

Editors' Notes

The articles included in this issue of the *Journal* were originally presented during the International Conference on "Challenges to Development: Innovation and Change in Regulation and Competition" held in EDSA Shangri-La Hotel, Manila on 13-15 October 2003. This issue contains a total of thirteen articles penned by scholars and practitioners alike coming from all over the world. Experiences of different countries revolving around deregulation vis-à-vis regulation of public services and industries directly impinging upon people's lives are shared here. Also included are two speeches delivered during the conference—a keynote and a plenary address.

"Local Regulatory Governance in the Philippines: Focus on Quezon City" by Perla E. Legaspi examines its regulatory system, paying particular attention to its business licensing system. The case study indicates the restrictions and constraints faced by a local government authority regulating the entry and conduct of businesses at the local level. Aside from the policies, laws or ordinances implemented, and the rules and regulations imposed by the local government, there are still a lot of encumbrances by the national government agencies which, by and large, have made the entry of establishments into the business or economic area doubly difficult and cumbersome.

The telecommunications industry was among the first to be deregulated by the Aquino government when it assumed power in 1986. Malacañan ordered the National Telecommunications Commission (NTC) to liberally interpret the franchises of the telecommunications companies other than the Philippine Long Distance Telephone Company (PLDT) which were at that time restricted to message or data transmission services only. Edna A. Espos, in her article, "Institutions, Regulation and Performance: The Case of Philippine Telecommunications," analyzes the formulation and enforcement of the laws and regulations governing the telecommunications industry since it was liberalized. She also provides insights on how the NTC mitigates its perceived weakness (i.e., regulatory capture) over several telecommunications companies now operating in the country.

A good governance framework should have sufficient regulations to prevent corruption and wasteful rent-seeking activities. If an entrepreneur has to pay a lot of bribes to establish production, it adds fixed costs and lowers the profitability of investment. Likewise, seeking bribes is a wasteful rent-seeking exercise that translates to a diversion of output and productive resources. "Transaction Cost Politics, Rent Seeking, Institutions for Commitment and Regulation" by S. Mansoob Murshed studies the issues of commitment, compromise and rent-seeking, all of which are relevant to institutional design and the formulation of optional policies, including the regulation of privatized utilities and enterprises. It also dissects the sustainability of a political compromise between competing groups—one that is eventually aimed at reducing rent-seeking.

Epictetus E. Patalinghug's treatise, "An Analysis of the Philippine Electricity Industry" opines that the real challenge to the future direction of the industry is how the regulatory authorities enforce open access to transmission and distribution facilities which is a prerequisite before introducing competition at the wholesale and retail levels. The Philippine electric power industry has embarked on an ambitious reform program that will take it to paths previously not trodden. This journey necessitates the restructuring and privatization of its existing agencies and institutions—and the establishment of a new legal and regulatory apparatus that does not succumb to pressures from influential market players as well as a government whose commitment to reform does not wax or wane with changes in the political environment.

As a further analysis of the politics and dynamics surrounding electric power generation vis-à-vis regulation in the Philippines, "Electricity Rate Regulation and the Public Interest: The Case of the Energy Regulatory Board and the Manila Electric Company (Meralco)" by Ma. Fe V. Mendoza gives a bird's eye view of the decade-long running case of the Energy Regulatory Board (ERB) versus Meralco (ERB Case 93-118) wherein the former granted the latter provisional authority to increase electricity rates, and subsequently reversed that same decision four years after. She traces the chronological sequence of events relevant to the case beginning with the Energy Crisis of the late 80s until the 90s which led to Meralco's petition for rate increase in 1993, and its approval by the ERB in 1994, then a turnaround of that same decision in 1998 together with the mandatory implementation of a refund program in 2003—as sanctioned by the Supreme Court's (SC) Third Division upholding the legality of the refund order. In retrospect, Mendoza notes that said case is a long-drawn petition that spans the realm of economics, law and politics. It counts ten long years of quasi-judicial and judicial proceedings within and among the ERB, SC and lower courts.

Citizens of each country want, need and aspire to have responsive and accountable systems of governance which at the same time demonstrate a capacity to provide them, not only with the economic foundation for sustainable development and income, but with a minimum range of affordable goods and services such as education, health, water, energy, transportation, communications. Martin Minogue's "Regulatory Governance and the Improvement of Public Services" portrays the relationships between public services improvement and public management reforms—including regulatory governance, in the context of dominant reform models promoted worldwide. He argues that current reform initiatives in these areas in developing countries are closely interlinked, but are likely to be ineffective since they embody models that do not engage accurately with the prevailing economic and political conditions. The author advocates a cautious treatment of so-called "best practice" models, allowing for adaptive responses that are founded on local conditions and assume variations in political and bureaucratic cultures, in the belief that this more versatile approach is less of a hostage to crude and contextless global blueprints.

Traditionally, regulation in Sri Lanka leaves much to be desired due to the fact that her institutional and legal apparatus is flawed. Given the

lackluster performance of regulation over the last quarter century, at the core of the current debate is the question of establishing effective, transparent and fair governance institutions that will enable required investments to flow to infrastructure sectors, and how to ensure an equitable deal for consumers in the process. Independence from operators and the government is seen as the most critical factor for regulatory agency effectiveness. "Regulatory Impact Assessment (RIA) in Sri Lanka: The Bridges That Have to be Crossed" by Malathy Knight-John, Shantha Jayasinghe and Andrew Perumal addresses some key aspects that impinges and will impinge upon efficient and effective regulation in two of the country's multisector agencies, namely for public utilities and telecommunications, and for related communication sectors—with a view to assessing the existence of regulatory impact assessment practices and evaluating the scope for its development (where required). The trio contends that RIA, as a methodology, if adopted by Sri Lanka to be a change-agent, could greatly negate the multifarious problems that hound regulation: poor decisionmaking, with regulatory capture posing the most serious threats.

Regulating water as a crucial life-sustaining resource in an essentially arid country such as South Africa is the focal point of Kobus Muller and Frederick M. Uys' think piece, "Regulatory Governance of the Water Sector in South Africa." At the most basic level, the issue with water is its scarcity and accessibility. Ostensibly, it is universally agreed upon that water should be for the benefit of all. The manner for its provision is, however, subject to serious discourse between the marketing of water and the prices that recover full costs from all consumers in an equitable way, and its "decommodification" as a public good. The article delves on the policy, legal and institutional framework as regards water supply, provision and regulation; access and economic issues; quality and standards; and the political context and its influence on the water sector—as it specifically relates to poverty in post-1994 South Africa.

Anthony Ogus' "The Importance of Legal Infrastructure for Regulation (and Deregulation) in Developing Countries" highlights the issue of legal infrastructure by examining the literature on the relationship between economic growth and legal systems. The preeminent view that emerged is that legal structures, specifically those pertaining to the "rule of law" have an important contribution to economic development; and that the failure of attempts to reform those structures, particularly by adopting Western models, has restrained growth. Until now, law and economics have failed to engage seriously in normative analysis of how legal institutions and principles should be selected and adopted to conditions in developing countries where the resources invested in the legal system are negligible.

A serious campaign finance reform program cannot be commanded from the outside, it needs dedicated leadership from within, specifically from the topmost levels of the State. In campaign finance, it is necessary to institutionalize confidence-building efforts among voters, whose frustrations about elections are widespread, and how workable specific reform instruments are closely linked to the way people have trust in their institutions and in each other. Eduardo T. Gonzalez in "Regulating Campaign Finance in the

Philippines: Limits and Challenges” notes the tension between a constraining governance environment and the reforms that have to be initiated for the success of anticorruption drives in the campaign finance system. He recognizes that institutional weakness of the state, the concentration of vested interests, and the extent of what the institutional economics literature describes as “state capture,” will work as powerful brakes on various government initiatives, eroding their effectiveness and sustainability.

Traditionally, the State is seen as a crucial cog in the promulgation of social welfare, the regulation of the market economy and the management of risks resulting from industrialization and modernization. Jinky Leilanie Lu’s research study, “Occupational Health Regulation: The Case of Women Workers in Selected Economic Zones in the Philippines” investigates the impact of information technology and gender sensitivity in two manufacturing industries—garments and electronics. Her systematic inquiry is a cross-sectional study of 23 establishments, 630 respondents and 47 supervisors. Her findings indicate that the overall physical health of supervisors is affected by factors such as number of workers supervised; burdensome, fast-paced and toxic nature of work; overtime; and lack of job autonomy. Correspondingly, workers’ health is also affected by close monitoring/supervision, poor quality of work and hazard exposures. Data further reveal that gender segregation is evident in companies, that new management styles and production processes adversely affect the health of women, and that information technology has brought about several organizational changes influencing women’s nature of work. The results of her study were analyzed in the light of existing regulations of the four books of the Labor Code of the Philippines.

Lastly, Giandomenico Majone’s treatise, “The Internationalization of Regulation: Implications for Developing Countries” asserts that developing countries today are more fully integrated into the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) system than ever before. For such countries, a rule-oriented diplomacy is greatly preferable than a power-oriented diplomacy. Settlement of international disputes with reference to rules to which both parties have previously agreed is better than settlement by negotiation with (more or less implicit) reference to the relative power status of the parties concerned. In the latter case, a developing country would hesitate to challenge a major country on which its trade lifeline depends. Neither the mere existence of rules, nor mere membership in international regulatory bodies is sufficient. It is in the best interest particularly of developing countries to be active members in order to influence the formulation and application of international rules. The European Union’s (EU) experience reveals that small countries, such as Denmark and the Netherlands—three and five votes, respectively, against the 29 votes of each of the four largest members of EU—can have influence on rule-making at the European level which is out of proportion to their political power.

This issue of the *Journal* also includes a *Documents Section* containing the *Plenary Address* of Wigberto Tañada entitled “Let Us Bring the Ladder Back: Why Proactive Governance Matters for the Poor” wherein he exhorts the participants of the conference to “return” the Philippines’ industrial

ladder back that will help her climb to greatness. He notes that said ladder includes an industrial strategy, protection that is time-bound, and massive support to enhance competitiveness. He narrates that there was a time in not so distant past that the Philippines' industrial ladder was very visible in Asia. This was during the 1960s when the Philippines was seen as second only to Japan in the march towards industrialization. Tañada reminds us that the 1960s was the period when many developing countries effectively governed their markets to protect the poor and the vulnerable, to promote and support their own nascent producers and manufacturers, and to propel the development and propagation of modern technology.

Lilia R. Bautista delivered her *Keynote Address*, "Challenges to Effective Regulation," where she shared realities that she deems important for government to keep in mind, as the Philippines takes the first steps towards blazing a new trail in regulation and competition. Bautista, as chair of the Securities and Exchange Commission (SEC), spoke of the changing demands on regulation in the midst of said realities and how the SEC has addressed them to regulate the country's capital market. For SEC to succeed as a regulator, the implementation of reforms must be a collective effort—a systemic-based implementation that is initiated by law, but sustained with the cooperation of the regulated.