1985: 188)."

The authority of judges to interpret the law in a given case is illustrated in the Philippine case of Chua Gan vs. Bernas (Paras 1978: 44), where the Supreme Court declared that:

> A judge must give a decision, whether he knows what law to apply or not. Thus, even if a judge does not know the rules of cockfighting, he must still decide the case.

In instances where there is silence, obscurity or insufficiency of the law, the judge is allowed flexibility to make laws. In doing so, judges undoubtedly make policies.

Rulemaking Power of the Supreme Court

The Supreme Court also makes policies through what is referred to as its rulemaking power.

The power of the Supreme Court to promulgate rules is set forth in the Constitution (Article VIII) which reads:

> Sec. 5. The Supreme Court shall have the following powers:
>
> x x x
>
> (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.

The rules promulgated by the Supreme Court 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 those pertaining to legal assistance to the underprivileged constitute the "law" or policy on the matter. They have the force of law and are binding to everybody.

An example of rules promulgated by the Supreme Court concerning the protection and enforcement of constitutional rights consists of those laid down by the US Supreme Court in the famous case of Miranda vs. Arizona[23] where the court prescribed as a matter of constitutional law, although not expressly mentioned in the US Constitution, a detailed form of legal advice which it said must be given by police officers to a detained suspect before he could be found to have waived his rights and agreed to questioning. These rules, which were prescribed by the US Supreme Court wayback in 1966 were later adopted by our delegates to the Constitutional Convention in 1973 and incorporated in our bill of rights (Article IV, Section 20).

An illustration of a rule promulgated by the Supreme Court concerning the matter of admission to the practice of law, which has become the standing policy on the matter, is demonstrated in the case of In Re: Cunanan *et al.*,[24] the famous Bar Flunkers' case.

In 1953, Congress, through RA 972 (The Bar Flunkers' Act of 1953), decreed, among other things, that Bar candidates who obtained in the Bar exams of 1946 to 1952 a general average of 70% without falling below 50% in any subject should be admitted *en masse* to the practice of law despite having been refused admission by the Supreme Court. When the act was challenged before the Supreme Court, the Court said that Congress has no right to admit the flunkers because the disputed law is not even a legislation; it is a judgment--one revoking those promulgated by the Supreme Court during the operative years affecting the Bar candidates concerned. Such an act of Congress would also in effect relieve the Supreme Court of its primary responsibility over the admission, suspension, disbarment and reinstatement of attorneys-at-law and its supervision over the practice of the legal profession.

Although the Supreme Court has the authority to promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged, like its power of judicial review, its rulemaking power is subject to certain limitations. These limitations, which are defined in the aforequoted constitutional provision on the Supreme Court's rulemaking power, are: (1) The rules shall be uniform for all courts of the same grade; (2) They shall not diminish, increase or modify substantive rights; and (3) The rules on pleadings, practice and procedure shall provide simplified and inexpensive procedure for speedy disposition of cases.

Influences and Pressures in the Judiciary

It is often thought that the policy that judges make is determined solely by principles of law and the dictates of justice. Research and common sense, however, demonstrate that this is not always so. While principles of law and canons of justice undoubtedly have great influence in the policymaking process of the judiciary, there are other more mundane pressures influencing the judges as well.

Policy decisions of judges that have been identified are also influenced by the pressure of public consensus--the weight of opinion in the legal profession, in Congress, in the press, and in the universities (Hilsman 1979: 149). This kind of pressure on the judiciary was clearly demonstrated at one time in the United States where the Supreme Court kept striking down child labor laws. Public outrage at the conditions in which children worked in factories and frustration over the Court's refusal to permit remedial legislation sparked a movement for a constitutional amendment. Only then, faced with the possibility of an amendment overruling them, did the justices reverse themselves (Hilsman 1979: 149).

Another factor that affects the way in which judges make policy decisions, is the ideology and philosophical convictions to which they subscribe. This is most evident in the US where a Supreme Court, for example, which is packed with jurists of liberal

orientation will invariably render decisions of liberal outlook. Thus, it is always a great issue during times of appointments to the judiciary (especially to the US Supreme Court) to determine the ideological orientation of the prospective appointee because his ideological orientation may affect the voting pattern of the court on issues of great public interest.

Another kind of pressure that certainly influences the policy decisions of the court is the influence of the Chief Justice and other Justices in the decisional process. For instance, in cases where the Chief Justice of the Supreme Court is the task leader, he has great influence in the allocation of political values inevitably involved in many of the court's decisions. More than any of his associates, his activity is apt to affect the court's prestige; this is important, for ultimately the basis of the court's power is its prestige (Danelski 1970: 412). In the case of the Justices in the Supreme Court, interpersonal relations among Justices also play an important part in the decisional process. A Justice has considerable opportunity to try to exercise influence over his colleagues in the course of the policymaking process. A Justice who would like to convince his peers to join the cause he is espousing could attempt to appeal to their varied interests and convince them that it would be to their advantage to support his interests or that their interest would suffer injury if they oppose his; to increase or create and then appeal to their personal and professional esteem for him; and to appeal to their concepts of duty and moral obligation (Murphy 1970: 382).

Special interest groups, in some instances, also influence the policymaking process of the judiciary. Such influence is usually made through the filing of *amicus curiae* (literally, "friend of the court") briefs filed by special interest groups when the court deals with an important national issue (Hilsman 1979: 150). The filing of position papers and memoranda by Philippine Medical Association, the Association of Drugstores, the drug companies and other cause-oriented groups during the deliberations of the constitutionality of the Generics Act could be cited as an example.

Pressures from the other branches of government, like the executive branch, also influence the policymaking process of the judiciary. This kind of pressure was apparent during the Martial Law years when it appeared that then President Marcos pressured the Supreme Court into affirming many of his questionable pronouncements.

Studies have identified many other influences and pressures on the policymaking process of the judiciary like the pressure of the general climate of opinion, judge's estimates of the implications of their decisions on society and future generations, knowledge and findings from fields outside their own taken up in this study. Suffice it to say, however, that these influences and pressures play an important part in the outcome of the policy decisions of judges. These influences and pressures may be present in other policymaking branches and agencies of government but their presence in the policymaking process in the judiciary is most prominent as a consequence of the unique way the processes of the latter operate.

Effects and Consequences of Judicial Policies

More often than not, the policies enunciated by the judiciary are important and have far-reaching implications to the lives of a great number of people and to society. Few people may realize it but as a consequence of the power of judicial review, the rule of precedent *(stare decisis)*, the inevitable necessity of interpreting laws and its rulemaking power, and other policymaking functions and processes, judges make policies about authoritative rules that govern our society, about the rights and powers of different segments of society, and about what the society does as a society (Hilsman 1979: 149). The role of the judiciary as a policymaking agency is therefore indisputable.

As Charles Black (Hilsman 1979: 149) once said:

> Once it is recognized that judicial decisions are not the mechanical exercises they were once thought to be, it is clear that all judges, in all cases, make policy to some degree, and that the Court, so long as it performs the task of judicial review, must function to some extent and in some ways as one of the policymaking organs of the nation.

Policies of the Judiciary Become Part of the Law of the Land

Under our legal system, decisions of judges have the force and effect of law. Thus, it is provided under Article VIII of the Civil Code of the Philippines that:

> Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not "laws" for if it were so, the courts would be allowed to legislate contrary to the principle of the separation of powers. Indeed, the courts exist for stating what the law is, not for giving it (*Jus di cere, non jus dare*) (Paras 1978: 39).

Judicial decisions, though not laws, are evidence, however, of what the laws mean, and this is why they are part of the legal system of the Philippines. The interpretation placed upon the written law by a competent court has the force of law.[25] They are entitled to great respect.

Courts also Govern Through Judicial Legislation

It is also often said that whenever the courts interpret the Constitution, the end result is not merely judicial legislation but a constitutional amendment which cannot be repealed or amended by the legislature. The only alternative is to amend the Constitution--a process that is, however, cumbersome to pursue (Lazaro 1985: 191). An example of this kind of constitutional amendment is shown in the Grisworld, Pimentel and Marcos cases discussed above. In the Grisworld case, the US Supreme Court clearly read into the

written law of the Constitution what was not there and in the process created a new right. The same thing was done by the Philippine Supreme Court in the Marcos family petition also discussed above. In the Pimentel case, the Supreme Court even went further by arrogating unto itself a power that was clearly conferred in another constitutional body. There are many other instances where the Supreme Court in the exercise of its power of judicial review has practically rewritten laws and the Constitution. When the judiciary does this, it is clearly governing us through judicial legislation by dictating the manner in which society has to conduct itself.

The judiciary's control over society also extends to other sectors of the government.

In the case of administrative agencies of government, the judiciary, to a large extent, exercises control over them by vetoing, so to speak, administrative actions. Actions of administrative or quasi-judicial boards, commissions and other like agencies may be nullified or set aside by the courts on the grounds of irregularities, arbitrariness, lack or excess of jurisdiction or absence of factual or legal support to the decision (Lazaro 1985: 191). Judges also hold the power of life and death over individuals by pronouncing judgment on their innnocence or culpability for the crimes they are charged. There is virtually no area of human endeavor where judges do not have some sort of control over such activities.

Should Judges be Allowed to Make Policies?

The issue of whether judges should merely find and apply the law or should they also legislate and make law (policy) is probably as old as the courts themselves. It has never been resolved. The issue crops up especially when judges exercise their power of judicial review.

One school of thought contends that courts should not engage in judicial legislation. A judge is 'sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expand the old one.' In a democracy, the right of making laws resides in the people at large.[26] The people and their elected representatives, not judges, are constitutionally vested with the power to amend the Constitution or the laws. Accordingly, judges should not usurp that power in order to put their own views.[27] Courts are awkwardly positioned to carry out legislative functions and they lack the appropriate personnel and proper tools to do effective legislative work (Fleming 1974: 119). They are extraordinarily inept instruments for political brokerage (Fleming 1974: 119), they have limited access to information that is essential to effective solutions to general problems (Fleming 1974: 119), and judicial legislation is ineffectual as compared to legislation enacted by Congress whose members are better equipped, better informed, possess greater sensitivity, and exercise a broader vision in making laws (Fleming 1974: 119).

On the other hand, the other school of thought is of the opinion that where the need for new law is great and the legislature is supine, judicial lawmaking is appropriate.[28] Judicial legislation is necessitated by the inadequacy or complacency of the legislature.[29] This is especially true when the case falls within the "open texture" at the borderlines of legal rules, in such case, the judge has the discretion to make a choice and must engage in "creative or legislative activity."[30]

Whether or not judges should be allowed to legislate or make laws (policies) is an issue that will probably never be resolved. But what is beyond dispute is that judges do make policies and are continuing to do so.

Judges as Lawmakers are not Accountable to the People

Unlike the other policymaking of government (the executive and the legislature) who are answerable to the people, the members of the judiciary are not. They are not accountable to the people for the errors or mistakes they committed since they enjoy security of tenure (Lazaro 1985: 193). The members of the Supreme Court, in particular, can only be removed on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes or betrayal of public trust.[31] The only way the Court can perhaps rectify its mistake or error is to have a similar case in the future to decide. Such opportunity, however, may never come, thus, immortalizing the error. There is absolutely no way, save only the ponderous, expensive and time consuming procedures of amending the Constitution, for the general citizenry or their representatives to approve or disapprove what the Supreme Court Justices do. Yet they are deciding social and political questions that are vital and important to us all. Perhaps, this is the congenital defect and paradox of judicial legislation (Lazaro 1985: 195).

Conclusion

The judiciary is one of the major branches of government. Despite its recognized place in our system of government, however, very little is known about the judiciary, its role, functions, and processes although many will readily concede that judges play an important part in society. Very few people also realize its great power. The power to declare laws passed by Congress as unconstitutional, to declare executive and bureaucratic actions unconstitutional, to declare acts by state and local executives, legislators, and judiciaries unconstitutional, and to interpret the Constitution and statutes passed by Congress, are only some of the powers accorded to the judiciary.

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In the course of exercising its powers, the judiciary makes policy. It makes decisions about authoritative rules that govern our society, about the rights and powers of different sectors of society and about what we do as a society. These rules generally influence our behavior as citizens since they demand compliance through the use of negative or positive sanctions.

The most important way in which the judiciary makes policy is by judicial review which is the power to pass upon the constitutionality of the acts of other departments of government. Another way in which the judiciary makes policy is through the rule of precedents which require judges to adhere to precedents. Because the rule of precedent is generally binding upon other judges, it permits judges to make law. But even without the rule of precedent, judges would make law (policy) by the inevitable necessity of interpreting statutory law and the Constitution. Since statutes and provisions of the Constitution are couched in general terms, judges must decide in specific cases what these terms specifically mean. In addition, judges also make policy by making rules on the practice of law and the legal profession. They make law (policy) on how we exercise our rights and under what conditions we may do so. There are numerous other ways in which the judiciary makes policy and it gets to implement such policies too through its own unique processes.

There are those who say that the judiciary should not engage in policymaking. More often than not, such a conclusion is based on a misconception of the role, functions and processes of the judiciary. They fail to see that the judiciary is a unique institution vested with power and authority to "declare the law beyond what the Legislature has said it is and beyond what the Executive thinks it is." Policymaking is therefore inherent in the functions of the judiciary. It cannot be avoided. Thus, whether we like it or not, the judiciary, by virtue of the power and authority vested upon it, will always make policies. The great challenge therefore is to study how this institution makes policies.

Endnotes

[1]Muskrat vs. United States, 219 US 346 (1911).

[2]Lopez vs. Roxas, 17 SCRA 756 (1966).

[3]Manila Electric Co. vs. Pasay Transportation Co., 57 Phil 600.

[4]Noblejas vs. Teehankee, 23 SCRA 405.

[5]Director of Prisons vs. Ang Cho Kio, 33 SCRA 494, 509.

[6]Osborn vs. Bank, 9 Wheat. (US) 738, 6 L. Ed. 204.

[7]107 Phil 632, 634.

[8]32 SCRA 2188, 199.

[9]Gaw Sin Gee vs. Master of the Divisoria Market *et al.* C.A., 46 O.G. 2617.

[10]J.M. Tuason and Co. vs. Court of Appeals, 3 SCRA 696, 703-704.

[11]People vs. Vera, 65 Phil 56.

[12]GR No. 6188, 22 December 1984.

[13]GR No. 88211, 15 September 1989.

[14]Article 13, Universal Declaration of Human Rights and Article 12, International Covenant on Civil and Political Rights which have been ratified by the Philippines.

[15]GR No. 88211, 15 September 1989.

[16]*Ibid.*

[17]PACU vs. Secretary of Education 7 Phil 80€, 810.

[18]People vs. Vera, 65 Phil 56.

[19]*Ibid.*

[20]Sotto vs. Commission on Elections, 76 Phil 516, 522. *Lis mota* signifies the beginning or commencement of an action or suit. In C. Alcantara & Sons, Inc. vs. Sebastian, SP - 03252, 23 April 1975 as cited in Federico B. Moreno. *Philippine Law Dictionary*, Second Edition. Quezon City: Vera-Reyes, Inc. 1982: 364.

[21]Philippine Trust Co. vs. Mitchell, 59 Phil. 30, cited in Edgardo L. Paras. *Civil Code of the Philippines, Annotated*, Vol. I, 9th Edition. Manila: Rex Book Store, 1978.

[22]Tan Chong vs. Secretary of Labor, 79 Phil 249.

[23]384 US 436.

[24]94 Phil 534.

[25]People vs. Jabinal, L-30061, 27 February 1974.

[26]Blackstone, 1 Bl. 49, cited in Manuel M. Lazaro, "Are Judges Lawmakers, Too?" *Supreme Court Reports Annotated*, Vol. 136 (April 1985), pp. 184-195.

[27]Justice Black's statement in Boddie vs. Connecticut, 401 US 371.

[28]Lord Mansfield's statement cited in Manuel M. Lazaro, *op cit.*, p. 192.

[29]John Austin's statement cited in Manuel M. Lazaro, *op cit.*, p. 192.

[30]Henry Hart, "The Concept of Law" in Manuel M. Lazaro, *op cit.*, p. 192.

[31]Sec. 2, Article XI, 1987 Philippine Constitution.

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