University of the Philippines
College of Law
Constitutional Law II
Midterms Reviewer
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Dean Pangalangan's Syllabus

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I. RIGHT-BASED DISCOURSE: NORMS, RIGHTS AND THE PLACE OF JUDICIAL POWER

A. General

Consti. Art. VIII, sec. 1

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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.

Consti. Art. VIII, sec. 2

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

Consti. Art. VIII, sec. 4.2

Section 4. (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Consti. Art. VIII, sec. 5.2.a

Section 5. (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.

Garcia vs. BOI

Facts:

- Original application of Bataan Petrochemical Corp (BPC) (Taiwanese owned) to BOI specified that:

  a. it's going to build a plant in Limay Bataan, where the Petrochemical Industrial Zone (run by PNOC) and the Bataan Refining Corp (producer of the 60% of the Phil's naptha output and a GOCC) are located.

  b. It's going to use naptha cracker and naptha as fuel for its plant

- BPC tried to amend its application by changing the site to Bataan and the fuel from naptha to naptha and/or LPG. Shell Phil operates an LPG depot in Batangas. (reason for the amendment: insurgency in Bataan and unstable labor situation)
- Several quarters objected to the transfer but BOI asserted that thought it preferred the Bataan site, it recognizes that the final decision/choice is with the proponent who will provide funding or risk capital. It approved the amendments.

Issue:

Should the plant remain in Bataan or be moved to Batangas? Did BOI commit grave abuse of discretion in agreeing with the wishes of the investor?

Held: BOI committed grave abuse of discretion. The original application is reinstated.

Ratio:

- In this decision, the court asserted that its powers under Art 8 sec 1(2) of the 1987 Consti provides it with the duty to address this controversy. It said that the position of the BOI to give absolute freedom to the investors is a repudiation of the independent policy of the government with regard to national interest expressed in numerous laws:

a. Sec. 10 of ART XII of the Consti: duty of the state to regulate and exercise over foreign investments within its national jurisdiction in accordance with its national goals and priorities
b. Sec. 19, Art II: The State shall develop a self-reliant and national economy effectively controlled by Filipinos.
c. Art 2. Omnibus Investment Code: It is the goal of the government to have "the sound development of the national econ in consonance with the principles and objectives of economic nationalism"

Dissent: Carino-Aquino and Melencio Herrera: The court should not delve on matters beyond its competence.

Oposa vs Factoran

Facts:

- Minors represented by their parents sued the DENR asking it to repudiate existing TLAs (timber license agreements) and ceased issuing them.
- The Complaint is a taxpayers' suit and the complainants stated that they were pursuing it in behalf of all Filipino citizens as well as "generations yet unborn", who all have a right to enjoy the country's rain forests.
- They cite section 15 and 16 of Art.2 in saying that it is the duty of the State to advance the "right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature" and promote "the right to health of the people" (Sec. 15).
- As their cause of action in the case they filed with the Makati RTC Branch 66, petitioners asserted the ff:

a. The continuing unhampered destruction of rain forests will/is caus/causing adverse effects and serious injury and irreparable damage that the present and future generations will bear.
b. Plaintiffs have a constitutional right to a balanced and healthful ecology and are entitled to be protected by the State in its capacity as the parens patriae. Based on this, they have a right to demand the cancellation of TLAs.
c. They have exhausted all available administrative remedies but respondents failed to cancel the TLAs which is contrary to the Philippine Environment Policy:

– to develop, maintain and improve conditions under which man and nature can thrive in productive harmony with each other
– to fulfill the social, economic, and other requirements of present and future Filipinos
– to ensure the attainment of an environmental quality that is conducive to the life and dignity and well being.

And which continue to cause serious damage and prejudice to the plaintiffs.

a. Violative of the Consti policy of the State:

– effect a more equitable distribution of opportunities, income and wealth and make full efficient use of natural resources (Sec. 1, Art. XII)
– protect the nation's marine wealth (sec. 2)
– conserve and promote the nation's cultural heritage and resources (sec. 14, Art. XIV)
– sec. 16, Art. II

a. contrary to the highest laws of man and natural law-the right to self-preservation and perpetuation

- The DENR Sec asked the Makati RTC to dismiss for lack of cause which the judge granted; hence the petition:

Issue:

1. Procedural Issue: locus standi
2. WON pet have a cause of action and whether the judge committed grave abuse of discretion in dismissing the suit.

Held:

- They have standing
- The judge committed grave abuse of discretion in dismissing the suit as the petitioners have a cause of action

Ratio:

1. Their standing arise from "intergenerational responsibility" in so far a balanced an healthful ecology is concerned.

J. Feliciano (separate concurring) explains/clarifies the implication of this point

a. appears to give standing to everyone who maybe expected to benefit from the petitioner's actions; hence the court appears to be recognizing a "beneficiaries' cause of action" in the filed if environmental protection.
b. Whether it applies in all situation or whether failure to act on the part of the govt agency must be shown, is subject to future determination of the court.

1. The lower court is wrong in saying that the complaint failed to point out a specific legal right violated.

a. sec. 26 of the charter, the right to a healthful, balanced ecology is a specific fundamental legal right. Even if it is not in the bill of rights, "it does not follow that is less important than any of the civil and political rights enumerated in the latter. " Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation..the advancement of which may even predate all government and constitutions". They nned not even be written in the Constitution for they are assumed to exist from the inception of mankind.
b. The right involves a correlative duty to refrain from impairing the environment, which is a clear mandate of DENR under EO 192 (Reorganizing the DENR) and the Admin Code of 1987).
c. This, this is not a political question but an issue of enforcing a right vis-à-vis policy formulated. Nevertheless, political question is no longer insurmountable in view of Art. 8 sec. 1(2).

Feliciano submits that the declaration of the court that the petitioner cited a "specific legal right" does violence to the language of the constitutional provision cited. In fact, they are too broad and too comprehensive (i.e. right to balanced and healthful ecology). What the Court is saying, according to Feliciano, in granting the petition is that "there may be a more specific legal right in our laws considering that general policy principles are found in the constitution and elsewhere, which the petitioners could have pointed out if only the lower court gave them an effective opportunity to do so rather than aborting the proceedings (Hence, there was abuse of discretion).

Feliciano further suggests that petitioners should therefore cite a more specific legal right to serve as basis

for their petition, now that the Court has granted them continuance, for two reasons:

a. defendants to may very well unable to mount an effective/intelligent defense if the complaint points to a broad right.
b. If no such specific right is cited, petitioners are expected to fall back on sec. 8(2) of the Constitution. When substantive standards as general as "the right to a balanced and healthful ecology", and the "right to health" are combined with remedial standards as broad ranging as "grave abuse of discretion", the result will be "to propel the court to unchartered ocean of social and economic policy making.

Manila Prince Hotel v GSIS, 02/03/97]

Bellosillo, J.

Facts: respondent GSIS, pursuant to the privatization program under Proclamation No. 50 dated December 8, 1986, decided to sell through a public bidding 30-51% of the shares of respindent Manila Hotel Corporation (MHC). The winning bidder "is to provide management expertise and/or an international marketing/reservation system, and financial suppport to strengthen the profitability and performance of the Manila Hotel.
Sept 18, 1995- two bidders participated in the auction; one was petitioner Manila Prince Hotel Corp, who wanted to buy 51% of the shares at Php41.85 each, and Renong Berhad, a Malaysian firm, which bid for the same number of shares at Php44 each

*pertinent provisions of bidding rules:
- if for any reason, the Highest Bidder cannot be awarded the Block of shares, GSIS may offer this to other Qualified bidders
- the highest bidder will only be declared the winner after 1) execution of the necessary contracts with GSIS/MHC and 2)securing the requisite approvals of the GSIS/MHC, Committee on Privatization and Office of the Govt Corporate Counsel

Sept 28, 1995-pending the declaration of Renong Berhad as the winning bidder, petitioner matched the bid price of the Malaysian firm
Oct 10, 1995-petitioner sent a manager's check issued by Philtrust Bank as bid security
Oct 17, 1995-petitioner, wishing to stop the alleged "hurried" sale to the foreign firm, filed the case in the SC
Oct 18, 1995-Court issues TRO

Petitioner: (Manila Prince Hotel)

1. invokes Art12, Sec10, Par.2, and argues that the Manila Hotel was covered by the phrase "national patrimony" and hence cannot be sold to foreigners; selling 51% would be tantamount to owning the business of a hotel which is owned by the GSIS, a GOCC, the hotel business of respondent GSIS being a part of the tourism industry which undoubtedly is part of the national economy.
2. petitioner should be preferred over its Malaysian counterpart after it has matched the bid, since the bidding rules state 'if for any reason, the Highest Bidder cannot be awarded the Block of shares, GSIS may offer this to other Qualified bidders, namely them

Respondents:(Govt Service Insurance System, Manila Hotel Corp, COP, OGCC)

1. Art12, Sec10, Par.2**:** merely a statement of policy/principle; requires enabling legislation
2. Manila Hotel does not fall under the term national patrimony; prohibition is against the State, not the GSIS as a separate entity
3. the constitutional provision is inapplicable as since what is being sold are outstanding shares, not the place itself or the land; 50% of equity is not part of national patrimony.
4. the reliance of the petitioners on the bidding rules is misplaced; the condition/reason that will deprive the highest bidder of the award of shares has not yet materialized hence the submission of a matching bid is premature
5. prohibition should fail for respondent GSIS did not exercise its discretion in a capricious manner, did not evade duty or refused to d a duty as enjoined by law. Similarly mandamus should fail since they have no clear legal right to demand anything

Issue:

1. Whether or not the constitutional provision is self-executory-YES
2. Whether or not the term "national patrimony" applies to the Manila Hotel-YES
3. Whether or not the term "qualified Filipinos" applies to the MPH-YES
4. Whether or not the GSIS, being a chartered GOCC, is covered by the constitutional prohibition-YES

Held:

1. admittedly, some constis are merely declarations of policies and principles. But a provision which is complete in itself and becomes operative w/o the aid of enabling legislation , or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected is self-executing. Modern constis are drafted upon a different principle and have often become extensive codes of law intended to operate directly. If the consti provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law, which can be cataclysmic. In case of doubt, the Consti should be considered self-executing rather than not. Though this presumption is in place, the legislature is not precluded from enacting further laws to enforce the consti provision so long as the contemplated statute squares with the consti. Also a consti provision may be self executing on one part and not on the other/s.

Respondents also rely on jurisprudence that are "simply not in point"-Basco v PAGCOR, Tolentino v Sec of Finance, Kilosbayan v Morato. A reading of the provisions involved in these cases clearly shows that they are not judicially enforceable constitutional rights but guidelines of laws, manifested in the very terms of the provisions. Res ipsa loquitur. As opposed to Art12, Sec10, Par.2 which is a mandatory, positive command, complete in itself, needing no further guidelines, creating a right where none existing before, that right being that qualified Filipinos shall be preferred. And

where there is a right, there is a remedy.
2. in plain language, patrimony means heritage, referring not only to natural resouces but to the cultural heritage of Filipinos as well. Manila Hotel has become a landmark-a living testament of Philippine heritage.
3. "qualified" according to the Consti commission refers to 1)companies whose capital or controlling stock is wholly owned by citizens of the Phil, 2) the fact that the company can make viable contributions to the common good, because of credible competency and efficiency. By giving preferrence to Phil comapnies or entities it does not mean that they should be pampered; rather they should indeed "qualify" first with the requirements that the law provides before they can even be considered as having the preferential treatment of the state accorded to them.In the 1st place, MPH was selected as one of the qualified bidders, which meant that they possessed both requirements. "in the granting of economic rights, privileges and concessions, when a choice is between a "qualified foreigner " and a "qualified Filipino", the latter shall be chosen"
4. the sale of the 51% of MHC could only be carried out with the prior approval of the State through the COP.
"state action" refers to 1)when activity engaged in is a public function, 2)when govt is so significantly involved in the actor as to make the govt responsible for his action 3)when govt has approved or authorized the action. Act of GSIS selling the shares falls under the 2nd and 3rd categories. Also, when the Consti refers to state it refers not only to the people but also to govt as elements of the state. Hence, the GSIS, being part of govt, although chartered, is still covered by the provision.

(the rest is obiter)

Petition dismissed.

Kilosbayan vs. Morato

J. Vicente Mendoza :

Facts :

- In a previous decision, the Court invalidated a contract of lease bet PCSO and the Phil Gaming Mgt Copr on the ground that it was made in violation of the PCSO's charter
- Hence, the PCSO and PGMC entered into a new equipment lease agreement (ELA).
- Petitioners in the 1st case again came to Court seeking to nullify the ELA in the ground that it is substantially the same as the nullified contract.
- PCSO/PGMC questioned the standing of the petitioners and argued that they lack cause of action.

Issue :

1. WON petitioners have standing and cause of action
2.WON the contract of sale should be nullified.

Held :

1. **No Standing.**

Ratio :

- The grant of standing in the 1st case (Kilosbayan vs. Guingona) does not bar the SC from looking into the issue again. That is not the law of the case as the petitioners claim because though the cases involved the same parties, the cases are not the same. (The contracts are subtantially different according to the Court). Moreover, the 7-6 ruling granting the standing in the 1st case is a « tenous one that is not likely to be maintained in subsequent litigation ».
- In this case, strictly speaking, the issue is not standing but WON the petitioners are real-party-in-interest as required by Rule 3 sec. 2 of the Rules on Civil Procedure.
- Stading is a constitutional law concept which requires a « partial consideration of the merits as well as broader policy concerns relating to the proper role of the judiciary in certain areas ». It is a question on whether parties « alleged such a personal stake in the outcome of the controversy to assure the concrete adverseness, which sharpens the presentation of issues upon which the court so largly depends for illumination of difficult constitutitonal questions »
  – A party must show (citing Valmonte vs PCSO) that :
  a. not only the law is invalid but also that he has sustained or is in immediate danger of sustaining some direcy injury as a result of its enforcement, and not only in an indefinite way.
  – now, in this case, the petitioners suing as taxpayers failed to allege that taxes have been misspent. The Senators did not show « that their prerogatives as legal have been curtailed ».
- Neither are they real parties in interest. A real-party in interest is the party who would be benefitted or injured by the judgment or the « party entitled to the avails of the suit ».
  – the parties only cited provisions under Art II of the Constitution such as : sec. 5 (general welfare clause) ; sec. 12 (that the right of the parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the govt, « sec. 13. State recognition for the vital role of the youth in nation-building and promotion of their physical, moral, spritual, intellectual and social well-being.
  – These are not self-executing provisions, the disregard of which can give rise to a cause of action. They do not embody judially enforceable constitutional rights but for guidance for legislations.
  – This is actually a case for annulment of a contract such as the real parties in interest can only be :
  a. parties to the contract
  b. parties which are principally or subsidiarily to one of the parties or whose rights with respect to that party are prejudicial
  c. have a right to be part of the public bidding but have been illegally excluded from it.

1. **No cause.**

Ratio :

- The features of the 1st contract that made it actually a joint enture agreement are not present herein. There is only a lease contract in the form of the ELA which is not against the PCOS's charter.
- Actively, the PCSO is not absolutely prohibited from entering into joint ventures so long as it itself holds or conducts the lottery. It is however prohibited from investing in companies offering the same games.
- E.O. 301 requires public bidding only for the purchase of supply and not lease agreements.

WIGBERTO E. TAÑADA et al.. vs. EDGARDO ANGARA, et al.

Facts
Note: Justice Panganiban provides a brief historical background on the development of the WTO (see p28-34)

On April 15, 1994, Respondent Rizalino Navarro, then Secretary of The Department of Trade and Industry, representing the Government of the Republic of the Philippines, signed in Marrakesh, Morocco, the Final Act Embodying the Results of the Uruguay Round of Multilateral Negotiations (Final Act, for brevity). (Note: This act makes the Philippines one of the founding members of the WTO)

On August 12, 1994, the members of the Philippine Senate received a letter dated August 11, 1994 from the President of the Philippines, stating among others that "the Uruguay Round Final Act is hereby submitted to the Senate for its concurrence pursuant to Section 21, Article VII of the Constitution."

On August 13, 1994, the members of the Philippine Senate received another letter from the President of the Philippines likewise dated August 11, 1994, which stated among others that "the Uruguay Round Final Act, the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services are hereby submitted to the Senate for its concurrence pursuant to Section 21, Article VII of the Constitution."

On December 9, 1994, the President of the Philippines certified the necessity of the immediate adoption of P.S. 1083, a resolution entitled "Concurring in the Ratification of the Agreement Establishing the World Trade Organization."

On December 14, 1994, the Philippine Senate adopted Resolution No. 97 which "Resolved, as it is hereby resolved, that the Senate concur, as it hereby concurs, in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization."

The text of the WTO Agreement is written on pages 137 *et seq*. of Volume I of the 36-volume *Uruguay Round of Multilateral Trade Negotiations* and includes various agreements and associated legal instruments (identified in the said Agreement as Annexes 1, 2 and 3 thereto and collectively referred to as Multilateral Trade Agreements, for brevity) as follows:

ANNEX 1
Annex 1A: Multilateral Agreement on Trade in Goods
General Agreement on Tariffs and Trade 1994
Agreement on Agriculture
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Measures
Agreement on Implementation of Article VI of he General Agreement on Tariffs and Trade 1994
Agreement on Implementation of Article VII of the General on Tariffs and Trade 1994
Agreement on Pre-Shipment Inspection
Agreement on Rules of Origin
Agreement on Imports Licensing Procedures
Agreement on Subsidies and Coordinating Measures
Agreement on Safeguards
Annex 1B: General Agreement on Trade in Services and Annexes
Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights
ANNEX 2
Understanding on Rules and Procedures Governing the Settlement of Disputes
ANNEX 3
Trade Policy Review Mechanism

On December 16, 1994, the President of the Philippines signed the Instrument of Ratification, declaring the Agreement Establishing the World Trade Organization and the agreements and associated legal instruments included in Annexes one (1), two (2) and three (3) ratified and confirmed

To emphasize, the WTO Agreement ratified by the President of the Philippines is composed of the Agreement Proper and "the associated legal instruments included in Annexes one (1), two (2) and three (3) of that Agreement which are integral parts thereof."

On the other hand, the Final Act signed by Secretary Navarro embodies not only the WTO Agreement (and its integral annexes aforementioned) but also (1) the Ministerial Declarations and Decisions and (2) the Understanding on Commitments in Financial Services. The Solicitor General describes these two latter documents as follows:

> The Ministerial Decisions and Declarations are twenty-five declarations and decisions on matters such as measures in favor of least developed countries, notification procedures etc.
>
> The Understanding on Commitments in Financial Services dwell on, among other things, standstill or limitations and qualifications of commitments to existing non-conforming measures, market access, national treatment etc.

On December 29, 1994, the present petition was filed. The Court resolved on December 12, 1995, to give due course to the petition. The court also requested the Hon. Lilia R. Bautista, the Philippine Ambassador to the United Nations stationed in Geneva, Switzerland, to submit a

paper, hereafter referred to as "Bautista Paper,", (1) providing a historical background of and (2) summarizing the said agreements.

During the Oral Argument held on August 27, 1996, the Court directed the petitioners to submit the (1) Senate Committee Report on the matter in controversy and (2) the transcript of proceedings/hearings in the Senate; and the Solicitor General, as counsel for respondents, to file (1) a list of Philippine treaties signed prior to the Philippine adherence to the WTO Agreement, which derogate from Philippine sovereignty and (2) copies of the multi-volume WTO Agreement and other documents mentioned in the Final Act.

Issues:

1. WON the petition presents a justiciable controversy
2. WON the provision of the WTO agreement and its three annexes contravene sec. 19, article 2 and sec. 10 and 12, article 12 of the Philippine Constitution
3. WON the provisions of said agreement and its annexes limit, restrict or impair the exercise of legislative power by congress
4. WON said provisions unduly impair or interfere with the exercise of judicial power by this court in promulgating rules on evidence
5. WON the concurrence of the senate in the WTO agreement and its annexes are sufficient and/or valid, considering that it did not include the final act, ministerial declarations and decisions, and the understanding on commitments in financial services

Holding: the petition is DISMISSED for lack of merit.
Ratio:

1. WON the Court has jurisdiction over the controversy

Yes.
The jurisdiction of this Court to adjudicate the matters raised in the petition is clearly set out in the 1987 Constitution, as follows:

> **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.**

As the petition alleges grave abuse of discretion and as there is no other plain, speedy or adequate remedy in the ordinary course of law, **we have no hesitation at all in holding that this petition should be given due course and the vital questions raised therein ruled upon under Rule 65 of the Rules of Court. Indeed, *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials. On this, we have no equivocation.**

We should stress that, in deciding to take jurisdiction over this petition, this Court will not review the *wisdom* of the decision of the President and the Senate in enlisting the country into the WTO, or pass upon the *merits* of trade liberalization as a policy espoused by said international body. Neither will it rule on the *propriety* of the government's economic policy of reducing/removing tariffs, taxes, subsidies, quantitative restrictions, and other import/trade barriers. **Rather, it will only exercise its constitutional duty "to determine whether or not there had been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the Senate in ratifying the WTO Agreement and its three annexes.**

2. WON The WTO Agreement contravenes the Phil. Constitution

No.
The "flagship" constitutional provisions referred to are Sec 19, Article II, and Secs. 10 and 12, Article XII, of the Constitution, which are worded as follows:

> Article II DECLARATION OF PRINCIPLES AND STATE POLICIES
> Sec. 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.
>
> Article XII NATIONAL ECONOMY AND PATRIMONY
> Sec. 10. . . . The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.
> In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.
>
> Sec. 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

Petitioners aver that these sacred constitutional principles are desecrated by the following WTO provisions quoted in their memorandum:

> a) In the area of investment measures related to trade in goods (TRIMS, for brevity):
> b) *In the area of trade related aspects of intellectual property rights (TRIPS, for brevity)*:
> *Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals* with regard to the protection of intellectual property. . . . (par. 1 Article 3, Agreement on Trade-Related Aspect of Intellectual Property rights, Vol. 31, Uruguay Round, Legal Instruments, p. 25432 (emphasis supplied)
> c) *In the area of the General Agreement on Trade in Services*:

Declaration of Principles Not Self-Executing

By its very title, Article II of the Constitution is a "declaration of principles and state policies." The counterpart of this article in the 1935 Constitution is called the "basic political creed of the nation" by Dean Vicente Sinco. **These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by**

the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of *Kilosbayan, Incorporated vs. Morato*, the principles and state policies enumerated in Article II and some sections of Article XII are not "self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."

In general, the 1935 provisions were not intended to be self-executing principles ready for enforcement through the courts. They were rather directives addressed to the executive and to the legislature. **If the executive and the legislature failed to heed the directives of the article, the available remedy was not judicial but political. The electorate could express their displeasure with the failure of the executive and the legislature through the language of the ballot.** (Bernas, Vol. II, p. 2).

It seems to me important that the legal right which is an essential component of a cause of action be a specific, operable legal right, rather than a constitutional or statutory policy, for at least two (2) reasons:

> 1. That unless the legal right claimed to have been violated or disregarded is given specification in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.
>
> 2. Where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of Section 1 of Article VIII of the Constitution

Economic Nationalism Should Be Read with Other Constitutional Mandates to Attain Balanced Development of Economy

Secs. 10 and 12 of Article XII, should be read and understood in relation to the other sections in said article.

The Constitution ordains the ideals of economic nationalism (1) by expressing preference in favor of qualified Filipinos "in the grant of rights, privileges and concessions covering the national economy and patrimony" and in the use of "Filipino labor, domestic materials and locally-produced goods"; (2) by mandating the State to "adopt measures that help make them competitive; and (3) by requiring the State to "develop a self-reliant and independent national economy effectively controlled by Filipinos." **In similar language, the Constitution takes into account the realities of the outside world as it requires the pursuit of "a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality ad reciprocity"; and speaks of industries "which are competitive in both domestic and *foreign* markets" as well as of the protection of "Filipino enterprises against *unfair* foreign competition and trade practices."**

It is true that in the recent case of *Manila Prince Hotel vs. Government Service Insurance System, et al.*, this Court held that "Sec. 10, second par., Art. XII of the 1987 Constitution is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rule for its enforcement. **From its very words the provision does not require any legislation to put it in operation. It is *per se* judicially enforceable." However, as the constitutional provision itself states, it is enforceable only in regard to "the grants of rights, privileges and concessions covering national economy and patrimony" and not to every aspect of trade and commerce. It refers to exceptions rather than the rule.**

The Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. **While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is *unfair*.**

WTO Recognizes Need toProtect Weak Economies

WTO decides by consensus whenever possible, otherwise, decisions of the Ministerial Conference and the General Council shall be taken by the majority of the votes cast, except in cases of interpretation of the Agreement or waiver of the obligation of a member which would require three fourths vote. Amendments would require two thirds vote in general. Amendments to MFN provisions and the Amendments provision will require assent of all members. Any member may withdraw from the Agreement upon the expiration of six months from the date of notice of withdrawals.

Hence, **poor countries can protect their common interests more effectively through the WTO than through one-on-one negotiations with developed countries. Within the WTO, developing countries can form powerful blocs to push their economic agenda more decisively than outside the Organization. This is not merely a matter of practical alliances but a negotiating strategy rooted in law. Thus, the basic principles underlying the WTO Agreement recognize the need of developing countries like the Philippines to "share in the growth in international trade *commensurate with the needs of their economic development*."** These basic principles are found in the preamble of the WTO Agreement. (see case for preamble of WTO)

Specific WTO Provisions Protect Developing Countries

So too, the Solicitor General points out that pursuant to and consistent with the foregoing basic principles, **the WTO Agreement grants developing countries a more lenient treatment, giving their domestic industries some protection from the rush of foreign competition. Thus, with respect to tariffs in general, preferential treatment is given to developing countries in terms of the *amount of tariff reduction* and the *period within which the***

***reduction is to be spread out*. Specifically, GATT requires an average tariff *reduction rate of 36% for developed countries* to be effected within a *period of six (6) years* while developing countries — including the Philippines — are *required to effect an average tariff reduction of only 24% within ten (10) years*.**

In respect to *domestic* subsidy, GATT requires *developed countries* to reduce domestic support to agricultural products by *20% over six (6) years*, as compared to *only 13% for developing countries to be effected within ten (10) years*. In regard to export subsidy for agricultural products, GATT requires developed countries to reduce their budgetary outlays for export subsidy *by 36%* and export volumes receiving export subsidy by *21% within a period of six (6) years*. For developing countries, however, the reduction rate is only *two-thirds* of that prescribed for developed countries and a longer *period of ten (10) years* within which to effect such reduction.

Moreover, GATT itself has provided built-in protection from unfair foreign competition and trade practices including anti-dumping measures, countervailing measures and safeguards against import surges. **Where local businesses are jeopardized by unfair foreign competition, the Philippines can avail of these measures. There is hardly therefore any basis for the statement that under the WTO, local industries and enterprises will all be wiped out and that Filipinos will be deprived of control of the economy. Quite the contrary, the weaker situations of developing nations like the Philippines have been taken into account; thus, there would be no basis to say that in joining the WTO, the respondents have gravely abused their discretion.**

Constitution Does Not Rule Out Foreign Competition

Furthermore, the constitutional policy of a "self-reliant and independent national economy" does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community." As explained by Constitutional Commissioner Bernardo Villegas, sponsor of this constitutional policy:

Economic self-reliance is a primary objective of a developing country that is keenly aware of overdependence on external assistance for even its most basic needs. It does not mean autarky or economic seclusion; rather, it means avoiding mendicancy in the international community.

The WTO reliance on "most favored nation," "national treatment," and "trade without discrimination" cannot be struck down as unconstitutional as in fact they are rules of equality and reciprocity that apply to all WTO members. Aside from envisioning a trade policy based on "equality and reciprocity," the fundamental law encourages industries that are "competitive in both domestic and foreign markets," thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favor of the gradual development of robust industries that can compete with the best in the foreign markets. Indeed, Filipino managers and Filipino enterprises have shown capability and tenacity to compete internationally. And given a free trade environment, Filipino entrepreneurs and managers in Hongkong have demonstrated the Filipino capacity to grow and to prosper against the best offered under a policy of *laissez faire*.

Constitution Favors Consumers, Not Industries or Enterprises

The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition. On the other hand, respondents claim that WTO/GATT aims to make available to the Filipino consumer the best goods and services obtainable anywhere in the world at the most reasonable prices. Consequently, the question boils down to whether WTO/GATT will favor the general welfare of the public at large.

Constitution Designed to Meet Future Events and Contingencies

No doubt, the WTO Agreement was not yet in existence when the Constitution was drafted and ratified in 1987. That does not mean however that the Charter is necessarily flawed in the sense that its framers might not have anticipated the advent of a borderless world of business.

It is not difficult to answer this question. Constitutions are designed to meet not only the vagaries of contemporary events. They should be interpreted to cover even future and unknown circumstances. It is to the credit of its drafters that a Constitution can withstand the assaults of bigots and infidels but at the same time bend with the refreshing winds of change necessitated by unfolding events. As one eminent political law writer and respected jurist explains:

3. WON the WTO Agreement restricts or limits the Legislative Power of Congress

No.
The WTO Agreement provides that "(e)ach Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." Petitioners maintain that this undertaking "unduly limits, restricts and impairs Philippine sovereignty, specifically the legislative power which under Sec. 2, Article VI of the 1987 Philippine Constitution is vested in the Congress of the Philippines.

More specifically, petitioners claim that said WTO proviso derogates from the power to tax, which is lodged in the Congress. And while the Constitution allows Congress to authorize the President to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, such authority is subject to "specified limits and . . . such limitations and restrictions" as Congress may provide, as in fact it did under Sec. 401 of the Tariff and Customs Code.

Sovereignty Limited by International Law and Treaties

While sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations." By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. **One of the oldest and most fundamental rules in international law is *pacta sunt servanda* — international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties . . . A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken."**

By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by or derived from a convention or pact.

The sovereignty of a state therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (1) limitations imposed by the very nature of membership in the family of nations and (2) limitations imposed by treaty stipulations.

UN Charter and Other Treaties Limit Sovereignty

When the Philippines joined the United Nations as one of its 51 charter members, it consented to restrict its sovereign rights under the "concept of sovereignty as auto-limitation." Under Article 2 of the UN Charter, "(a)ll members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action."

Apart from the UN Treaty, the Philippines has entered into many other international pacts — both bilateral and multilateral — that involve limitations on Philippine sovereignty. These are enumerated by the Solicitor General in his Compliance dated October 24, 1996 (see case for list of bilateral treaties)

In such treaties, the Philippines has effectively agreed to limit the exercise of its sovereign powers of taxation, eminent domain and police power. The underlying consideration in this partial surrender of sovereignty is the reciprocal commitment of the other contracting states in granting the same privilege and immunities to the Philippines, its officials and its citizens. The same reciprocity characterizes the Philippine commitments under WTO-GATT.

The point is that, as shown by the foregoing treaties, a portion of sovereignty may be waived without violating the Constitution, based on the rationale that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of . . . cooperation and amity with all nations."

4. WON WTO Agreement impairs Judicial Power

No.
Petitioners aver that paragraph 1, Article 34 of the General Provisions and Basic Principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) intrudes on the power of the Supreme Court to promulgate rules concerning pleading, practice and procedures. (See case for scope and meaning of Article 34, Process Patents and Burden of Proof, TRIPS)

There exists a similar burden of proof required in the current patent law. **The foregoing should really present no problem in changing the rules of evidence as the present law on the subject, Republic Act No. 165, as amended, otherwise known as the Patent Law, provides a similar presumption in cases of infringement of patented design or utility model.**

By and large, the arguments adduced in connection with our disposition of the third issue — derogation of legislative power — will apply to this fourth issue also. Suffice it to say that the reciprocity clause more than justifies such intrusion, if any actually exists. Besides, Article 34 does not contain an unreasonable burden, consistent as it is with due process and the concept of adversarial dispute settlement inherent in our judicial system. So too, since the Philippine is a signatory to most international conventions on patents, trademarks and copyrights, the adjustment in legislation and rules of procedure will not be substantial.

5. WON Senate concurrence in the WTO Agreement and Not in Other Documents Contained in the Final Act are binding

Yes.
Petitioners allege that the Senate concurrence in the WTO Agreement and its annexes — but not in the other documents referred to in the Final Act, namely the Ministerial Declaration and Decisions and the Understanding on Commitments in Financial Services — is defective and insufficient and thus constitutes abuse of discretion. They contend that the second letter of the President to the Senate which enumerated what constitutes the Final Act should have been the subject of concurrence of the Senate.

The assailed Senate Resolution No. 97 expressed concurrence in exactly what the Final Act required from its signatories, namely, concurrence of the Senate in the WTO Agreement.

The Ministerial Declarations and Decisions were deemed adopted without need for ratification. They were approved by the ministers by virtue of Article XXV: 1 of GATT which provides that

representatives of the members can meet "to give effect to those provisions of this Agreement which invoke joint action, and generally with a view to facilitating the operation and furthering the objectives of this Agreement."

The Understanding on Commitments in Financial Services also approved in Marrakesh does not apply to the Philippines. It applies only to those 27 Members which "have indicated in their respective schedules of commitments on standstill, elimination of monopoly, expansion of operation of existing financial service suppliers, temporary entry of personnel, free transfer and processing of information, and national treatment with respect to access to payment, clearing systems and refinancing available in the normal course of business."

(Note: Justice Panganiban ends with an epilogue that acts as a summary. It is about 2 pages in length.)

Santiago vs. Bautista

Facts :

- Teodoro Santiago Hr. Was awarded 3rd honors in their grade Six graduating class by the Comm on the Rating of Students for Honor. (Hereon referred as Comm).
- He, represented by his parents, sought the invalidation of the results thru a writ of certiorari claiming that the teachers :
  - violated the Service Manual for Teachers of the Bureau of Public Schools which states that the comm should be made up of grede 5 and grade 6 teachers not just the latter.
  - Committed grave abuse of discretion by chaning the grades of the 1st/2nd honors recipients.
- Respondents moved for dismissal because certiorari was improper and the issue became moot and academic since graudation was over
- Court agreed with respondents pointing out that
  - no written or formal judgment made by the respondent was submitted for correction so certitori cannot issue.
  - Admin remedies not exhausted.
  - There was abuse of discretion only errors
- Santiago appealed. The respondents further raised that the comm being impleaded is not a « tribunal board or officer exercising judicial function » agains which an action for certiorari apply under sec. 1 rule 65 of the Rules of Court.

Issue :

The Court thought it is most important to settle WON the committee can be a proper subject of certiorari

Held :

Certiorari cannot apply

Ratio :

- To answer this case, the court had to first define « judicial power ».
- Generally, is the authority to determine what the law is and what legal rights of parties are, with respect to a matter in controversy. In short, it implies the « construction of laws and the adjudication of rights ». It is not the office that matters but the nature of the action taken to determine WON there was a discharge of judicial or quasi-judicial functions.
- Following such definition, the court said that for judicial or quasi-judicial acts to be exercised, there must be :

a. a law that gives rise to some specific rights of persons or property,
b. adverse claims are made resulting in a controversy
c. same controversy is brought before a body of officer clothed with authority to make a determination of law and adjudication of rights.

* Based on that definition, the Court ruled that the comm is neither a judicial or quasi-judicial body. Notable, the petitioner cannot claim a right that has been violated. There is no right to a prize until it is awarded. There is only a privilege to compete that did not ripen into a demandable right unless and until they were proclaimed « winners » (citing a decision regarding an oratorical contest).

PEOPLE vs. FERRER

Facts:

On May 5, 1970 a criminal complaint was filed against respondent FELICIANO CO charging him as a ranking leader of the Communist Party of the Philippines, in violation of RA 1700 (Anti-Subversion Law). On May 25, 1970 a criminal case against NILO TAYAG and others was filed for subversion – respondent was a member of the Kabataang Makabayan, a subversive group, and tried to invite others to revolt against the government. On July 21, 1970, TAYAG moved to quash, arguing that RA 1700 is:

1. a bill of attainder;
2. vague;
3. with more than one subject expressed in title;
4. a denial of equal protection of laws.

On September 15, 1970, the statute was declared void on the grounds that it is a bill of attainder, vague, and overbroad.

Issues:

1. WON RA 1700 is a bill of attainder
2. WON RA 17700 is overbroad and vague (due process)

Held:

1. No, it is not a bill of attainder. The act does not specify which CPP members are to be punished. The focus is not on individuals but on conduct relating to subversive purposes. The guilt of CPP members must first be established, as well as their cognizance as shown by overt acts. Even if acts specified individuals, instead of activities, it shall not be a bill of attainder – not unless specific individuals were named. The court has consistently upheld the CPP's activities as inimical to public safety and welfare. A bill of

attainder must also reach past conduct and applied retroactively; Section 4 of RA 1700 expressly states that the act will be applied prospectively to give members time to renounce their affiliations. The legislature is with reasonable relation to public health, morals, and safety – and the government is with right to protect itself against subversion.

2. No, the statute is not overbroad and vague. The respondents' assertion that the term "overthrow" is overbroad is likewise untenable, since it could be achieved by peaceful means. Respondents disregarded the terms "knowingly, willingly, and by overt acts," overthrow is understood to be by violent means. Whatever interest in free speech/associations that is infringed is not enough to outweigh considerations of national security and preservation of democracy. The title of the bill need not be a catalogue of its contents – it is valid if it is indicative in broad but clear terms the nature, scope, and consequences of proposed law and operation.

Guidelines Set Forth by the Supreme Court:

1. In the case of any subversive group
    a. establish purposes to overthrow and establish totalitarian regime under foreign domination;
    b. accused joined organization;
    c. knowledge, will and overt action.
2. in CPP case
    a. pursuit of objectives decried by the government;
    b. accused joined organization;
    c. knowledge, will, and overt action.

WHEREFORE, Resolution set aside, cases remanded to court a quo for trial on merits.

Fernando, dissenting:

RA 1700 must be appraised in light of meaning prescribed to increasing complexity of subversive movements in the country. A taint of invalidity is seen even in the title of the Act, which state the specific name of an organization and create presumption of guilt. The right to dissent is constitutionally protected, even if it contains a subversive tinge. Dissent is not disloyalty. A line is drawn when words amount to incitement to sedition or rebellion. Other means could have been taken to stem the issue and spread of the CPP.

Director of Prisons vs. Ang Chio Kho

- Ang Cho Kio had been previously convicted of various crimes and sentenced to more than 45 years of jail time. However while serving his sentence he was given pardon on the condition that he'll voluntarily leave the Phil and never to return. He was released and left for Taipei in 1959.
- In 1966, Ang Chio Kho under the name of Ang Ming Huy arrived at the MIA en route Honolulu. The stopover in Manila was about 72 hours (3 days). While staying at a hotel he contacted 2 friend s who convinced him to stay longer. They went to the Bureau of Immigration to ask for a 14-day extension of his stay. However his identity was discovered.
- He was then arrested. By authority of the President, Exec. Sec. Rafael Salas, then ordered him to be recommitted to the National Penitentiary to serve his unexpired prison term.
- Ang Chio Kio filed a petition for a write of habeas corpus but was denied by both trial court and CA on the ground that the president, in recommitting him to prison exercised his prerogatives under the Revised Penal Code. It is settled in jurisprudence that the Pres by himself can determine if the conditions of a pardon were violated, a prerogative which the Courts may not interfere with, however erroneous the findings may be.
- However, the CA decision contained a recommendation that Ang Chio Kho be allowed to leave the country. The Sol. Gen. thus come to the SC to ask that the recommendation be deleted saying that it was beyond the issue raised by the petition of Ang Chio Kho and that it is not inherent or incidental to the exercise of judicial functions. It is political in character, courts should not interefere.

Issue:

WON the decision of the CA should be modified.

Held: Yes.

Ratio:

- Recommendatory powers of judges are limited to these expressly provided by law such as that in the RPC sec. 5 on the commutation of sentence; penalizing acts etc.
- It is improper for the CA to make a recommendation suggesting a modification of an act, which they said was aptly a prerogative of the Pres. It would thus amount to political interference.
- It is better practice for courts to keep their opinions to those relevant to the questions presented before them.
- J. Fernando (concurring) said that "it is not for any occupant of any court to play the role of adviser to the President". To do so well not only be an infringement on the separation of powers concept but it would also grossly endanger the "duty of the courts to assure compliance with constitutional mandates". The court should "ignore the limits of its own authority".
- However, no majority vote was acquired to overturn the CA recommendation, hence it stands.

JM TUASON & CO. vs. LAND TENURE ADMINISTRATION

-an appeal from COFI, Rizal

June 30, 1970

Ponente: Justice Fernando

Petioner (appellee): JM Tuason & Co. Inc
Respondent (appellant): Land tenure Administration, Solicitor General & Auditor General

For petitioner-appellee: Araneta, Mendoza & Papa
For respondent-appellant: Besa, Aguilar & Garcia, Solicitor General Felix Makasiar, Asst. SG Frime Zaballero, Solicitor Rosalio de Leon & Special Attorney Magno Pablo

Facts:

Feb 18, 1970- Court rendered judgment reversing the lower court's decision that RA 2616 is unconstitutional.
March 30, 1970 – motion for reconsideration was filed by appellee invoking his rights to due process & equal protection of laws
May 27, 1970 – detailed opposition to the reconsideration was filed by SG Felix Antonio
June 15, 1970 - a rejoinder of petition was filed. Petitioner contends that the expropriation of Tatalon Estate in Quezon City is unconstitutional (by virtue of its denial of due process for landowners) pursuant to RA 2616 sec 4. *the statute prohibits suit for ejectment proceedings & continuance of proceedings after expropriation proceedings have been initiated.

ISSUES:

1. WON sec4 RA2616 is unconstitutional by virtue of its denial of due process & equal protection
2. WON procedural mistakes invalidate the statute

HELD:

1. No.
   Ratio: The statute is held to be constitutional given the opportunity and protection it affords to land owners in recognizing their right to evict subject to expropriation proceedings and just compensation. RA 3453 amended sec4 of RA 2616 in order to address this precise problem (sec4 of RA 3453 previously held to be unconstitutional.)
   The amendment was drafted in light of Cuatico vs. Court of Appeals where the landowner's right to due process was impaired by tenants' invocation of as-yet-to-be instituted expropriation proceedings.

2. No.
   Ratio: Inaccuracies committed by Congress in determining who owns the land does not invalidate the statute. Dominical rights cannot be conferred on those obviously not entitled to them. Appellee's fears are without legal basis. The government will only compensate rightful owners.

Wherefore,
Judgement AFFIRMED.

Ex Post Facto Laws

Consti. Art. III, sec. 22

Section 22. No ex post facto law or bill of attainder shall be enacted.

B. Case or Controversy Requirement: Elements

STANDING

Muskrat vs. US

- An act of Congress that provide for the allotment of lands of Cherokee Nation, which increased the number of persons entitled to share in the final distribution of lands and funds of the Cherokees beyond those enrolled in Sept. 1902 in accordance with the act of Congress passed in July 1902. It had the effect of permitting the enrollment of children who were minors living in March 1906, whose parents had theretofore been enrolled as members of the Cherokee tribe or had applications pending for that purpose.
- The Congress brought to this Court with an appeal to test the constitutionality of prior acts of Congress.

Issue:

WON conferring such jurisdiction is within the power of Congress.

Held:

It is not within the authority of the Court to take cognizance of the claims of Muskrat; hence the grant of jurisdiction is invalid.

Ratio:

- Although in the beginning of the govt, the right of Congress to give original jurisdiction in cases not enumerated in the Constitution have been entertained. However, further examination has led this Court to consistently decline powers that are strictly judicial in their nature.
- That exercise of that power is limited to cases and controversies which imply the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication. The court has no veto power over leg. acts. The court cant declare an act unconstitutional unless a proper case between opposing parties is submitted.
- In this action, the US is made defendant but it has not adverse interest against them. The objective is not to assert a property right as against the govt or demand compensation for alleged wrongs. Thus the decision that court will render if the actions were allowed to proceed will be nothing more than an expression of opinion upon the validity of the acts in question. Conferring advise to the leg was never contemplated in the constitution as a function of the court.

(The parties have not cited a right violated by the Act of Congress. Congress, by allowing them to sue the govt, only allowed the Court to settle the doubtful character of the leg in question not actual conflicts.)

Consti. Art. VII, sec. 18, par. 3

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

Philippine Assoc. of Colleges and University vs. Sec. of Educ.

Facts:

- PACU assails the constitutionality of Act 2706 "An act making the inspection obligatory for the Sec. of Public Instructions.

a. The power of the Sec. of Education to require prior permit before they operate deprive them of liberty and property without due process.
b. The act involved undue delegation of leg. powers when it allowed the Sec. of Educ. Unlimited powers and discretion to prescribe rules and standards. The act does not provide guidelines for this. This. There has been abuse on the part of the school inspectors "bullying".
c. The act imposes a tax on a right (i.e. to operate schools)
d. Regulation of books of instruction amounts to censorship.

- Govt asserts that the petitioners have not brought a justiciable controversy and should be dismissed. Nevertheless, the gov't can state that the act is not unconstitutional.

Issue:

WON there is a justiciable controversy with regard to permits.

Held:

No there is none.

Ratio:

In the 1st place, there is no justiciable controversy bec none of them have been closed down in fact. It was not shown either that the Sec. of Education has threatened to revoke their permits.

Courts do not sit to adjudicate mere academic questions. Nevertheless, in view of decisions of US SC quoted apparently outlawing censorship, the Court decided to look into the merits, otherwise it might be alleged that the Court failed to act in the face of a clear violation of fundamental personal rights of liberty and property.

Gonzales vs.

*** no digest for this case so I copied the digest from another reviewer.*

Petitioner assails respondent's authorization of the importation of rice by the govt from private sources on the ground that said act is violative of an Act prohibiting such importation by the RCA or any govt agency. Resp contends that the status of petitioner as a rice planter does not give him sufficient interest to file the instant petition. The SC held that petitioner has standing since in light of the polict of the govt underlying the Act, which is to engage in the purchase of basic foods directly from tenants, farmers, growers in the Phil, petitioner is entitled to a chance to sell to the govt the rice it now seeks to import. Said act of respondent thus deprives petitioner of this opportunity, amounting to an actual injury to petitioner. Moreover, public funds will be used to effect the purchase. Petitioner, as taxpayer, has sufficient interest and personality to seek judicial assistance with a view to restraining what he believes to be an attempt to unlawfully disburse said funds.

Exhaustion of administrative remedies: exceptions applicable to case at bar: The principle requiring the previous exhaustion of administrative remedies is not applicable:

1. where the question in dispute is purely a legal one, or
2. where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or
3. where the respondent is a department secretary, whose acts as alter-ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him or
4. where there are circumstances indicating the urgency of judicial intervention.

The case at bar falls under each one of the foregoing exceptions to the general rule.

Main function of Executive is to enforce laws enacted by Congress, not to defeat the same. –Under the Constitution, the main function of the Executive is to enforce laws enacted by Congress. The former may not interfere in the performance of the legislative powers of the latter, except in the exercise of the veto power. He may not defeat legislative enactments that have acquired the status of law, by indirectly repealing the same through an executive agreement providing for the performance of the very act prohibited by said laws.

Jurisdiction; Power to invalidate treaties:--The Constitution of the Philippines has clearly settled the question of whether an international agreement may be invalidated by our courts in the affirmative, by providing in Section 2 of Article VIII thereof that the Supreme Court may not be deprived "of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ or error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in (1) all cases in which the constitutionality or validity of any treaty, not only when it conflicts with the fundamental law, but also when it runs counter to an act of Congress.

Gonzales vs. Marcos

*** no digest for this case so I copied the digest from another reviewer.*

Petitioner assails an EO creating a trust for the construction of the CCP on the ground that it is an impermissible encroachment by the President on the legislative prerogative. The SC held here that petitioner has no sufficient standing as the funds administered by the President came from donations and contributions not from public funds raised through taxation. Accordingly, there is absence of the requisite pecuniary or monetary interest. A taxpayer's suit will only prosper if involves the use of public funds.

Creation of rules governing the administration of a trust may be concurrently exercised by the President and the Congress. –While to the Presidency under the 1935 Constitution was entrusted the responsibility for administering public property, the then Congress could provide guidelines for such a task. Relevant in this connection is the excerpt from an opinion of Justice Jackson in Youngstown Sheet & Tube Co. vs. Sawyer "When the president acts in absence of either a congressional grant or denial of authority =, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have a concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law". To vary the phraseology, to recall Thomas Reed Powell, if Congress would continue to keep its peace notwithstanding the action taken by the executive department, it may be considered as silently vocal. In plainer language, it could be an instance of silence meaning consent.

People vs. Vera

Facts:

- Cu Unjieng was found guilty and sentenced to imprisonment
- C.U. applied for probation under Act 4221 in Manila CFI (Tuason presiding), which referred it ti the probation which in turn denied it.
- However, another branch, held by herein respondent Vera granted a hearing, denied the application. However, the judge failed to rule on the execution of the sentence of C.U. bec the latter asked for a recon and a group of lawyers asked to intervene in his favor.
- But before Judge Vera could rule on this, HSBC, later joined by Sol. Gen. filed an action for certiorari and prohibition before the SC asking it to put a stop on the hearing and execute the sentence of CU.
- They argued that the judge lack jurisdiction in as much as his basis, the Probation Law is unconstitutional on 3 grounds:

a. infringed on the executive prerogative to grant pardon and reprieves
b. undue delegation of leg power
c. violates equal protection clause

- Respondents argue:

a. case is premature since the same issues being raised by petitioners are still pending before the trial court. They have also a pending appeal before the said court. The SC should not impair the latter's jurisdiction.
b. The private petitioner may not intervene in a probation case. While the Sol Gen is estopped from questioning a law which govt promulgated.
c. Act. 4221, is constitutional but even it is not, the assailed parts can be excluded while the others can be maintained (separability).

Issues:

A. Justiciability
B. Constitutional Issues Raised
C. Separability

Held:

1. The petitioners raised an issue of constitutionality in a proper case

- Courts willonly make a determination with regard to constitutionality if raised in the appropriate cases (i.e. requisites for judicial review are present) and the issue of constitutionality is the very lis mota of the case which is the case here.

Ratio:

- Right remedy sought. Although question of unconstitutionality are usually raised in ordinary action in the lower courts. However, if the very basis for the jurisdiction of the lower court, is accused of constitutional infirmities, a writ of prohibition is issued.
- Public Party have standing.

a. Private party- gen. rule: only parties to the suit can question the validity of a law (in this case only the govt is the party bec it's a probation proceeding).
b. Public party-the people, rep by Sol. Gen., is a proper party. Indeed the proper party-to bring the action. If act 4221 indeed violates the constitution, then the state has a substantial interest to set it aside. Not only does its implementation result in the illegal expenditure of public funds, it also inflicts "a mortal wound upon the fundamental law".
c. The people is not estopped from impinging the law just because it is already implemented. It is not a valid ground because fiscals etc will naturally implement Act 4221 as long as it is not declared void by the Court.

- Mootness: not moot

As a general rule, question of constitutionality must be raised at the earliest opportunity so that if it is not raised in the pleading, ordinarily it may not be raised at the trial, and if not in the trial courts, in will not be considered on appeal.

However, courts can grant exception through the exercise of its sound discretion such as in:

a. crim cases, it may be raised at any stage of the proceedings
b. when the constitutionality of the jurisdiction of the lower court is assailed, the issue can be considered any time by an appellate court.

- Lis Mota: There is no doubt that the constitutionality is the issue here bec Cu Unjien draws his purported privilege from the assailed law.
- Liberality Doctrine (of Judicial Review):

However the Court said that despite the foregoing discussion on justiciability, the court can still overrule the defense of want of jurisdiction bec "there is an extraordinary situation which calls for the relaxation of the general rule" on justiciability.

Considering the...
"importance of the case", "to prevent the multiplicity of suits", strong reasons of public policy and that the issue be resolved".

- Constitutionality: Act 4221 is unconstitutional
- WON it a usurpation of pardon powers. NO

a. Probation is not pardon. A pardon removes both guild and punishment. It releases punishment and blots out of existence the guilt so that in the eye of the law, the offender is as innocent as if he had never committed an offense. It removes the penalties and disabilities, and restores him to all his civil rights.
b. A probation, unlike pardon, does not relieve penalty. It is in fact a penalty of lesser degree. During the probation period, the convict is still under legal custody, under the control of the probation of the officer and the Court; he may be rearrested if he violates the conditions of his probation and it rearrested, may be committed to prison to serve out his original sentence.
c. Congress is the branch where in the power to define crimes and their penalties is reposed. Since probation is a "new mode of penalty, in substitution of imprisonment and tire", therefore, the leg did not overstep its bounds when it passed Act 4221.

BUT

- It is an undue delegation of leg powers.
- General Rule: A delegated power cannot be redelegated.

Exceptions:

a. delegation of leg power to the LGUs to prescribe local ordinances
b. delegation of leg power directly to the people (eg. Referendum)
c. delegation of leg power by the Consti itself (eg. Emergency powers of the pres to leg.)

- The case at hand does not fall within the exception. It must be subjected to a test: was the statute complete in itself when it left the hands of the legislative so that nothing was left to judgment of any other delegate of the leg. Quoting Judge Ranney, it is quite different to give discretion, it is quite different to give discretion as to what it (the law) shall be and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. Hence, it is valid for Congress, to let the delegate make a determination of facts, upon presence of which a law becomes executable.
- But Sec. 11 of the Act 4221, allows discretion to the provinces to implement or not implement the law. Said sec. 11 gives the provincial board arbitrary discretion. The Act becomes applicable only if provincial boards appropriate. The salary for the probation officer of the province.
- Act violates equality clause.
- person X in province A may benefit from the Act bec province A provided for the salary of the probation officer whereas person Y may not in province B that did not do the same. It permits the denial of equal protection which is not different from a direct denial of equal protection.
- Separability. Sec. 11 is invalid, the whole law is invalid. How can the law be implemented without probation officers (which is the subject matter of said sec. 11). Enough must remain (in the impugned statute) to make a complete, intelligible, and valid statute which carries out the leg interest. This is not the case here.

Flast vs. Cohen

Facts:

- Appellants filed a suit in a N.Y. district court seeking to invalidate secs of the Elementary and Secondary Education Act of 1965.
- The act allegedly vitiates the establishment and the exercise clause of the 1st amendment of the US consti as it provides funding for sectarian/religious schools.
- They sued as taxpayers but the NY Court, citing Frothingham vs Mellon, did not grant them standing. Frothingham, it was stated that the int of a federal taxpayer in the funds of the Treasury was "comparatively minute and indeterminable" and the "effect on future taxation" of the expenditures for the assailed maternity Act of 1921 was "remote, fluctuating and uncertain". Hence the direct injury test was not met (Frothingham case).

Issue: WON appellants have locus standi

Held: Yes

Ratio:

- Govt is wrong in saying that standing should not be granted bec this taxpayers' suit involves mere disagreement with the uses of the tax and the issue should belong to other branches of govt.
- In deciding question of standing, it is not relevant whether or not the substantive issues are justiciable. The main question is WON the party seeking reliefe has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult consti issues". (Baker vs Carr)
- Hence, a party may be granted standing but the court won't pass on the subs issues bec they are, for instance, political questions.
- In the case of a taxpayer's suit, the court will look at the substantive issues to decide on the issue of standing for another purpose, which is to

establish the "logical nexus" between the status asserted and the claim sought to be adjudicated.

- Establishing that "logical nexus" involves 2 things:

a. a logical link bet a taxpater (i.e. the status) and the type of legislative enactment attacked. Thus, the latter must involve the exercise of congressional power under the taxing and spending clause and not merely an incidental expenditure of tax funds in the admin of essentially regulatory statute.

b. A nexus bet status and the nature of constitutional infringement alleged.

- The petitioners herein alleged that their tax money is being used in violation of a specific constitutional protection against abuses of leg powers. This met the logical nexus. The Educ Act involves the spending power of Congress (direct spending) and they alleged that the Act violates the establishment and free exercise clauses. This constitutional amendment was put there exactly to prevent taxation in favor of any religious establishment.

Sierra Club vs. Morton

- Sierra Club, a long standing org advocating preservation/conservation of environment sued the Forest Service to prevent the dev;t of a ski resort at Mineral King Area of Sequoia National Park.
- The Sierra Club invoked the Admin. Procedure Act which states that any person suffering legal wrong bec of agency action or adversely affected or aggrieved by the same within the meaning or a relevant statute is entitled to judicial review. They argue that the Forest Service violated fed laws/regulations re: preservation in approving the Mineral King Devt. Hence, they sought a restraining order against it.
- District Court granted them standing but CA reversed saying that the Sierra Club had not made an adequate showing of inseparable injury to merit a judgment of the court.

Issue:

WON Sierra has standing to sue

Held: None.

Ratio:

- Rule: Where no specific statue authorizaing the invocation of judicial review, personal stake in the outcome of the controversy must be asserted to ensure adverseness.
- However, if there is that statute, the question is does the case at hand fall within the purview of said law.
- The change in aesthetics and ecology of the Mineral King area, (even though non-economic in nature) may be considered injury-in-fact and sufficient to merit judicial review under Sec. 10 of the APA. Except that the party invoking said sec must still show that he is among the injured party.
- In this case, the Sierra Club has failed to allege that any of its members may be affected in their past times or recreation if the ski resort is built. An org may indeed represent its members in a suit provided that it can show that said members are injured parties. In claiming standing, public interest as the issue is not enough otherwise, any group or individual with special interest in the issue can be given standing which may undermine adverseness requisites of judicial review.

US vs. SCRAP

- A group of 4 law students
- Under the Interstate Commerce Act, the Interstate Commerce Commission, the railroads still have the initiative to increase their fees, provided they give 30 days prior notice to the ICC. Within the 30-day period, the Comm may suspend the operation of the proposed rate within 7 months pending review of the legality of the raise.
- SCRAP alleged in a district court that the failure of the ICC to suspend a surcharge while investigating its legality violated the National Environment Policy Act (NEPA) since it failed to attach an environmental impact statement with its order which allegedly have a significant impact on the environment.
- The petitioner sought to have it dismissed on the gournd that the standing of the petitioner was based on "vague unsubstantial and insufficiend pleadings" i.e. failing to assert injury in fact as set in Sierra Club vs Morton.
- The district court granted standing since the petition alleged more than a "gen interest in seeing that the law is enforced. It is also found in favor of petitioner with regard to the merits and issued an injunction. It said that the NEPA implicitly confers authority to federal courts to enjoin any federal action taken in violation of NEPAs procedural requirements. The court refused to reconsider, hence this appeal.

Issue:

1. Standing
2. Jurisdiction of the court to issue the injunction

Held:

1. SCRAP has standing.

Ratio:

- Their petition is distinguishable from the failed petition of the Sierra Club.

a. Unlike in Sierra Club, petitioners herein alleged that their members used the forests, streams, mountains, and other resources in the Washington Metropolitan area. Their activities, they claim will be disturbed by the use of non-recyclable material which had become more expensive as a result of the increase rates of transportation. Hence, more timber and other

natural resources will be used/destroyed in lieu of the recyclables.

b. Unlike Sierra Club, were the effect of the assailed project is limited to a special geographic area, the federal action complained here is applicable to all railroads in the country and therefore its alleged environmental impact is nationwide.
c. It is correct that pleadings must be more than academic exercise. The harm claimed by SCRAP should indeed be perceptible rather than merely conceivable. However, the recourse is not an appeal to the SC but a motion for summary judgment in the lower courts so that they cam assail the claims of SCRAP.

- The suspension of rates is an exclusive prerogative of the ICC so the court had no authority to issue the injunction. The NEPA cannot be construed as having repealed that exclusive grant by Congress because there was never such an intention. In fact in passing the NEPA, Congress instructs that the Act shall not in any way affect the specific statutory obligation of any federal agency.

Kilosbayan vs. Guingona

** *no digest for this case so I copied the digest from another reviewer.*

Petitioner corporation composed of citizens suing in their capacities as senators, taxpayers, and concerned citizens, opposed the Contract of Lease between PCSo and PGMC which sets up an on-line lottery system on the basis or serious moral and ethical considerations. The SC ruled that a party's standing is a procedural technicality which the courts may, in the exercise of its discretion, set aside in view of the importance of the issues raised in this petition. The court brushed aside this technicality because the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside the technicalities of procedure. Insofar as taxpayers' suit are concerned, the Court has declared that it is not devoid of discretion as to whether or not it should be entertained or that it enjoys an open discretion to entertain the suit or not.

Steffel vs. Thompson

** *no digest for this case so I copied the digest from another reviewer.*

Petioner was threatened with arrest for distributing anti-war handbills and further threatened with future arrest if her returned and such being stipulated as unlawful in the Criminal Trespass Law. This is a petition for declaratory relief. The SC held that the court incorrectly dismissed the pet when no state criminal proceeding is pending, federal intervention will not result in the disruption of the state criminal justice system. Rather, non-action would result in the individual's not knowing that by continuing his activities, he is violating the law, or that by desisting from the same, he is depriving himself of a constitutional right. Further, Congress clearly intended that a declaratory relief be more available when an injunction is not in order to test the constitutionality of state criminal statutes. Although a declaratory relief will not make an unconstitutional law disappear, it is nevertheless useful since a declaration of full unconstitutionality will result in the reversal of previous convictions and a declaration of partial unconstitutionality will limit the statute's applicability. In declaratory relief, irreparable injurt is not a prerequisite since what is required is an injunction. Declaratory relief has been assigned by Congress to protect constitutional rights where an injunction is not available, which is when no case has been filed.

FRANCISCO V HOUSE OF REPS

(Nov. 10, 2003)
Ponente: J. Carpio-Morales

Facts:

- July 22, 2002: House adopted a Resolution directing the Committee on Justice to conduct an investigation, in aid of legislation, on the manner of disbursements and expenditures by the Chief Justice of the Judiciary Development Fund (JDF)
- June 2, 2003: Erap filed an impeachment complaint (1st impeachment complaint) against the Chief Justice and 7 Associate Justices for culpable violation of the Consti, betrayal of public trust and other high crimes, which was sufficient in form but dismissed for being insufficient in substance
- Oct 23: 2nd impeachment complaint was filed with the Sec Gen of the House on the basis of the alleged results of the legislative inquiry of the abovementioned Resolution
- **Petitioners' main argument:** 2nd impeachment complaint is unconstitutional bec it violates Sec 5, Art XI of the Consti, stating that "no impeachment proceedings shall be initiated against the same official more than once within a period of one year"
- **Petitioners' allegations of Legal Standing:**
  - Duty as members of the legal profession or of the Integrated Bar of the Philippines or of the Philippine Bar Association
  - As citizens of the Philippines, with an obligation to protect the SC, the Chief Justice, and the integrity of the Judiciary
  - As taxpayers, with a right to be protected against all forms of senseless spending of taxpayers' money
  - As a class suit, in behalf of all citizens, citing *Oposa v Factoran*, which was filed in behalf of succeeding generations of Filipinos
  - As members of the House of Reps, with the duty of ensuring that only constitutional impeachment proceedings are initiated
  - As professors of law, with an interest in the subject matter as it pertains to a constitutional issue "which they are trying to inculcate in the minds of their students"
  - Legal standing should be brushed aside for consideration of **issues of national and transcendental importance and of public interest**

Issues/Held:

1. WON the power of judicial review extends to those arising from impeachment proceedings – YES
2. WON the essential prerequisites for the exercise of the power of judicial review have been fulfilled

- WON petitioners have legal standing – YES
- WON the issue is ripe for adjudication – YES
- WON the issue is justiciable – YES
- WON the issue is the lis mota of the case – YES

1. WON the 2nd impeachment complaint is unconstitutional – YES

Ratio:

1. The Consti itself has provided for the instrumentality of the judiciary as the rational way to determine the nature, scope and extent of the powers of government. When the judiciary mediates to allocate constitutional boundaries, it does not assert superiority over the other departments; it only asserts its solemn and sacred obligation to determine conflicting claims of authority under the Consti and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. In case of conflict, only the judicial arm can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.
2. **Locus standi:** a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged

   SolGen: petitioners have standing bec procedural matters are subordinate to the need to determine WON the other branches of gov't have not exceeded the constitutional limits of their powers

   Dean Pangalangan: rule exception that when the *real party in interest* is unable to vindicate his rights by seeking the same remedies, as in the case of the CJ who, for ethical reasons, cannot himself invoke the jurisdiction of this Court, the courts will grant petitioners' standing

   Difference bet rule on real-party-interest and rule on standing: former is a concept of civil procedure while the latter has constitutional underpinnings. Standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas. The question re: real party in interest is WON he is the party who would be benefited or injured by the judgment, or the party entitled to the avails of the suit.

   When suing as a citizen: interest of the petitioners must be direct and personal; he must show that he sustained or is in imminent danger of sustaining some direct injury as a result of the enforcement of any gov'tal act; party should appear to have been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

   As a taxpayer: where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a waste of public funds through the enforcement of an invalid or unconstitutional law, a party is allowed to sue. He should prove that he has sufficient interest and that he would sustain direct injury as a result.

   As a legislator: he is allowed to sue to question the validity of any official action which he claims infringes his prerogatives as a legislator.

   As an association: while an association has legal personality to represent its members, the mere invocation by the IBP or any member of the legal profession of the duty to preserve the rule of law

   and nothing more, although true, does not suffice to clothe it with legal standing bec its interest is too general. However, the Court chooses to relax the rules on standing bec of advanced constitutional issues raised in the petitions.

   In the case of class suits: persons intervening must be sufficiently numerous to fully protect the interests of all concerned to enable the court to deal properly with all interests involved in the suit bec a judgment in a class suit , whether favorable or not, is binding on all members of the class WON they were before the court.

   In the case of transcendental importance: J. Feliciano's instructive determinants:

   a. The character of the funds or other assets involved in the case
   b. The presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the gov't
   c. The lack of any other party with a more direct and specific interest in raising the questions being raised

   Ripeness: for a case to be considered ripe for adjudication, something should have been accomplished or performed by either branch before a court may come into the picture (Tan v Macapagal)

   The questioned acts having been carried out, i.e. the 2nd impeachment complaint had been filed with the House of Reps and the 2001 Rules have already been promulgated and enforced, the prerequisite above has been complied with.

   Dean's persuasion that wasn't taken: even if the petitions are premature (since Articles of Impeachment haven't been transmitted to the Senate), the CJ can still raise issue of constitutional infirmity through a Motion to Dismiss ▪ withdrawal of signatories would not, by itself, cure the House Impeachment Rules of infirmity and it would not obliterate the 2nd impeachment complaint

3. **Sec 5, Art XI of the Consti** – y'all know the discussion here ☺

SANLAKAS vs. EXEC SEC

(02/03/2004)

Tinga, J.
Facts:

July 27, 2003-Oakwood mutiny

-Pres GMA issued *Proclamation no 47* declaring a "state of rebellion" & *General Order No. 4* directing AFP & PNP to supress the rebellion.

-by evening, soldiers agreed to return to

barracks.
GMA, however, did not immediately lift the declaration of a state of rebellion, only doing so on August 1, 2003 thru Proc NO. 435.

Petitioners:
1. Sanlakas & PM; standing as "petitioners committed to assert, defend, protect, uphold, and promote the rights, interests, and welfare of the people, especially the poor and marginalized classes and sectors of Philippine society. Petitioners are committed to defend and assert human rights, including political and civil rights, of the citizens freedom of speech and of expression under *Section 4, Article III of the 1987 Constitution*, as a vehicle to publicly ventilate their grievances and legitimate demands and to mobilize public opinion to support the same; assert that *S18, Art7 of the Consti* does not require the declaration of state of rebellion to call out AFP;assert further that there exists no factual basis for the declaration, mutiny having ceased.

2. SJS; standing as "Filipino citizens, taxpayers, law profs & bar reviewers"; assert that *S18, Art7* of the Consti does not require the declaration of the state of rebellion, declaration a "constitutional anomaly" that misleads because "overzealous public officers, acting pursuant to such proclamation or general order, are liable to violate the constitutional right of private citizens"; proclamation is a circumvention of the report requirement under the same *S18, Art7*, commanding the President to submit a report to Congress within 48 hours from the proclamation of martial law; presidential issuances cannot be construed as an exercise of emergency powers as Congress has not delegated any such power to the President

3. members of House; standing as citizens and as Members of the House of Representatives whose rights, powers and functions were allegedly affected by the declaration of a state of rebellion; the declaration of a state of rebellion is a "superfluity," and is actually an exercise of emergency powers, such exercise, it is contended, amounts to a usurpation of the power of Congress granted by *S23 (2), Art6* of the Constitution

4. PImentel; standing as Senator; assails the subject presidential issuances as "an unwarranted, illegal and abusive exercise of a martial law power that has no basis under the Constitution; petitioner fears that the declaration of a state of rebellion "opens the door to the unconstitutional implementation of warrantless arrests" for the crime of rebellion

Respondents: SolGen; petitions have been rendered moot by the lifitng of the proclamation; questions standing of petitioners

Issues:
1. whether or not petitioners have standing
2. whether or not case has been rendered moot by the lifting of the proclamation
3. whether or not the proclamation calling the state of rebellion is proper

Held: 1. NOT EVERY PETITIONER. only members of the House and Sen Pimentel have standing. Sanlakas & PM have no standing by analogy with LDP in *Lacson v Perez* "... petitioner has not demonstrated any injury to itself which would justify the resort to the Court. Petitioner is a juridical person not subject to arrest. Thus, it cannot claim to be threatened by a warrantless arrest. Nor is it alleged that its leaders, members, and supporters are being threatened with warrantless arrest and detention for the crime of rebellion." At best they seek for declaratory relief, which is not in the original jurisdiction of SC. Even assuming that Sanlakas & PM are "people's organizations" in the language of *Ss15-16, Art13 of the Consti*, they are still not endowed with standing for as in *Kilosbayan v Morato* "These provisions have not changed the traditional rule that only real parties in interest or those with standing, as the case may be, may invoke the judicial power. The jurisdiction of this Court, even in cases involving constitutional questions, is limited by the "case and controversy" requirement of *S5,Art8*. This requirement lies at the very heart of the judicial function." SJS, though alleging to be taxpayers, is not endowed with standing since "A taxpayer may bring suit where the act complained of directly involves the illegal disbursement of public funds derived from taxation.No such illegal disbursement is alleged." Court has ruled out the doctrine of "transcendental importance" regarding constitutional questions in this particular case. Only members of Congress, who's (?) powers as provided in the Consti on giving the Pres emergency powers are allegedly being impaired, can question the legality of the proclamation of the state of rebellion.

2. YES. As a rule, courts do not adjudicate moot cases, judicial power being limited to the determination of "actual controversies." Nevertheless, courts will decide a question, otherwise moot, if it is "capable of repetition yet evading review."[19] The case at bar is one such case, since prior events (the May 1, 2001 incident when the Pres also declared a state of rebellion) prove that it can be repeated.

3. YES. *S18, Art 7* grants the President, as Commander-in-Chief, a "sequence" of "graduated power[s]." From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare martial law. In the exercise of the latter two powers, the Constitution requires the concurrence of two conditions, namely, an actual invasion or rebellion, and that public safety requires the exercise of such power. However, as we observed in Integrated Bar of the *Philippines v. Zamora*, "[t]hese conditions are not required in the exercise of the calling out power. The only criterion is that 'whenever it becomes necessary,' the President may call the armed forces 'to prevent or suppress lawless violence, invasion or rebellion.'"Nevertheless, it is equally true that S18, Art7 does not expressly prohibit the President from declaring a state of rebellion. Note that the Constitution vests the President not only with Commander-in-Chief powers but, first and foremost, with Executive powers. The ponencia then traced the evolution of executive power in the US (Jackson and the South Carolina situation, Lincoln and teh 'war powers', Cleveland in In re: Eugene Debs) in an effort to show that "the Commander-in-Chief powers are broad enough as it is and become more so when taken together with the provision on executive power and the presidential oath of office. Thus, the plenitude of the powers of the presidency equips the occupant with the means to address exigencies or threats which undermine the very existence of government or the integrity of the State." This, plus *Marcos v Manglapus* on residual powers, the *Rev Admin Code S4, Ch2, Bk3* on the executive power of

the Pres to declare a certain status, argue towards the validity of the proclamation. However, the Court maintains that the declaration is devoid of any legal significance for being superflous. Also, the mere declaration of a state of rebellion cannot diminish or violate constitutionally protected rights. if a state of martial law does not suspend the operation of the Constitution or automatically suspend the privilege of the writ of habeas corpus,[61] then it is with more reason that a simple declaration of a state of rebellion could not bring about these conditions. Apprehensions that the military and police authorities may resort to warrantless arrests are likewise unfounded.In *Lacson vs. Perez*, supra, majority of the Court held that "[i]n quelling or suppressing the rebellion, the authorities may only resort to warrantless arrests of persons suspected of rebellion, as provided under *Section 5, Rule 113 of the Rules of Court*,[63] if the circumstances so warrant. The warrantless arrest feared by petitioners is, thus, not based on the declaration of a 'state of rebellion.'"[64] In other words, a person may be subjected to a warrantless arrest for the crime of rebellion whether or not the President has declared a state of rebellion, so long as the requisites for a valid warrantless arrest are present.The argument that the declaration of a state of rebellion amounts to a declaration of martial law and, therefore, is a circumvention of the report requirement, is a leap of logic. There is no illustration that the President has attempted to exercise or has exercised martial law powers. Finally, Nor by any stretch of the imagination can the declaration constitute an indirect exercise of emergency powers, which exercise depends upon a grant of Congress pursuant to *S23 (2), Art6* of the Constitution.The petitions do not cite a specific instance where the President has attempted to or has exercised powers beyond her powers as Chief Executive or as Commander-in-Chief. The President, in declaring a state of rebellion and in calling out the armed forces, was merely exercising a wedding of her Chief Executive and Commander-in-Chief powers. These are purely executive powers, vested on the President by *S1 & 18, Art7*, as opposed to the delegated legislative powers contemplated by *Section 23 (2), Article VI.*

Pimentel vs. Exec. Sec.

** *no digest for this case so I just copied the whole case since this is Prof. Roque's case which is of course a favorite.*

PUNO *J.*:

This is a petition for *mandamus* filed by petitioners to compel the o ffice of the Executive Secretary and the Department of Foreign Affairs to transmit the signed copy of the Rome Statute of the International Criminal Court to the Senate of the Philippines for its concurrence in accordance with Section 21, Article VII of the 1987 Constitution.

The Rome Statute established the International Criminal Court which "shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern xxx and shall be complementary to the national criminal jurisdictions."[1] Its jurisdiction covers the crime of genocide, crimes against humanity, war crimes and the crime of aggression as defined in the Statute.[2] The Statute was opened for signature by all states in Rome on July 17, 1998 and had remained open for signature until December 31, 2000 at the United Nations Headquarters in New York. The Philippines signed the Statute on December 28, 2000 through *Charge d' Affairs* Enrique A. Manalo of the Philippine Mission to the United Nations.[3] Its provisions, however, require that it be subject to ratification, acceptance or approval of the signatory states.[4]

Petitioners filed the instant petition to compel the respondents — the Office of the Executive Secretary and the Department of Foreign Affairs — to transmit the signed text of the treaty to the Senate of the Philippines for ratification.

It is the theory of the petitioners that ratification of a treaty, under both domestic law and international law, is a function of the Senate. Hence, it is the duty of the executive department to transmit the signed copy of the Rome Statute to the Senate to allow it to exercise its discretion with respect to ratification of treaties. Moreover, petitioners submit that the Philippines has a ministerial duty to ratify the Rome Statute under treaty law and customary international law. Petitioners invoke the Vienna Convention on the Law of Treaties enjoining the states to refrain from acts which would defeat the object and purpose of a treaty when they have signed the treaty prior to ratification unless they have made their intention clear not to become parties to the treaty.[5]

The Office of the Solicitor General, commenting for the respondents, questioned the standing of the petitioners to file the instant suit. It also contended that the petition at bar violates the rule on hierarchy of courts. On the substantive issue raised by petitioners, respondents argue that the executive department has no duty to transmit the Rome Statute to the Senate for concurrence.

A petition for *mandamus* may be filed when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.[6] We have held that to be given due course, a petition for *mandamus* must have been instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board or person which unlawfully excludes said party from the enjoyment of a legal right. The petitioner in every case must therefore be an aggrieved party in the sense that he possesses a clear legal right to be enforced and a direct interest in the duty or act to be performed.[7] The Court will exercise its power of judicial review only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question. "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the government act that is being challenged. The term "interest" is material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[8]

The petition at bar was filed by Senator Aquilino Pimentel, Jr. who asserts his legal standing to file the suit as member of the Senate; Congresswoman Loretta Ann Rosales, a member of the House of Representatives and Chairperson of its Committee on Human Rights; the Philippine Coalition for the Establishment of the International Criminal Court which is composed of individuals and corporate entities dedicated to the Philippine ratification of the Rome Statute; the Task Force Detainees of the Philippines, a juridical entity with the avowed purpose of promoting the cause of human rights and human rights victims in the country; the Families of Victims of Involuntary Disappearances, a juridical entity duly organized and existing pursuant to Philippine Laws with the avowed

purpose of promoting the cause of families and victims of human rights violations in the country; Bianca Hacintha Roque and Harrison Jacob Roque, aged two (2) and one (1), respectively, at the time of filing of the instant petition, and suing under the doctrine of inter-generational rights enunciated in the case of **Oposa vs. Factoran, Jr.**;[9] and a group of fifth year working law students from the University of the Philippines College of Law who are suing as taxpayers.

The question in standing is whether a party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[10]

We find that among the petitioners, only Senator Pimentel has the legal standing to file the instant suit. The other petitioners maintain their standing as advocates and defenders of human rights, and as citizens of the country. They have not shown, however, that they have sustained or will sustain a direct injury from the non-transmittal of the signed text of the Rome Statute to the Senate. Their contention that they will be deprived of their remedies for the protection and enforcement of their rights does not persuade. The Rome Statute is intended to complement national criminal laws and courts. Sufficient remedies are available under our national laws to protect our citizens against human rights violations and petitioners can always seek redress for any abuse in our domestic courts.

As regards Senator Pimentel, it has been held that "to the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution."[11] Thus, legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators. The petition at bar invokes the power of the Senate to grant or withhold its concurrence to a treaty entered into by the executive branch, in this case, the Rome Statute. The petition seeks to order the executive branch to transmit the copy of the treaty to the Senate to allow it to exercise such authority. Senator Pimentel, as member of the institution, certainly has the legal standing to assert such authority of the Senate.

We now go to the substantive issue.

The core issue in this petition for *mandamus* is whether the Executive Secretary and the Department of Foreign Affairs have a **ministerial** duty to transmit to the Senate the copy of the Rome Statute signed by a member of the Philippine Mission to the United Nations even without the signature of the President.

We rule in the negative.

In our system of government, the President, being the head of state, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations.[12] As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs. Hence, the President is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations.[13] In the realm of treaty-making, the President has the sole authority to negotiate with other states.

Nonetheless, while the President has the sole authority to negotiate and enter into treaties, the Constitution provides a limitation to his power by requiring the concurrence of 2/3 of all the members of the Senate for the validity of the treaty entered into by him. Section 21, Article VII of the 1987 Constitution provides that "no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." The 1935 and the 1973 Constitution also required the concurrence by the legislature to the treaties entered into by the executive. Section 10 (7), Article VII of the 1935 Constitution provided:

> Sec. 10. (7) The President shall have the power, with the concurrence of two-thirds of all the Members of the Senate, to make treaties xxx.

Section 14 (1) Article VIII of the 1973 Constitution stated:

> Sec. 14. (1) Except as otherwise provided in this Constitution, no treaty shall be valid and effective unless concurred in by a majority of all the Members of the Batasang Pambansa.

The participation of the legislative branch in the treaty-making process was deemed essential to provide a check on the executive in the field of foreign relations.[14] By requiring the concurrence of the legislature in the treaties entered into by the President, the Constitution ensures a healthy system of checks and balance necessary in the nation's pursuit of political maturity and growth.[15]

In filing this petition, the petitioners interpret Section 21, Article VII of the 1987 Constitution to mean that the power to ratify treaties belongs to the Senate.

We disagree.

Justice Isagani Cruz, in his book on International Law, describes the treaty-making process in this wise:

> The usual steps in the treaty-making process are: negotiation, signature, ratification, and exchange of the instruments of ratification. The treaty may then be submitted for registration and publication under the U.N. Charter, although this step is not essential to the validity of the agreement as between the parties.
>
> *Negotiation* may be undertaken directly by the head of state but he now usually assigns this task to his authorized representatives. These representatives are provided with credentials known as full powers, which they exhibit to the other negotiators at the start of the formal discussions. It is standard practice for one of the parties to submit a draft of the proposed treaty which, together with the counter-proposals, becomes the basis of the subsequent negotiations. The negotiations may be brief or protracted, depending on the issues involved, and may even "collapse" in case the parties are unable to come to an agreement on the points under consideration.
>
> If and when the negotiators finally decide on the terms of the treaty, the same is opened for *signature*. This step is primarily intended as a means of authenticating the instrument and for the purpose of symbolizing the good faith of the parties; but, significantly, **it does not indicate the final consent of the state in cases where ratification of the treaty is required**. The document is ordinarily signed in accordance with the *alternat*, that is, each of the several negotiators is allowed to sign first on the copy which he will bring home to his own state.

Ratification, which is the next step, is the formal act by which a state confirms and accepts the provisions of a treaty concluded by its representatives. **The purpose of ratification is to enable the contracting states to examine the treaty more closely and to give them an opportunity to refuse to be bound by it should they find it inimical to their interests. It is for this reason that most treaties are made subject to the scrutiny and consent of a department of the government other than that which negotiated them**.

x x x

The last step in the treaty-making process is the *exchange of the instruments of ratification*, which usually also signifies the effectivity of the treaty unless a different date has been agreed upon by the parties. Where ratification is dispensed with and no effectivity clause is embodied in the treaty, the instrument is deemed effective upon its signature.[16] [*emphasis supplied*]

Petitioners' arguments equate the signing of the treaty by the Philippine representative with ratification. It should be underscored that the signing of the treaty and the ratification are two separate and distinct steps in the treaty-making process. As earlier discussed, the signature is primarily intended as a means of authenticating the instrument and as a symbol of the good faith of the parties. It is usually performed by the state's authorized representative in the diplomatic mission. Ratification, on the other hand, is the formal act by which a state confirms and accepts the provisions of a treaty concluded by its representative. It is generally held to be an executive act, undertaken by the head of the state or of the government.[17] Thus, Executive Order No. 459 issued by President Fidel V. Ramos on November 25, 1997 provides the guidelines in the negotiation of international agreements and its ratification. It mandates that after the treaty has been signed by the Philippine representative, the same shall be transmitted to the Department of Foreign Affairs. The Department of Foreign Affairs shall then prepare the ratification papers and forward the signed copy of the treaty to the President for ratification. After the President has ratified the treaty, the Department of Foreign Affairs shall submit the same to the Senate for concurrence. Upon receipt of the concurrence of the Senate, the Department of Foreign Affairs shall comply with the provisions of the treaty to render it effective. Section 7 of Executive Order No. 459 reads:

> **Sec. 7. Domestic Requirements for the Entry into Force of a Treaty or an Executive Agreement.** — The domestic requirements for the entry into force of a treaty or an executive agreement, or any amendment thereto, shall be as follows:
>
> A. Executive Agreements.
>
> i. All executive agreements shall be transmitted to the Department of Foreign Affairs after their signing for the preparation of the ratification papers. The transmittal shall include the highlights of the agreements and the benefits which will accrue to the Philippines arising from them.
>
> ii. The Department of Foreign Affairs, pursuant to the endorsement by the concerned agency, shall transmit the agreements to the President of the Philippines for his ratification. The original signed instrument of ratification shall then be returned to the Department of Foreign Affairs for appropriate action.
>
> B. Treaties.
>
> i. All treaties, regardless of their designation, shall comply with the requirements provided in sub-paragraph[s] 1 and 2, item A (Executive Agreements) of this Section. In addition, the Department of Foreign Affairs shall submit the treaties to the Senate of the Philippines for concurrence in the ratification by the President. A certified true copy of the treaties, in such numbers as may be required by the Senate, together with a certified true copy of the ratification instrument, shall accompany the submission of the treaties to the Senate.
>
> ii. Upon receipt of the concurrence by the Senate, the Department of Foreign Affairs shall comply with the provision of the treaties in effecting their entry into force.

Petitioners' submission that the Philippines is bound under treaty law and international law to ratify the treaty which it has signed is without basis. The signature does not signify the final consent of the state to the treaty. It is the ratification that binds the state to the provisions thereof. In fact, the Rome Statute itself requires that the signature of the representatives of the states be subject to ratification, acceptance or approval of the signatory states. Ratification is the act by which the provisions of a treaty are formally confirmed and approved by a State. By ratifying a treaty signed in its behalf, a state expresses its willingness to be bound by the provisions of such treaty. After the treaty is signed by the state's representative, the President, being accountable to the people, is burdened with the responsibility and the duty to carefully study the contents of the treaty and ensure that they are not inimical to the interest of the state and its people. Thus, the President has the discretion even after the signing of the treaty by the Philippine representative whether or not to ratify the same. The Vienna Convention on the Law of Treaties does not contemplate to defeat or even restrain this power of the head of states. If that were so, the requirement of ratification of treaties would be pointless and futile. It has been held that a state has no legal or even moral duty to ratify a treaty which has been signed by its plenipotentiaries.[18] There is no legal obligation to ratify a treaty, but it goes without saying that the refusal must be based on substantial grounds and not on superficial or whimsical reasons. Otherwise, the other state would be justified in taking offense. [19]

It should be emphasized that under our Constitution, the power to ratify is vested in the President, subject to the concurrence of the Senate. The role of the Senate, however, is limited only to giving or withholding its consent, or concurrence, to the ratification.[20] Hence, it is within the authority of the President to refuse to submit a treaty to the Senate or, having secured its consent for its ratification, refuse to ratify it.[21] Although the refusal of a state to ratify a treaty which has been signed in its behalf is a serious step that should not be taken lightly,[22] such decision is within the competence of the President alone, which cannot be encroached by this Court *via* a writ of *mandamus*. This Court has no jurisdiction over actions seeking to enjoin the President in the performance of his official duties.[23] The Court, therefore, cannot issue the writ of *mandamus* prayed for by the petitioners as it is beyond its jurisdiction to compel the executive branch of the government to transmit the signed text of Rome Statute to the Senate.

IN VIEW WHEREOF, the petition is **DISMISSED**.

:

TAN vs. MACAPAGAL

POE VS. ULLMAN

This case deals with the statute as in Griswold vs. Connecticut where, in this case, two couples and their physician sued the State and its Attorney-General, Ullman, asking the Court to declare the Connecticut statute prohibiting the use of contraceptives unconstitutional under the Fourteenth Amendment..

Facts: Paul and Pauline Poe had three consecutive pregnancies terminating in infants with multiple congenital abnormalities resulting in their death shortly after birth. Because of the great emotional and psychological stress resulting from these deaths, it is Dr. Buxton's opinion that the best and safest medical treatment is to prescribe contraceptives in order to preserve the health of petitioner. On the other hand, Mrs. Doe recently underwent a pregnancy which caused her critical physical illness such that another pregnancy would be exceedingly perilous to her life. Also, their doctor, Dr. Buxton, also joined them in saying that the statute deprived them of liberty and property without due process.

Issue: W/N the allegations raised by petitioners regarding the constitutionality of the Connecticut statute raise a justiciable question before the Court.

Held: No. Petitioners do not allege that appellee, Ullman threatens to prosecute them for their use of or for giving advice regarding contraceptives. The allegations merely state that in the course of his public duty he intends to prosecute any violation of Connecticut law. There is thus no imminent or impending threat of arrest on the petitioners. The Court goes on to say that in the over 75 years of its existence, prosecutions for violation of the statute seems never to have been initiated according to counsel nor the researchers of the Court. Judicial notice was also taken of the fact that contraceptives are readily available in drug stores which invite more the attention of enforcement officials. Given the fact that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed or immediately threatened with harm, by the challenged action, the circumstances of the case do not justify the exercise of judicial power as it lacks the requisites for "case" and "controversy".

Mr. Justice Douglas, dissenting.

Public clinics dispensing birth-control information has been closed down by the State as well as others following the Nelson case which the ponente cited as the test case for the statute. The Court failed to take notice of the fact that several prosecutions for violations of this statute had been initiated in the minor courts. In failing to answer the question of the constitutionality of the statute, in effect the court is asking the people to violate the law and hope that it is not enforced, that they don't get caught which is not a proper choice under the present constitutional system. He then goes on to repeat the arguments in *Griswold* regarding the application of the statute reaching into the intimacies of the marriage relationship forcing search warrants for private bedrooms for its enforcement since what it prohibits is not the sale or manufacture but the use of contraceptives.

U.S vs. RICHARDSON

BURGER, C. J., +4 concurring, 4 dissented

FACTS:
Respondent attempted to obtain from the Gov't information concerning detailed expenditures of the CIA. He wrote to the Government Printing Office and requested that he be provided with the documents published by the Government in compliance with Art I, sec 9, cl (7) of the US Constitution:

> "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

insofar as that clause requires a regular statement and account of public funds.

The Fiscal Service of the Bureau of Accounts of the Department of the Treasury replied, explaining that it published the document known as the Combined Statement of Receipts, Expenditures, and Balances of the US Gov't. Several copies of the monthly and daily reports of the office were sent with the letter. Respondent also inquired as to how he could receive further information on the expenditures of the CIA. The Bureau of Accounts replied stating that it had no other available information.

Respondent asked the federal court to declare unconstitutional a provision of the CIA Act which permits the CIA to account for its expenditures "solely on the certificate of the Director ". The only injury alleged by respondent was that he cannot obtain a document that sets out the expenditures and receipts of the CIA but on the contrary was asked to accept a fraudulent document. District Court dismissed the case for lack of standing.

The CA en banc with three judges dissenting, reversed, holding that the respondent had standing. The majority relied on Flast v. Cohen, and its two-tier test.

While noting that the respondent did not directly attack an appropriations act, as did the plaintiff in Flast, the CA concluded that the CIA statute challenged by the respondent was "integrally related," to his ability to challenge the appropriations since he could not question an appropriation about which he had no knowledge. The CA seemed to rest its holding on an assumption that this case was a prelude to a later case challenging, on the basis of information obtained in this suit, some particular

appropriation for or expenditure of the CIA; respondent stated no such an intention in his complaint.

ISSUES: WON respondent is a proper and appropriate party to invoke federal judicial power with respect to the issues raised.

HELD: NO, he has no standing. (case is not ripe for adjudication)

RATIO:

Standing Issue:

Precedents:

Flast v. Cohen is a starting point in an examination of respondent's claim to prosecute this suit as a taxpayer, that case must be read with reference to its principal predecessor, Frothingham v. Mellon.

Frothingham: Denied standing on the "comparatively minute, remote, fluctuating and uncertain" impact on the taxpayer, and the failure to allege the kind of direct injury required for standing.

Flast: held that a "taxpayer will have standing consistent with Art III to invoke judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power."

Court made clear it in Flast that it was reaffirming the principle of Frothingham precluding a taxpayer's use of "a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System."

Application of Doctrines:

It is held in Flast that a "fundamental aspect of standing" is that it focuses primarily on the party seeking to get his complaint before the federal court rather than "on the issues he wishes to have adjudicated," it made equally clear that in ruling on taxpayer standing, it is necessary to look to the substantive issues to determine if there is a logical nexus between the status asserted and the claim sought to be adjudicated.

Status Asserted -(nexus)- Claim Sought:
The recital of the respondent's claims and an examination of the statute under attack demonstrate how far he falls short of the standing criteria of Flast and how neatly he falls within the Frothingham. Although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing or spending power, but to the statutes regulating the CIA. That section provides different accounting and reporting requirements and procedures for the CIA, as is also done with respect to other governmental agencies dealing in confidential areas.

Respondent makes no claim that funds are being spent in violation of a specific constitutional limitation upon the taxing and spending power. Rather, he asks the courts to compel the Government to give him information on precisely how the CIA spends its funds. Thus there is no "logical nexus" between the asserted status of taxpayer and the claimed failure of the Congress to require the Executive to supply a more detailed report.

Ripeness Issue:

Respondent's claim: without detailed information on CIA expenditures, he cannot intelligently follow the actions of Congress or the Executive, nor can he properly fulfill his obligations as a member of the electorate in voting for candidates seeking national office.

SC says: This is surely the kind of a generalized grievance described in both Frothingham and Flast since the impact on him is plainly undifferentiated and common to all members of the public. He has not alleged that, as a taxpayer, he is in danger of suffering any particular concrete injury as a result of the operation of this statute.

Sierra Club v. Morton: "A mere `interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization `adversely affected' or `aggrieved' within the meaning of the APA."

In the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process.

The Constitution created a representative Government, not an Athenian Democracy, with the representatives directly responsible to their constituents during election periods.

S

DEFUNIS vs. ODEGAARD

FACTS:
Marco Defunis applied for admission at University of Washington Law School of w/c Charles Odegaard is president. DeFunis was denied admission. He then commenced with this suit contending that the procedures and criteria will be employed by the admissions committee discriminated against him because of race in violation of the Equal Protection clause. He brought the suit on behalf of himself alone and not as a representative of any class. He asked and the trial court gave a mandatory injunction commanding the Univ to allow to enroll him. He began studies in 1971. On appeal, the Washington SC reversed the trial courts decision. He was in his 2nd year. DeFunis then petitioned the United States SC for a writ of certiorari. The WSC's decision was stayed until final dispostion by the USSC. In the 1st term of his final year, the USSC considered his petition and requested both parties to make a brief on the question of mootness. Respondent claimed that the petitioner had another term for him to enroll therefore the question was not moot. USSC granted petition. The case was finally heard during DeFunis' final term.

Counsel for Respondent made it clear that the petitioners registration will not be abrogated regardless of USSC determination.

Issue: Is the case moot?

Ratio:
"Federal courts are w/o power to decide questions that cannot affect the right of litigants before them" (this doctrine stems from Consti that judicial power can only be exercised when there exists an actual case or controversy) All parties agree that DeFunis will be allowed to complete his term and graduate.
Therefore, the case is moot.

Rationale:
A USSC deision would no longer be necessary to compel the result nor prevent it. The controvrsy between the parties is no longer "definite and concrete" and "no longer touches the legal relations of parties having adverse interests".
Defunis suit is not a class action; his only remedy was that he be admitted. He already had that remedy and is in his final term. It does not matter that there admission policy issues involved. DeFunis will no longer be affected.

Doctrine of "mere voluntary cessation of allegedly illegal conduct does not moot case" is irrelevant because mootness arose from the fact that Defunis is in his final term, not the unilateral change in admissions procedure.

Doctrine of "capable of repetition, yet evading review" also irrelevant because Defunis will never again be required to enter admission processes. The issue will never be raised again in review. If admissions procedures are left unchanged, there is no reason to suppose that a subsequent case will not come to court. This is not exception to doctrine in Southern Pacific Terminal Co v ICC; actual controversy must exist at stages of appelate or certiorari review, and not simply at the date the action is initiated.

DISPOSITION: WSC decision vacated, case remanded for such poceedings necessary

DISSENTS:
Douglas: does not address issue of mootness directly. Discusses admissions policy. Argues for remanding of case to determine if LSAT exam should be eliminated for racial minorities because of it's inherent discriminatory white man viewpoint

Brennan: case is not moot bec something might happen to cause Defunis to miss final term, thus he will have to enter admission processes again. "Voluntary cessation" doctrine relevant bec university implied no concession that admission policy is unlawful. university allowed only that
petitioner will be allowed to complete this term. respondent did not demonstrate that there was not even a mere possibility that the petitioner would once again be subject to the challenged admissions policy. respondent free to return to their old ways (the challenged policy).

Requirements for ripeness present because of case's history (procedural facts). Reqirements are "questions are framed with necessary specificity, issues will be contested with necessary adverseness, litigation will be pursued with
necessary vigor, to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution.

Mooting the case disserve public interest. Many people are affected and are involved with 26 amicus curiae briefs. This issue will be raised again and again until SC decides. Avoidance of repetitious litigation serves public interest, and this case's inevitability counsels that SC should decide
on it now.

I. DUE PROCESS CLAUSE

Consti. Art. III, sec. 1

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

A. Procedural Due Process

BANCO ESPANOL FILIPINO vs. PALANCA

STREET, J +4 concurred, 1 dissent

FACTS: (note: not in Bernas)
This action was instituted by "El Banco Espanol-Filipino" to foreclose a mortgage upon property situated in the city of Manila. The mortgage was executed by the original defendant herein, Engracio Palanca Tanquinyeng, as security for a debt owing by him to the bank.

After the execution of this instrument by Tanquinyeng, he returned to China and he there died.

As Tanquinyeng was a nonresident at the time, it was necessary for the bank in the foreclosure proceeding to give notice to Tanquinyeng by publication pursuant to sec 399 of the Code of Civil Procedure. Publication was made in a newspaper of Manila. The court also directed the clerk of court to deposit in the post office a copy of the summons and complaint directed to Tanquinyeng at his last place of residence, the city of Amoy, China pursuant to the same provision.

Sec. 399,Code of Civil Procedure:

> In case of publication, where the residence of a nonresident or absent defendant is known, the judge must direct a copy of the summons and complaint to be forthwith deposited by the clerk in the post-office, postage prepaid, directed to the person to be served, at his place of residence

Whether the clerk complied with this order does not affirmatively appear.

The case proceeded in the CFI, and the defendant not having appeared, judgment was taken against him by default.

July 3, 1908, decision was rendered in favor of the bank.

It was ordered that the Tnaquinyeng should deliver amount owed to the clerk of the court, and it was declared that in case of failure to satisfy the judgment, the mortgage property should be exposed to public sale. The payment contmeplated in said order was never made.

Court ordered the sale of the property which was bought in by the bank.

7 years after confirmation of sale, motion was made by Vicente Palanca, as administrator of Tanquinyeng, requesting the court to set aside the order of default and the judgment rendered upon July 3, 1908, and to vacate all the proceedings subsequent thereto.

Basis of motion: that the order of default and the judgment rendered thereon were void because the court had never acquired jurisdiction over the defendant or over the subject of the action.

The motion was denied.

ISSUES:
Assume that the clerk of court failed to mail the papers which he was directed to send to the defendant in Amoy

1) WON the court acquired the necessary jurisdiction to enable it to proceed with the foreclosure of the mortgage. YES
2) WON those proceedings were conducted in such manner as to constitute due process of law. YES

RATIO:

1. (note: not in Bernas)
"jurisdiction," may have reference
   (1) to the authority of the court to entertain a particular kind of action or to administer a particular kind of relief, or it may refer to the power of the court over the parties, or
   (2) over the property which is the subject to the litigation.

Jurisdiction over the person is acquired by the voluntary appearance of a party in court and his submission to its authority, or it is acquired by the coercive power of legal process exerted over the person.

Jurisdiction over the property which is the subject of the litigation may result either from a seizure of the property under legal process, whereby it is brought into the actual custody of the law, or it may result from the institution of legal proceedings wherein the power of the court over the property is recognized and made effective.

In this Case:
Tanquinyeng is a nonresident and, remaining beyond the range of the personal process of the court, refuses to come in voluntarily, the court never acquires jurisdiction over the person at all. This, however, is not essential.

The property itself is the sole thing which is impleaded and is the responsible object which is the subject of the exercise of judicial power. It follows that the jurisdiction of the court is based exclusively on the power which it possesses over the property.

The jurisdiction over the property based upon the following:
   (1) that the property is located within the district;
   (2) that the purpose of the litigation is to subject the property by sale to an obligation fixed upon it by the mortgage; and
   (3) that the court at a proper stage of the proceedings takes the property into custody, if necessary, and expose it to sale for the purpose of satisfying the mortgage debt.

Given that jurisdiction is exlusively over property, the relief granted by the court must be limited to such as can be enforced against the property itself.

2. (this is the only issue included in Bernas)
Requirement of due process is satisfied if;
   (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it;
   (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding;
   (3) the defendant must be given an opportunity to be heard; and
   (4) judgment must be rendered upon lawful hearing.
Issue in this case concerns (3).

Opportunity to be heard:
In a foreclosure case some notification of the proceedings to the nonresident owner, prescribing the time within which appearance must be made is essential.

To answer this necessity the statutes generally provide for:
   1) publication
   2) personal notice thru mail, if his residence is known

Personal Notice
(aka constructive or substituted service)
- Such notification does not constitute a service of process in any true sense.
- It is merely a means provided by law whereby the owner may be admonished that his property is the subject of judicial proceedings and that it is incumbent upon him to take such steps as he sees fit to protect it.
- This mode of notification does not involve any absolute assurance that the absent owner shall thereby receive actual notice.
- The provision of our law relative to the mailing of notice does not absolutely require the mailing of notice unconditionally and in every event, but only in the case where the defendant's residence is known.

In the light of all these facts, it is evident that actual notice to the defendant in cases of this kind is not, under the law, to be considered absolutely necessary.

Assumption in recognizing the effectiveness of a means of notification which may fall short of actual notice is:
Property is always assumed to be in the possession of its owner, in person or by agent; and he may be safely held, under certain conditions, to be affected with knowledge that proceedings have been instituted for its condemnation and sale.

Right to due process has not been infringed.

(further discussion on the irregularity of the non-performance of the clerk of court of delivering the notice is discussed in the case, but Bernas no longer includes. Procedural crap na ito...)

ANG TIBAY vs. COURT of INDUSTRIAL RELATIONS

Justice Laurel:

A motion for reconsideration was filed by the Sol-Gen in behalf of the respondent Court of Industrial Relations on the case of National Labor Union Inc. praying that their labor case be remanded to the CIR for a new trial.

Petitioner, Ang Tibay has filed an opposition for both the motion for reconsideration of CIR and the motion for a new trial by the National Labor Union.

The National Labor Union's case:

- they alleged that Toribio Teodoro, who dominated the National Workers' Brotherhood of Ang Tibay, made a false claim that there was a shortage of leather soles in ANg Tibay that made it necessary for him to lay off workers, however, claim was unsupported by records of the Bureau of Customs & the accounts of native dealers of leather. Such was just a scheme adopted to systematically discharge all the members of the NLU, inc., from work.
- unfair labor practice for discriminating against the National Labor Union, Inc., and unjustly favoring the National Workers' Brotherhood.
- That the exhibits hereto attached are so inaccessible to the respondents that even with the exercise of due diligence they could not be expected to have obtained them and offered as evidence in the Court of Industrial Relations.
- That the attached documents and exhibits are of such far-reaching importance and effect that their admission would necessarily mean the modification and reversal of the judgment rendered herein.

HELD: motion for reconsideration denied, motion for new trial granted.

Discussion of the Nature of the CIR to emphasize certain guiding principles which should be observed in the trial of cases brought before it.

Court of Industrial Relations – an administrative court

- exercises judicial or quasi-judicial functions in the determination of disputes between employers and employees

- has jurisdiction over the entire Philippines, to consider, investigate, decide, and settle any question, matter controversy or dispute arising between, and/or affecting employers and employees or laborers, and regulate the relations between them, subject to, and in accordance with, the provisions of Commonwealth Act No. 103 (section 1).

There is in reality here a mingling of executive and judicial functions, which is a departure from the rigid doctrine of the separation of governmental powers.

In the case of *Goseco vs. Court of Industrial* Court of Industrial Relations is not **narrowly constrained by technical rules of procedure**, and the Act requires it to **"act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms** and shall not be bound by any technicalities or legal forms and shall **not be bound by any technical rules of legal evidence** but may inform its mind in such manner as it may deem just and equitable." (Section 20, Commonwealth Act No. 103.)

requirements of due process in trials and investigations of an administrative character.

1. right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.

2. tribunal *must consider* the evidence presented.

3. have something to support the decision

4. evidence must be "substantial." - such relevant evidence as a reasonable mind accepts as adequate to support a conclusion." The statute provides that "the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn judicial proceedings would not invalidate the administrative order. But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence

5. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.

Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory, such delegation shall not affect the exercise of the Court itself of any of its powers.

6. The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them.

8.The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it.

The court observed that, except as to the alleged agreement between the Ang Tibay and the National Worker's Brotherhood, the record is barren and does not satisfy the thirst for a factual basis upon which to

predicate, in a national way, a conclusion of law. Therefore, in the interest of justice, a new trial should commence giving the movant the opportunity to present new evidence.

PHILCOMSAT vs. ALCUAZ

Facts:

- By virtue of R.A No. 5514, philcomsat was granted a franchise to establish, construct, maintain and operate in the Philippines, at such places the grantee may select, station or stations and or associated equipment and international satellite communications. under this franchise, it was likewise granted the authority to "construct and operate such ground facilities as needed to deliver telecommunications services from the communications satellite system and the ground terminals.
- The satellite service thus provided by petitioner enable international carriers to serve the public with indespensible communications service
- Under sec. 5 of RA 5514, petitioner was exempt from the jurisdiction of the then Public Service commission. now respondent NTC
- Pursuant EO 196 petitioner was **placed under the jurisdiction and control and regulation** of the respondent NTC
- Respondent NTC ordered the petitoner to apply for the requisite certificate of public convenience and ncessity covering its facilities and the services it renders, as well as the corresponding authority to charge rates
- September 9, 1987, pending hearing, petitioner filed with the NTC an application to continue operating and maintaining its facilities including a provisional authority to continue to provide the services and the charges it was then charging
- September 16, 1988 the petitioner was granted a provisional authority and was valid for 6 months, when the provisional authority expired, it was extended for another 6 months.
- **However the NTC directed the petitioner to charge modified reduced rates through a reduction of 15% on the authorized rates**

Issues:
1. WON EO 546 and EO 196 are unconstitutional on the ground that the same do not fix a standard for the excercise of the power therein conferred? NO
2. WON the questioned order violates Due process because it was issued without notice to petitioner and without the benefit of a hearing? YES
3. WON the rate reduction is confiscatory in that its implementation would virtually result in a cessation of its opeartions and eventual closure of business? YES

Held:
1. a) Fundamental is the rule that delegationof legislative power may be sustained only upon the ground that some standard for its exercise is provided and that the legislature in making the delegation has prescribed tha manner of the execise of the delegated power. Therefore, when the administrative agency concerned, respondent NTC in this case, establishes a rarte, its act must be both non-confiscatory and must have been established in the manner prescribed by the legislature; otherwise , in the absence of a fixed standard, the delegation of power becomes unconstitutional. In case of a delegation of rate-fixing power, the only standard which the legislature is required to prescribe for the [illegible]f the administrative authority is that the rate [illegible]ble and just . However, it has been held that [illegible]e absence of an express requirement as to reasonableness, this standard may be implied.

b) under Sec. 15 EO 546 and Sec. 16 thereof, Respondent NTC, in the exercise of its rate-fixing power, is limited by the requirements of public safety, public interest, reasonamle feasibility and reasonable rates, which conjointly more than satisfy the requirements of a valid delegation of legislative power.

2. a)The function involved in the rate fixing power of the NTC is adjudicatory and hence quasi-judicial, not quasi legislative; thus hearings are necessary and the abscence thereof results in the violation of due process.

b)The Centrak Bank of the Philippines vs. Cloribal "*In so far sa generalization is possible in view of the great variety of administrative proceedings, it may be stated as a general rule that the notice and hearing are not essential to the validity of administrative action where the administrative body acts in the excercise of executive, administrative, or legislative functions; but where public adminitartive body acts in a judicial or quasi-judicial matter, and its acts are particular and immediate rather than general and prospective, the person whoe rights or property may be affected by the action is entitiled to notice and hearing*"

c)Even if respondents insist that notice of hearing are not necessary since the assailed order is merely incidental to the entire proceedings and therefore temporary in nature, it is still mot exempt from the statutory procedural requirements of notice and hearing as well as the requirement o reasonableness.

d.) it is thus clear that with regard to rate-fixing, respondent has no authority to make such order without first giving petitioner a hearing, whether the order the be temporary or permanent, and it is immaterial wheter the same is made upon a complaint, a summary ivestigation, or upon the comissions own motion.

3. a.) What the petitioner has is a grant or privelege granted by the State and may revoke it at will there is no question in that, however such grant cannot be unilaterally revoked absent a showing that the termination of the opeartion of said utility is required by common good. The rule is that the power of the State to regulate the conduct and business of public utilities is limited by the consideration that it is not the owner of the property of the utility, or clothed with the general power of management incident to ownership, since the private right of ownership to such property remains and is not to be destroyed by the regulatory power. The power to regulate is not the power to destroy useful and harmless enterprises, but is the power to protect, foster, promote, preserve, and control with due regard for the interest, first and foremost, of the public, then of the utility and its patrons. any regulation, therefore, which operates as an effective confiscation of private property or constitutes an arbitrary or unreasonable infringerement of property rights is void, because it is

repugnant to the constitutional guaranties of due process and equal protection of the laws.

b.) A cursory persual of the assailed order reveals that the rate reduction is solely and primarily based on the initial evaluation made on the financial statements of petitioner, contrary to respondent NTC's allegation that it has several other sources. Further more, it did not as much as make an attempt to elaborate on how it arrived at the prescribed rates. It just perfunctorily declared that based on the financial statements, there is merit for a rate reduction without any elucidation on what implifications and conclutions were necessariy inferred by it from said staements. Nor did it deign to explain how the data reflected in the financial statements influenced its decision to impose rate reduction.

c.) The challenged order, particularly on the rates proprovide therin, being violative of the due process clause is void and should be nullified.

ATENEO vs. COURT of APPEALS

Facts
Carmelita Mateo, a waitress inside the university charged Juan Ramon Guanzon, a boarder and first year student of the university with unbecoming conduct committed on December 12, 1967 at about 5:15 in the evening at the Cervini Hall's cafeteria

"Mr. Guanzon, a boarder at Cervini ... was asking for 'siopao.' I was at the counter and I told him that the 'siopao' had still to be heated and asked him to wait for a while. Then Mr. Guanzon started mumbling bad words directed to me, in the hearing presence of other boarders. I asked him to stop cursing, and he told me that was none of my business. Since he seemed impatient, I was going to give back his money without any contempt. He retorted that he did not like to accept the money. He got madder and started to curse again. Then he threatened to strike me with his fist. I tried to avoid this. But then he actually struck me in my left temple. Before he could strike again, his fellow boarders held him and Dr. Bella and Leyes coaxed him to stop; I got hold of a bottle so I could dodge him. It was then that Fr. Campbell arrived. The incident was hidden from Fr. Campbell by the boarders. I could not tell him myself as I had gone into the kitchen crying because I was hurt."

The university conducted an investigation of the slapping incident. Based on the investigation results, Juan Ramon was dismissed from the university. This triggered the filing of a complaint for damages by his parents against the university in the then Court of First Instance of Negros Occidental at Bacolod City. The complaint states that Juan Ramon was expelled from school without giving him a fair trial in violation of his right to due process and that they are prominent and well known residents of Bacolod City, with the unceremonious expulsion of their son causing them actual, moral, and exemplary damages as well as attorney's fees.

In its answer, the university denied the material allegations of the complaint and justified the dismissal of Juan Ramon on the ground that his unbecoming behavior is contrary to good morals, proper decorum, and civility, that such behavior subjected him as a student to the university's disciplinary regulations' action and sanction and that the university has the sole prerogative and authority at any time to drop from the school a student found to be undesirable in order to preserve and maintain its integrity and discipline so indispensable for its existence as an institution of learning.

After due trial, the lower court ruled in favor of the Guanzons and ordered the university to pay them P92.00 (actual damages); P50,000.00 (moral damages); P5,000.00 (attorney's fees) and to pay the costs of the suit.

Upon appeal to the Court of Appeals by the university, the trial court's decision was initially reversed and set aside. The complaint was dismissed.

However, upon motion for reconsideration filed by the Guanzons, the appellate court reversed its decision and set it aside through a special division of five. In the resolution issued by the appellate court, the lower court's decision was reinstated. The motion for reconsideration had to be referred to a special division of five in view of the failure to reach unanimity on the resolution of the motion, the vote of the regular division having become 2 to 1.

The petitioner now asks to review and reverse the resolution of the division of five

Issues:
1. WON Juan Ramon Guanzon was not accorded due process of law
2. WON respondent’s complaint for recovery of damages was premature because administrative remedies have not yet been exhausted
3. WON private respondents are entitled to damages

Holding:
No, he was accorded due process
No, complaint was not premature
No, there is no basis for recovery of damages
Petition granted in favor of Ateneo. CA ruling reversed.

Ratio
1.
Exceptions to the rule on finality of factual findings of trial courts and administrative agencies

The appellate court resolution invoked the rule that findings of facts by administrative officers in matters falling within their competence will not generally be reviewed by the courts, and the principle that findings of facts of the trial court are entitled to great weight and should not be disturbed on appeal.

The court does not agree. The statement regarding the finality given to factual findings of trial courts and administrative tribunals is correct as a general principle. However, it is subject to well established exceptions. Factual findings of trial courts are disregarded when - (1) the conclusion is a finding grounded on speculations, surmises, and conjectures; (2) the inferences made are

manifestly mistaken, absurd, or impossible; (3) there is a grave abuse of discretion; (4) there is a misapprehension of facts; and (5) the court, in arriving at its findings, went beyond the issues of the case and the same are contrary to the admissions of the parties or the evidence presented.

A similar rule applies to administrative agencies. By reason of their special knowledge and expertise, we ordinarily accord respect if not finality to factual findings of administrative tribunals. However, there are exceptions to this rule and judicial power asserts itself whenever (1) the factual findings are not supported by evidence; (2) where the findings are vitiated by fraud, imposition, or collusion; (3) where the procedure which led to the factual findings is irregular; (4) when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest

Why he is deemed to have been accorded due process
(note: for 9 steps taken by school are enumerated in p. 106-107)

When the letter-complaint was read to Juan Ramon, he admitted the altercation with the waitress and his slapping her on the face. Rev. Welsh (Dean of men) did not stop with the admission. He interviewed Eric Tagle, Danny Go, Roberto Beriber, and Jose Reyes, friends of Juan Ramon who were present during the incident.

The Board of Discipline was made up of distinguished members of the faculty -Fr. Francisco Perez, Biology Department Chairman; Dr. Amando Capawan, a Chemistry professor; Assistant Dean Piccio of the College; and Dr. Reyes of the same College. There is nothing in the records to cast any doubt on their competence and impartiality insofar as this disciplinary investigation is concerned.

Juan Ramon himself appeared before the Board of Discipline. He admitted the slapping incident, then begged to be excused so he could catch the boat for Bacolod City. Juan Ramon, therefore, was given notice of the proceedings; he actually appeared to present his side; the investigating board acted fairly and objectively; and all requisites of administrative due process were met.

The claim that there was no due process because the private respondents, the parents of Juan Ramon were not given any notice of the proceedings will also not stand. Juan Ramon, who at the time was 18 years of age, was already a college student, intelligent and mature enough to know his responsibilities. In fact, in the interview with Rev. Welsh, he even asked if he would be expelled because of the incident. He was fully cognizant of the gravity of the offense he committed. When informed about the December 19, 1967 meeting of the Board of Discipline, he was asked to seek advice and assistance from his guardian and or parents. Juan Ramon is assumed to have reported this serious matter to his parents. The fact that he chose to remain silent and did not inform them about his case was not the fault of the petitioner university.

Moreover, notwithstanding the non-participation of the private respondents, the university, as stated earlier, undertook a fair and objective investigation of the slapping incident. Due process in administrative proceedings also requires consideration of the evidence presented and the existence of evidence to support the decision (Halili v. Court of Industrial Relations, 136 SCRA 112).

Carmelita Mateo was not entirely blameless for what happened to her because she also shouted at Juan Ramon and tried to hit him with a cardboard box top, but this did not justify Juan Ramon's slapping her in the face. The evidence clearly shows that the altercation started with Juan Ramon's utterance of the offensive language "bilat ni bay," an Ilongo phrase which means sex organ of a woman. It was but normal on the part of Mateo to react to the nasty remark. Moreover, Roberto Beriber, a friend of Juan Ramon who was present during the incident told Rev. Welsh during the investigation of the case that Juan Ramon made threatening gestures at Mateo prompting her to pick up a cardboard box top which she threw at Juan Ramon. The incident was in public thus adding to the humiliation of Carmelita Mateo. *There was "unbecoming conduct" and pursuant to the Rules of Discipline and Code of Ethics of the university, specifically under the 1967-1969 Catalog containing the rules and academic regulation (Exhibit 19), this offense constituted a ground for dismissal from the college. The action of the petitioner is sanctioned by law. Section 107 of the Manual of Regulations for Private Schools recognizes violation of disciplinary regulations as valid ground for refusing re-enrollment of a student (Tangonan v. Paño, 137 SCRA 245).*

Before Juan Ramon was admitted to enroll, he received (1) the College of Arts and Sciences Handbook containing the general regulations of the school and the 1967-1969 catalog of the College of Arts and Sciences containing the disciplinary rules and academic regulations and (2) a copy of the Rules and Regulations of the Cervini-Elizo Halls of the petitioner university one of the provisions of which is as follows: under the title "Dining Room" -"The kitchen help and server should always be treated with civility." Miss Mateo was employed as a waitress and precisely because of her service to boarders, not to mention her sex, she deserved more respect and gracious treatment.
The petitioner is correct in stating that there was a serious error of law in the appellate court's ruling on due process.

2.
The petitioner raises the issue of "exhaustion of administrative remedies" in view of its pending appeal from the decision of the Ministry of Education to the President of the Philippines. It argues that the private respondents' complaint for recovery of damages filed in the lower court was premature.

The issue raised in court was whether or not the private respondents can recover damages as a result of the dismissal of their son from the petitioner university. This is a purely legal question and nothing of an administrative nature is to or can be done. The case was brought pursuant to the law on damages provided in the Civil Code. The jurisdiction to try the case belongs to the civil courts.

3.
There is no basis for the recovery of damages. Juan Ramon was afforded due process of law. The penalty is based on reasonable rules and regulations applicable to all students guilty of the same offense. He never was out

of school. Before the decision could be implemented, Juan Ramon asked for an honorable dismissal which was granted. He then enrolled at the De la Salle University of Bacolod City and later transferred to another Jesuit school. Moreover, his full and complete tuition fees for the second semester were refunded through the representation of Mr. Romeo Guanzon, Juan Ramon's father.

There was no bad faith on the part of the university. In fact, the college authorities deferred any undue action until a definitive decision had been rendered. The whole procedure of the disciplinary process was get up to protect the privacy of the student involved. There is absolutely no indication of malice, fraud, and improper or wilful motives or conduct on the part of the Ateneo de Manila University in this case.

ALCUAZ vs. PSBA

Justice Paras:

Facts:

- Students and some teachers of PSBA rallied and barricaded the school because they wanted to admin to hear their grievances with regards to "not being able to participate in the policy-making of the school", despite the regulations set by the admin with regards to protest actions
- During the regular enrollment period, petitioners and other students similarly situated were allegedly blacklisted and denied admission for the second semester of school year 1986-1987.
- court ordered the school authorities to create a special investigating committee to conduct an investigation, who made recommendations which the school adopted
- a lot of procedural crap, petitioners and respondents filing and answering the complaints
- petitioners claim that they have been deprived of due process when they were barred from re-enrollment and for intervenors teachers whose services have been terminated as faculty members, on account of their participation in the demonstration or protest charged by respondents as "anarchic" rallies, and a violation of their constitutional rights of expression and assembly.
- Petitioners allege that they have been deprived of procedural due process which requires that there be due notice and hear hearing and of substantive due process which requires that the person or body to conduct the investigation be competent to act and decide free from bias or prejudice.

ISSUE:

A. Whether or not there has been deprivation of due process ?

B. WON there was contempt of Court by the respondents

HELD:

A. NO. there was no deprivation of due process.

1. There is no existing contract between the two parties. Par 137 of Manual of Regulations for Private Schools states that when a college student registers in a school, it is understood that he is enrolling for the entire semester. Likewise, it is provided in the Manual, that the "written contracts" required for college teachers are for 'one semester. after the close of the first semester, the PSBA-QC no longer has any existing contract either with the students or with the intervening teachers. It is a time-honored principle that contracts are respected as the law between the contracting parties The **contract having been terminated, there is no more contract to speak of.** The **school cannot be compelled to enter into another contract with said students and teachers**. "The courts, be they the original trial court or the appellate court, have no power to make contracts for the parties."

2. The Court has stressed, that **due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice.**

Standards of procedural due process are:

a. the students must be **informed in writing** of the nature and cause of any accusation against them;
b. they shall have the **right to answer the charges** against them, with the assistance of counsel, if desired:
c. they shall be **informed of the evidence** against them;
d. they shall have the **right to adduce evidence** in their own behalf and
e.the **evidence must be duly considered** by the investigating committee or official designated by the school authorities to hear and decide the case.

3. Printed Rules and Regulations of the PSBA-Q.C. were distributed at the beginning of each school

> Enrollment in the PSBA is **contractual** in nature and upon admission to the School, the **Student is deemed to have agreed to bind himself to all rules/regulations** promulgated by the Ministry of Education, Culture and Sports. Furthermore, he agrees that he may be required to **withdraw from the School at any time for reasons deemed sufficiently serious** by the School Administration.

Petitioners clearly violated the rules set out by the school with regard to the protest actions. Necessary action was taken by the school when the court issued a temporary mandatory injunction to accept the petitioners for the first sem & the creation of an investigating body.

4. The Court, to insure that full justice is done both to the students and teachers on the one hand and the school on the other, ordered an investigation to be conducted by the school authorities, in the resolution of November 12, 1986.

Findings of the investigating committee:

1. students disrupted classes
2. petitioners involved were found to be academically deficient & the teachers are found to have committed various acts of misconduct.

5. The right of the school to refuse re-enrollment of students for academic delinquency and violation of disciplinary regulations has always been recognized by this Court Thus, **the Court has ruled that the school's refusal is sanctioned by law**. Sec. 107 of the Manual of Regulations for Private Schools considers academic

delinquency and violation of disciplinary regulations vs as valid grounds for refusing re-enrollment of students. The opposite view would do violence to the academic freedom enjoyed by the school and enshrined under the Constitution.

Court ordinarily accords respect if not finality to factual findings of administrative tribunals, unless :

1. the factual findings are not supported by evidence;
2. where the findings are vitiated by fraud, imposition or collusion;
3. where the procedure which led to the factual findings is irregular;
4. when palpable errors are committed; or
5. when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.

investigation conducted was fair, open, exhaustive and adequate.

.B. No. The urgent motion of petitioners and intervenors to cite respondents in contempt of court is likewise untenable.

1. **no defiance of authority** by mere filing of MOR coz respondent school explained that the **intervenors were actually reinstated** as such faculty members after the issuance of the temporary mandatory injunction.

2. **respondent school has fully complied with its duties under the temporary mandatory injunction** The school manifested that while the investigation was going on, the intervenors-faculty members were teaching and it was only after the investigation, that the recommendations of the Committee were adopted by the school and the latter moved for the dismissal of the case for having become moot and academic

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NON vs. JUDGE DAMES

Holding:
School authorities may limit students' exercise of constitutional rights w/in the school. The exercise of these rights does not make school authorities virtually powerless to discipline students.

Ratio:
1. Tinker v Des Moines Community School District: If a student's conduct materially disrupts classwork or invades the rights of others, he/she is not immunized by the constitutional guarantee of freedom of speech.
2. Malabanan case: School authorities can apply sanctions in cases wherein students permitted to hold a rally violated the terms of the permit by holding the demonstration in a place other than that specified & longer than the period allowed.
3. Guzman case: imposition of disciplinary sanctions must undergo procedural due process:
   a. inform the students in writing of the nature & cause of accusation vs them
   b. students should have the rt to answer the charges w/the assistance of a counsel, if desired
   c. students shall be informed of the evidence against them
   d. they shall have the rt to adduce evidence in their own behalf
   e. evidence must be duly considered by the investigating committee/official designated by the school authorities to hear & decide case
4. Penalty must be proportionate to the offense committed lest there be arbitrariness.

GOLDBERG vs. KELLY

Jack Goldberg, Commissioner of Social Services of the City of New York, Appelant
V
John Kelly et al

Facts:
- The question for decision is whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the 14th Ammendment
- Complainants (appellees): NY residents receiving financial aid under the program Aid to Families with Dependent Children (AFDC) under NY's Home Relief Program. Their complaint: NYC officials terminated aid without prior notice and hearing thereby denying them due process of law.
- Prior to the filing of complaints, no prior notice or hearing of any kind was required before termination. The state however adopted procedures for notice and hearing after suits were brought and the plaintiffs challenged the constitutional adequacy of said procedures
- Procedure No. 68-18: a caseworker sees the recipient and then reports to the unit supervisor to make an official review abt ineligibility and whether or not aid should be stopped.
- Appellee's challenge to this procedure emphasizes the absence of any provisions for the personal appearance of the recipient before the reviewing official, for **oral presentation of evidence, and for confrontation and cross-examination of adverse witnesses**. However, they are afforded post-termination "fair hearing" for redress when the can appear personally, offer **oral presentation of evidence, and for confrontation and cross-examination of adverse witnesses.** If they win, they get what was withheld from them and if not, they can avail of judicial review.
- District Court found for the complainants and only the Commissioner of Social Services appealed

Issue:
- Whether the due process clause requires that the recipient be afforded an evidentiary hearing before the termination of benefits.

Held:
- Yes. SC affirmed the decision of the District Court.

Ratio:
- Suffice it to say that to cut off a welfare recipient in the face of a brutal need without prior hearing of some sort is unconscionable, unless overwhelming consideration justify it.

- The need to protect tax revenues is not "overwhelming consideration". It does not justify denying a hearing meeting the ordinary standards of due process.
- Due process requires an adequate hearing before termination of welfare benefits
- Such benefits are a matter of statutory entitlement. **The constitutional challenge cannot be answered by an argument that public assistance benefits are a privilege and not a right.**
- Due process is influenced by the extent to which one may be condemned to suffer grievous loss and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication
- Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of government function involved as well as of the private interest that has been affected by governmental action.
- What will serve due process in this case is pre-termination evidentiary hearing
- Crucial factor: is that the termination of aid pending resolution may deprive an eligible recipient of the very means by which to live while he waits (immediately desperate)

- Appellant's argument: these are outweighed by countervailing governmental interests in conserving fiscal and administrative resources
- SC: these governmental interests are not overriding in the welfare context
- Pre-termination hearing need not take the form of a judicial or quasi-judicial trial, just a full administrative review
- The fundamental requisite of due process of law is the opportunity to be heard at a meaningful time in a meaningful manner
- The seven-day notice, the letter, and the personal conference with a caseworker (of above mentioned procedure) are not constitutionally sufficient per se. insufficiency is in not permitting welfare recipients to appear personally before the official who determines eligibility
- Informal procedures will suffice. In this context, due process does not require a particular order of proof or mode of offering evidence
- Jurisprudence says: where governmental action seriously injures an individual, and reasonableness of the action depends on fact findings, evidence used to prove govt's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. This is true not only in crim proceedings but also for admin actions

Dissent of J. Black:

- Federal judges uses this judicial power for legislative purposes
- I do not think that the 14th amendment should be given such an unnecessarily broad construction. Court in effect is saying that failure to pay an individual deprives him of *his own property*.
- That due process clause forbids any conduct that the majority of the court believes unfair DOES NOT appear anywhere in the due process clause. If they did, they would leave the majority of justices free to hold any conduct unconstitutional that they should conclude on their own to be unfair or shocking to them. If that view of due process is correct, the due process clause could easily swallow up all other parts of the constitution

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BELL vs. BURSON

Facts:

- Georgias Motor Vehicle Safety Responsibility Act provides that motor vehicle registration and drivers license of an uninsured motorist invovlved in an accident shall be suspended unless he posts security to cover the amount of damages claimed bby aggrieved parties in reports of accident.
- petitioner is a clergyman whose ministry requires him to travel by car to cover three rural Georgia communities
- Nov. 24, 1968 petitioner was involved in an accident when 5 year old Sherry Capes rode her bicycle into the side of his automobile
- the childs parents filed an accident report withthe director of the Georgia Department of Public Safety, indicating that their daughter had suffered substantial injuries for which they claim damages amounting to $5000
- **Petitioner was informed by the director that unless he was covered by a liability insurance policy in effect at the time of the accident, or present a notarized release from liabiltity, plus proof of future financial responsibilities or suffer the suspension of his drivers license**.
- after an administrative hearing, the director rejected the petitoner proffer of evidence on liability. Superir court on the other hand upheld the constitutional contention by the petioner but was later reversed by the Court of appeals.
- **the Georgia CA rejected petitioners contention that the states statutory scheme, in failing before suspending the license to afford him a hearing on the question of his fault or liability.**
- the Clergymans license remained suspended

Issue:

WON the Georgia Motor Vehicle Safety Responsibilty Act deny the petitioner due process in violation of the 14th Amendment for the suspension of his license wothout a hearing? YES

Held:

a) once licenses are issued, as in petitioners case, their continued possession may become essential in the pursuit of livelihood. Suspension of issued licenses thus involvels state action that adjudicates important interests of the licensees. In such cases the license are not to be taken witout that procedural due process required by the Fourth Amendment.

b) It is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate an interest such as here

involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case."

UP vs. HON. LIGOT-TELANN

(Oct 21, 1993)
Ponente: J. Romero

Facts:

- Ramon Nadal (isang malaking kupal), a student from the College of Law, applied for a scholarship under the Socialized Tuition Fee and Assistance Program (STFAP) a.k.a. Iskolar ng Bayan program. A precautionary measure to ensure the integrity of the program included the falsification or suppression of any material information as a punishable act under Sec 2(a) of the Rules and Regulations on Student Council Discipline of the University. Also, a fact-finding team was created to visit the applicants' homes and verify the truth of the info provided in their application/sworn statement. Accordingly, Ramon Nadal's home in BLUE RIDGE, QC was visited. Upon such visitation, the team found out that he withheld information about his ownership of a 1977 Toyota Corolla and that his mom worked in the US to support his brothers' schooling (in other words, mayaman pala siya).
- The UP charged Nadal before the Student Disciplinary Tribunal (SDT), which found him not guilty for withholding info about the car, but finding him guilty regarding his mom's income. This charge was tantamount to acts of dishonesty, which had the penalty of expulsion from the Univ. Upon automatic review of the UPDil Exec Comm, the SDT's decision was affirmed, whereupon Nadal appealed to the Board of Regents (BOR). On March 28, 1993, the BOR ruled that they would stay the decision upon learning that Nadal was also a recipient of a scholarship grant in Ateneo HS. They would rule on a decision once this new info was affirmed.
- March 29: ADMU issued a certification that Nadal was indeed a recipient of a scholarship grant before. That night, in a special meeting and without Nadal to witness such, the BOR found Nadal "guilty", with a penalty of a 1-year suspension, non-issuance of certificate of good moral character, and reimbursement of STFAP benefits.
- April 22: Nadal filed with the RTC of QC a petition for mandamus with preliminary injunction and prayer for TRO against the BOR and other UP officers, stating that he was denied due process since he was not present during the March 29 meeting. The preliminary injunction was granted. Hence, the instant petition.

Issue/Held:

1. WON Nadal was denied due process in the administrative disciplinary proceedings against him → NO
2. WON respondent judge gravely abused her discretion in issuing the preliminary injunction → YES

Ratio:
I would like to mention that Nadal actually had the gall to question the standing of private petitioner Dr. Caoili who, not having been authorized by the BOR as a collegial body to file the petition, and Dr. Abueva (UP Pres), not being the "Board of Regents" nor the "Univ of the Phils" – hence, they are not real parties in interest. Kupal ng hayup na 'to. And so, the SC said that Nadal opped from questioning the petitioners' y bec he already named them as respondents in his petition in the RTC. Tanga talaga. Anyway…

1. Admission to the UP falls under the ambit of the school's academic freedom; hence, the "process that is due" is that which is governed under the UP's rules. UP's rules do not necessitate "the attendance in BOR meetings of individuals whose cases are included as items on the agenda of the Board." Besides, in the March29 meeting, they were only supposed to reconsider their previous decision, so Nadal's attendance was indeed unnecessary. Thus, he was not denied due process. Mwehehehehe. Moreover, since the issue falls within the school's academic freedom, it is beyond the jurisdiction of the court. As a result, they won't be able to give him any legal remedy regarding the matter.
2. Mandamus is never issued in doubtful cases, a showing of a clear and certain right on the part of the petitioner being required. Hence, by issuing the writ of preliminary injunction, the lower court dared to tread upon legally forbidden grounds. For, by virtue of the writ, the UP's exercise of academic freedom was peremptorily curtailed. If Nadal had his way, it would not only undermine the authority of UP to discipline its students who violate its rules and regulations, but would subvert the very concept and lofty intent to give financial assistance to poor but deserving students (unlike him).

DBP vs. NLRC

** *Unfortunately, we don't have a digest for this case.*

ESTRADA vs. SANDIGANBAYAN

(11/19/2001)
Bellosillo, J.

Facts: Estrada was charged of the violation of the Anti-Plunder Law (RA 7080, amended by RA 7659.) on April 4 2001. Petitioner filed Omnibus Motion initially alleging the lack of a preliminary investigation, reconsideration/reinvestigation of offense, and opportunity to prove lack of probable cause, all of which were quashed. On June 14, petitioner moved to quash the Informations filed against him. Sandiganbayan denied motion, hence appeal to SC.

Petitioner: 1. Anti-plunder Act is unconstitutional under the "void for vagueness" doctrine which states that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute.
2. Anti-Plunder act in unconstitutional for being overbroad, which states that a government purpose may not be achieved with means which sweep unnecessarily

broadly and thereby invade the area of constitutionally protected freedoms

3. Anti-Plunder act is unconstitutional for it dispenses with due process since the terms in S1, par. D and S2 ("combination", "series", "pattern") are precisely vague & overbroad, which denies the petitioner of the right to be informed of the nature & cause of the accusation against him.

4. Anti-Plunder act is unconstitutional for it dispenses with due process since the S4 thereof sets a lower standard for the modicum of evidence required to convict person than that which is required for criminal cases, which is proof beyond reasonable doubt.

Issues: 1. Whether or not the Anti-Plunder Law is unconstitutional for being vague and overbroad

2. Whether or not the Anti-Plunder Law lowers the threshold for evidence in violation of due process

3. Whether or not Plunder as defined is malum prohibitum, which means that criminal intent need not be proved in order to convict person.

Held: 1. **NO**. There are several levels of reasoning which the SC used.

a. presumption of constitutionality of a statute- basic principle that a legislative enactment is presumed to be in harmony with the Consti. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort.

b. As it is written, the Plunder Law contains ascertainable standards and well-defined parameters which would enable the accused to determine the nature of his violation. Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity.

1. words of a statute will be interpreted in the natural, plain & ordinary acceptation, except in cases where it is evident that the legislature intended a technical & special legal meaning
2. a statute is not rendered uncertain & void merely because general terms are used, or because it employed terms that were not defined. There is no statutory or constitutional command that the Congress needs to define every word it uses. Inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in the Plunder Law.
3. challenge of a statute for being "vague" can only be applied for those laws which in the face are utterly vague and cannot be clarified by a saving clause or by construction.

c. the overbroad and vagueness doctrines, according to the SC, have a special application for free-speech cases & are inapt for testing the validity of penal statutes.

Therefore, the Anti-Plunder law does not violate due process since it defines the act which it purports to punish, giving the accused fair warning of the charges against him, and can effectively interpose a defense on his behalf.

2. NO. In a criminal prosecution for plunder, as in all other crimes, the accused always has in his favor the presumption of innocence which is guaranteed by the Bill of Rights. The petitioner's contention that the language of the law which states that not every act of amassing wealth needs to be proven, but only a pattern or series of acts, dispenses with the requirement of guilt beyond reasonable doubt is unfounded. The prosecution still has to prove beyond reasonable doubt that the acts constituting plunder (though not all) occurred, and these predicate acts form a pattern. Hence it does **not** lower the level of evidence from "beyond reasonable doubt" to "mere preponderance". Further, S4 on "for the purposes of establishing the crime of plunder", a procedural & does not define a substantive right in favor of the accused but only operates in furtherance of a remedy.

3. **NO**. Plunder is mala in se which requires proof of criminal intent. Mens rea must be proven. Again, this only means that the Anti-Plunder Law does not establish a lower level of evidence. P

Petition dismissed for lack of merit. RA 7080 held to be constitutional.

We don't have digests for the Hamdy and Velasquez Rodriguez cases.

B. "Old" Substantive Due Process: Protection for Property Interests

Calder vs. Bull

Doctrine: prohibition on ex post facto laws applies only to penal/criminal statues not civil.

Chase, J

Facts

- 1779 Normand Morrison executed a will in favor of Bull and wife, his grandparents.
- 1793 The Court of Probate of Hartford disapproved of the will and refused its recording.
- Calder and Wife claim their rights as the wife is heiress to N. Morrison as a physician after the disapproval of the will. By existing laws of Connecticut, wife is said to have the rights as heiress(not explained how).
- 1795 The Legislature of Connecticut passed a resolution or law(May) setting aside the first negative decree of the court of Probate for Hartford, granting a new hearing and appeal within 6 months. The new

hearing in the Court of Probate now, approved the will and ordered its recording(July) .

- 1795 (Aug) An appeal was had in the Superior Court of Hartford, and in 1796, The superior court of Hartford affirmed the decree of the Court of Probate.
- And still in 1796, An appeal was gained in the SC of errors of Connecticut who in June of that year, adjudged, that there were no errors.
- Since it was more than 18 months since the decree of the Court of Probate, Caleb Bull and Wife were barred of all right of appeal by a statute of Connecticut. But their will was indeed affirmed so why bother?
- **But the plaintiffs Calder and wife had a reason to appeal because the effect of the resolution was divest the right that accrued to Calder and wife when the court of Probate denied the will of Norman Morrison.** (remember: the new hearing approved the will affirmed by the superior court and SC of Errors)
- The plaintiffs Calder and wife petitioned the SC and contended that the resolution made by Connecticut was an ex post facto law, prohibited by the constitution, therefore, void. The court then had power to declare such law void.

The court will answer the contention of the plaintiffs but whether the Legislature of any of the States can revise and correct, by law, a decision of any of its Courts of Justice will not be answered now as the case doesn't go that far. This is only important if the state's constitution does not prohibit the correction or revision. But the ponente gave his opinion.

Plaintiffs argue that the Legislature of Connecticut had no constitutional power to make the resolution (or law) in question, granting a new hearing, etc

- The ponente said that without giving opinion at this time, whether the court had jurisdiction to decide that any law made by Congress contrary to the constitution is void. He is fully satisfied that this court has no jurisdiction to determine that any law of any state legislature contrary to the consti is void. (before Marbury cguro to!) And if they had problems with the laws contrary to State charters or consti, it is within the state court's jurisdiction.

Issue

WON the resolution of the Connecticut Legislature is an ex post facto law. NO

- It is accepted that all the people-delegated powers of the Fed. Gov't are defined, and it has no constructive powers. **So, all the powers that remain in the State Gov't are indefinite**(trivia:except in Masachusetts). (ex. establishment of the courts of justice and justices)
- But the Constitution was established for justice, gen. welfare, liberty and protection of their persons and property from violence. These purposes and determinants of the nature and terms are the reasons why the people enter into the social compact. Although not expressly said, they restrain the absolute power of the legislature(nature of free Republican gov't). Any act in violation of the social compact is not a rightful exercise of legislative authority.
- That no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit.[1]
- The prohibition against their making any ex post facto laws was introduced for greater caution because when they were under Great Britain, laws under the denomination of bills of attainder or bills of pains and penalties were passed. These acts were legislative and judicial power. (ex. treason when they aren't in other times and one witness even when the law required two, all for the "safety of the kingdom"). SECs 9 and 10 of the US Consti provided this prohibition(see patterson below for text).
- The prohibition is not to pass any law concerning, and after the fact; but that the Legislatures of the several states, shall not pass laws, after a fact done by a subject, or citizen, which shall have relation to such fact, and shall punish him for having done it.
- This is an additional bulwark in favour of the personal security of the subject, **to protect his person from punishment by legislative acts**, having a retrospective operation. **BUT NOT to secure the citizen in his private rights, of either property, or contracts.** *If the prohibition of ex post facto laws included personal rights then why the need for other prohibitions in making only gold and silver the legal tender and not to pass laws impairing obligations in contracts* ***which are retrospective****. (*Wouldn't it be superfluous?)
- The restriction against ex post facto law was to secure the person of the subject from injury from such law, enumerated to be laws that:
    1. makes an action, which was innocent when done, criminal; and punishes it
    2. aggravates a crime, or makes it greater than it was, when committed
    3. changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed
    4. alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender
- Every ex post facto law must necessarily be retrospective(this is the prohibited); but every retrospective law is not an ex post facto law.
- Every law that takes away, or impairs, rights vested, agreeably to existing laws, is retrospective and unjust, but not all, take for example a pardon. There is a difference in making an unlawful act lawful and one making it a crime. (ex post facto meaning taken by ponente from Wooddeson, Blackstone; Massachusetts', Maryland's and North Carolina's Constitutions, or forms of Government same as one or two of the enumerated)
- The prohibition contemplated the fact not to be affected by subsequent law, was some fact to be done by a Citizen, or Subject. Citing Justice Raymond calling stat. 7 Geo. 1st. stat. 2 par 8, ex post facto because it affected contracts for South Sea Stock made before the statute.
- **In the present case there is no fact done by the plaintiffs, that is affected by the resolution of the Connecticut. The 1st decree of the court of probate was given before the resolution and in**

[1] The Legislature may enjoin, permit, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases, but they can't change innocence to punishable guilt or violate the rights in contracts and private property.(I don't know why the ponente said this, when he debunked it anyway)

that's sense, they lost what they were entitled to were it not for the resolution. And the decree was the only fact that which the resolution affected, this is *not within the intention of the law* to be prohibited.

- The framers of the prohibition didn't intend to include vested rights, or else the provision "that private property should not be taken for public use without just compensation" is superfluous/unnecessary. Why need specific prohibition?
- Anyway, the resolution (or law) alone had no manner of effect on any right whatever vested in Calder and wife. The Resolution combined with the new hearing, and the decision, in virtue of it, took away their right to recover the property in question. But when combined they took away no right of property vested in Calder and wife; because the 1st decree against the will did not vest in or transfer any property to them. Because a vested right means that, that person has the power to do certain actions, possess things according to the law of the land.
- If any one has a right to property such right is a perfect and exclusive right; but no one can have such right before he has acquired a better right to the property, than any other person in the world: a right, therefore, only to recover property cannot be called a perfect and exclusive right. (I think the will was more excl and perfect as it was valid)

Then Justice Chase is of the opinion that the petition is void. Judgment affirmed.

Patterson, J.

The Connecticut Consti is made up of usages.(I think this means ancient and uniform practice) He recognizes that eversince the Connecticut Legislature had been able to do judicial acts(like granting of new trials. Even though in 1762 they imparted this to the courts, they still retained this right. The imparting didn't annihilate their power, instead it only shred the jurisdiction. So the resolution could be seen both ways, either a judicial or legislative act.

But for the purpose of answering the petition of the plaintiffs, WON the resolution was an ex post facto law. We will look at this as a judicial act(*remember ex post are legislative*).

Using Judge Blackstone's description [2] and the constitutions of Masachussets[3] ,Delaware[4] , North Carolina[5] and Maryland[6], **we see that the prohibition of ex post facto laws applies only in penal statutes.**

The 1st Art. in Sec 9 of the US Consti says "No state shall pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts." The framers couldn't have intended it to include the laws on obligation of contracts since they had needed to specify it too.

Iredell, J.

He concurs in the result. He dissents only to the reasons used. He argues that the act of the resolution granting a new hearing couldn't be legislative. It is definitely judicial. But supposing it is legislative, it still falls in the prohibition. And even if the court can't adjudged it to be void, because they can claim that they acted within their constitutional power contrary to natural justice. And even if they acted out of their authority, which is entirely void, the court won't act on such a delicate and awful nature until it is clearly and urgently needed.

He also subscribes to the belief that the prohibition only applies to criminal/penal statues. Because apparently the framers of the constitution intended for Private civil rights to succumb to Public use.

Still he also finds that there is no case. Because, 1st. if the act of the Legislature of Connecticut was a judicial act, it is not within the words of the Constitution; and 2nd. even if it was a legislative act, it is not within the meaning of the prohibition.

Cushing, J.

There is no problem in the case, in whichever way, they didn't commit any wrong. If the resolution is taken to be a judicial act then it is not touched by the FEDERAL constitution. IF it seen as a legislative act, it is within the ancient and uniform practice of the state of Connecticut.

Judgment Affirmed.

Lochner vs. New York [1905]

Facts:

- Plaintiff in error is charged for violating Sec. 110, Art. 8, Chapter 415, Laws of 1897 otherwise known as the **Labor Law of the State of New York** in wrongfully & unlawfully requiring & permitting an employee working for him to work more than 60hrs. in one week. Plaintiff in error runs a bakery business & employee involved is a baker.
- Statute provides that "no employee shall be required/permitted to work more than 10hrs. per day." Such is equated to "no employee shall contract/agree to work more than 10hrs./day." It's mandatory in all instances. Statute prohibits such even if an employee wants to do so to earn extra money.

Issue: WON the statute is unconstitutional. – YES

Ratio: It interferes w/the liberty of person or the right of free contract between employer & employees by determining the hours of labor in the occupation of a baker without any reasonable ground for doing so.

- Gen. right to make a contract in relation to one's business is a liberty protected by the 14th amendment[7] w/c also protects the rt to purchase or to sell labor.

2 'There is, says he, a still more unreasonable method than this, which is called making of laws, ex post facto, when after an action, indifferent in itself, is committed, the Legislator, then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it. Here it is impossible, that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had, therefore, no cause to abstain from it; and all punishment for not abstaining, must, of consequence, be cruel and unjust.

3 'Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.'

4 'That retrospective laws punishing offences committed before the existence of such laws, are oppressive and unjust, and ought not to be made.'

5 'That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no ex post facto law ought to be made.'

6 'That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no ex post facto law ought to be made.'

7 No state can deprive any person of life, liberty or property w/o due process of law.

- However, states have police power w/c relates to the safety, health, morals & gen. welfare of the public. This power enables the states to regulate both property & liberty and to prevent the individual from making certain kinds of contracts and in these instances, the 14th amendment cannot interfere. And when the state's legislature in its exercise of its police power enacts a statute such as the one challenged in this case, it's impt to determine w/c shall prevail – rt of individual to work at the time of his choice or rt of state to prevent the individual from laboring beyond the time prescribed by law.
- But then, there is a limit to the valid exercise of the police power of the state. The question asked to test the validity of the exercise: "Is this a fair, reasonable & appropriate exercise of the police power of the state or is it an unreasonable, unnecessary, & arbitrary interference w/the rt of the individual to his personal liberty, or to enter into those contracts in relation to labor w/c may seem to him appropriate/necessary for the support of himself & his family?"
- This law does not in any way affect any other portion of the public so it can't be said that it's done in the interest of the public. It's a law pertaining to the health of the individual as a baker. But clean & wholesome bread does not depend on the length of hours a baker spends at work. Limiting their working hours does not come w/in the police power of the state.
- Mere assertion that a law slightly relates to public health can't make it valid automatically. It must have a more direct relation as a means to an end & the end itself must be appropriate & legitimate before it can be held to be valid w/c interferes w/a personal liberty.
- The trade of a baker is not an alarmingly unhealthy one that would warrant the state's interference w/rts to labor & contract. As a matter of fact, it's never been regarded as an unhealthy one. Besides, almost all occupations more or less affect the health. There must be more than the mere possibility of some small amount of unhealthiness to justify legislative interference. To say that a man who's not overworked is more likely to be clean and thus producing clean output would be unreasonable & arbitrary considering that it's quite impossible to discover the connection between the no. of working hours & the healthful quality of the bread made by the baker.

Holding: Petition dismissed. Decisions of lower courts reversed. Case remanded to the County Court for further proceedings not inconsistent w/this opinion.

Harlan, dissenting (White & Day join him):
- Liberty of contract may, w/in certain limits, be subjected to regulations to promote gen. welfare or to guard the public health, morals or safety.
- A Federal/state legislative enactment can only disregarded/held invalid if it plainly, palpably & beyond question in excess of legislative power. Otherwise, any doubt as to its validity must be resolved in favor of its validity & the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation. The burden of proof is upon those who assert the statute to be unconstitutional.
- This statute aims to protect the physical well-being of workers in bakery & confectionery establishments. Working beyond 60hrs/week may endanger their health. The court cannot inquire on the wisdom of the legislation. The court can only inquire whether the means devised by the state have a real/substantial relation to the protection of health. In this case, the Justice believes that the means used is related to the end it seeks to accomplish. He believes it does not invade constitutionally mandated rights. Court goes beyond its functions in annulling this statute.
- Remember that statute is limited to workers in bakery & confectionery establishments. The air they constantly breathe is not as pure & healthful as that to be found in other establishments or outdoors. He cites Prof. Hirt's treatise on the "Diseases of the Workers" and the paper of another writer w/c support his belief that the trade of a baker is an unhealthy one. (see p. 100-101 for text)
- State is not amenable to the judiciary in respect of its legislative enactments unless clearly inconsistent w/the US Constitution.

Holmes, dissenting:
- Case is decided upon an economic theory w/c a large part of the country does not entertain.
- State constitutions & laws may regulate life in many ways w/c some may find as injudicious (unwise), tyrannical & w/c interfere w/the liberty to contract. Ex. Sunday laws, usury laws, prohibition of lotteries. The liberty of a citizen to do as he likes so long as he does not interfere w/liberty of others to do the same is interfered w/by school laws, Post office, every state/municipal institution w/c takes his money for purposes thought desirable, whether he likes it or not.
- But a Constitution is not intended to embody a particular economic theory such as paternalism or laissez faire. It's made for people of fundamentally differing views. And not because we find an opinion novel or shocking, we can already conclude that it's conflicting with the US Consti.
- General propositions don't decide concrete cases. The decision will depend on a judgment/intuition subtler than any articulate major premise. Every opinion tends to become a law.
- "Liberty" in the 14th amendment is perverted if we use it to prevent the natural outcome of a dominant opinion (the statute in this case) unless a rational & fair man would admit that the statute would infringe fundamental principles as we traditionally understand them. A reasonable man might think that the statute is a proper measure on the score of health.
- My take: he thinks the statute is reasonable & he believes any reasonable man would see that. Ergo, unreasonable yung majority. Hehe...please read the dissent since Dean Pangalangan mentioned that it's one of the most important dissenting opinions in US history.

People v. Pomar

The Prosecuting attorney of the City of Manila filed a complaint against defendant Julio Pomar for violation of sec. 13, in connection of sec. 15 of Act. No. 3071 of the Philippine Legislature which essentially orders

employers to give pregnant women employees 30 days vacation with pay before & after confinement.

- Defendant was found guilty of violating said statute by refusing to pay his pregnant employee, Macaria Fajardo, P80.
- Pomar demurred the complaint alleging that the facts therein complained did not constitute an offense. As the demurrer was overruled, he answered and admitted all the allegations trial but contended that the provisions of Act No. 3071 were illegal, unconstitutional and void
- The lower court convicted him of crime as charged

Issue: WON said Act was adopted in the reasonable and lawful exercise of the police power of the state

- NO. Said section 13 was enacted in the exercise of its supposed police power for the purpose of safeguarding the health of pregnant women laborers in "factory, shop or place of labor of any description," and insuring to them reasonable support for 1 month before and 1 month after their delivery.
- Definitions of police power are generally limited to particular cases and examples, which are as varied as they are numerous. But from all the definitions, the SC concluded that it is much easier to perceive and realize the existence and sources of police power than to exactly mark its boundaries, or prescribe limits to its exercise by the legislative department of the government.
- The Court in this case has to choose between police power and the liberty to contract, much like in the case of *Adkins v. Children's Hospital of the District of Columbia.* In that case, the court held that the Minimum Wage Act was void on the ground that the right to contract about one's own affairs was a part of the liberty of the individual under the constitution, and while there was no such thing as absolute freedom of contract, and it was necessarily subject to a great variety of restraints, yet none of the exceptional circumstances, which at times justify a limitation upon one's right to contract for his own sevices, applied in the particular case. Such may be said in the case at bar and the SC so holds.
- The right to liberty includes the right to enter into contracts and to terminate contracts. The statute violates liberty of contract w/o due process. It takes into account only the welfare of the employee but fails to consider periods of distress in the business.
- It further fails to consider the fact that payment for labor depends upon the type of labor.
- The statute prescribes a sum of money to insure subsistence, health and morals of pregnant employee. The statute creates a mandatory term in any contract entered into by employer. It violates right to enter into contract upon terms which parties may agree to.
- The court further explained that the state, under the police power, is possessed with plenary power to deal with all matters relating to the general health, morals, and safety of the people, so long as it does not contravene any positive inhibition of the organic law and providing that such power is not exercised in such a manner as to justify the interference of the courts to prevent positive wrong and oppression. The legislature has no authority to pronounce the performance of an innocent act criminal when the public health, safety, comfort, or welfare is not interfered with.
- Sec. 13 has deprived every person, firm or corporation owning or managing a factory, shop or place of labor of any description w/in the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon.
- The state, when providing by legislation for the protection of the public health, the public morals or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere w/ the execution of the powers and rights guaranteed to the people under the Constitution.

NDC v. Phil. Veterans

Facts:

- Involves the constitutionality of PD 1717, which ordered the rehabilitation of the Agrix Group of Companies to be administered mainly by the National Development Company.
- Section 4(1) of PD 1717 provides that all mortgages and other liens presently attaching to any of the assets of the dissolved corporations are hereby extinguished.
- July 7, 1978 – Agrix execute in favour of private respondent Philippine Veterans Bank (PVB) a real estate mortgage over 3 parcels of land situated in Los Banos. During the existence of the mortgage Agrix went bankrupt.
- PVB filed a claim with the Agrix Claims Committee for the payment of itts loan credit. New Agrix and National Development Company invoked Sec. 4(10) of PD 1717.
- PVB took steps to extrajudicially foreclose the mortgage, prompting the petitioners to file a second case with the same court to stop the foreclosure.
- Trial court – annulled the entire PD 17171.
    - Exercise of legislative power was a violation of the principle of separation of powers
    - Impaired the obligation of contracts
    - Violated the equal protection clause

Issues:

1. WON PD 1717 violates the due process and equal protection clause of the constitution?

- Petitioner argues that property rights are subject to regulation under the police power for the promotion of the common welfare. They contend that the inherent power of the state may be exercised at any time for this purpose as long as the taking of the property right, even is based on contract, is done with due process of law.
- The court held that a legislative act based on the police power requires the concurrence of a lawful subject and a lawful method.
    a. The interest of the public should justify the interference of the state
    b. Means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.
- In this case the public are not sufficiently involved to warrant the interference of the

government with the private contracts of Agrix. the record does not state how many here are of such investors, and who they are, and why they are being preferred to the other creditors of Agrix with vested property rights.

- ♦ Public interest has not been shown. It has not been shown that by the creation of the New Agrix and the extinction of the property rights of the creditors of, Agrix the interests of the public as a whole, as distinguished from those of a particular class, would be promoted or protected.
- ♦ The decree is oppressive. The right to property in all mortgages, liens, interests, penalties and charges owing to the creditors of Agrix is arbitrarily destroyed.
- ♦ The right to property is dissolved by legislative fiat without regard to the private interest violated
- ♦ In extinguishing the mortgage and other lien, the decree lumps the secured creditors with the unsecured creditors and places them on the same level in the prosecution of their respective claims.
- ♦ Under the equal protection clause, all persons of things similarly situated must be treated alike, both in the privileges conferred and the obligations imposed. In this case, persons differently situated are similarly treated, in disregard of the principle that there should be equality among equals.

1. WON PD 1717 violates section 10 of the bill of rights? YES

- ♦ It is true that the police power is superior to the impairment clause, the principle will apply only where the contract is so related to the public welfare that it will be considered congenitally susceptible to change by the legislature in the interest of the greater number.
- ♦ The contract of loan and mortgage executed by the Agrux are purely private transactions and have not been shown to be affected with public interest,

PD 1717 is an invalid exercise of the police power, not being in conformity with the traditional requirements of a lawful subject and a lawful method. The extinction of the mortgage and other liens constitutes taking without due process of law and violation of the equal protection clause.

Balacuit vs. CFI

- Movie tickets for children

- An ordinance was passed by the municipal board of Butuan ordering that the price of the admission of children in movie houses and other places of amusements should be half that of adults.

- Owners of 4 theaters (petitioners) maintain that Ordinance 640 violates the due process clause for it is unfair, unjust, confiscatory, and amounts to a restraint of trade and violative of the right of persons to enter into contracts.

- Municipality: a valid exercise of policy under the gen welfare clause in their charter.

Issue:

Is Ordinance 460 a valid exercise of police power?

Held: It is not.

Ratio:

Not lawful subject/ no lawful purpose

- The ordinance is not justified by any necessity of public interest. The evidence purpose of it is to reduce the loss in savings of parents, in turn passing the buck to the theater owners. The contention of the city that they are preventing the movie houses from exploiting children is not tenable (they are given the same quality of entertainment). Besides, the city said that movies are attractive nuisance, so why are they encouraging it.
- The means are clearly unreasonable. How can the theater operators distinguish bet a 13-year old an an 11-year old child. The city said that the movie operators can ask the children to bring their birth certificates but that is impractical, said the court (why?)
- A theater ticket is an evidence of a contract bet the movie house and its patrons. It may also be considered a license, allowing the purchases to enjoy the entertainment being provided. In either case, the ticket is a species of property. The operators, as the owners thereof, have the right to dispose of it at a price it wants and to whom he pleases.
- The courts have declared valid laws regulating the prices of food and drugs during emergency; limiting the act profit of utilities. But the theater is not of the same nature—it is not a public utility or a public good.
- Note 3 instances when the exercise of police power by local govt are invalid:
    a. violates the consti
    b. violates the act of Congress of the leg
    c. against public policy or is unreasonable, oppressive, discriminating or in derogation of common rights.

People vs. Nazario

Plaintiff: People of the Phils.
Accused-appellant: Eusebio Nazario

Appeal from the decision of the CFI of Quezon
Sarmiento, J.

Facts:
Petitioner is charged with violation of municipal ordinances in Pagbilao, Quezon. He refuses to pay taxes

on the operation of the fishponds he leased from the gov't. asserting that said tax measures are 1) ambiguous and uncertain, 2) unconstitutional for being *ex post facto* laws and 3) applies only to owners or overseers of fishponds of private ownership and not to lessees of public land.

Said ordinances, Ordinance # 4 (1955), Ordinance # 15 (1965) and Ordinance # 12 (12 (1966) provides as follows:

Ord. # 4: Sec. 1. "Any owner or manager of fishponds … within … Pagbilao, Quezon, shall pay a municipal tax in the amount of Php 3 per hectare of fishpond on part thereof per annum."

Ord. # 15: Sec. 1(a) "For … owners or managers of fishponds within … this municipality, the date of payment of municipal tax … shall begin after the lapse of three (3) years starting from the date said fishpond is approved by the Bureau of Fisheries."

Ord. # 12: Sec 1: "Any owner or manager of fishponds … within … Pagbilao shall pay a municipal tax in the amount of Php 3 per hectare or any fraction thereof per annum beginning and taking effect from the year 1964, if the fishpond started operating before the year 1964."

The trial court held that the appellant violated the assailed ordinances. So this appeal.

Issue:

1) WON the Pagbilao municipal ordinances are unconstitutional (vague or *ex post facto*)? No
2) WON the ordinances apply to the accused? Yes

Ratio:

The Court finds that Eusebio Nazario violated Pagbilao's tax ordinances.

1) A statute or act may be said to be vague if it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution because 1) it violates due process because it fails to accord persons fair notice of the conduct to avoid, 2) it gives law enforcers unbridled discretion in carrying it out.

But the act must be utterly vague on its face and not just an imprecisely phrased legislation, which can still be saved by proper construction or a legislation, which may appear to be ambiguous, but is applicable if taken in the proper context or applied to certain types of activities (ex. US Uniform Code of Military Justice prohibits "conduct unbecoming an officer and gentleman", such a phrase, taken in a military context, is not ambiguous because there are already military interpretations and practices in place that provide enough standards on what is permissible conduct.) The assailed ordinances cannot be said to be tainted by vagueness because it clearly provides what activity is to be avoided and to whom the law applies.

As evident from the provisions themselves, the appellant falls within its coverage. As the operator and financier of the fishponds and employer of the laborers therein he comes within the term "manager." Though the gov't owns the land, it never had a share in the profits so it is only logical t hat he shoulders the burden of the tax.

As to the appellants claim that the imposition of the tax has to depend upon an uncertain date yet to be determined ("3 years after the approval of the fishpond" by the Bureau of Fisheries) and upon an uncertain event ("if the fishpond started operating before 1964"), it is **merely a problem in computation**.

The liability for the tax accrues on Jan. 1, 1964 for fishponds already in operation, this amendment (Ord # 12) to the earlier ordinances served only as an amnesty to delinquent fishpond operators and it did not repeal the mother ordinances (Ords. # 4 & 15). For fishponds not yet in operation on Jan. 1, 1964, Ord # 15 applies, and it provides that for new fishpond operators, the tax accrues 3 years after their approval by the Bureau of Fisheries.

The contention that the ordinances were *ex post facto* laws because Ord # 12 was passed on Sept 19, 1966 and yet it takes effect and penalizes acts done from the year 1964 has no merit. As explained in the previous paragraph, Ord # 12 merely served as an amnesty to delinquent taxpayers, it did not repeal the mother ordinance (Ord # 4) which was already in effect since May 14, 1955 and as the act of non-payment of the tax was already penalized since 1955 it is clear that Ord # 12 does not impose a retroactive penalty.

Appellant also assails the power of municipal gov'ts to tax "public forest land." As held in *Golden Ribbon Lumber Co. Inc v City of Butuan* local gov'ts taxing power do not extend to forest products or concessions under RA 2264 (Local Autonomy Act), which also prohibits municipalities from imposing percentage taxes on sales.

But **the tax in question is not on property**, though it is based on the area of the fishponds, they are actually privilege taxes on the business of fishpond maintenance. They are not charged against sales, which goes against the decision in *Golden Ribbon Lumber Co. Inc* but on occupation, which is allowed under RA 2264. Also fishponds are not forest lands although they are considered by jurisprudence as agricultural lands so necessarily do not produce the forest products referred to in the prohibition of RA 2264.

Held: Appeal is **DISMISSED.**

Agustin vs. Edu

Action: Action for prohibition

Facts:

Petitioner assails Letter of Instruction No. 229 which provides for the mandatory use of early warning devices for all motor vehicles. Petitioner owns a Volkswagen Beetle equipped with blinking lights that could well serve as an early warning device. He alleges that the statute:

1. violates the provision against delegation of police power
2. immoral – will only enrich the manufacturer of the devices at the car owner's expense
3. prevents car owners from finding alternatives

Petitioner prays for a declaration of nullity and a restraining order in the meantime.

On the other hand, respondents' answers are based on case law and other authoritative decisions of the tribunal issues.

Issues:

1. WON LOI 229 is constitutional (due process)
2. WON LOI 229 is an invalid delegation of legislative power, as far as implementation is concerned

Held:

1. Yes. Respondents assert that LOI 229 is backed by factual data & statistics, whereas petitioner's conjectural assertions are without merit. The statute is a valid exercise of police power in so far as it promotes public safety, and petitioner failed to present factual evidence to rebut the presumed validity of the statute. Early warning devices have a clear emergency meaning, whereas blinking lights are equivocal and would increase accidents. The petitioner's contention that the devices' manufacturers may be abusive does not invalidate the law. Petitioner's objection is based on a negative view of the statute's wisdom-something the court can't decide on.

2. No. The authority delegated in the implementation is not legislative in nature. Respondent Edu was merely enforcing the law forms part of Philippine law. PD 207 ratified the Vienna Convention's recommendation of enacting road safety signs and devices. Respondents are merely enforcing this law. Moreover, the equal protection under the laws contention was not elaborated upon.

Wherefore: Petition is dismissed. Judgment immediately executory.

Teehankee, dissenting:

The rules and regulations outlined by the LTO Commission does not reflect the real intent of LOI229.

1. Effectivity and utility of statute not yet demonstrated.
2. public necessity for LOI not yet shown
3. big financial burden on motorists
4. no real effort shown to illustrate less burdensome alternative to early warning device
5. imperative need to impose blanket requirement on all vehicles
   -people still drive dilapidated vehicle

   -need for sustained education campaign to instill safe driving

The exercise of police power affecting the life , liberty, and property of any person is till subject to judicial inquiry.

A. **"New" Substantive Due Process: Protection for "Liberty" Interests in Privacy**

WARREN & BRANDEIS: THE RIGHT TO

A. EVOLUTION OF THE COMMON LAW

I. Full protection in person and in property is a principle as old as the common law

- From time to time it has been necessary to redefine the exact nature and extent of such protection and even as far as to recognize new rights in order to meet the demands of the political, social and economic changes in society.
- Law gave a remedy only for physical interference with life and property in early times
- Recognition of man's spiritual nature, of his feelings and his intellect led to protection even of mere attempts to do injury → assault.
  - Right to life = the right to enjoy life ▪ the right to be let alone
  - Right to liberty = the right to the exercise extensive civil privileges
  - Right to property – encompasses every form of possession, intangible and tangible
- Regard for human emotion extended the scope of personal protection beyond the body of the individual – reputation and his standing among his fellow-men were considered. → the law on slander and libel.

II. The right "to be let alone"

- Recent inventions and business methods entail taking the necessary steps for the protection of the person and the individual of their "right to be let alone"
  - Desirability and even necessity of such protection can be seen in the way the press is overstepping in every direction the obvious bounds of propriety and of decency.
  - "The intensity and complexity of life attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distressl far greater than could be inflicted by mere bodily injury.

B. PURPOSE: whether existing laws afford a principle which can be properly invoked to protect the privacy of the person; and, if it does, what the nature and extent of such protection is.

I. Law on Slander and Libel

- The wrongs and correlative rights recognized by the law of slander and liver are in their nature material rather than spiritual → injure him in his intercourse with others, subject him to ridicule, hatred, etc.
- The law does not recognize any principle upon which compensation can be granted for mere injury to the feelings.
  - However, it is viewed that the common law right to intellectual and artistic property are but instances of a general right to privacy
  - Under the American system of government, one can never be compelled to express his thoughts, sentiments and emotions and even if he has chosen to give them expression, he generally retains the power to fix the limits of the publicity which shall be given them
    - Existence of the right does not depend upon the particular method of expressions adopted but rather each individual is given the right to decide whether that which is his shall be given to the public.
      - The right is only lost when the author himself communicates his production to the public

I. right of property

- What is the basis of this right to prevent the publication of manuscripts and works of art? Right of Property
  - But where the value of the production is found not in the right to take the profits arising from publication, but in the peace of mind or the relief afforded by the ability to prevent any publication at all, it is difficult to regard the right as one of property
  - The belief that the idea of property in its narrow sense was the basis of the protection of unpublished manuscripts led an able court to refuse, in several cases injunctions against the publication of private letters, on the ground that "letters not possessing the attributes of literary compositions are not property entitled to protection…"
- These decisions have, however, not been followed and it may not be considered that the protection afforded by the common law is independent of its pecuniary value or intrinsic merits, etc. → "a man is entitled to be protected in his exclusive use and enjoyment of that which is exclusively his."
  - "but if privacy is once recognized as a right entitled to legal protection, the interposition of the courts cannot depend on the particular nature of the injuries resulting"

- conclusion that protection afforded to thoughts, sentiments and emotions as far as it consists in preventing publication, is merely an instance of the enforcement of the more **general right of the individual to be let alone**.
  - In each of these rights there is a quality of being owned or possessed and (distinguishing attribute of property) there may be some propriety in speaking of those rights as property.
  - The principle which protects personal writings and all other personal productions, not against theft and physical appropriation, but against publication in any form, is in reality **not the principle of private property, but that of an inviolate personality.**

- therefore, the existing law affords a principle which can be invoked to protect the privacy of the individual
  - distinction between deliberate thoughts and emotions and the casual and involuntary expression cannot be made because:
    - test of deliberateness of the act – a lot of the casual correspondence now given protection will be excluded
    - amount of labor – we will find that it is much easier to express lofty sentiments in a diary than in the conduct of a noble life.

I. The Right to Privacy

- No basis is discerned upon which the right to restrain publication and reproduction can be rested except the right to privacy, as a part of the more general right to the immunity of the person – the right to one's personality.
  - Court has also seen in some instances to grant protection against wrongful publication not on the ground or not wholly on the ground of property but upon the ground of an alleged breach of an implied contract or of a trust or confidence.
    - Useful only for cases where there is participation by the injured party such as a misuse by the photographer of photograph taken of you with your consent.

- Advance of technology has made it possible to take pictures, etc. surreptitiously and therefore the doctrine of contract and of trust are inadequate to support the required protection and therefore the law of tort must be resorted to.
  - Right of property embracing all possession (e.g the right to an inviolate personality) affords alone that broad basiss upon which the protection which the individual demands can be rested.
  - We there conclude that the rights, so protected, whatever their exact nature, are not rights arising from contract or from special trust, but are rights as against the world… **The principle which protects personal writings and any other productions of the intellect or of the emotions, is the right to privacy, and the law has no new principle to formulate when it extends this protection to the personal appearance, sayings, acts, and to personal relation, domestic or otherwise.**

I. Limitations of Right to Privacy

1. The right to privacy does not prohibit any publication of matter which is of public or general interest.
   - Design of the law is to protect those persons whose affairs the community has no legitimate concern
   - Others such as those in public positions have, in varying degrees, renounced their right to live their lives screened from public observation.
     - General object is to protect the privacy of private life, and to whatever degree an in whatever connection a man's life has ceased to be private, before the publication under consideration has been made, to that extent the protection is to be withdrawn.

2. The right to privacy does not prohibit the communication of any matter, though in its nature private, when the publication is made under circumstances which would render it a privileged communication according to the law of slander and libel.
   - Right to privacy not invaded by any publication made in a court of justice, in legislative bodies, etc.

3. The Law would probably not grant any redress for the invasion of privacy by oral publication in the absence of special damage.

4. The right to privacy ceases upon the publication of the facts by the individual or with his consent.

5. The truth of the matter published does not afford a defense.
   - It is not for injury to the individual's character that redress or prevention is sought, but for injury to the right of privacy.

6. The absence of malice in the publisher does not afford a defense.

I. Remedies for an invasion of the right of privacy

1. An action of tort for damages in all cases
2. An injunction, in perhaps a very limited class of cases
   - Legislation is required to give added protection to the privacy of the individual in criminal law.
     - Protection of society must come mainly through a recognition of the right of the individual.

CONSTITUTIONAL FOUNDATIONS OF PRIVACY:

This article by Cortes starts off by introducing concepts regarding privacy such as "the right to be let alone" which is an assertion by the individual of his inviolate personality. Westin in his book entitled "Privacy and Freedom" illustrates an individual as he creates zones of privacy which at the center is the "core self". Even anthropologists deal with the notion of privacy and say that even animals seek periods of individual seclusion or small group intimacy. Religion has stories regarding Adam and Eve's shyness and the story of Noah's son which reveal moral nature is linked with privacy. Since privacy varies with every culture, even in the Philippines, there are gaps about the notion of privacy: Filipino culture is accustomed to public life but still keeps to himself certain hopes and fears.

The right of privacy gives a person the right to determine what, how much, to whom and when info about himself shall be disclosed. This is where Science and Technology may play a role, either positively or negatively. One example given is polygraph tests: that while it is true that a person gives his consent, he seldom realizes how much more the test discloses then he may intend. Computerization, without adequate regulation of the input, output and storage of data, can also cause harms since it can deprive individuals the right to control the flow of information about himself. In addition, Miller says the psychological impact on the citizenry is that many may begin to base their personal decisions on what is to be reflected on the databases.

Privacy as a Legal Concept

Privacy has been equated with phrase "right to be let alone" but it is in Samuel Warren and Louis Brandeis "The Right to Privacy" that it was described as "the right to life has come to mean the right to enjoy life- the right to be let alone". Originally, the right of privacy was asserted in private cases where it was seen to be derived from natural law (characterized as immutable since no authority can change or abolish it). In the Philippines, it provides for "privacy of correspondence and communication" where it is recognized by the Civil Code and other special laws.

Privacy as a Tort

According to Prosser violations of privacy create 4 different kinds of tort. 1) intrusion upon plaintiff's seclusion or solitude 2) public disclosure of private embarrassing facts 3) publicity that places one in a bad light 4) appropriation, for the defendant's advantage of the plaintiff's name or likeness. Interesting is the privacy of letters in the Philippines where it the recipients which are considered the owners and have the right. In Europe, writing verses or dabbling in painting where privacy is asserted is based on the property right over an unpublished manuscript. Another aspect is that privacy is a personal right where an injury to the feelings and sensibilities of the parties involved is the basis. Thus the decisions that creditors are infringing upon the privacy of their debtors if the make it public just to compel them to fulfill. Courts usually deal with this problem involving the reconciliation of constitutionally protected rights- the right of the public to know, the freedom of the press against the right to privacy.

In the Phil., privacy as privacy independent of any other specific constitutional guarantee was rarely invoked. As in Arnault v. Nazareno where there is privacy- in the light of the constitutional guarantee against self-incrimination. Only in Morfe v. Mutuc where inquiry into private individuals spending chores would violate privacy which is implicit in unreasonable searches and seizures and right against self-incrimination, where it was recognized as a constitutional right.

Privacy and Mass Media
The public law inquiry is to determine whether there are constitutional limitations on the acts of government encroaching upon zones of privacy. With respect to public figures, Warren and Brandeis comment "matters of which publication should be repressed are those which concern the private life, habits, acts and relations of an individual". In our local setting privacy issues are lax: the more prominent a person, the more unrelenting the publicity. Regarding news matters, its gathering and dissemination would be completely hampered if individuals claim invasion of privacy and would want to recover damages for some inaccuracies. When a person becomes a public figure, he relinquishes a part of his privacy.

Privacy and residential picketing
It was recommended that some legislation be done about residential picketing where high regard is accorded to the privacy of an individual's home.

CONSTITUTIONAL FOUNDATIONS
In the US, the concept developed first in private law where it was later used in public law in relation to other specific constitutional guarantees. It was not until Griswold v. Connecticut (anti-contraceptive statute) that for the 1st time the right of privacy as an independent constitutional right (Bill of Rights have penumbras which create zones of privacy). Other cases were mentioned where differences were not attributed to differences in consti provisions but to ideas of privacy particularly individual beliefs. In the Phil, the privacy of communication and correspondence forestalled problems caused by its omission in the US consti. This "communication and correspondence" can be relaxed if public safety and order requires it bit this too can be restricted by legislation such as the Anti-Wire tapping Act.

Searches and Seizure
The constitutional convention added safeguards to the requisites in the issuance of warrants (1. probable cause to be supported by oath 2. particular description of the place to be searched and persons to be seized) and that a judge should determine them and must examine under oath the complainant and other witnesses . The guarantee against unreasonable search and seizure require both physical intrusion and seizure of tangible property and it extends to both citizens and aliens. Also it makes no distinction in criminal or administrative proceedings (as mentioned in the cases).

Regarding the decisions of the US SC that in regulating business enterprises a warrant is required before inspections can be made, the author says that it is intriguing if the doctrines are invoked here given the petty graft situation in all levels of the government.

Administrative Arrest
The constitutionality of the grant of power to the Comm. of Immigration to issue warrants of arrest (since a judge was the additional safeguard) was challenged in several cases. The SC while distinguishing between warrants in criminal cases and administrative warrants, suggested a distinction between warrants issued for the purpose of taking a person in custody so that he may be made to answer charges against him and a warrant to carry out a final order based on a finding of guilt. Because of this, the "probable cause" does not extend in deportation proceedings. This was overturned in Vivo v. Montesa that the Court said it is unconstitutional (issuing is for purposes of investigation and before a final order of deportation).

Particularity of Description
-Added consti reqment that the person or thing to be seized should be described with particularity.

Remedies against unreasonable search and seizure
The court finally held that evidence obtained through warrants illegally issued is inadmissible. The author also discusses that in the course of an illegal search a contraband was found, the limitation recommended is that the contraband should not be returned but it would also not be used as evidence. This also applies in illegal search made by private parties, as it does in the Anti-Wire Tapping Law.

Motorist's Right
Since the guarantee protects the person and not places, a private car is protected from unreasonable searches and seizures. Although there are exceptions, it must almost always have a warrant as said in the Carroll case: "in cases where the securing of a warrant is reasonably practicable it must be used"

Right Against Self-Incrimination
The US extended the guarantee against self-incrimination on the grounds of public policy and humanity. Here, the privilege is only applicable to testimonial or communicative evidence. It is not violated by introducing in evidence the result of an analysis of a substance taken from the body of the defendant, to submit to a pregnancy test or put on a pair of pants to see if it fits. Our SC has held that the right against self-incrimination only protects against testimonial evidence or the performance of acts which not being purely mechanical, require the application of intelligence and attention. However, the conviction of an accused on a voluntary extra-judicial confession in no way violates the constitutional guarantee where the burden to prove that the confession was improperly obtained rests on the defendant.

Conclusion
The right of privacy finds protection not only in various provisions of the constitution but also in special laws.
Author's recommendations:
1) the constitutional guarantee on the inviolability of communication and correspondence affords less protection than originally intended by the convention back in 1934, it may well be expanded to include the private persona and his family.
2) because of computerization, there is a need to provide a regulatory system to protect individual rights
3) legislation for the protection of the home against residential picketing
4) the proposal by Congress rendering extra-judicial confessions and admissions inadmissible may be the answer to the problem of coerced confessions.

OLMSTEAD vs. U.S.

FACTS:
Petitioners here were convicted of a conspiracy to violate the National Prohibition Act through the unlawful possession, importation and selling of liquor. Petitioner Olmstead is the leading conspirator and general manager of the operations. The operation required over 50 employees, 3 sea vessels, a ranch outside urban Seattle, caches in that city, as well as a fully staffed office. Monthly sales produced at least $175,000.00. Annual income was projected to be over $2M.

To be able to gather information on the operation, four federal prohibition officers intercepted messages on the telephones of the conspirators. This gathering of evidence went on for months, yielding a lot of information. Among these were large business transactions, orders and acceptances, as well as difficulties the conspirators suffered, even dealings with the Seattle police. It is important to note that there was no trespass into the property of any of the defendants as the taps came the streets near the houses.

ISSUE: Whether wire-tapping amounted to a violation of the 4th amendment.

HELD: No, wire-tapping does not amount to a violation of the 4th amendment.

RATIO:

4th amendment: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

5th amendment: No person...shall be compelled, in any criminal case, to be a witness against himself.

In deciding this case, the court went through a number of earlier cases discussing the 4th and 5th amendments. In these cases, struck down as unconstitutional were various acts in the procurement of evidence. Among these were, unlawful entries, warrantless arrests and seizures, and requiring the producing of documents that may prove incriminating. These were all acts pertaining to gathering evidence. As they did not comply with the 4th amendment, the evidence acquired was deemed inadmissible in court and had to be returned to the defendants.

In the present case, the court said that there is no compulsion evident, therefore the only issue was with regards to the 4th amendment.

The court noticed that in all the cases mentioned, they all pertained to a physical taking, whether of documents, evidence, or even of the persons convicted (warrantless arrest). In wire-tapping, however, there is no physical taking. What was used was the recording of audio and nothing else. In the court's eyes, this does not qualify as a taking. Moreover, there was no trespassing involved as the taps were done in the streets and not in the houses of the conspirators.

Lastly, the court brought up the common-law rule that evidence will be appreciated no matter how it was obtained. "Where there is no violation of a constitutional guarantee, the verity of the above statement is absolute." (Professor Greenleaf). This rule is supported by both American and English cases.

Dissent of J. Holmes:
In his dissent, J. Holmes, (agreeing with the dissent of J. Brandeis), says that "the government ought not to use evidence obtained and obtainable by a criminal act". What he states is that the courts have 2 options: 1) the courts use evidence obtained criminally or 2) some criminals should escape in the event that evidence was obtained criminally. To J. Holmes "it is a less evil that some criminals should escape than that the Government should play an ignoble part". Lastly, he states "...if we are to confine ourselves to precedent and logic the reason for excluding evidence by violating the Constitution seems to me logically to lead to excluding evidence obtained by a crime of the officers of the law".

SKINNER vs. OKLAHOMA

FACTS:

1926 Skinner was convicted of stealing chickens and sentenced to the reformatory.

1929 He was convicted of the crime of robbery with firearm and sentenced again to the reformatory.

1934 He was convicted of the rime of robbery with firearms and sentenced to the penitentiary.

1935 The **Oklahoma Habitual Criminal Sterilization Act** was passed.

The Act provides that if someone is found by the court or jury as a **habitual criminal** and that he "may be rendered sexually sterile w/o detriment to his/her general health", then the court shall order that he/she shall be rendered sexually sterile. Vasectomy in case of male; salpingectomy in case of a female.

Habitual criminal is defined as

A person who, having been convicted 2 or more times for crimes involving moral turpitude, either in Oklahoma court or in a court of any other state, is thereafter convicted of such a felony in Oklahoma and is sentenced to a term of imprisonment in an Oklahoma penal institute. However, section 195 of the Act states that **offenses arising out of the violation of the prohibitory laws, revenue acts, embezzlement, or political offenses shall not be considered within the terms of the Act.**

The Attorney General has to institute a proceeding against such a person in Oklahoma courts. **Notice and the right to a jury trial are provided.**

1936 Attorney General instituted proceedings against Skinner. Petitioner challenged the Act as unconstitutional by reason of the 14th Amendment in the US Consti. After a jury trial, it was decided that vasectomy be performed on Skinner. This decision was affirmed by the Oklahoma Supreme Court.

ISSUE:

WON the legislation violates the equal protection clause of the 14th Amendment.

DECISION:

Oklahoma Supreme Court decision REVERSED. The Act violates the equal protection clause in the 14th Amendment.

- **When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious (offensive) discrimination as if it had selected a particular race or nationality for oppressive treatment.**
  - i. **Oklahoma makes no attempt to say that one who commits larceny by trespass or trick or fraud has biologically inheritable traits which one who commits embezzlement lacks.**
  - ii. **Line between larceny by fraud and larceny by embezzlement is determined "with reference to the time when fraudulent intent to convert the property to the taker's own use" arises.**
    1. **No basis for inferring that the line has any significance in eugenics, nor that inheritability of criminal traits follows the legal distinctions which the law has marked between these two offenses.**

Example: A clerk who embezzles over $20 from his employer and a stranger who steals the same amount are both guilty of felonies. If the stranger repeats his act and is convicted three times, he may be sterilized. But the clerk is not subject to the penalties of the Act no matter how large his embezzlements nor how frequent his convictions because of the exception in section 195 of the Act.

- The Act involves one of the basic civil rights of man.
- Marriage and procreation are fundamental to the very existence and survival of the race.
- The power to sterilize may have subtle, far-reaching and devastating effects. There is no redemption for the individual whom the law touches. Any experiment w/c the state conducts is to the individual's irreparable injury. He is forever deprived of a basic liberty.

Other Criticisms of the Act which the Court mentioned but did not elaborate.

1. The Act cannot be sustained as an exercise of the police power in view of the state of scientific authorities respecting inheritability of criminal traits.
2. Due process is lacking because the defendant is given no opportunity to be heard on the issue as to whether he is the probable potential parent of socially undesirable offspring.
3. The Act is penal in character and that the sterilization provided for is cruel and unusual punishment.

GRISWOLD vs. CONNECTICUT

Justice Douglas

FACTS:

- Appellants are the Executive Director of the Planned Parenthood League of Connecticut (Griswold), and its medical director, a licensed physician (Buxton), They gave information, instruction, and medical advice to married persons as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

- Both were convicted as accessories for giving married persons information and medical advice on how to prevent conception and, following examination, prescribing a contraceptive device or material for the wife's use. A Connecticut statute makes it a crime for any person to use any drug or article to prevent conception. Appellants claimed that the accessory statute as applied violated the Fourteenth Amendment. An intermediate appellate court and the State's highest court affirmed the judgment.

The statutes whose constitutionality is involved in this appeal are 53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). The former provides:

"Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

Section 54-196 provides:

"Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

ISSUES:

1. Whether or not Appellants have standing to assert the constitutional rights of the married people.
2. Whether or not the Connecticut statute forbidding use of contraceptives violates the

right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights.

HELD:

1. Appellants have standing to raise the constitutional rights of the married people with whom they had a professional relationship.
2. The Connecticut statute forbidding use of contraceptives violates the right of marital privacy.

RATIO:

The standards of "case or controversy" should be less strict by reason of the appellants' criminal conviction for serving married couples in violation of an aiding-and-abetting statute. Certainly the accessory should have standing to assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime.

The primary issue in this case concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. These constitutional guarantees include: Freedom of Speech and Press including the right to distribute, receive, read and teach, and freedom of inquiry and thought; the First Amendment has a penumbra where privacy is protected from government intrusion; the concept of liberty embraces the right of marital privacy though that right is not mentioned explicitly in the Constitution; the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked so fundamental."

This law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

EISENSTADT vs. BAIRD

(March 22, 1972)
Ponente: J. Brennan

FACTS:

- After delivering a lecture on overpopulation and contraception, the appellee invited members of the audience to come and help themselves to contraceptive articles. He personally handed a package of Emko vaginal foam to a young, unmarried woman. As a result, BAM! he was convicted in a Massachusetts state court for violating **Massachusetts General Laws Ann. Secs 21 and 21(a),** which made it a crime to sell, lend, or give away any contraceptive device to unmarried persons. The statute provides a maximum 5-year term of imprisonment for such violation.
- The statutory scheme distinguishes among 3 distinct classes of distributes:
  1. married persons may obtain contraceptives to prevent pregnancy, but only from doctors or pharmacists on prescription
  2. single persons may NOT obtain contraceptives from anyone to prevent pregnancy
  3. married or single persons may obtain contraceptives from anyone to prevent, not pregnancy, but the spread of disease
- State's goal: preventing the distribution of articles designed to prevent conception which may have undesirable, if not dangerous, physical consequences; a 2nd, more compelling reason = to protect morals through regulating the private sexual lives of single persons
- Massachusetts Supreme Judicial Court affirmed conviction
- US District Court (Mass) dismissed appellee's petition for writ of habeas corpus
- US CA reversed US DC's decision and remanded the case with instructions to grant the writ

ISSUES:

1. WON appellee has standing to assert the rights of unmarried persons denied access to contraceptives → YES
2. WON the Mass statute could be upheld as a deterrent to fornication, as a health measure, or simply as a prohibition to contraception → NO
3. WON there is some ground of difference that rationally explains the different treatment accorded married and unmarried persons under the assailed statute → no such ground exists, hence, IT VIOLATES THE EQUAL PROTECTION CLAUSE of the 14th Amendment

RATIO:

1. Baird has sufficient interest in challenging the statute's validity to satisfy the "case and controversy" requirement of Art III of the Consti → it has been held that the Mass statute is NOT a health measure; hence, Baird cannot be prevented to assail its validity bec he is neither a doctor nor a druggist. In this case, the relationship bet Baird and those whose rights he seeks to assert is not simply that bet a distributor and potential distributees, but that bet an **advocate of the rights of persons to obtain contraceptives** and **those desirous of doing so.** Enforcement of the Mass statute will materially impair the ability of single persons to obtain contraceptives. Unmarried persons denied access to contraceptives are themselves the subject of prosecution and, to that extent, are denied a forum in which to assert their own rights.
2. Effect of the ban on distribution of contraceptives to unmarried persons has at best a marginal relation to the proffered objective. As ruled in *Griswold v Connecticut*, the rationale is dubious considering the widespread availability to ALL PERSONS in the State, unmarried and married, of birth-control devices for the **prevention of disease,** as distinguished from the **prevention of conception.** The Mass statute is also riddled with exceptions that deterrence of premarital sex cannot reasonably be regarded as its aim.

Moreover, Secs 21 and 21(a) of the Mass statute have a dubious relation to the State's criminal prohibition on fornication, which entails a $30 fine and 3-month imprisonment. Violation of the present statute is a felony, punishable by 5 years in prison. The Court cannot believe that Mass has chosen to expose the aider and abetter who simply *gives away* a contraceptive to *20 times the 90-day sentence* of the offender himself. Hence, such deterrence cannot reasonably be taken as the purpose of the ban on distribution of contraceptives.

If health was the rationale of Sec 21(a), the statute would be both discriminatory and overbroad for being "illogical to the point of irrationality." For one thing, not all contraceptives are potentially dangerous. If the Mass statute were a health measure, it would not only invidiously discriminate against the unmarried, but also be overbroad with respect to the married. As a prohibition to conception, the statute conflicts with "fundamental human rights" under Griswold v Connecticut.

3. **Equal Protection Clause**: denies to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis criteria wholly unrelated to the objective of the statute. A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.
   - Whatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike.
   - **Griswold case → Right of privacy**: If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

There is no more effective practical guaranty against arbitrary and unreasonable gov't intrusion that to require that the principles of law, which officials would impose upon a minority must be imposed generally. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.

POE vs. ULLMAN

This case deals with the statute as in Griswold vs. Connecticut where, in this case, two couples and their physician sued the State and its Attorney-General, Ullman, asking the Court to declare the Connecticut statute prohibiting the use of contraceptives unconstitutional under the Fourteenth Amendment..

FACTS:
Paul and Pauline Poe had three consecutive pregnancies terminating in infants with multiple congenital abnormalities resulting in their death shortly after birth. Because of the great emotional and psychological stress resulting from these deaths, it is Dr. Buxton's opinion that the best and safest medical treatment is to prescribe contraceptives in order to preserve the health of petitioner. On the other hand, Mrs. Doe recently underwent a pregnancy which caused her critical physical illness such that another pregnancy would be exceedingly perilous to her life. Also, their doctor, Dr. Buxton, also joined them in saying that the statute deprived them of liberty and property without due process.

ISSUE:
W/N the allegations raised by petitioners regarding the constitutionality of the Connecticut statute raise a justiciable question before the Court.

HELD:
No. Petitioners do not allege that appellee, Ullman threatens to prosecute them for their use of or for giving advice regarding contraceptives. The allegations merely state that in the course of his public duty he intends to prosecute any violation of Connecticut law. There is thus no imminent or impending threat of arrest on the petitioners. The Court goes on to say that in the over 75 years of its existence, prosecutions for violation of the statute seems never to have been initiated according to counsel nor the researchers of the Court. Judicial notice was also taken of the fact that contraceptives are readily available in drug stores which invite more the attention of enforcement officials. Given the fact that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed or immediately threatened with harm, by the challenged action, the circumstances of the case do not justify the exercise of judicial power as it lacks the requisites for "case" and "controversy".

Mr. Justice Douglas, dissenting.

Public clinics dispensing birth-control information has been closed down by the State as well as others following the Nelson case which the ponente cited as the test case for the statute. The Court failed to take notice of the fact that several prosecutions for violations of this statute had been initiated in the minor courts. In failing to answer the question of the constitutionality of the statute, in effect the court is asking the people to violate the law and hope that it is not enforced, that they don't get caught which is not a proper choice under the present constitutional system. He then goes on to repeat the arguments in *Griswold* regarding the application of the statute reaching into the intimacies of the marriage relationship forcing search warrants for private bedrooms for its enforcement since what it prohibits is not the sale or manufacture but the use of contraceptives.

ROE vs. WADE

(01/22/1973)
Blackmun, J.

NATURE: Appeal from the US DC of the Northern District of Texas

FACTS:
Texas State Penal Code Arts 1191-1194 & 1196 make it a crime to procure an abortion, as therein defined, or to attempt one, except procured or attempted by medical advice for the purpose of saving the life of the mother." Similar statutes are in existence in a majority of the

States. Jane Roe,a single woman who was residing in Dallas County, Texas, instituted federal action in Mar 1970 against the District Attorney of the county. She sought a declaratory judgment that the Texas criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes. Hallford, a licensed physician, sought & was granted leave to intervene in Roe's action. John & Mary Doe, a married couple, filed a companion complaint to that of Roe, also naming the District Attorney as defendant. claiming like constitutional deprivations, & seeking declaratory & injunctive relief. The two actions were consolidated and heard together by a duly convened three-judge district court. This court found that Roe & Hallford had standing, but the Does did not for failing to allege facts sufficient to present a controversy. The District Court held that the fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment, through the Fourteenth Amendment, and that the Texas criminal abortion statutes were void on their face because they were both unconstitutionally vague and constituted an overbroad infringement of the plaintiffs' Ninth Amendment rights. The court then held that abstention was warranted with respect to the requests for an injunction. It therefore dismissed the Does' complaint, declared the abortion statutes void, and dismissed the application for injunctive relief. Roe, Doe & intervenor Hallford appealed to SC regarding denial of injunction, while defendant DA cross-appealed regarding grant of declaratory relief.

Petitioners:
1. Jane Roe-unmarried & pregnant; wishes to terminate her pregnancy but is prevented by Texas' laws; unable to transfer to another jurisdiction to secure abortion; contends that the statues invade upon the right of a pregnant woman to chose to terminate her pregnancy, grounded in the concept of personal "liberty" embodied in the 14th Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras (Griswold, Eisenstat) or among those rights reseved to the people by the 9th Amendment.
2. Hallford-had twice been arrested in Texas for violation of abortion statutes; because of the uncertainty of the law it was difficult to tell whether his patient's particular situation fell within or outside the exception recognized by A1196; as a consequence, the statutes were vague and uncertain, in violation of the Fourteenth Amendment, & that they violated his own and his patients' rights to privacy in the doctor-patient relationship and his own right to practice medicine, rights he claimed were guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments
3. Does-childless couple; Mrs Doe had a "neuro-chemical disorder" & was advised to avoid pregnancy; discontinued use of birth control pills; that if ever she became pregnant, she wishes to have alegal abortion under safe, clinical conditions.

ISSUES:
1. whether or not petitioners have standing to bring suit
2. whether or not Texas laws regarding abortions are unconstitutional for invading a constitutionally protected right

HELD:
1. Roe-At the trial court stage, it was undisputed that she had standing; logical nexus test in *Flast* met as her status as a pregnant women was logically connected to the claim that she sought, that is, that the law be struck down as unconsitutional for her to have an abortion. However, appellee notes that the records to not disclose whether she was pregnant at the time of the hearing of the case or when the TC decision was handed down, which is important since usual rule in federal cases is that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated (*US v Musingwear*). The delivery of the baby would have rendered the case moot. But the SC relaxed this rule, reasoning that pregnancy provides for classic conclusion of nonmootness, "capable of repetition, yet evading review."
Hallford-has two pending cases with the State court, which is significant because "absent harassment and bad faith, a defendant in a pending state criminal case cannot affirmatively challenge in federal court the statutes under which the State is prosecuting him". He tries to distinguish his status as present state defendant from his status as "potential future defendant", but the SC sees no distinction & applies the rule to him, reversing the finding of the trial court on the doctor's standing.
Does-has asserted as their only immediate & present injury an alleged "detrimental effect on their marital happiness"Their claim is that, sometime in the future, Mrs. Doe might become pregnant because of possible failure of contraceptive measures, and, at that time in the future, she might want an abortion that might then be illegal under the Texas statutes, which the SC finds as very speculative. The bare allegation of so indirect an injury is insufficient to present an actual case or controversy (*Younger v Harris*). Does are therefore not appropriate plaintiffs.
2. The SC took a look first at the historical perspective on abortion, reasoning that most of the laws criminalizing abortion are of "relatively recent vintage". Even the Hippocratic Oath, which said that a doctor should not provide drugs to induce an abortion, was found by the court to be at the beginning acceptable to only a small number of people; abortion was for the most part accepted ot tolerated. Common law provided that an abortion before "quickening"(the 1st recognizable movement of the fetus in utero) was not an indictable offense. Whether abortion of a quick fetus was a felony at common law, or even a lesser crime, is still disputed. In English statutory law, England's first criminal abortion statute, *Lord Ellenborough's Act*, came in 1803. It made abortion of a quick fetus, § 1, a capital crime, but, in § 2, it provided lesser penalties for the felony of abortion before quickening, and thus preserved the "quickening" distinction. The case of *Rex v. Bourne*, apparently answered in the affirmative the question whether an abortion necessary to preserve the life of the pregnant woman was excepted from the criminal penalties of the 1861 Act. This trend in thinking was carried over to the US to the extent that only as recently as the end of the 1950's, a large majority of the jurisdictions banned abortion, however and whenever performed, unless done to save or preserve the life of the mother.It is thus apparent that, at common law, at the time of the adoption of the US Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today. At least with respect to the early stage of pregnancy, and very possibly without such a limitation, the opportunity to

make this choice was present in this country well into the 19th century. The SC recognizes that the debate now is between the State's right (some say duty) to protect prenatal life versus the contention that the laws were passed to protect the woman from placing herself in a potentially life threathening situation (as abortion techniques were initially unrefined & presented a threat to the woman's health.)
The ponencia moves to a discussion on the right to privacy, conceeding that this is not explicitly found in any part of the Consti. But this right of privacy, whether it be founded in the 14th Amendment's concept of personal liberty and restrictions upon state action, or in the 9th Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.The Court concludes that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation. Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest. While there is a contention that the protection of prenatal life is a "compelling state interest" that warranted the abortion laws, and that the unborn is a "person" under the 14th Amend, the Court held that the use of the word is such that it has application only post-natally. None indicates, with any assurance, that it has any possible pre-natal application. The unborn have never been recognized in the law as persons in the whole sense. Measured against these standards, "Art. 1196 of the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore, cannot survive the constitutional attack made upon it here."

District Court decision affirmed.

BOWERS vs. HARDWICK

FACTS:

In August 1982, respondent Hardwick was charged with violating the Georgia statute criminalizing sodomy by committing that act with another adult male in the bedroom of his home. Hardwick brought suit in Federal District Court, challenging the constitutionality of the statute insofar as it criminalized consensual sodomy. He asserted that he was a practicing homosexual, that the Georgia sodomy statute placed him in imminent danger of arrest, and that the statute for several reasons violates the Federal Constitution.

The court granted Bower's motion to dismiss for failure to state a claim.

The CA reversed and remanded, holding that the Georgia statute violated respondent's fundamental rights. It held that the Georgia statute violated respondent's fundamental rights because his homosexual activity is a private and intimate association that is beyond the reach of state regulation by reason of the 9th Amendment and the Due Process Clause of the 14th Amendment

Attorney General petitions for certiorari questioning the holding that the sodomy statute violates the fundamental rights of homosexuals.

ISSUE: WON the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal.

HELD: No.
Precedent Cases:

- It is evident that none of the rights announced in those cases bears any resemblance to the claimed constitutional right of homosexuals to engage in acts of sodomy. No connection between family, marriage, or procreation on the one hand and homosexual activity on the other has been demonstrated, either by the Court of Appeals or by respondent.
- Moreover, any claim that these cases nevertheless stand for the proposition that any kind of private sexual conduct between consenting adults is constitutionally insulated from state proscription is unsupportable.
- Despite the language of the Due Process Clauses of the 5th and 14th Amendments, there are a multitude of cases in which those Clauses have been interpreted to have substantive content, subsuming rights that to a great extent are immune from federal or state regulation or proscription.

Nature of the rights qualifying for heightened judicial protection:
Palko v. Connecticut, , 326 (1937)

- those fundamental liberties that are "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed."

Moore v. East Cleveland, (1977)

- those liberties that are "deeply rooted in this Nation's history and tradition."

It is obvious to us that neither of these formulations would extend a fundamental right to homosexuals to engage in acts of consensual sodomy.

Sodomy was a criminal offense at common law and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights. In 1868, when the Fourteenth Amendment was ratified, all but 5 of the 37 States in the Union had criminal sodomy laws. In fact, until 1961, all 50 States outlawed sodomy, and today, 24 States and the District of Columbia continue to provide criminal penalties for sodomy performed in private and between consenting adults. Against this background, to claim that a right to engage in such conduct is "deeply rooted in this Nation's history and tradition" or "implicit in the concept of ordered liberty" is, at best, facetious.

Respondent Argues: The result should be different where the homosexual conduct occurs in the privacy of the home. Relies on Stanley v. Georgia, (1969), where the Court held that the 1st Amendment prevents conviction for possessing and reading obscene material in the privacy of one's home.

Court Answers: Illegal conduct is not always immunized whenever it occurs in the home. Victimless crimes, such as the possession and use of illegal drugs, do not escape the law where they are committed at home. Stanley itself recognized that its holding offered no protection for the possession in the home of drugs, firearms, or stolen goods. And if respondent's submission is limited to the voluntary sexual conduct between consenting adults, it would be difficult to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home.

Respondent Asserts: There must be a rational basis for the law and that there is none in this case other than the presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable.

Court Answers: The law is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed.

LAWRENCE vs. TEXAS

FACTS:

Responding to a reported weapons disturbance in a private residence, Houston police entered petitioner Lawrence's apartment and saw him and another adult man, petitioner Garner, engaging in a private, consensual sexual act.

The complaints described their crime as "deviate sexual intercourse, namely anal sex, with a member of the same sex (man)." App. to Pet. for Cert. 127a, 139a. The applicable state law is Tex. Penal Code Ann. §21.06(a) (2003). It provides: "A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex." The statute defines "[d]eviate sexual intercourse" as follows: (A) any contact between any part of the genitals of one person and the mouth or anus of another person; or "(B) the penetration of the genitals or the anus of another person with an object." §21.01(1).

The petitioners challenged the statute as a violation of the Equal Protection Clause of the Fourteenth Amendment and of a like provision of the Texas Constitution. Tex. Const., Art. 1, §3a. Those contentions were rejected. The petitioners, having entered a plea of *nolo contendere*, were each fined $200 and assessed court costs of $141.25.

The Court of Appeals for the Texas Fourteenth District considered the petitioners' federal constitutional arguments under both the Equal Protection and Due Process Clauses of the Fourteenth Amendment. After hearing the case en banc the court, in a divided opinion, rejected the constitutional arguments and affirmed the convictions. The majority opinion indicates that the Court of Appeals considered our decision in *Bowers* v. *Hardwick,* 478 U.S. 186 (1986), to be controlling on the federal due process aspect of the case. *Bowers* then being authoritative, this was proper.

The petitioners were adults at the time of the alleged offense. Their conduct was in private and consensual.

ISSUE

WON the bowers case should be a controlling precedent for this case.

HOLDING

No, case reversed and remanded (I'm not sure but as an effect of this ruling, All sodomy laws in the US are now unconstitutional and unenforceable when applied to non-commercial consenting adults in private)

Ratio

Equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty are linked in important respects, and a decision on the latter point advances both interests. If protected conduct is made criminal and the law which does so remains unexamined for its substantive validity, its stigma might remain even if it were not enforceable as drawn for equal protection reasons. When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres. The central holding of *Bowers* has been brought in question by this case, and it should be addressed. Its continuance as precedent demeans the lives of homosexual persons.

(a) Resolution of this case depends on whether petitioners were free as adults to engage in private conduct in the exercise of their liberty under the Due Process Clause. For this inquiry the Court deems it necessary to reconsider its *Bowers* holding. The *Bowers* Court's initial substantive statement–"The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy ... ," 478 U.S., at 190–discloses the Court's failure to appreciate the extent of the liberty at stake. To say that the issue in *Bowers* was simply the right to engage in certain sexual conduct demeans the claim the individual put forward, just as it would demean a married couple were it said that marriage is just about the right to have sexual intercourse. Although the laws involved in *Bowers* and here purport to do not more than prohibit a particular sexual act, their penalties and purposes have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. They seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals. The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons.

(b) Having misapprehended the liberty claim presented to it, the *Bowers* Court stated that proscriptions against sodomy have ancient roots. 478 U.S., at 192. It should be noted, however, that there is no longstanding history in this country of laws directed at homosexual conduct as a distinct matter. Early American sodomy laws were not directed at homosexuals as such but instead sought to prohibit nonprocreative sexual activity more generally, whether between men and women or men and men. Moreover, early sodomy laws seem not to have been enforced against consenting adults acting in private. Instead, sodomy prosecutions often involved predatory acts against those who could not or did not consent: relations between men and minor girls or boys, between adults involving force, between adults implicating disparity in status, or between men and animals. The

longstanding criminal prohibition of homosexual sodomy upon which *Bowers* placed such reliance is as consistent with a general condemnation of nonprocreative sex as it is with an established tradition of prosecuting acts because of their homosexual character. Far from possessing "ancient roots," *ibid.,* American laws targeting same-sex couples did not develop until the last third of the 20th century. Even now, only nine States have singled out same-sex relations for criminal prosecution. Thus, the historical grounds relied upon in *Bowers* are more complex than the majority opinion and the concurring opinion by Chief Justice Burger there indicated. They are not without doubt and, at the very least, are overstated. The *Bowers* Court was, of course, making the broader point that for centuries there have been powerful voices to condemn homosexual conduct as immoral, but this Court's obligation is to define the liberty of all, not to mandate its own moral code, *Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U.S. 833, 850. The Nation's laws and traditions in the past half century are most relevant here. They show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex. See *County of Sacramento* v. *Lewis*, 523 U.S. 833, 857.

(c) *Bowers'* deficiencies became even more apparent in the years following its announcement. The 25 States with laws prohibiting the conduct referenced in *Bowers* are reduced now to 13, of which 4 enforce their laws only against homosexual conduct. In those States, including Texas, that still proscribe sodomy (whether for same-sex or heterosexual conduct), there is a pattern of nonenforcement with respect to consenting adults acting in private. *Casey, supra,* at 851–which confirmed that the Due Process Clause protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education–and *Romer* v. *Evans,* 517 U.S. 620, 624–which struck down class-based legislation directed at homosexuals–cast *Bowers'* holding into even more doubt. The stigma the Texas criminal statute imposes, moreover, is not trivial. Although the offense is but a minor misdemeanor, it remains a criminal offense with all that imports for the dignity of the persons charged, including notation of convictions on their records and on job application forms, and registration as sex offenders under state law. Where a case's foundations have sustained serious erosion, criticism from other sources is of greater significance. In the United States, criticism of *Bowers* has been substantial and continuing, disapproving of its reasoning in all respects, not just as to its historical assumptions. And, to the extent *Bowers* relied on values shared with a wider civilization, the case's reasoning and holding have been rejected by the European Court of Human Rights, and that other nations have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent. *Stare decisis* is not an inexorable command. *Payne* v. *Tennessee*, 501 U.S. 808, 828. *Bowers*' holding has not induced detrimental reliance of the sort that could counsel against overturning it once there are compelling reasons to do so. *Casey, supra*, at 855—856. *Bowers* causes uncertainty, for the precedents before and after it contradict its central holding.

(d) *Bowers'* rationale does not withstand careful analysis. In his dissenting opinion in *Bowers* Justice Stevens concluded that (1) the fact a State's governing majority has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice, and (2) individual decisions concerning the intimacies of physical relationships, even when not intended to produce offspring, are a form of "liberty" protected by due process. That analysis should have controlled *Bowers,* and it controls here. *Bowers* was not correct when it was decided, is not correct today, and is hereby overruled. This case does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle. Petitioners' right to liberty under the Due Process Clause gives them the full right to engage in private conduct without government intervention. *Casey*, *supra*, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life.

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." *Casey*, *supra*, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.

BOARD of EDUCATION vs. EARLS

FACTS:

The Student Activities Drug Testing Policy (Policy) adopted by the Tecumseh, Oklahoma, School District (School District) requires all middle and high school students to consent to urinalysis testing for drugs in order to participate in any extracurricular activity. In practice, the Policy has been applied only to competitive extracurricular activities sanctioned by the Oklahoma Secondary Schools Activities Association (OSSAA). Respondent high school students and their parents brought this 42 U.S. C. §1983 action for equitable relief, alleging that the Policy violates the Fourth Amendment. Applying Vernonia School Dist. 47J v. Acton, 515 U.S. 646 , in which this Court upheld the suspicionless drug testing of school athletes, the District Court granted the School District summary judgment. The Tenth Circuit reversed, holding that the Policy violated the Fourth Amendment . It concluded that before imposing a suspicionless drug testing program a school must demonstrate some identifiable drug abuse problem among a sufficient number of those tested, such that testing that group will actually redress its drug problem.

The court then held that the School District had failed to demonstrate such a problem among Tecumseh students participating in competitive extracurricular activities.

HELD:

Tecumseh's Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren and does not violate the Fourth Amendment. Pp. 4—14.

(a) Because searches by public school officials implicate Fourth Amendment interests, see e.g., Vernonia, 515 U.S., at 652, the Court must review the Policy for "reasonableness," the touchstone of constitutionality. In contrast to the criminal context, a probable cause finding is unnecessary in the public school context because it would unduly interfere with maintenance of the swift and informal disciplinary procedures that are needed. In the public school context, a search may be reasonable when supported by "special needs" beyond the normal need for law enforcement. Because the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children, id., at 656, a finding of individualized suspicion may not be necessary. In upholding the suspicionless drug testing of athletes, the Vernonia Court conducted a fact-specific balancing of the intrusion on the children's Fourth Amendment rights against the promotion of legitimate governmental interests. Applying Vernonia's principles to the somewhat different facts of this case demonstrates that Tecumseh's Policy is also constitutional. Pp. 4—6.

(b) Considering first the nature of the privacy interest allegedly compromised by the drug testing, see Vernonia , 515 U.S., at 654, the Court concludes that the students affected by this Policy have a limited expectation of privacy. Respondents argue that because children participating in nonathletic extracurricular activities are not subject to regular physicals and communal undress they have a stronger expectation of privacy than the Vernonia athletes. This distinction, however, was not essential in Vernonia, which depended primarily upon the school's custodial responsibility and authority. See, e.g., id., at 665. In any event, students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. Some of these clubs and activities require occasional off-campus travel and communal undress, and all of them have their own rules and requirements that do not apply to the student body as a whole. Each of them must abide by OSSAA rules, and a faculty sponsor monitors students for compliance with the various rules dictated by the clubs and activities. Such regulation further diminishes the schoolchildren's expectation of privacy. Pp. 6—8.

(c) Considering next the character of the intrusion imposed by the Policy, see Vernonia , 515 U.S., at 658, the Court concludes that the invasion of students' privacy is not significant, given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put. The degree of intrusion caused by collecting a urine sample depends upon the manner in which production of the sample is monitored. Under the Policy, a faculty monitor waits outside the closed restroom stall for the student to produce a sample and must listen for the normal sounds of urination to guard against tampered specimens and ensure an accurate chain of custody. This procedure is virtually identical to the "negligible" intrusion approved in Vernonia, ibid. The Policy clearly requires that test results be kept in confidential files separate from a student's other records and released to school personnel only on a "need to know" basis. Moreover, the test results are not turned over to any law enforcement authority. Nor do the test results lead to the imposition of discipline or have any academic consequences. Rather, the only consequence of a failed drug test is to limit the student's privilege of participating in extracurricular activities. Pp. 8—10.

(d) Finally, considering the nature and immediacy of the government's concerns and the efficacy of the Policy in meeting them, see Vernonia , 515 U.S., at 660, the Court concludes that the Policy effectively serves the School District's interest in protecting its students' safety and health. Preventing drug use by schoolchildren is an important governmental concern. See id., at 661—662. The health and safety risks identified in Vernonia apply with equal force to Tecumseh's children. The School District has also presented specific evidence of drug use at Tecumseh schools. Teachers testified that they saw students who appeared to be under the influence of drugs and heard students speaking openly about using drugs. A drug dog found marijuana near the school parking lot. Police found drugs or drug paraphernalia in a car driven by an extracurricular club member. And the school board president reported that people in the community were calling the board to discuss the "drug situation." Respondents consider the proffered evidence insufficient and argue that there is no real and immediate interest to justify a policy of drug testing nonathletes. But a demonstrated drug abuse problem is not always necessary to the validity of a testing regime, even though some showing of a problem does shore up an assertion of a special need for a suspicionless general search program. Chandler v. Miller, 520 U.S. 305 , 319. The School District has provided sufficient evidence to shore up its program. Furthermore, this Court has not required a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing. See, e.g., Treasury Employees v. Von Raab, 489 U.S. 656 , 673—674. The need to prevent and deter the substantial harm of childhood drug use provides the necessary immediacy for a school testing policy. Given the nationwide epidemic of drug use, and the evidence of increased drug use in Tecumseh schools, it was entirely reasonable for the School District to enact this particular drug testing policy. Pp. 10—14.
242 F.3d 1264, reversed.

OPLE vs. TORRES

(July 23, 1998)
Ponente: J. Puno (IDOL!)

FACTS:

· Petition for the declaration of unconstitutionality of **Administrative Order(AO) No. 308,** entitled **"Adoption of a National Computerized Identification Reference System (NCIRS)"** on 2 grounds:
1. It is a usurpation of the power of Congress to legislate
2. It impermissibly intrudes on our citizenry's protected 'zone of privacy'
· AO 308 issued by FVR on December 12, 1996 (see p. 144-146 for the complete citation of AO 308)

ISSUES:

1. WON AO 308 is a law and not a mere administrative order, the enactment of the former being beyond the President's power à YES
2. WON AO 308 violates the right to privacy → YES

RATIO:

1. AO 308 establishes a system of identification that is all-encompassing in scope, affects the life and liberty of every Filipino citizen and foreign resident, and more particularly, violates the right to privacy. It involves a subject that is not appropriate to be covered by an administrative order.

The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to administer and enforce them will disturb the delicate balance of power and cannot be allowed. Hence, the Court will give *stricter scrutiny* to the breach of exercise of power belonging to another by one branch of government.

- **Legislative power:** the authority, under the Constitution, to make laws, and to alter and repeal them. The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil gov't.
- **Executive power:** vested in the President; the power to enforce and administer laws; the power of carrying laws into practical operation and enforcing their due observance.
- **The President, as Chief Executive, represents the gov't as a whole and sees to it that all laws are enforced by the officials and employees of his department.** Thus, he is given ADMINISTRATIVE POWER, which is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.
- **Administrative order:** an ordinance issued by the President which relates to specific aspects in the administrative operation of gov't. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy (Sec 3, Ch 2, Title I, Book III, Administrative Code of 1987).

AO 308 does not merely implement the Administrative Code of 1987; it establishes for the first time a NCIRS, which requires an overhaul of various contending state policies. Also, under AO 308, a citizen cannot transact business with gov't agencies without the contemplated ID card; without such, s/he will have a difficulty exercising his rights and enjoying his privileges. Hence, AO 308 clearly deals with a subject that should be covered by law.

2. The right to privacy is a fundamental right guaranteed by the Constitution; hence, it is a burden of gov't to show that AO 308 is justified by some *compelling state interest* and that it is *narrowly drawn*.

In the case of *Morfe v. Mutuc*, the ruling in *Griswold v. Connecticut* that **there is a constitutional right to privacy** was adopted. "The right to privacy is accorded recognition independently of its identification with liberty… The concept of limited gov't has always included that governmental powers stop short of certain intrusions into the personal life of the citizen… A system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the State can control."

The right of privacy is recognized and enshrined in several provisions of the Constitution, namely: Sections 1, 2, 3(1), 6, 8 and 17 of the Bill of Rights. The **zones of privacy** are also recognized and protected in several statutes, namely: Articles 26, 32 and 723 of the Civil Code, Articles 229, 290-292 and 280 of the Revised Penal Code, The Anti-Wire Tapping Act, the Secrecy of Bank Deposits Act, and the Intellectual Property Code.

The ponencia proceeds to discuss the dangers to the people's right to privacy:

1. Section 4 of AO 308: provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics technology" and "computer application designs"
   - AO 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage. It does not state whether encoding of data is limited to biological information alone for identification purposes. The indefiniteness of AO 308 can give the gov't the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.
   - AO 308 does not tell us how the information gathered shall be handled. It does not provide who shall control and access the data, under what circumstances and for what purpose. These factors are essential to safeguard the privacy and guaranty the integrity of the information.
2. The ability of a sophisticated data center to generate a comprehensive *cradle-to-grave dossier* on an individual and transmit it over a national network is one of the most graphic threats of the computer revolution. The Court ruled that an individual has no reasonable expectation of privacy with regard to the National ID and the use of biometrics technology. AO 308 is so widely drawn that a minimum standard for a reasonable expectation of privacy, regardless of technology used, cannot be inferred from its provisions.
3. The need to clarify the penal aspect of AO 308 is another reason why its enactment should be given to Congress.

DISCLAIMER: the Court, *per se*, is not against the use of computers to accumulate, store, process, retrieve and transmit data to improve the bureaucracy. Also, the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be **narrowly focused** and a **compelling interest** to justify such intrusions.

DUNCAN ASSOC vs. GLAXO WELCOME

FACTS:

- Oct 24, 1995 – petitioner Pedro A Tecson was hired by Glaxo Wellcome Philippines, Inc. (Glaxo) as medical representative
- Tecson signed a contract of employment with the company that states that he agrees to study and abide by existing company rules; *to disclose to management any existing or future relationship by consanguinity or affinity with co-employees or employees of competing drug companies and should management find that such relationship poses a possible conflict of interest, to resign from the company.*
- The Employee Code of Conduct of Glaxo similarly provides that an *employee is expected to inform management of any existing or future relationship by consanguinity or affinity with co-employees or*

employees of competing drug companies. If management perceives a conflict of interest or a potential conflict between such relationship and the employee's employment with the company, the management and the employee will *explore the possibility of a transfer to another department in a non-counterchecking position or preparation for employment outside the company after six months*.

- Tecson was initially assigned to market Glaxo's products in the Camarines Sur-Camarines Norte sales area.
- Tecson entered into a romantic relationship with Betsy, a supervisor of Astra (competitor) in Albay
- Tecson received several reminders from his District Manager regarding the conflict of interest which his relationship with Betsy, still, they got married.
- January 1999- Tecson's superiors informed him that his marriage to Bettsy gave rise to a conflict of interest. They advised him that he and Bettsy should decide which one of them would resign from their jobs, although they told him that they wanted to retain him as much as possible because he was performing his job well.
- Tecson asked for more time because Astra was merging with another pharmaceutical company and Betsy wanted to avail of the redundancy package.
- November 1999- Glaxo transferred Tecson to the Butuan City-Surigao City-Agusan del Sur (where his family was located) sales area. He asked for a reconsideration but his petition was denied.
- Tecson sought Glaxo's reconsideration regarding his transfer and brought the matter to Glaxo's Grievance Committee. But it remained firm in its decision and gave Tescon until February 7, 2000 to comply with the transfer order. Tecson defied the transfer order and continued acting as medical representative in the Camarines Sur-Camarines Norte sales area.
- Tecson was not issued samples of products which were competing with similar products manufactured by Astra. He was also not included in product conferences regarding such products.
- Because the parties failed to resolve the issue at the grievance machinery level, they submitted the matter for voluntary arbitration. Glaxo offered Tecson a separation pay of ₱50,000.00 but he declined the offer.
- Tecson brought the case to the National Conciliation & Mediation Board & the Court of Appeals which upheld the validity of Glaxo's policy prohibiting its employees from having personal relationships with employees of competitor companies as a valid exercise of its management prerogatives.

ISSUE:

1. WON Glaxo's policy against employees marrying from competitor companies is valid?
2. WON said policy violates the equal protection clause?
3. WON tecson was constructively dismissed?

HELD & RATIO:

1. Yes. Glaxo's policy is a valid exercise of management prerogative.

- Glaxo has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information from competitors, especially so that it and Astra are rival companies in the highly competitive pharmaceutical industry.
- It is reasonable under the circumstances because relationships of that nature might **compromise the interests of the company**. In laying down the assailed company policy, *Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures*.
- Glaxo possesses the right to protect its economic interests cannot be denied. No less than the **Constitution recognizes the right of enterprises to adopt and enforce such a policy to protect its right to reasonable returns on investments and to expansion and growth.** Indeed, while our laws endeavor to give life to the constitutional policy on social justice and the protection of labor, it does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes that management has rights which are also entitled to respect and enforcement in the interest of fair play.
- Upon signing the contract with Glaxo, Tecson is clearly aware of Glaxo's policy in prohibiting relationships with employees of the competitor and he is well aware of the effects and consequences of such transgression.

2. No. The challenged policy does not violate the equal protection clause of the constitution.

- The commands of the equal protection clause are addressed only to the state or those acting under color of its authority. Equal protection clause erects no shield against merely private conduct, however, discriminatory or wrongful.
- The only exception occurs when the state in any of its manifestations or actions has been found to have become entwined or involved in the wrongful private conduct. The exception is not present in this case. The company actually enforced the policy after repeated requests to the employee to comply with the policy. Indeed, the application of the policy was made in an impartial and even-handed manner, with due regard for the lot of the employee.
- From the wordings of the contractual provision and the policy in its employee handbook, it is clear that **Glaxo does not impose an absolute prohibition against relationships between its employees and those of competitor companies**. Its employees are free to cultivate relationships with and marry persons of their own choosing. What the company merely seeks to **avoid is a conflict of interest between the employee and the company that may arise out of such relationships**.

  The policy being questioned is not a policy against marriage. An employee of the company remains free to marry anyone of his or her choosing. The policy is not aimed at restricting a personal prerogative that belongs only to the individual. However, an employee's personal decision does not detract the employer from exercising management prerogatives to ensure maximum profit and business success.

- Tecson was aware of that restriction when he signed his employment contract and when he entered into a relationship with Bettsy. Since Tecson knowingly and voluntarily entered into a contract of employment with Glaxo, the stipulations therein have the force of law between them and thus, should be complied with in

good faith. He is therefore estopped from questioning said policy.

1. No. Petitioner was not constructively dismissed when he was re-assigned to Butuan.

- **Constructive dismissal** is defined as a quitting, an involuntary resignation resorted to when continued employment becomes impossible, unreasonable, or unlikely; when there is a demotion in rank or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.
- None of these conditions are present in the instant case. The record does not show that Tescon was demoted or unduly discriminated upon by reason of such transfer.
- Petitioner's transfer to another place of assignment was merely in keeping with the policy of the company in avoidance of conflict of interest, and thus valid. Tecson's wife holds a sensitive supervisory position as Branch Coordinator in her employer-company which requires her to work in close coordination with District Managers and Medical Representatives. The proximity of their areas of responsibility, all in the same Bicol Region, renders the conflict of interest not only possible, but actual, as learning by one spouse of the other's market strategies in the region would be inevitable. Management's appreciation of a conflict of interest is founded on factual basis.

The challenged policy has been implemented by Glaxo impartially and disinterestedly for a long period of time. There was ample notice given to Tecson by Glaxo, the contract, employee handbook, fair warnings from the managers. He was even given time to resolve the conflict by either resigning from the company or asking his wife to resign from Astra. Glaxo even expressed its desire to retain Tecson in its employ because of his satisfactory performance and suggested that he ask Betsy to resign from her company instead. When the problem could not be resolved after several years of waiting, Glaxo was constrained to reassign Tecson to a sales area different from that handled by his wife for Astra. The Court did not terminate Tecson from employment but only reassigned him to another area where his home province is.

BUT BEWARE! D2 NAG-COMMENT C DEAN !!!

Excerpts:

The aim of the law in this context is to insulate family values from the menace of the market. Sure, let the market reign over all things commercial. All that the law says is that there are ***certain things that are placed beyond the reach of the market, that are "inalienable" -- cannot be bartered away -- like, in Pedro's case, choosing a wife.*** To force him to choose between his job and Betsy is callous, the Constitution says. There is a long noble history in law where courts refuse to lend their honor to contracts that dishonor constitutionally guaranteed claims.

The Court invokes the "state action" requirement that says the equal protection clause is "addressed only to the state or those acting under color of its authority" and "erects no shield against merely private conduct, however discriminatory or wrongful." Our Charter makes no such distinction: it says plainly "nor shall any person be denied the equal protection of the laws." That language protects the "person," the victim, whoever violates his equality rights, whether the violator is the state or a private person. For instance, can a taxicab reject pregnant women or grandparents because they can't board the cab fast enough? Can McDonald's or Jollibee exclude street children because they are not good for its image?

There are many ways to satisfy state action. It would have been easier here because the Constitution requires the state to respect the "sanctity of family life" as the "foundation of the nation," etc. In light of this affirmative command, the Court's inaction is the state action. By tolerating intolerance, the Court becomes a willing accomplice. It has blessed the sin with its imprimatur, and owned up to the wrong it should have chastised.

In the end, this should not be seen as a case of love versus profit. Rather it is, in its most technical legal sense, a question of the "level of scrutiny," of the standard of judicial review to be applied by the Court. If all that the employer imposes are ordinary job requirements, like wearing a uniform, observing official hours, etc., it would be enough to say that the management prerogative "to protect a competitive position" is reasonable (or, in legal jargon, it meets the "minimum test of rationality"). But if the employer burdens a constitutionally protected claim like the right to marry, and treats an employee differently because of his choice of a life partner, then the employer must discharge a higher burden. He will be judged by heightened standards because he impinges upon rights which enjoy a higher level of protection. That standard is called "strict scrutiny," which requires that the regulation be supported by compelling interests and that it be narrowly tailored to achieve that purpose. Regrettably, the Court, by not applying strict scrutiny, has relieved Glaxo of its duty to craft those "narrowly tailored" measures that equal protection entails.

In case you have any lingering doubts, listen to the Court praise Glaxo for its benign but feudal concern for Pedro: "When their relationship was still in its initial stage, Tecson's supervisors at Glaxo constantly reminded him about its effects on his employment..." In other words, when Pedro and Betsy were just falling in love, the company did its best to smother that love. To think that falling in love is one of life's sweetest joys, and here comes your boss reminding you of "its effects on [your] employment."

BELLINGER vs. BELLINGER

FACTS:

- On May 2, 1981, Mr. & Mrs. Bellinger went through a ceremony of marriage under Marriage Act 1949. Mrs. Bellinger, formerly Elizabeth Ann Wilkinson, was a male who underwent gender reassignment surgery.
- Sec. 1(c) of the Nullity of Marriage Act of 1971, re-enacted in Sec. 11(c) of the Matrimonial Causes Act 1973 provides that a marriage is void unless the parties are 'respectively male and female.'
- Background: Mrs. Bellinger, born in 1946, was classified & registered as male. However, she felt more inclined to be female. Despite this, she married a woman when she was 21, but they separated and eventually divorced in 1975. Since then, she has dressed & lived as a woman and

underwent sex change before she married Mr Bellinger.

- In the present case, Mrs Bellinger seeks a declaration that the marriage was valid at its inception and is subsisting. As an alternative claim, she seeks a declaration that Sec 11(c) of the Matrimonial Causes Act 1973 is incompatible w/ Articles 8 & 12 of the European Convention on Human Rights.

*Transsexual: born w/ the anatomy of a person of one sex but w/ an unshakeable belief or feeling that they are persons of the opposite sex. (Mrs. Bellinger is transsexual)
*Note: the aim of gender reassignment surgery is to make somebody feel more comfortable w/ his/her body, '*not to turn them into a woman*.'

ISSUES

1. WON petitioner, Mrs Bellinger is validly married to Mr Bellinger (that is, WON at the time of the marriage, Mrs Bellinger was 'female' within the meaning of that expression in the statute) **[NO]**
2. WON Sec 11(c) of the Matrimonial Causes Act 1973 is incompatible w/ articles 8 & 12 of the European Convention on Human Rights **[YES]**

RATIO:

1. NO

- W/ the gender reassignment surgery, Mrs Bellinger's testes & penis was removed, and an orifice was created; but she was still without uterus or ovaries or any other biological characteristics of a woman.
- The present state of English law regarding the sex of transsexual people is represented by the case of *Corbett v Corbett.*
- *Corbett v Corbett:* (concerns the gender of a male to female transsexual in the context of the validity of a marriage.) Held: **The law should adopt the chromosomal, gonadal & genital test. If all 3 are congruent, that should determine a person's sex for the purpose of marriage. The biological sexual constitution of an individual is fixed at birth, at the latest, & can't be changed either by the natural dev't of organs of the opposite sex or by medical or surgical means.**
- Criticism on Corbett: It is too reductionistic to have regard only to the 3 Corbett factors. This approach ignores the compelling significance of the psychological status of the person as a man or a woman.
- The trial judge and the CA, though recognizing the marked change in social attitudes to problems such as those of Mrs Bellinger since Corbett, adhered to the Corbett approach and held that the 3 criteria relied upon therein remain the only basis upon which to decide upon the gender of a child at birth.

The contrary view

- The European Court of Human Rights said that an increased social acceptance of transsexualism & an increased recognition of the problems w/c post-operative transsexual people encounter. This court decided the *Goodwin v UK* case.
- *Goodwin v UK:* Christine Goodwin was a post-operative male to female transsexual. Court held that the UK was in breach of Art. 8 (right to respect for private life) & Art 12 (right to marry) of the Convention.
- *Goodwin:* A test of congruent biological factors can no longer be decisive in denying legal rec69ognition to the change o gender of a post-operative transsexual. Court recognized that it is for a contracting state to determine the conditions under w/c a person claiming legal recognition as a transsexual establishes that gender re-assignment has been properly effected. But it found no justification for barring the transsexual from enjoying the right to marry under any circumstances. [The Goodwin decision is prospective in character]

Developments since the Goodwin decision

- 1) The terms of reference of the interdepartmental working grp on transsexual people include re-examining the implications of granting full legal status to transsexual people in their acquired gender; 2) *govt announced intention to bring forward primary legislation w/c will allow transsexual people who can demonstrate they have taken decisive steps towards living fully & permanently in the acquired gender to marry in that gender*; 3) from the Goodwin decision, those parts of English law w/c fail to give legal recognition to the acquired gender of transsexual persons are in principle incompatible w/ Arts 8 & 12 of the Convention. Domestic law, including Sec 11(c) of the Matrimonial Causes Act will have to change.

Conclusion on first issue:

- Despite humanitarian considerations & the international trend towards recognizing gender reassignment, the Lordships' House, sitting *in its judicial capacity* ought not to accede to the submissions made on behalf of Mrs Bellinger. Recognition of Mrs Bellinger as female for the purposes of Sec 11(c) of the Matrimonial Causes Act 1973 would necessitate giving the expressions 'male' & 'female' in that Act a novel, extended meaning: that a person may be born w/ one sex but later become, or become regarded as, a person of the opposite sex. Questions of social policy & administrative feasibility arise at several points. **The issues are altogether ill-suited for determination by courts and court procedures. They are pre-eminently a matter for Parliament.**
- Intervention by the courts would be peculiarly inappropriate when the change being sought in the law raises issues such as the ff:
- FIRST, much uncertainty surrounds the circumstances in w/c gender reassignment should be recognized for the purposes of marriage. There seems to be no 'standard' operation or recognized definition of the outcome of completed surgery. It is questionable whether the successful completion of some sort of surgical intervention should be an essential prerequisite to the recognition of gender assignment. There must be some objective,

publicly available criteria by w/c gender reassignment is to be assessed.

- SECOND, the recognition of gender reassignment for the purposes of marriage is part of a wider problem w/c should be considered as a whole & not dealt with in a piecemeal fashion. The decision regarding recognition of gender reassignment for the purpose of marriage cannot sensibly be made in isolation from a decision on the like problem in other areas where a distinction is drawn bet'n people on the basis of gender (i.e areas such as educ, child care, birth certificates, etc)
- THIRD, even in the context of marriage, the present question raises wider issues. Marriage is an institution, or relationship deeply embedded in the religious & social culture of this country. It's deeply embedded as a relationship bet'n 2 persons of the opposite sex...There are those who urge that the special relationship of marriage should not now be confined to persons of the opposite sex
- FOR THESE REASONS I WOULD NOT MAKE A DECLARATION THAT THE MARRIAGE BET'N MR & MRS BELLINGER WAS VALID. A CHANGE IN THE LAW AS SOUGHT BY MRS BELLINGER MUST BE A MATTER OF DELIBERATION & DECISION BY PARLIAMENT.

2. YES

- Sec 11(c) of the Matrimonial Causes Act 1973, insofar as it makes no provision for the recognition of gender reassignment is incompatible w/ Sec 8 & 12 of the Convention.
- Sec 8: right to respect for private life; Sec 12: right to marry (Case did not say anything else on the provision)
- Mrs Bellinger claims that although she & Mr Bellinger celebrated their marriage long before the Human Rights Act 1998 came into force, & although the *Goodwin* decision dealt w/ the human rights position as at the date of the judgment (Jul 2002), the non-recognition of their ability to marry (by virtue of Sec 11c) continues to prevent them marrying each other.
- That non-recognition of gender reassignment for the purposes of marriage is incompatible w/ Secs 8 & 12 is found by the European Court of Human Rights in its *Goodwin* decision, and the government accepted such position. However, the govt's announcement of forthcoming legislation on the matter has not had the effect of curing the incompatibility.

A. Protected Interests in Property

Mere "Regulation" under the Due Process Clause VERSUS "Taking" of Property via the Power of Eminent Domain

CHURCHILL VS. RAFFERTY

(1915)
Trent J

FACTS:

Plaintiffs put up a billboard on private land in Rizal Province "quite a distance from the road and strongly built". Some residents (German and British Consuls) find it offensive. Act # 2339 allows the defendent, the Collector of Internal Revenue, to collect taxes from such property and to remove it when it is offensive to sight. Court of first Instance prohibited the defendant to collect or remove the billboard.

ISSUE:

1.May the courts restrain by injunction the collection of taxes?

2.Is Act # 2339 unconstitutional because it deprives property without due process of law in allowing CIR to remove it if it is offensive?

RULE:

1.an injunction is an extraordinary remedy and not to be used if there is an adequate remedy provided by law; here there is an adequate remedy, therefore court may not do so.

2.unsightly advertisements which are offensive to the sight are not dissociated from the general welfare of the public, therefore can be regulated by police power, and act is constitutional.

RATIONALE:

1.Writ of injunction by the courts is an extraordinary preventive remedy. Ordinary (adequate) remedies are in the law itself. Sections 139 and 140 of the Act forbids the use of injunction and provides a remedy for any wrong. _Plaintiffs say that those sections are unconstitutional because by depriving taxpayers remedy, it also deprives them of property without due process of law and it diminishes the power of the courts_. Taxes, whether legal or illegal, cannot be restrained by the courts by injunction. There must be a further showing that there are special circumstances such as irreparable injury, multiplicity of suits or a cloud upon title to real estate will result. Practically, if the courts can do so then there will be an insane number of suits enjoining the collection of taxes by tax avoiders. The state will not function since taxes are not paid (and judges will become unpaid!). There is, of course, no law nor jurisprudence that says it is not allowed to sue after having paid the tax, and such is the usual course in bringing suits against illegal(?) taxes. Pay it under protest. As to the diminishment of power of the courts, the Philippine courts never had the power to restrain the collection of taxes by injunction. It is said par 2 sec 56 Act 136 confers original jurisdiction upon CFI to hear and determine all civil actions but civil actions at that time had a well-defined meaning. The legislature had already defined the only action previously and that is the payment of the tax under protest then suit. Civil actions like injunction suits are of a special extraordinary character. Section 139 also does not diminish power of the courts because the power is still there if there is no adequate remedy available but sec 140 gives an adequate remedy.

2.sec 100 of act 2339 gives power to the CIR to remove offensive billboards, signs, signboards after due invstigation. The question becomes is that a reasonable

exercise of police power affecting the advertising industry? Police power is reasonable insofar as it properly considers public health, safety, comfort, etc. If nothing can justify a statute, it's void. State may interfere in public interest but not final. Court is final. Police power has been expanding. blahblahblah (consti1). The basic idea of civil polity in US is gov't should interfere with individual effort only to the extent necessary to preserve a healthy social and economic condition of society. State interferes with private property through, taxation, eminent domain and police power. Only under the last are the benefits derived from the maintenance of a healthy economic standard of society and aka damnum absque injuria. Once police power was reserved for common nuisances. Now industry is organized along lines which make it possible for large combinations of capital to profit at the expense of socio-economic progress of the nation by controlling prices and dictating to industrial workers wages and conditions of labor. It has increased the toll on life and affects public health, safety and morals, also general social and economic life of the nation, as such state must necessarily regulate industries. Various industries have regulated and even offensive noises and smells coming from those industries. Those noises and smells though ostensibly regulated for health reason are actually regulated for more aesthetic reasons. What is more aesthetic than sight which the ad industry is wooing us with. Ads cover landscapes etc. The success of billboards lie not upon the use of private property but on channels of travel used by the general public. Billboard that cannot be seen by people are useless. Billboards are legitimate, they are not garbage but can be offensive in certain circumstances. Other courts in US hold the view that police power cannot interfere with private property rights for purely aesthetic purposes. But this court is of the opinion that unsightly advertisements which are offensive to the sight are not dissociated from the general welfare of the public.

disposition:
judgment reversed

motion for a rehearing

trent j:
we were right the first time

U.S. vs. TORIBIO

FACTS:

- Luis Toribio slaughtered for human consumption a Carabao without a permit from the municipal treasurer violating Act 1147
  - Act 1147, Sec. 30. “No large cattle shall be slaughtered or killed for food **at the municipal slaughterhouse** except upon permit secured from the municipal treasurer...”
  - Act 1147, Sec. 31. “No permit to slaughter carabaos shall be granted by the municipal treasurer unless such animals are **unfit for agricultural work or for draft purposes**...”
    - Application of Toribio for a permit was denied since animal was not found to be unfit for agricultural work or draft purposes.
- It is contended by Toribio that statute is applicable only to slaughter done in a municipal slaughterhouse and that the statute is unconstitutional sine it penalizes the slaughter of carabaos without a permit amounting to a taking by the government of the right of the person over his property amounting to an exercise of eminent domain without just compensation or an undue exercise of police power by the State.

ISSUE:

1. W/N the statute is applicable only to slaughter done in a municipal slaughterhouse
   - The statute seeks to protect the large cattle of the Philippines from theft and to make easy their recovery by providing an elaborate and compulsory system of branding and registration
   - By limiting the application of the statue to those done only in the municipal slaughterhouse, the purpose of the article is greatly impaired if not totally destroyed since these animals could now be slaughtered for human consumption without need of showing proof of ownership.
   - Statute should be construed so as to give effect to the manifest intent of the lawmaker and promote the object for which the statue was enacted.
   - **Statute therefore prohibits and penalizes the slaughter of large cattle for human consumption anywhere without the permit provided for in the Act.**

1. W/N the statute is unconstitutional
   - Because of the statue the use and enjoyment of the owners over their cattle are in a way impaired... therefore it is not a taking but a **just restraint of injurious private use of property** ▪ police power of the State.
   - “Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious (to the equal enjoyment of others having an equal right to the enjoyment of their property or to the rights of the community), and to such reasonable restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may thing necessary and expedient.”
   - Disease threatened the total extinction of carabaos in the Philippines resulting in famine from the insufficiency of work animals to cultivate the fields.
     - Given these circumstances and conditions, the general welfare necessitated the enactment of the statute
       - To justify the exercise of police power of the state: first, that the interests of those of a particular class require such interference; and second, that the means

are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

Consti. Art. III, sec 9

Private property shall not be taken for public use without just compensation.

PEOPLE vs. FAJARDO

Appeal from the decision of the CFI convicting Juan F. Fajardo and Pedro Babilonia of a violation of Ordinance No. 7, Series of 1950, of the Municipality of Baao Camarines Sur, for having constructed without a permit from the municipal mayor a building that destroys the view of the public plaza.

FACTS
During the incumbency of defendant-appellant Juan F. Fajardo as mayor of the municipality of Baao, Camarines Sur, the municipal council passed the ordinance in question providing as follows:

"SECTION 1. Any person or persons who will construct or repair a building should, before constructing or repairing, obtain a written permit from the Municipal Mayor.
SEC. 2. A fee of not less than P2.00 should be charged for each building permit and P1.00 for each repair permit issued.

After the term of Fajardo as mayor had expired, he and his son-in-law, appellant Babilonia, filed a written request with the incumbent municipal mayor for a permit to construct a building adjacent to their gasoline station on a parcel of land registered in Fajardo's name, located along the national highway and separated from the public plaza by a creek. The request was denied, for the reason among others that the proposed building would destroy the view or beauty of the public plaza. Defendants reiterated their request for a building permit, but again the request was turned down by the mayor.

Appellants proceeded with the construction of the building without a permit, because they needed a place of residence very badly, their former house having been destroyed by a typhoon and they had been living on leased property.

On February 26, 1954, appellants were charged before and convicted by the justice of the peace court of Baao, Camarines Sur, for violation of the ordinance in question. Defendants appealed to the Court of First Instance, which affirmed the conviction, and sentenced appellants to pay a fine of P35 each and the costs, as well as to demolish the building in question. From this decision, the accused appealed to the Court of Appeals, but the latter forwarded the records to us because the appeal attacks the constitutionality of the ordinance in question.

ISSUE
WON the assailed municipal ordinance was valid.

WON the conviction was valid.

HOLDING
No, the regulation in question, Municipal Ordinance No. 7, Series of 1950 was beyond the authority of said municipality to enact, and is therefore null and void.
No, The appealed conviction can not stand. The conviction is reversed, and said accused are acquitted. *(as a consequence of the first issue)*

RATIO
1. A first objection to the validity of the ordinance in question is that under it the mayor has absolute discretion to issue or deny a permit. *The ordinance fails to state any policy, or to set up any standard to guide or limit the mayor's action. No purpose to be attained by requiring the permit is expressed; no conditions for its [illegible] merely a case of deficient standards; standards are entirely lacking.* The ordinance thus confers upon the mayor arbitrary and unrestricted power to grant or deny the issuance of building permits, and it is a settled rule that such an undefined and unlimited delegation of power to allow or prevent an activity, per se lawful, is invalid (People vs. Vera, 65 Phil)

The ordinance in question in no way controls or guides the discretion vested thereby in the respondents. It prescribes no uniform rule upon which the special permission of the city is to be granted. Thus the city is clothed with the uncontrolled power to capriciously grant the privilege to some and deny it to others; to refuse the application of one landowner or lessee and to grant that of another, when for all material purposes, the two are applying for precisely the same privileges under the same circumstances. *The danger of such an ordinance is that it makes possible arbitrary discriminations and abuses in its execution, depending upon no conditions or qualifications whatever, other than the unregulated arbitrary will of the city authorities as the touchstone by which its validity is to be tested. Fundamental rights under our government do not depend for their existence upon such a slender and uncertain thread. Ordinances which thus invest a city council with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, are unreasonable and invalid. The ordinance should have established a rule by which its impartial enforcement could be secured.*

It is contended, on the other hand, that the mayor can refuse a permit solely in case that the proposed building "destroys the view of the public plaza or occupies any public property"; and in fact, the refusal of the Mayor of Baao to issue a building permit to the appellant was predicated on the ground that the proposed building would "destroy the view of the public plaza" by preventing its being seen from the public highway. Even thus interpreted, the ordinance is unreasonable and oppressive, in that it operates to permanently deprive appellants of the right to use their own property; hence, it oversteps the bounds of police power, and amounts to a taking of appellants property without just compensation. We do not overlook that the modern tendency is to regard the beautification of neighborhoods as conducive to the comfort and happiness of residents. But while property may be regulated in the interest of the general welfare, and in its pursuit, the State may prohibit structures offensive to the sight (Churchill and Tait vs. Rafferty, 32 Phil. 580), *the State may not, under the guise of police power,*

permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. As the case now stands, every structure that may be erected on appellants' land, regardless of its own beauty, stands condemned under the ordinance in question, because it would interfere with the view of the public plaza from the highway. The appellants would, in effect, be constrained to let their land remain idle and unused for the obvious purpose for which it is best suited, being urban in character. To legally achieve that result, the municipality must give appellants just compensation and an opportunity to be heard.

2. The validity of the ordinance in question was justified by the court below under section 2243, par. (c), of the Revised Administrative Code, as amended. This section provides:

SEC. 2243. Certain legislative powers of discretionary character.-The municipal council shall have authority to exercise the following, discretionary powers:
* * *
To establish fire limits in populous centers, prescribe the kinds of buildings that may be constructed or repaired within them, and issue permits for till creation or repair thereof, charging a fee which shall be determined by the municipal council and which shall not be less than two pesos for each building permit and one peso for each repair permit issued. The fees collected under the provisions of this subsection shall accrue to the municipal school fund."

Under the provisions of the section above quoted, however, *the power of the municipal council to require the issuance of building permits rests upon its first establishing fire limits in populous parts of the town and prescribing the kinds of buildings that may be constructed or repaired within them. As there is absolutely no showing in this case that the municipal council had either established fire limits within the municipality or set standards for the kind or kinds of buildings to be constructed or repaired within them before it passed the ordinance in question, it is clear that said ordinance was not conceived and promulgated under the express authority of sec. 2243 (c) aforequoted.*

YNOT vs. CA

FACTS:

- Petitioner challenges the constitutionality of EO NO. 626-A which provides:
    - The Pres has given orders prohibiting the interprovincial movement of carabaos and the slaughtering of carabaos of a certain age. Despite such orders, violators still manage to circumvent the prohibition. Therefore, I, Marcos, promulgate the ff amendment: no carabao, regardless of age, sex, physical condition or purpose and no carabeef shall be transported from one province to another.
- Petitioner had transported six carabaos in a pump boat from masbate to Iloilo on Jan 13, 1984 which were cxonfiscated
- The RTC sustained the confiscation
- So did the appellate court
- Petitioner's claim is that the penalty is invalid because it is imposed without according the owner a right to be heard before a competent and impartial court as guaranteed by due process
- This court has declared that while lower courts should observe a becoming modesty in examining constitutional questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal. We have jurisdiction under the constitution to "review, revise, reverse, modify or affirm in certiorari, as the law or rules of court may provide" final judgments and orders of lower courts in, among others, all cases involving the constitutionality of certain measures. This simply means that the resolution of such cases may be made in the 1st instance by these lower courts
- Courts should not follow the path of least resistance by simply presuming the constitutionality of a law when it is questioned
- The challenged measure is denominated as an executive order but it is really a pres decree, promulgating anew rule instead of merely implementing an existing law. Issued not for taking care that the laws are faithfully executed but in the exercise of legislative authority
- Due process clause- intentionally vague; meant to adapt easily to every situation.
- It may not be dispensed with except in the interest of public health and public morals
- Police power was invoked by the govt to justify EO 626-A
- Court held that as to the 1st EO, it was ok (reasonably necessary) but not so with the EO 626-A bec it imposes an absolute ban not on the slaughter of carabao but on their movement
- Unlike in the toribio case, here there is no trial
- The EO defined the prohibition, convicted the petitioner, and immediately imposed punishment, which was carried out forthright. Also, as it also provides that confiscated carabaos shall be donated to charitable institutions as the chairman of natl meat inspection may see fit, it's an invalid delegation of powers
- Invalid exercise of police power. Due process is violated. And an invalid delegation of powers
- EO 626-A=unconstitutional
-

U.S. vs. CAUSBY

FACTS:

Respondents are owners of 2.8-acre farm outside of Greensboro, North Carolina. Said property was close to the municipal airport leased by the government. The Civil Aeronautics Authority (CAA) designated the safe path to glide to one of the airport runways over the property of appellees. They contend that the noise and glare from airplaines landing and taking off constituted a **taking of property** under the FIFTH AMENDMENT. The Court of Claims found the facts of the case to constitute a taking of property and rewarded appellees with $2,000 as value of the easement.

ISSUES:

1. WON appellee's property was taken as provided for the Fifth Amendment
2. WON awarding of damages is reasonable
3. WON Court of Claims is with jurisdiction

HELD, RATIO:

1. Yes, US Congress enacted the Air Commerce Act of 1926 (as amended by Civil Aeronautics Act of 1930), which outlines that the US had complete and exclusive national sovereignty in air space. The Act deemed **navigable air space** as that above the minimum safe altitude of flight prescribed by the CAA. While appellant contend that the flight is well within the minimum safe altitude (take-off and landing), and that there was no physical invasion or taking of property, the Court ruled that rendering lands unusable for purposes of a chicken farm entitles petitioners to compensation under the Fifth Amendment, despite the Court's unfavorable view of the application of the common law doctrine. The measure of value is not the taker's gain but the owner's loss. The path of glide as defined by the appellant is not within the meaning of minimum safe altitude of flight in the statute. Land owners are entitled to at least as much space above ground as he can occupy in connection with his use of the land. The damages sustained were a product of a direct invasion of respondent's domain. It is the character of invasion, and not the amount of damage resulting, that determines WON property was taken. Furthermore, the definition of "property" under the Fifth Amendment contains a meaning supplied by local law – as in the case of North Carolina Law.
2. No, the value of the land was not completely destroyed; it can still be used for other purposes. Thus, appellees are only entitled to a lower value given the limited utility of the land. However, there is no precise description of the nature of the easement taken, whether temporary or permanent. These deficiencies in evidentiary findings are not rectified by a statement of opinion. The finding of facts on every material matter is a statutory requirement. The Court of Claims' finding of permanence is more conjectural than factual; more is needed to determine US liability. Thus, the amount stated as damages is not proper.
3. Yes, the Court of Claims has clear jurisdiction over the matter. The question of WON there has been a taking property is a claim within the constitutionally-granted jurisdiction of the Court of Claims.

WHEREFORE, the judgment is reversed. Case remanded to the Court of Claims for evidentiary hearing.

Justice Black, dissenting:

The Court's opinion seems to be that it is the noise and glare of planes, rather than the flying of the planes themselves, which constitutes taking. The appellee's claims are at best an action in tort (nuisance, statute violation, negligence). The Government cannot be sued in the Court of Claims unless over matters of implied or express contracts. There is no contract involved in the case at bar.

The concept of "taking" has been given a sweeping meaning. The old concept of land ownership must be made compatible with the new field of air regulation. The damages should not be elevated to the level of the Constitution, as it would be an obstacle to a better-adapted, vital system of national progress.

REPUBLIC vs. PLDT

FACTS:

Sometime in 1933, respondent PLDT contracted an agreement with the American company, RCA Communications Inc., connecting calls coming and going from RCA to the Philippines and vice versa. Later, this agreement extended to radio and telephone messages to and from European and Asiatic countries. In 1956, PLDT, complying with their 24-month notice agreement, made known its termination of the agreement, which came to pass in 1958.

Created in 1947, the Bureau of Telecommunications set up a Government telephone System by renting trunk lines from PLDT. In doing so, the Bureau has agreed to abide by the rules and regulations of PLDT, which includes the prohibition for public use that which was furnished for private use. In 1948, the Bureau extended service to the general public.

In 1958, the Bureau entered into an agreement with RCA for a joint overseas telephone service. PLDT then complained that the Bureau was violating their agreement as the latter was using PLDT's trunk lines for public use and not just private. PLDT then gave notice that if these activities continued, they would disconnect service. When no reply was received, OLDT pulled the plug on the Bureau, causing an isolation of the RP from the rest of the world, except the US.

The Bureau proposed an interconnecting agreement, but as negotiations wore on, neither party could come to a compromise.

Petitioner Bureau of Telecommunications is prayed for a judgment commanding PLDT to execute an agreement, allowing the Bureau to use PLDT's facilities, as well as a writ of preliminary injunction to restrain respondent from severing existing connections as well as restoring those already severed.

While the lower court directed respondent to reconnect the severed lines and refrain from disconnecting more, as well as to accept incoming international calls, PLDT filed its answer denying any obligation it has to the Bureau, as well as assailing the jurisdiction of the Court of First Instance. PLDT also claimed that the Bureau was engaging in commercial telephone operations, which was in excess of its authority.

The court then said that it could not compel the parties to enter into agreement, that under EO 94, establishing the Bureau, said Bureau is not limited to government services, nor was it guilty of fraud, abuse, or misuse of PLDT's poles, as well as declared the injunction permanent. The complaint and counterclaims, however, were dismissed. Hence this appeal.

ISSUES:

1) Whether or not the trial court can coerce the parties to enter into agreement.
2) Whether the court of first instance had jurisdiction.

3) Whether the Bureau of Telecommunications is empowered to engage in commercial telephone business.

4) Whether these commercial services created unfair competition, and the Bureau is subsequently guilty of fraud and abuse.

5) Whether PLDT has a right to compensation for the use of the Bureau of PLDT's poles.

HELD:

1) No the trial court may not.
2) Yes, the trial court had jurisdiction over the case.
3) Yes, the Bureau is empowered to engage in commercial telephone business.
4) No, these services did not create any unfair competition.
5) No, PLDT has no right to compensation.

RATIO:

1) The court here stated that contracts and agreements must be made freely and not tainted by violence, intimidation, or undue influence. However, while the RP may not compel an agreement, it may require PLDT to permit interconnection between it and the government, as an exercise of eminent domain. While said power usually pertains to title, the court here said that the power may be used to impose a burden on the owner, without having to relinquish the ownership and title. Also, the State should be able to require a public utility to render services in the general interest. In this case, the general public would be the ones who will profit from an interconnection.
2) PLDT contends that the court had no jurisdiction, and the proper body is the Public Service Commission. The court here stated, however, that the latter has no jurisdiction over the taking of property under the power of eminent domain. Also, while PLDT is a public utility, and its franchise and properties are under the jurisdiction of the Public Service Commission, the Bureau's telecommunications network is a public service owned by the RP and is therefore exempt from such jurisdiction (sec. 14 Public Service Act).
3) EO 94 sec. 79 empowers the Bureau to b) negotiate for, operate and maintain wire telephone or radio telephone communication service throughout the Philippines c) to prescribe, subject to approval by the Department Head, equitable rates of charges for messages handled by the system and/or for time calls and other services that may be rendered by the system.

   Nothing precludes the Bureau from engaging in commercial activities or prevents it from serving the general public. While in the agreement, the Bureau limited itself to government services, the court said that this does not bar it from future expansion into commercial services, as this is allowed by law.

4) The competition assailed here is merely hypothetical. This is shown by the figures. At the time of filing the proceedings, PLDT still had 20,000 applications pending, and the Bureau had 5,000. There can be no competition when PLDT cannot even handle the demands of the public. Also, the charter of PLDT provides that its rights are not exclusive. Lastly, the court said that the acceptance of PLDT of payments for rentals implies knowledge of the Bureau's intentions to enter into commercial services. As the relationship has been around for awhile and the public has utilized both services, it is too late for PLDT to claim misuse of its facilities.
5) PLDT claims that the use of the poles are free only for telegraphic services, as the telephone services did not exist yet at the time of the franchise. Also alleged is that the Bureau must pay for the use of the poles, as well as if the latter attaches more than one ten-pin crossarm for telegraphic purposes. However, the court said that there is no proof of any strain caused by the telephone wires, nor of any damage caused, nor that the RP has attached more than one ten-pin crossarm. They reasoned that so long as there is no additional burden, the reservation in favor of the telegraphic wires should extend to the telephone wires.

REPUBLIC vs. CASTELVI

FACTS:

1. Republic (Philippine Air Force) occupied Castellvi's land on July 1, 1947, by virtue of a contract of lease, on a year to year basis..
2. Before the expiration of the contract of lease in 1956, the Republic sought to renew the contract but Castellvi refused.
3. The AFP refused to vacate the land. Castellvi wrote to the AFP Chief of Staff informing him that the heirs of the property had decided to subdivide the land for sale to the general public.
4. The Chief of Staff answered that it was difficult for the AFP to vacate in view of the permanent installations erected and that the acquisition of the property by expropriation proceedings would be the only option.
5. Castellvi brought a suit to eject the Phil. Air Force from the land. While the suit was pending, the Republic of the Phil. filed a complaint for eminent domain against Vda. De Castellvi and Toledo-Gozun over parcels of land owned by the two.
6. Trial Court issued an order fixing the provisional value of lands at P259, 669
7. Castellvi filed a Motion to Dismiss for the following reasons:

a) the total value of the parcels land should have been valued at P15/sq.m. because these are residential lands.

b) the Republic (through the Philippine Air Force), despite repeated demands had been illegally occupying the property since July 1, 1956.

The defendants prayed that the complaint be dismissed OR that the Republic be ordered to pay P15/ sq. m. plus interest at 6% per annum from July 1, 1956 AND the Republic be ordered to pay 5 million as unrealized profits.

Gozun (co-defendant and owner of another parcel of land) also filed a Motion to Dismiss because her lands should have been valued at P15/sq.m. as these were residential and a portion had already been subdivided into diff. Lots for sale to the general public.

8. After the Republic had deposited the provisional value of the land, it was actually placed in the actual possessions of the lands. (1959)
9. The Commissioners appointed to determine the value of the land recommended that the lowest price that should be paid was P10/sq.m. The trial court accepted the recommendation.
10. 1961 – Republic filed a motion for a new trial upon the grounds of newly-discovered evidence but was denied by the court. A series of appeals and counter appeals followed.
11. Republic elevated the case to the Supreme Court.

Important Issues:

1. WON the lower court erred holding that the taking of the properties commenced with the filling of the action.
2. WON the lower court erred in finding the price of P10/sq.m. of the lands.

DECISION:

Issue #1.

The trial court is correct in ruling that the "taking" of the land started only with the filing of the complaint for eminent domain in 1959 and not in 1947 (start of the contract of lease).

1. Two essential elements in the "taking' of the property **were not present** when the Republic entered and occupied the property in 1947.
   a) that the entrance and occupation must be for a permanent, or indefinite period
   b) that in devoting the property to public use the owner was ousted from the property and deprived of its financial use.
1. The right of eminent domain **may not be** exercised by simply leasing the premises to be expropriated. Nor can it be accepted that the Republic would enter into a contract of lease where its real intention was to buy.
2. To sustain the contention of the Republic would result in a practice wherein the Republic would just lease the land for many years then expropriate the land when the lease is about to terminate, then claim that the "taking" of the property be considered as of the date when the Gov't started to occupy the land, in spite of the fact that the value of the property had increased during the period of the lease. **This would be sanctioning what obviously is a defective scheme, which would have the effect of depriving the owner of the property of its true and fair value at the time when the expropriation proceedings were actually instituted in court.**

Issue # 2

The price of P10/sq.m. is quite high. The Supreme Court fixed it at P5/sq.m.

1. There is evidence that the lands in question had ceased to be devoted to the production of agricultural crops, that they had become adaptable for residential purposes, and that the defendants had actually taken steps to convert their lands into residential subdivisions even before the Republic filed the complaint for eminent domain.
2. In expropriation proceedings, the owner of the land has the right to its value for the use for which it would bring the most in the market.
3. The Court has weighed all the circumstances (such as the prevailing price of the land in Pampanga in 1959) and in fixing the price of the lands the Court arrived at a happy medium between the price as recommended by the commissioners and approved by the lower court (P10) and the price advocated by the Republic (20 centavos /sq.m.)

BEL-AIR ASSOCIATION vs. IAC

Ponente: J. Sarmiento

FACTS:
Before the Court are five consolidated petitions, docketed as G.R. Nos. 71169, 74376, 76394, 78182, and 82281 in the nature of appeals from five decisions of the Court of Appeals, denying specific performance and damages. This case stems from a provision regarding restrictions found in the deed of sale granted to Bel-Air homeowners. Included in the said deed was a restriction (sec II, b) which limited use of lots for residential purposes only. In the 1960's Ayala Corp. began developing the area bordering Bel-Air along Buendia Ave and Jupiter St. With the opening of the entire length of Jupiter Street to public traffic in the 1970's, the different residential lots located in the northern side of Jupiter Street the ceased to be used for purely residential purposes. The municipal government of Makati and Ministry of Human Settlements declared that the said areas, for all purposes, had become commercial in character.

Subsequently, on October 29, 1979, the plaintiffs-appellees Jose D. Sangalang and Lutgarda D. Sangalang brought the present action for damages against the defendant-appellant Ayala Corporation predicated on both breach of contract and on tort or quasi-delict. They were joined in separate suits by other homeowners and the Bel-Air Village Association (BAVA) against other commercial establishments set up in the vicinity of the village. After trial on the merits, the then Court of First Instance of Rizal, Pasig, Metro Manila, rendered a decision in favor of the appellees. On appeal, the Court of Appeals rendered a reversal

ISSUES:

1. Did the Bel-Air residents who converted their residences into commercial establishments violate the restrictions found the deed of sale? **NO**

2. Is Ayala Corporation (formerly Makati Development Corporation), liable for tearing down the perimeter wall along Jupiter Street that had separated its commercial section from the residences of Bel-Air Village and ushering in, as a consequence, the full "commercialization" of Jupiter St, in violation of the very restrictions it had authored?**NO**

RATIO:

1. Insofar as these petitions are concerned, the court exculpated the private respondents, not only because of the fact that Jupiter Street is not covered by the restrictive easements based on the "deed restrictions" but chiefly because the National Government itself, through the Metro Manila Commission (MMC), had reclassified Jupiter Street into a "high density commercial (C-3) zone," pursuant to its Ordinance No. 81-01. Hence, the petitioners have no cause of action on the strength alone of the said "deed restrictions."

Jupiter Street lies as the boundary between Bel-Air Village and Ayala Corporation's commercial section. And since 1957, it had been considered as a boundary — not as a part of either the residential or commercial zones of Ayala Corporation's real estate development projects. Hence, it cannot be said to have been "for the exclusive benefit" of Bel-Air Village residents.

As a consequence, Jupiter Street was intended for the use by both the commercial and residential blocks. It was not originally constructed, therefore, for the exclusive use of either block, least of all the residents of Bel-Air Village, but, we repeat, in favor of both, as distinguished from the general public.

2. When the wall was erected in 1966 and rebuilt twice, in 1970 and 1972, it was not for the purpose of physically separating the two blocks. According to Ayala Corporation, it was put up to enable the Bel-Air Village Association "better control of the security in the area" and as the Ayala Corporation's "show of goodwill,"
In fine, we cannot hold the Ayala Corporation liable for damages for a commitment it did not make, much less for alleged resort to machinations in evading it. The records, on the contrary, will show that the Bel-Air Village Association had been informed, at the very outset, about the impending use of Jupiter Street by commercial lot buyers.

It is not that we are saying that restrictive easements, especially the easements herein in question, are invalid or ineffective. But they are, like all contracts, subject to the overriding demands, needs, and interests of the greater number as the State may determine in the legitimate exercise of police power. Our jurisdiction guarantees sanctity of contract and is said to be the "law between the contracting parties," but while it is so, it cannot contravene "law, morals, good customs, public order, or public policy." Above all, it cannot be raised as a deterrent to police power, designed precisely to promote health, safety, peace, and enhance the common good, at the expense of contractual rights, whenever necessary.

Undoubtedly, the MMC Ordinance represents a legitimate exercise of police power. The petitioners have not shown why we should hold otherwise other than for the supposed "non-impairment" guaranty of the Constitution, which, as we have declared, is secondary to the more compelling interests of general welfare. The Ordinance has not been shown to be capricious or arbitrary or unreasonable to warrant the reversal of the judgments so appealed.

EPZA vs. DULAY

(April 29, 1987)
Ponente: J. Gutierrez, Jr.

FACTS:

- Jan 15, 1979: Pres Marcos issued **PD 1811**, reserving a certain parcel of land in Mactan, Cebu for the establishment of an export processing zone by petitioner Export Processing Zone Authority. However, not all reserved areas were public lands. So petitioner offered to purchase the parcels of land in accordance with the valuation set forth in **Sec 92 of PD 464**. Despite this, the parties failed to reach an agreement regarding the sale of the properties.
- Petitioner filed with the CFI of Cebu a complaint for expropriation with a prayer for the issuance of a writ of possession, pursuant to PD 66, which empowers the petitioner to acquire by condemnation proceedings any property for the establishment of export processing zones.
- Feb 17, 1981: respondent judge issued the order of condemnation declaring petitioner as having the lawful right to take the properties sought to be condemned. A second order was issued, appointing certain persons as commissioners to ascertain and report the just compensation for the properties sought to be expropriated.
- June 19: the 3 appointed commissioners recommended that P15/sq.m. was the fair and reasonable value of just compensation for the properties
- July 29: petitioner filed Motion for Recon on the ground that **PD 1533** has superseded **Secs. 5-8 of Rule 67 or the Rules of Court** on the ascertainment of just compensation through commissioners. MFR was denied by the trial court.

ISSUE/HELD:
WON **PD's 76, 464, 794 and 1533** have repealed and superseded **Sec 5 to 8 of Rule 67 of the Revised Rules of Court**, such that in determining the just compensation of property in an expropriation case, the

only basis should be its market value as declared by the owner or as determined by its assessor, whichever is lower → NO

RATIO:

Just compensation

- The equivalent for the value of the property at the time of its taking.
- A fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gains would accrue to the expropriating entity.
- In estimating the market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in at the time nor the use to which it is them applied by the owner.
- This court may substitute its own estimate of the value as gathered from the record.
- All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered.

- In this case, the decrees categorically and peremptorily limit the definition of just compensation.
- Recurrent phrase in the assailed PD's: "…the basis (for just compensation) shall be the current and fair market value declared by the owner or anyone having legal interest in the property or administrator, or such market value as determined by the assessor, whichever is lower."
- The method of ascertaining just compensation under the decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which, under the Consti, is reserved to it for final determination. Following the decrees, its task would be relegated to simply stating the lower value of the property as declared either by the owner or the assessor. Hence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. The strict application of the decrees would be nothing short of a mere formality or charade as the court has only to choose between the 2 valuations; it cannot exercise its discretion or independence in determining what is just or fair.
- The ruling is that, the owner of property expropriated is entitled to recover from expropriating authority the fair and full value of the lot, as of the time when possession thereof was actually taken, plus consequential damages. **If the Court's authority to determine just compensation is limited, it may result in the deprivation of the landowner's right of due process to enable it to prove its claim to just compensation, as mandated by the Consti.** The valuation in the decree may only serve as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.
- In the case, the tax declarations presented by the petitioner as basis for just compensation was made long before martial law, when land was not only much cheaper, but when assessed values of properties were stated in figures that were only a fraction of their true market value. To peg the value of the lots on the basis of outdated documents and at prices below the acquisition cost of present owners would be arbitrary and confiscatory.

Guidelines in determining just compensation

- Determination of "just compensation" in eminent domain cases is a judicial function.
- The exec or leg depts. may make the initial determinations; but when a party claims a violation of the guarantee in the Bill of Rights, no statute, decree, or EO can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

Held: PD 1533 (and the other PDs which it amended) is unconstitutional and void.

NPC vs. CA

Petition for Review on Certiorari of the Decision of the Court of Appeals, entitled National Power Corporation, Plaintiff-Appellant,v B.E. San Diego, Inc.

FACTS:

National Power Corporation (NPC, for short), commenced negotiations with spouses Esteban Sadang and Maria Lachica, for the purchase of a portion of 8,746 sq. ms. of the latter's parcel of land of 62,285 sq. ms., situated in Barrio San Mateo, Norzagaray, Bulacan, for the purpose of constructing an access road to its Angat River Hydroelectric Project. Although the negotiations were not yet concluded, NPC nevertheless obtained permission from said spouses to begin construction of the access road, which it did in November 1961.

However, on December 7, 1962, B.E. San Diego, Inc. a realty firm and private respondent herein (SAN DIEGO, for short), acquired the parcel of land at a public auction sale and was issued a title.

CFI Decision

On February 14, 1963, NPC instituted proceedings for eminent domain against the spouses Sadang in the Court of First Instance of Bulacan, later amended on June 20, 1963, with leave of Court, to implead SAN DIEGO. On March 19, 1969, the Trial Court appointed two Commissioners, one for each of the parties and another for the Court, to receive the evidence and determine the just compensation to be paid for the property sought. The Trial Court then rendered a Decision:

a) Declaring to plaintiff the full and legal right to acquire by eminent domain the absolute ownership over the portion of the land referred to in Paragraphs 4 and 9 of the Amended Complaint, consisting of 8,746 square meters, access road of the plaintiff to its Angat River Hydroelectric Project;
b) Authorizing the payment by plaintiff to defendant of the amount of P31,922.00 as full indemnity for the property at the rate of P3.75 per square meter, with interest at 12% per annum from March 11, 1963 until fully paid;
c) A final Order of Condemnation over the property and improvements therein is entered, for the purpose set forth, free from all liens and encumbrances;
d) Ordering the registration of this Act of Expropriation, at plaintiff's expense, with the Register of Deeds of

Bulacan at the back of defendant's title to the whole property.

CA Decision

Both parties appealed to the then Court of Appeals, which rendered a Decision on December 24, 1980, decreeing: "Considering the peculiar facts and circumstances obtaining in the present case, it is our considered view that the just and reasonable compensation for the property in question is P7.00 per square meter."

Reconsideration having been denied, NPC availed of the present recourse, to which due course was given. SAN DIEGO did not appeal from the Appellate Court judgment although it filed a Brief.

ISSUE:
WON respondent Court of Appeals erred
(1) in fixing the amount of P7.00 per square meter as just compensation for the portion of land sought to be expropriated based on its planned convertibility into a residential subdivision; and
(2) in not reducing the rate of interest payable by NPC from twelve (12%) per cent to six (6%) per cent per annum.

HOLDING:
Yes. The judgment of respondent Appellate Court is set aside, and the Decision of the then Court of First Instance of Bulacan authorizing payment of P31,922.00 as full indemnity for the property at the rate of P3.75 per square meter is reinstated.

Yes. Petitioner is directed to pay interest at six per cent (6%) per annum on the amount adjudged from December 7, 1962, until fully paid.

Ratio
FIRST ISSUE

All considered, P3.75 a square meter is and represents the fair market value

On the other hand, respondent CFI reasoned thus:

> "It has been amply shown that the defendant purchased the land for the purpose of converting the same into a first class residential subdivision. Evidence has also been adduced to show that, as appraised by C.M. Montano Realty, the prevailing market price of residential lots in the vicinity of defendant's land was P20.00 per square meter
>
> "Defendant further maintains that because the access road was not constructed in a straight line, the property was unnecessarily divided into three separate and irregular segments. This rendered the owner's plan of converting the land into a subdivision 'futile.'
>
> "Needless to state, plaintiff should have given heed to the above legal prescription (Art. 650, Civil Code) by having constructed the road in a straight fine in order to cover the shortest distance, and thus cause the least prejudice to the defendant. Plaintiff failed to observe this rule, and no explanation has been offered for such neglect."
>
> "It is noted that the only basis of the court a quo in assessing the just compensation of the property at the price of P3.75 per square meter is that at the time of actual occupancy by the plaintiff, 'the property was agricultural in use as well as for taxation purposes. But such posture is hardly in accord with the settled rule that in determining the value of the land appropriated for public purposes. *The inquiry, in such cases, must always be not what the property is worth in the market, viewed not merely as to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adopted; that is to say, what is its worth from its availability for valuable uses?*' (City of Manila vs, Corrales, 32 Phil. 85, 98). *It has also been held 'that the owner has a right to its value for the use for which it would bring the most in the marke*t' (City of Manila vs. Corrales, supra; Republic vs, Venturanza, et al. 17 SCRA 322, 327).

After a review of the records, we are of the considered opinion that the findings of the Trial Court merit our approval for several reasons:

(1) Both documentary and oral evidence indicate that the land in question, at the time of taking by NPC in 1961, was agricultural in use as well as for taxation purposes. In fact, it was described as "cogonales."

(2) SAN DIEGO's contention that the location and direction of the access road is burdensome is not borne out by the evidence. The Report of the Commissioner of the Court revealed that NPC merely improved a pre-existing mining road on the premises, which was only accessible by carabao-drawn sledge during the rainy season.

(3) The finding of the Trial Court that "there is negligible, if any, consequential damage to speak of' thus becomes readily tenable. SAN DIEGO was not, as was the belief of respondent Court of Appeals, "prevented from carrying out the plan of converting the property into a housing subdivision." On the contrary, the Trial Court observed that "the thoroughfare should provide a marked improvement to the flourishing housing subdivision managed by defendant (private respondent)."

(4) The appraisal by a realty firm of P20.00 per square meter, the price that SAN DIEGO stresses the property should command, is not, to our minds, a fair market value. The former owners, the Sadang spouses, offered to part with the property at P4.00 per sq. meter, SAN DIEGO had purchased the entire property of 62,285 square meters at public auction for P10,000,00, or at P0.16 per square meter. Previous to that, or in 1957, the property was mortgaged to the Development Bank of the Philippines for P20,000.00 and subsequently in 1958 to SAN DIEGO, by way of second mortgage, for P30,000,00.

The price of P12.00 to P15.00, which respondent Court observed as the just compensation awarded in two civil suits for lands condemned in the immediate vicinity, cannot be a fair gauge since said Court neither adopted the same, and specially

considering that the property was "cogonal" at the time NPC constructed its access road in 1961. Moreover, NPC also presented contrary evidence indicating prices of P.05 and P.06 per square meter at around the time it had entered the property.

SECOND ISSUE

(5) And most importantly, on the issue of just compensation, it is now settled doctrine, following the leading case of Alfonso vs. Pasay,2 that to determine due compensation for lands appropriated by the Government, the basis should be the price or value at the time it was taken from the owner and appropriated by the Government.

In the case at bar, the taking by NPC occurred in November 1961, when it constructed the access road on the expropriated property at time when it was still "cogonal" and owned by the spouses Sadang. The Complaint was filed only in 1963.

The convertibility of the property into a subdivision, the criterion relied upon by respondent Court, is not controlling. The case of Manila Electric Co. vs. Tuason, 60 Phil, 663, 668, cited in Municipal Govt. of Sagay vs. Jison,4 has categorically ruled that **it is the time of taking and not as "potential building" site that is the determining factor,**

Since SAN DIEGO bought the land in question in the interim and was issued a title only on December 7, 1962, the "taking" as to it should commence only from said date.

On the issue of legal interest in expropriation proceedings, we held in Amigable vs. Cuenca, 43 SCRA 360 (1972), that:

> " AS regards the claim for damages, the plaintiff is entitled thereto in the form of legal interest on the price of the land from the time it was taken up to the time that payment is made by the government. In addition, the government should pay for attorneys fees, the amount of which should be fixed by the trial court after hearing."

In the case at bar, legal interest should accrue from December 7, 1962, the time of taking as far as SAN DIEGO is concerned, at six per cent (6%) per annum, up to the time that payment is made by NPC

“Takings” under Eminent Domain VERSUS “Takings” under the Social Justice Clause

DE KNECHT vs. BAUTISTA

(10/30/1980)
Fernandez, J.

NATURE: For Certiorari & Prohibition on the Order of the CFI, Pasay

FACTS:
There was a plan extending EDSA to Roxas Blvd that would pass thru Cuneta Ave. However, the plan was changed from that proposed route to Fernando Rein & Del Pan Sts, which are lined with old houses, petitioner's property being amongst those that will be affected by the change in the plan. The owners of the properties along Fernando-Del Pan filed on April 1977 a formal petition with Pres. Marcos asking him to order the Ministry of Public Works to proceed with the original plan. Marcos then ordered the head of the MPH Baltazar Aquino to explain, & tasked the Human Settlements Commission to investigate the matter. After formal hearings the HSC recommended that the planned extension be reverted to its original route. Despite this the MPH insisted on implementing the route which passed through Fernando Rein & Del Pan Sts. In Feb 1979, gov't filed expropriation proceedings in the CFI, Branch 3 of Pasay City. Petitioner filed motion to dismiss. In June 1979 the Republic filed a motion for the issuance of a writ of possesion, on the ground that the payment for the expropriated properties had already been made with the PNB. Respondent Judge Bautista granted writ. It is this that is being assailed in the present petition.

Petitioner:
1. respondent court lacked or exceeded its jurisdiction in issuing the writ of possesion because petitioner raised a constitutional question that the court must first resolve before it can issue an order to take possesion
2. the choice of Fernando Rein-Del Pan Sts arbitrary and capricious for :
    a. the original consideration for the extension is that it would travel in a straight line, but the new route detours to the north first before heading south.
    b. equal protection of the law was not accorded to the petitioner who is one of the "owners of solid & substantial homes & quality residential lands occupied for generations" and not only to the motel owners of Cuneta Ave.

Respondents:
1. court did not exceed jurisdiction since the Republic complied with all the statutory requirements for it to have immediate possesion of the property.
2. the change from the original plan of Cuneta Ave to the Del Pan route was not sudden or capricious. Those who would be adversely affected by the change were notified. Gov't in changing the proposed route did not intend to do so for the protection of the motels but to minimize the social impact factor as more people would be affected if the original plan had pushed thru as opposed to a smaller number of homeowners in the second route

ISSUE:
Whether or not respondent judge acted with grave abuse of discretion in issuing the writ of possesion

Held: YES
The power of emminent domain is unesquestioned as it is constitutionally granted. (***S2, A4, 1973 Consti; S9 A3 1987 Consti***). But there are exacting standards that need to be met. Govt may not capriciously or arbitrarily choose what private land to be taken. The Court held in ***JM Tuason v LTA*** that "a landowner is covered by the mantle of protection that due process affords...it frowns on arbitrariness, is the antithesis of any govermental act that smacks of whim & caprice...negates state power to act in an oppresive manner" and that it is the courts that can determine whether or not property owners have indeed been the "victims" of partiality & prejudice in the expropriation proccedings & thus nullify the act. In the instant case, the Court reasoned that taking all the

factors: 1)that is seemed odd why there was a sudden change in plan where the route went north rather than south; 2)that is is doubtful whether the extension of EDSA along Cuneta Ave can be objected to on the ground of social impact as those to be affected are mostly motels as opposed to residential areas; 3) that the HSC report has recommended the original route; the choice of Fernando Rein-Del Pan was arbitrary and hence should not recieve judicial approval.

Petition granted.

Republic cs. De Knecht

GANCAYCO, J.:

FACTS:

- Philippines filed in the CFI an expropriation proceeding against the owners (Cristina De Knecht w/ 15 others) of the houses standing along Fernando Rein-Del Pan streets.
- Some motions which led to the victory of De Knecht and other land owners in saving their property from expropriation. (**De Knecht v. Baustista**) Just to elaborate, here is what happened:
    - De Knecht filed a motion to dismiss alleging lack of jurisdiction, pendency of appeal with the President of the Philippines, prematureness of complaint and arbitrary and erroneous valuation of the properties.
    - De Knecht filed for the issuance of a restraining order.
    - Republic filed a motion for the issuance of a writ of possession of the property to be expropriated on the ground that it had made the required deposit with the PNB of 10% of the amount of compensation.
    - Lower court issued a writ of possession authorizing the Republic to enter into and take possession of the properties sought to be condemned, and created a Committee of 3 to determine the just compensation.
    - De Knecht filed with this Court a petition for certiorari and prohibition directed against the order of the lower. SC granted the petition. (De Knecht vs. Baustista)
    - defendants-Maria Del Carmen Roxas Vda. de Elizalde, Francisco Elizalde and Antonio Roxas moved to dismiss the expropriation action in compliance with the dispositive portion of the previous decision of the SC. The Republic filed a manifestation stating that it had no objection to the motion to dismiss.
- After a few years, the Republic filed a motion to dismiss said case due to the enactment of the **Batas Pambansa Blg. 340** expropriating the same properties and for the same purpose. The lower court granted dismissal by reason of the enactment of the law.
- De Knecht appealed to the CA. CA granted appeal on the ground that the choice of Fernando Rein-Del Pan Streets as the line through which EDSA should be extended is arbitrary and should not receive judicial approval.

ISSUE:

WON an expropriation proceeding that was determined by a final judgment of the SC may be the subject of a subsequent legislation for expropriation.

RATIO:

- As early as 1977 the gov't, through the DPWH began work on the westward extension of EDSA out fall of the Manila and suburbs flood control and drainage project and the Estero Tripa de Gallina.
- These projects were aimed at:
    - easing traffic congestion in the Baclaran and outlying areas;
    - controlling flood by the construction of the outlet for the Estero Tripa de Gallina; and
    - completing the Manila Flood and Control and Drainage Project.
- Republic acquired about 80 to 85 percent of the the needed properties involved in the project through negotiated purchase. The owners did not raise any objection as to arbitrariness on the choice of the project and of the route.
- It is only with the remaining 10 to 15 percent that the petitioner cannot negotiate. Thus, Republic filed the expropriation proceedings in the CFI.
- The decision in De Knecht vs. Bautista, SC held that the "*choice of the Fernando Rain-Del Pan streets as the line through which the EDSA should be extended to Roxas Boulevard is arbitrary and should not receive judicial approval.*" It is based on the recommendation of the Human Settlements Commission that the choice of Cuneta street as the line of the extension will minimize the social impact factor as the buildings and improvement therein are mostly motels. In view of the said finding, SC set aside the order of the trial court.
- Subsequently B.P. Blg. 340 was enacted. CA held that the decision of the Supreme Court having become final, Republic's right as determined therein should no longer be disturbed and that the same has become the law of the case between the parties involved.
- The right of the Republic to take private properties for public use upon the payment of the just compensation is so provided in the Constitution. Such expropriation proceedings may be undertaken by the petitioner not only by voluntary negotiation with the land owners but also by taking appropriate court action or by legislations. When the Batasang Pambansa passed B.P. Blg. 340, it appears that it was based on supervening events that occurred after the decision of this Court was rendered in De Knecht in 1980 justifying the expropriation.
- The **social impact factor which persuaded the Court to consider this extension to be arbitrary had disappeared**. All residents in the area have been relocated and duly compensated. Eighty percent of the EDSA outfall and 30% of the EDSA

extension had been completed. Only private respondent remains as the solitary obstacle to this project.

- The single piece of property 'occupied' by De Knecht is the only parcel of land where Government engineers could not enter due to the 'armed' resistance offered by De Knecht.
- B.P. Blg. 340 effectively superseded the final and executory decision of the SC, and the trial court committed no grave abuse of discretion in dismissing the case pending before it on the ground of the enactment of B.P. Blg. 340.
- **The decision is no obstacle to the legislative arm of the Gov't in making its own assessment of the circumstances then prevailing as to the propriety of the expropriation and thereafter by enacting the corresponding legislation.**

CRUZ, J., concurring:

B.P. Blg. 340 is not a legislative reversal of the finding in De Knecht v. Bautista, that the expropriation of the petitioner's property was arbitrary. As Justice Gancayco clearly points out, supervening events have changed the factual basis of that decision to justify the subsequent enactment of the statute. The SC is sustaining the legislation, not because it concedes that the lawmakers can nullify the findings of the Court in the exercise of its discretion. It is simply because the Court has found that under the changed situation, the present expropriation is no longer arbitrary.

MANOTOK vs. NHA

JUSTICE GUTIERREZ JR.

FACTS:

- June 11, 1977 – Pres. issued LOI No. 555 instituting a nationwide slum improvement & resettlement program & LOI No. 558 adopting slim improvement as a national housing policy
- July 21, 1977 - issuance of EO No.6-77 adopting the Metropolitan Manila Zonal Improvement Program which included the properties known as the Tambunting Estate and the Sunog-Apog area in its priority list for a zonal improvement program (ZIP) because the findings of the representative of the City of Manila and the National Housing Authority (NHA) described these as blighted communities.
- March 18, 1978 - a fire razed almost the entire Tambunting Estate, after which the President made a public announcement that the national government would acquire the property for the fire victim
- December 22, 1978 - President issued Proclamation No. 1810 declaring all sites Identified by the Metro Manila local governments and approved by the Ministry of Human Settlements to be included in the ZIP upon proclamation of the President. The Tambunting Estate and the Sunog-Apog area were among the sites included.
- January 28, 1980 - President issued PD Nos. 1669 and 1670 which respectively declared the Tambunting Estate and the Sunog-Apog area expropriated.

Presidential Decree No. 1669, provides, among others:

- Expropriation of the "Tambunting Estate".
- NHAA- is designated administrator of the National Government with authority to immediately take possession, control, disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties.
- City Assessor shall determine the market value. In assessing the market value, he should consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost.
- Just compensation @ Pl7,000,000.00 which shall be payable to the owners within a period of five (5) years in five (5) equal installments.

Presidential Decree No. 1670, contains the same provisions for the Sunog-Apog property valued @ P8,000,000

- April 4, 1980- NHA wrote to the Register of Deeds of Manila, furnishing it with a certified copy of P.D. Nos. 1669 and 1670 for registration, with the request that the certificates of title covering the properties in question be cancelled and new certificates of title be issued in the name of the Republic of the Philippines.
- However, the Register of Deeds requested the submission of the owner's copy of the certificates of title of the properties in question to enable her to implement the aforementioned decrees.
- Subsequently, petitioner Elisa R. Manotok, one of the owners of the properties to be expropriated, received a letter informing her of the deposits made with regard to the first installment of her property.
- August 19, 1980- petitioner Elisa R. Manotok wrote a letter to the NHA alleging,that the amounts of compensation for the expropriation of the properties do not constitute the "just compensation" & expressed veritable doubts about the constitutionality of the said
- In the meantime, some officials of the NHA circulated instructions to the tenants-occupants of the properties in dispute not to pay their rentals to the petitioners for their lease-occupancy of the properties in view of the passage of P.D. Nos. 1669 and 1670. Hence, the owners of the Tambunting Estate filed a petition to declare P.D. No. 1669 unconstitutional. The owners of the Sunog-Apog area also filed a similar petition attacking the constitutionality of P.D. No. 1670.

ISSUES:

1. WON PD 1669 & PD 1670 expropriating the Tambunting & SUnog-Apog estates are unconstitutional?
2. WON the petitioners have been deprived of due process
3. WON the taking is for public use
4. WON there was just compensation

HELD:

The power of **eminent domain** is inherent in every state and the provisions in the Constitution pertaining to such power only serve to limit its exercise in order to protect the individual against whose property the power is sought to be enforced.

Limitations:

1. taking must be for a public use
2. payment of just compensation
3. due process must be observed in the taking...

1.Yes. The challenged decrees unconstitutional coz they are uniquely unfair in the procedures adopted and the powers given to the respondent NHA. The 2 PD's exceed the limitations in the exercise of the eminent domain. It deprived the petitioners due process in the taking, it was not public in character & there was no just compensation.

2. Yes. The petitioners were deprived of due process. The properties in question were summarily proclaimed a blighted area & directly expropriated without the slightest semblance or any proceeding. The expropriation is instant and automatic to take effect immediately upon the signing of the decree. Not only are the owners given absolutely no opportunity to contest the expropriation, plead their side, or question the amount of payments fixed by decree, but the decisions, rulings, orders, or resolutions of the NHA are expressly declared as beyond the reach of judicial review. An appeal may be made to the Office of the President but the courts are completely enjoined from any inquiry or participation whatsoever in the expropriation of the subdivision or its incidents.

Constitutionally suspect methods or authoritarian procedures cannot, be the basis for social justice. A program to alleviate problems of the urban poor which is well studied, adequately funded, genuinely sincere, and more solidly grounded on basic rights and democratic procedures is needed.

It mandates some form of proceeding wherein notice and reasonable opportunity to be heard are given to the owner to protect his property rights.

Where it is alleged that in the taking of a person's property, his right to due process of law has been violated, the courts will have to step in and probe into such an alleged violation.

The government may not capriciously or arbitrarily choose what private property should be taken. The land-owner is covered by the mantle of protection due process affords. It is a mandate of reason.

3. No. It was not proven that the taking was for public use. The basis for the exercise of the power of eminent domain is necessity that is public in character.

In the instant petitions, there is **no showing whatsoever as to why the properties involved were singled out for expropriation** through decrees or what necessity impelled the particular choices or selections.

The Tambunting estate or at least the western half of the subdivision fronting Rizal Avenue Extension is valuable commercial property. If the said property are given to the squatters, they either lease out or sell their lots to wealthy merchants even as they seek other places where they can set up new squatter colonies. The public use and social justice ends stated in the whereas clauses of P.D. 1669 and P.D. 1670 would not be served thereby.

The Government still has to prove that expropriation of commercial properties in order to lease them out also for commercial purposes would be "public use" under the Constitution.

In the challenged PDs, there is no showing how the President arrived at the conclusion that the Sunog-Apog area is a blighted community. Petitioners were able to show however that the Sunog-Apog area is a residential palce where middle to upper class families reside. The area is well-developed with roads, drainage and sewer facilities, water connection to the Metropolitan Waterworks and Sewerage System electric connections to Manila Electric Company, and telephone connections to the Philippine Long Distance Telephone Company. There are many squatter colonies in Metro Manila in need of upgrading. The Government should have attended to them first. There is no showing for a need to demolish the existing valuable improvements in order to upgrade Sunog-Apog.

3. No. There has been no just compensation. The fixing of the maximum amounts of compensation and the bases thereof which are the assessed values of the properties in 1978 deprive the petitioner of the opportunity to prove a higher value because, the actual or symbolic taking of such properties occurred only in 1980 when the questioned decrees were promulgated.

Municipality of Daet vs. CA:

just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity.

NPC v. CA:

the basis should be the price or value at the time it was taken from the owner and appropriated by the Government. The owner of property expropriated by the State is entitled to how much it was worth at the time of the taking.

In P.D.s 1669 and 1670, *there is no mention of any market value declared by the owner.* Sections 6 of the two decrees peg just compensation at the market value determined by the City Assessor. The City Assessor is warned by the decrees to "consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation costs."

The market value stated by the city assessor alone cannot substitute for the court's judgment in expropriation proceedings. It is violative of the due process and the eminent domain provisions of the Constitution to deny to a property owner the opportunity to prove that the valuation made by a local assessor is wrong or prejudiced.

National Housing Authority v. Reyes

basis for just compensation shall be the market value declared by the owner for tax purposes or such market value as determined by the government assessor, whichever is lower.

The maximum amounts, therefore, which were provided for in the questioned decrees cannot adequately reflect the value of the property and, in any case, should not be binding on the property owners for, as stated in the above cases, there are other factors to be taken into consideration.

ERMITA MALATE HOTEL & MOTEL OPERATORS vs. CITY OF MANILA

FACTS:

- June 13, 1963, the municipal board of the city of manila enacted ordinance no. 4760. approved on june 14 by vice mayor astorga then the acting city mayor
- Petitioners: Ermita-Manila Hotel and Motel Operator Assoc, Hotel del Mar (a member) and Go Chiu (president and gen manager of Hotel del Mar)
- Defendant: Mayor of Manila (astorga)
- Petitioners contend that the ordinance is unconstitutional and void for being unreasonable and violative of due process because it
  1. imposes a 150-200% increase in the license fee
  2. requires owner, manager, keeper of a hotel or motel to ask guests to fill up a prescribed form that will be open to public at all times (whole name, birthday, address, occupation, nationality, sex length of stay, number of companions with name, age, sex, relationship)
  3. facilities of such hotels will be open for inspection by the mayor, chief of police or any authorized representatives (invasion of the right to privacy and the guaranty against self incrimination)
  4. classifies motels into two classes and requiring maintenance of certain minimum facilities
  5. prohibits admission of persons below 18 unless accompanied by parents or lawful guardian and prohibits establishments from leasing a room (or part of it) twice every 24 hours
  6. provides a penalty which is the cancellation of license causing the destruction of the business

- Respondent says:
  1. **the challenged ordinance bears a reasonable relation to a proper purpose which is to curb morality**
  2. it is a valid exercise of police power that only guests or customers not before the court could complain of the alleged invasion of the right to privacy and the guaranty against self-incrimination
- Lower court decision: The challenged ordinance no 4760 of the city of manila would be unconstitutional and, therefore, null and void.

ISSUE:

WON Ordinance No. 4760 is violative of the due process clause- ▪ No

HELD/RATIO:

- There are standards of constitutional adjudication in both procedural and substantive aspects. There must be evidence to offset the presumption of validity that attaches to a challenged statute or ordinance
- Evidence to rebut is unavoidable unless the ordinance is void on its face
- Precedent US case (O'Gorman &Young v Hartford Fire Insurance Co): presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute
- No such factual foundation being laid in the present case. Presumption must prevail.
- The mantle of protection associated with the due process associated with the due process guaranty does not cover petitioners (I think what this means is that the individual customers should be the ones to invoke the right to privacy thing)
- Safeguard to public moral is immune from such imputation of nullity resting purely on conjecture and unsupported by anything of substance
- Purpose of the state (the purpose of police power): promote public health, public morals, public safety, and the general welfare
- **Purpose specifically in this case is to minimize practices hurtful to public morals**
- Astorga annexed a stipulation of facts that there is an alarming increase in the rate of prostitution, adultery, and fornication in Manila traceable in great part to the existence of motels which provide a necessary atmosphere for clandestine entry, presence and exit and thus become the ideal heaven for prostitutes and thrill seekers
- **Means: ordinance check the clandestine harboring of transients and guests to fill up a registration form, prepared for the purpose, in a lobby open to public view at all times, and by introducing several amendatory provisions calculated to shatter the privacy that characterizes the registration of transients and guests.**
- **Another Means: increase in license fees to discourage illegal establishments**
- This court has invariably stamped with the seal of approval ordinances intended to protect public morals
- In view of the requirements of due process, equal protection and other applicable constitutional guaranties, the exercise of police power insofar as it may affect the life, liberty, property of any person is subject to judicial inquiry
- When exercise of police power may be considered as wither capricious, whimsical, unjust or unreasonable, a denial of due process, or a violation of any other applicable constitutional guaranty may call for correction by the courts
- There is no controlling and precise definition of due process. It merely requires that any "taking" should be valid.

- **<u>What then is the procedural or substantive requisite?</u>**

1. responsiveness to the supremacy of reason, obedience to the dictates of justice
2. arbitrariness is ruled out and unfairness avoided
3. must not outrun the bounds of reason and result in sheer oppression
4. should be reflective of democratic traditions of legal and political thought
5. not unrelated to time, place, and circumstances
6. due process cannot be a slave to form or phrases

- The increase in license fees is incidental to the police power (power to regulate)
- There is municipal discretion which the courts decline to interfere with
- Cities and municipalities have plenary power to tax (1) for public purpose, (2)just, (3) uniform
- The mere fact that some individuals in the community may be deprived of their present business or a particular mode of earning cannot prevent the exercise of police power--- neither is the restriction on freedom
- Purpose was not unreasonable in this case
- There is a correspondence between the undeniable existence of an undesirable situation and the legislative attempt at correction
- Liberty is not absolute. Liberty is regulated for the greater good. It is subject to reasonable restraint by general law for the common good
- Fundamental aim of the state (to which individual rights are SUBORDINATED): to secure the general comfort, health and prosperity of the state
- There is a required balance bet authority and liberty to ensure peace, order, and happiness for all.
- People vs Pomar (maternity leave held not a proper exercise of police p) is no longer a living principle
- Government has the right to intervene even in contractual relations affected with public interest
- Ordinance also not vague (common sense can understand it)

Judgment reversed

Consti. Art. III, sec. 1 and 4

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

ASSOC. OF SMALL LANDOWNERS vs. SEC. OF AGRARIAN REFORM

(1989)

- The 1935, 1973 and 1987 Constitution had already recognized equitable redistribution of private property, finally mandating an agrarian reform program in the 1987 Constitution. Even before the 1973 Constitution, **R.A. No. 3844**—the Agricultural Land Reform Code—had already been enacted.
- This was superseded by Pres. Marcos's **P.D. No. 72** to provide for compulsory acquisition of private lands for distribution among tenant-farmers & to specify maximum retention limits for landowners
- Pres. Aquino, while exercising legislative powers before Congress had convened, had also issued **E.O. No. 228**, declaring full land ownership in favor of the beneficiaries of P.D. No. 27 and providing for the valuation of still unvalued lands covered by the decree as well as the manner of their payment.
- This was followed by **Pres. Proc. No. 131**, instituting a **comprehensive agrarian reform program (CARP)**, and **E.O. No. 229**, providing the mechanics for its implementation.
- When Congress did convene, it enacted **R.A. No. 6657**—the Comprehensive Agrarian Reform Law of 1988, which although considerably changing the previous enactments, nevertheless gives them suppletory effect.
- 4 cases were consolidated and resolved. Petitioners in the 4 cases include landowners whose lands are given to the tenants tilling the lands, sugar planters, landowners associations etc. who essentially assail the constitutionality of the different measures to implement the Constitutional mandates regarding agrarian reform.
- Note: Issues shall be the allegations and contentions of the petitioners and respondents

ISSUES:

1. WON petitioners and intervenors are proper parties

- YES. Each of them has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of. Besides, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if the Court must, technicalities of procedures.

1. WON enactment of P.D. No. 27, Proc. No. 131 and E.O. Nos 228 and 229 are constitutional

- YES. Promulgation of P.D. No. 27 by Pres. Marcos in the exercise of his powers under martial laws has already been sustained in Gonzales v. Estrella
- Power of Pres. Aquino to promulgate Proc. No. 131 and E.O. Nos 228 and 229 is authorized under Sec. 6 of the Transitory Provisions of the 1987 Constitution.
- They are not midnight enactments as they were enacted in July 17 (E.O. 228) and July 22, 1987 (Proc. 131 and E.O. 229) while Congress convened in July 27.
- These measures did not cease to be valid when she lost her legislative power, they continue to be in force unless modified or repealed by subsequent law or declared invalid by the courts.

- The Congress she allegedly undercut has not rejected but in fact substantially affirmed the measures and even provided that they be suppletory to R.A. 6657

2. **WON P50 billion fund created in Sec. 2 Proc. No. 131 and Secs. 20 and 21 of E.O. 229 is invalid for not originating in the House of Reps (Sec. 24, Art. VI) and not being certified by the National Treasurer as actually available (Sec. 25(4), Art. VI).**
   - NO, as it is not an appropriation measure even if it does provide for the creation of said fund, for that is not its principal purpose. The creation of the fund is only incidental to the main objective of the proclamation, which is agrarian reform.
   - It should follow that the specific constitutional provisions do not apply.

3. **WON Proc 131 and EO 229 should be invalidated for not providing for retention limits as required by Sec. 4, Art. XIII, Consti.**
   - MOOT as R.A. No. 6657 now does provide for such limits in Sec. 6 of said law

4. **WON EO 229 violates constitutional requirement that a bill shall have only one subject, to be expressed in its title**
   - NO. The title of the bill does not have to be a catalogue of its contents and will suffice if the matters embodied in the text are relevant to each other and may be inferred from the title.

5. **WON writ of mandamus cannot issue to compel the performance of a discretionary act especially by a specific department of the government (as contended by a private respondent)**
   - NO. mandamus can lie to compel the discharge of the discretionary duty itself but not to control the discretion to be exercised. In other words, mandamus can issue to require action only but not to specific action

6. **WON sugar planters should not be made to share the burden of agrarian reform as they belong to a particular class with particular interests of their own**
   - NO. No evidence has been submitted to the Court that the requisites of a valid classification have been violated, namely
     - It must be based on substantial distinctions;
     - It must be germane to the purposes of the law;
     - It must not be limited to existing conditions only; and
     - It must apply equally to all the members of the class

7. **WON the State should first distribute public agricultural lands in the pursuit of agrarian reform instead of immediately disturbing property rights by forcibly acquiring private agricultural lands**
   - NO. The Constitution calls for "the just distribution of all agricultural lands." In any event, the decision to redistribute private agricultural lands in the manner prescribed by the CARP was made by the legislative and executive departments in the exercise of their discretion. The Court is not justified in reviewing that discretion in the absence of a clear showing that it has been abused.

8. **WON expropriation as contemplated by the agrarian reform program matches the requirements for a proper exercise of the power of eminent domain**
   - YES. The requirements for proper exercise of the power are
     - Public use.
     - Just compensation
   - Public use. The purposes specified in PD No. 27, Proc. 131 and RA 6657 is in fact, an elaboration of the constitutional injunction that the State adopt the necessary measures "to encourage and undertake the just distribution of all agricultural lands to enable farmers who are landless to own directly or collectively the lands they till." That public use, as pronounced by the Constitution, must be binding on the court.
   - Just compensation. Petitioners argue that the manner of fixing the just compensation is entrusted to the administrative authorities in violation of judicial prerogatives. To be sure, the determination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government. But a reading of the assailed provision of R.A. 6657 (Sec. 16(d)) will show that although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Sec. 16(f) provides: "Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation." Thus, the determination made by the DAR is only **preliminary** unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review with finality the said determination in the exercise of what is admittedly a judicial function
   - The petitioners also argue that Sec. 18 of RA 6657 is unconstitutional insofar as it requires the owners of the expropriated properties to accept just compensation in less than money, which is the only medium of payment allowed. True enough jurisprudence has shown that the traditional medium for payment of just compensation is money and no other (Manila Railroad Co. v. Velasquez, J.M. Tuazon v. LTA, Mandl v. City of Pheonix, etc.). But this is not traditional or ordinary expropriation where only a specific and limited area is sought to be taken by the State for a local purpose. This is a revolutionary kind of expropriation which affects all private agricultural land as long as they are in excess of the maximum retention limits allowed their owners. It benefits the **entire Filipino nation**, from all levels of society. Its purpose furthermore, **goes beyond in time to the foreseeable future.** The cost will be tremendous which is not fully available at this time. It is assumed that the framers foresaw this and thus it is assumed that their intention was to allow such manner of payment as is now provided

for by the CARP law. The Court did not find in the records of the Con-Com, categorical agreement among the members regarding the meaning of just compensation as applied in the CARP. But then, there is nothing in the records either that militates against the assumption that Con-Com had intended to allow such mode of payment.

- With these assumptions, the Court held that the content and manner of compensation in Sec. 18 is not violative. It is further held that the proportion of cash payment to the other things of value constituting the total payment, as determined on the basis of the areas of the lands expropriated, is not unduly oppressive upon the landowner.

2. WON RA 6657 is unconstitutional for divesting the landowner of his property even before actual payment to him in full of just compensation, in contravention of a well-accepted principle of eminent domain.

- NO. The rule is that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation. And it is true that P.D. no. 27 expressly ordered the emancipation of tenant-farmer as of Oct. 21, 1972and declared that he shall "be deemed the owner" of a portion of land consisting of a family-sized farm except that "no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmer's cooperative." It was understood however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.

SUMULONG vs. GUERRERO

1987

ponente: Cortes J

Facts:

Respondent National Housing Authority filed a complaint for expropriation of 25 hectares of land which includes the lots of petitioners Lorenzo Sumulong and Emilia Vidanes Balaoing, together with a motion for immediate possession of the properties. The land was valued by provinvial assessors at P1 / sq meter through PD's. NHA deposited P158,980 with PNB. All these are pursuant to PD 1224 which defines "the policy on expropriation of private property for socialized housing upon payment of just compensation".

Respondent judge Buenaventura Guerrero issued the writ of possession. Petitioners filed for reconsideration.

ISSUES:

1. Is socialized housing for public use even though it is not used by public itself?

2. Is there just compensation when value arbitrarily fixed by govt?

3. Is there due process when it allows taking immediate possession of property?

RULES:

1.The expanded concept of public use together with Consti provisions makes socialized housing for public use

2. Just compensation is for fair and full value of the loss sustained, not provincial assessors say-so.

3.Due process must give opportunity for owner to prove valuation wrong.

RATIONALE:

1. The public use requirement for eminent domain is flexible and evolving. This jurisdictions trend is that whatever may be beneficially employed for the general welfare of the general welfare satisfies the requirement of public use(Heirs of Juancho Ardona v Reyes). Consti has many provisions concerning socialized housing as propmotion of general welfare. (Art2 sec7:
establish social services including housing; Art2 sec9: promote just social order w/ social services; Art13 sec9: urban land reform). Housing is a basic human need and becomes a matter of state concern since it affects general welfare.

It has a public character and is recognized as such with UN calling 1987 International Year of Shelter for the Homeless. The expropriated land would be used for Bagong
Nayon Project which provides low-cost housing for govt employees. There is a shortage in housing in NCR with 50% of urban families unable to afford adequate shelter (NEDA). Petioners also contended that size does not matter with PD and "any private land" can be expropriated (concerns with CARP/CARL).

Court says any land can be under eminent domain not just landed estates.. NHA has broad discretion and absent fraud, NHA may choose any land without interference from court. NHA's powers stem from Consti (art2 sec10: social justice; art13 sec1: regulate property to diffuse wealth).

2. Court quotes Export Processing Authority v Dulay. Just compensation means the value of the property at the time of the taking; fair and full equivalent value for loss sustained; all facts to the condition of property should be considered. Various factors come into play that provincial assessors do not take into account like individual differences because they only account for generalities. Owners are not estopped from questioning the valuations of their property.

3. Court quote Export PZA supra: violative of due process to deny owners of opportunity to prove valuations wrong. Repulsive to justice to allow a minor bureaucrat's work to prevail over court. Courts have evidence and
arguments to reach a just determination.

Court quotes Ignacio v Guerrero: Requirements for a writ of possession to be issued:
1)Complaint for expropriation sufficient in form and substance,
2) provisional determination of just compensation by trial court on the
basis of judicial discretion,

3)deposit requirement

Disposition:

writ of possession annulled for excess of jurisdiction. remanded for further proceedings to determine compensation

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CITY GOVERNEMENT vs. JUDGE ERICTA

This is a petition for review seeking the reversal of the decision of the CFI of Rizal declaring Section 9 of Ordinance No. 6118, S-64, of the Quezon City Council null and void.

FACTS
Section 9 of Ordinance No. 61 18, S-64, entitled "ORDINANCE REGULATING THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF PRIVATE MEMORIAL TYPE CEMETERY OR BURIAL GROUND WITHIN THE JURISDICTION OF QUEZON CITY AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF" provides:

> "Sec. 9. At least six (6) percent of the total area of the memorial park cemetery shall be set aside for charity burial of deceased persons who are paupers and have been residents of Quezon City for at least 5 years prior to their death, to be determined by competent City Authorities. ...”

For years, the aforequoted section of the Ordinance was not enforced but seven years after the enactment of the ordinance, the Quezon City Council passed the following resolution:

> "RESOLVED by the council of Quezon assembled, to request, as it does hereby request the City Engineer, Quezon City, to stop any further selling and/or transaction of memorial park lots in Quezon City where the owners thereof have tailed to donate the required 6% space intended for paupers burial.

Pursuant to this resolution, the Quezon City Engineer notified respondent Himlayang Pilipino, Inc. in writing that Section 9 of Ordinance No. 6118, S-64 would be enforced.

CFI Ruling

Respondent Himlayang Pilipino reacted by filing with the CFI of Rizal, Branch XVIII at Quezon City, a petition for declaratory relief', prohibition and mandamus with preliminary injunction seeking to annul Section 9 of the Ordinance in question. The respondent alleged that the same is contrary to the Constitution, the Quezon City Charter, the Local Autonomy Act, and the Revised Administrative Code.

The respondent court rendered the decision declaring Section 9 of Ordinance No. 6118, S-64 null and void.

The City Government and City Council filed the instant petition. Petitioners argue that the taking of the respondent's property is a valid and reasonable exercise of police power and that the land is taken for a public use as it is intended for the burial ground of paupers. They further argue that the Quezon City Council is authorized under its charter, in the exercise of local police power, "to make such further ordinances and resolutions not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this Act and such as it shall deem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and the inhabitants thereof, and for the protection of property therein. "

On the other hand, respondent Himlayang Pilipino, Inc. contends that the taking or confiscation of property is obvious because the questioned ordinance permanently restricts the use of the property such that it cannot be used for any reasonable purpose and deprives the owner of all beneficial use of his property. The respondent also stresses that the general welfare clause is not available as a source of power for the taking of the property in this case because it refers to "the power of promoting the public welfare by restraining and regulating the use of liberty and property."

ISSUE
WON Section 9 of Ordinance No. 61 18, S-64 is unconstitutional

HOLDING
Yes, it is unconstitutional. The petition for review is hereby dismissed. The decision of' the respondent court is affirmed.

RATIO
We find the stand of the private respondent as well as the decision of the respondent Judge to be well-founded. We cite, with approval the decision of the respondent court:

> **"An examination of the Charter of Quezon City (Rep. Act. No. 537), does not reveal any provision that would justify the ordinance in question except the provision granting police power to the City. Section 9 cannot be justified under the power granted to Quezon City to tax, fix the license fee, and regulate such other business, trades, and occupation as may be established or practiced in the City”**
>
> **"The power to regulate does not include the power to prohibit (People vs. Esguerra, 81 Phil. 33 Vega vs. Municipal Board of Iloilo, L-6765, May 12, 1954; 39 N.J. Law, 70, Mich. 396). A fortiori, the power to regulate does not include the power to confiscate. The ordinance in question not only confiscates but also prohibits the operation of a memorial park cemetery, because under Section 13 of said ordinance, The confiscatory clause and the penal provision in effect deter one from operating a memorial park cemetery. Neither can the ordinance in question be justified under sub-section ‘t,' Section 12 of Republic Act 537 which authorizes the City Council to "'prohibit the burial of the dead within the center of population of the city**

and provide for their burial in such proper place and in such manner as the council may determine, subject to the provisions of the general law regulating burial grounds and cemeteries and governing funerals and disposal of the dead.

"Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in Political Law by Tañada and Carreon V-II, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. It' he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare. In police power, the owner does not recover from the government for injury sustained in consequence thereof. It has been said that police power is the most essential of' government powers, at times the most insistent, and always one of the least limitable of the powers of government (Ruby vs. Provincial Board, 39 Phil. 660; Ichong vs. Hernandez, L-7995, May 31, 1957). The Supreme Court has said that police power is so far-reaching in scope that it has almost become impossible to limit its sweep. As it derives its existence from the very existence of the state itself, it does not need to be expressed or defined in its scope."

"It seems to the court that Section 9 of Ordinance No. 6118, Series of 1964 of Quezon City is not a mere police regulation but an outright confiscation. It deprives a person of his private property without due process of law, nay, even without compensation."

We are mindful of the heavy burden shouldered by whoever challenges the validity of duly enacted legislation, whether national or local. As early as 1913, this Court ruled in Case v. Board of Health (24 Phil. 250) that the courts resolve every presumption in favor of validity and, more so, where the municipal corporation asserts that the ordinance was enacted to promote the common good and general welfare.

However, there is no reasonable relation between the setting aside of at least six (6) percent of the total area of all private cemeteries for charity burial grounds of deceased paupers and the promotion of' health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation. Instead of' building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries.

'The expropriation without compensation of a portion of private cemeteries is not covered by Section 12(t) of Republic Act 537, the Revised Charter of Quezon City which empowers the city council to prohibit the burial of the dead within the center of population of the city and to provide for their burial in a proper place subject to the provisions of general law regulating burial grounds and cemeteries. **When the Local Government Code, Batas Pambansa Blg. 337 provides in Section 177(q) that a sangguniang panlungsod may "provide for the burial of the dead in such place and in such manner as prescribed by law or ordinance" it simply authorizes the city to provide its own city owned land or to buy or expropriate private properties to construct public cemeteries. This has been the law, and practice in the past. It continues to the present. Expropriation, however, requires payment of just compensation.** The questioned ordinance is different from laws and regulations requiring owners of subdivisions to set aside certain areas for streets, parks, playgrounds, and other public facilities from the land they sell to buyers of subdivision lots. The necessities of public safety, health, and convenience are very clear from said requirements which are intended to insure the development of communities with salubrious and wholesome environments. The beneficiaries of the regulation, in turn, are made to pay by the subdivision developer when individual lots are sold to homeowners.

As a matter of fact, the petitioners rely solely on the general welfare clause or on implied powers of the municipal corporation, not on any express provision of law as statutory basis of their exercise of power. The clause has always received broad and liberal interpretation but we cannot stretch it to cover this particular taking.

Moreover, the questioned ordinance was passed after Himlayang Pilipino, Inc. had incorporated, received necessary licenses and permits, and commenced operating. The sequestration of six percent of the cemetery cannot even be considered as having been impliedly acknowledged by the private respondent when it accepted the permits to commence operations.

LUZ FARMS vs. SECRETARY OF AGRARIAN

FACTS:

- R.A No. 6657 (Comprehensive Agrarian Reform Law of 1988) was approved on June 10, 1988.
  - The CARL included the raising of livestock, poultry and swine in its coverage.
- On January 2 and 9, the Secretary of Agrarian Reform promulgated the guidelines and Implementing Production and Profit Sharing and the Implementing Rules and Regulations of R.A. No. 6657 respectively.
  - Sec. 3(b) includes the "raising of livestock (and poultry) in the definition of Agricultural, Agricultural Enterprise and Agricultural Activity"
  - Sec. 11 defines the "commercial farms" as "private agricultural lands devoted to commercial, livestock, poultry and swine raising…"
  - Sec. 16 (d) and 17 vests on the DAR, the authority to summarily determine the just compensation to be paid for lands covered by the CARL.
  - Sec 13 and 32 calls upon petitioner to execute a production-sharing plan and spells out that same plan mentioned in Sec. 13

- The petitioner, Luz Farms, is a corporation engaged in the livestock and poultry business and along with others similarly situated prays that the abovementioned laws, guidelines and rules be declared unconstitutional and a writ of preliminary injunction be issued enjoining the enforcement of the same.

ISSUE:
W/N Secs. 3(b), 11, 13 and 32 of RA 6657 insofar as it includes the raising of livestock, poultry and swine in it coverage as well as the Implementing Rules and Regulations promulgated in accordance therewith is unconstitutional.

HELD:

- In constitutional construction, the primary task is to give an ascertain and to assure the realization of the purpose of the framers. Therefore, in determining the meaning of the language used, words are to be given their ordinary meaning except where technical terms are employed in which case the significance attached to them prevails.
- While it is true that the intent of the framers is not controlling, looking into the deliberations which led to the adoption of that particular provision goes a long way in explaining the understanding of the people when they ratified it.
    - Transcripts of the deliberations shows that it was never the intent of the farmers to include livestock and poultry-raising in the coverage of the constitutionally-mandated agrarian reform program of the Gov't.
    - In the words of Commissioner Tadeo: **"… hindi naming inilagay ang agricultural worker sa kadahilanang kasama rito and piggery, poultry at livestock workers. Ang inilagay naming ditto ay farm worker kaya hindi kasama ang piggery, poultry at livestock workers."**
        - Argument of petitioner that land is not the primary resource in livestock and poultry and represents no more than 5% of the total investment of commercial livestock and poultry raisers.
        - Excluding backyard raisers, about 80% of those in commercial livestock and poultry production occupy 5 hectares or less. The remaining 20% are mostly corporate farms.
- It is therefore evident that Section II of RA 6657 which includes "private agricultural lands devoted to commercial livestock, poultry and swine raising" in the definition of "commercial farms" is **invalid**. And that the Secs. 13 and 32 of RA 6657 in directing corporate farms including livestock and poultry to execute and implement "profit-sharing plans" (distribution of 3% of gross sales and 10% of net profits to workers) is **unreasonable for being confiscatory and therefore violative of the due process clause."**

CARIDAY vs. CA

This case is about the proper interpretation of a provision in the Deed of Restriction on the title of a lot in the Forbes Park Subdivision.
Parties involved:
Forbes Park Association (FPA)- non-profit, non-stock corporation organized for the purpose of promoting and safeguarding the interests of the residents
Cariday Investment Corporation (CARIDAY)- owner of a residential building in the Forbes Park Subdivision, hence a member of the FPA

Pertinent restrictions in the "Deed of Restrictions":
"Lots may be used for residential purposes and not mote than one single family residential building will be constructed thereon except that separate servant's quarters may be built".

Pertinent restrictions in the Building Rules and Regulations:
"One residential building per lot. It may be used only for residential purposes and not more than one single-family residential building will be constructed on one lot except for separate garage and servants' quarters and bathhouses for swimming pools…"

"…it shall be exclusively for residence only of the owners and bona fide residents and their families, house guests, staff and domestics…in case of violation, Board of Governors shall after at least 10 days previous notice in writing, order the disconnection of the water service supplied through deep well pumps…"

FACTS:
In June 1986, Cariday with notice to the FPA, "repaired" its building. After inspection by FPA's engineer it was found out that additions or deletions were made. Upon 2nd inspection, it disclosed more violations where it can be used by more than one family. Cariday admitted that it has the exterior appearance of a single family residence but it is designed inside to allow occupancy by 2 families. FPA demanded it conform to the restrictions. Cariday still leased on portion of the house to an Englishman (James Duvivier), he also leased the other half of the building to Procter and Gamble foe the use of one of its American executives (Robert Haden).

A letter by Cariday sent to the FPA requesting a clearance so that Hayden may move in together with his belongings was denied. The security guards did not allow Hayden to enter and Cariday was also threatened that the water supply be disconnected by the FPA because of his alleged violations.

Cariday filed in the RTC a complaint for injunction and damages alleging that its tenants' health may be endangered and their contracts rescinded. RTC granted upon Cariday's filing of a P50,000 bond. FPA motion for reconsideration denied. CA reversed and annulled the writ of injunction saying that the FPA had the right to

prohibit entry of tenants and disconnect the water supply accrdg to its rules and regulations.

ISSUE: WON the FPA's rules and regulations regarding the prohibitions are valid and binding

HELD: yes

RATIO: In the petition for review of the CA, Cariday was asserting that although there is a restriction regards the "one residential building" per lot, nowhere in the rules and regulations a categorical prohibition to prevent him from leasing it to 2 or more tenants.
The Court said the Cariday's interpretation unacceptable since the restriction not only clearly defines the type and number of structures but also the number of families that may use it as residence. The prohibition's purpose is to avoid overcrowding which would create problems in sanity and security for the subdivision. It cannot be allowed that it be circumvented by building a house with the external appearance of a single family dwelling but the interior is designed for multiple occupancy.
However, recognizing Filipino custom and the cohesive nature of family ties, the concept of a single-family dwelling may embrace the extended family which includes married children who continue to be sheltered until they are financially independent.
(petition denied)

Gutierrez, Jr. Dissenting:

There is absolutely no showing that 2 families living in one big residence in Forbes Park would lead to any of the unpleasant consequences such as overcrowding, deterioration of roads, unsanitary conditions, ugly surroundings and lawless behavior. The family restriction is intended to insure Forbes Park real estate value remains high where the Court is not protecting against unpleasant consequences but the inflated land values and an elitist lifestyle. Under the rules, one family could hire a battalion of servants, drivers, yayas, gardeners and other without violating the single family rule where it is STILL not considered overcrowding.

Metro Manila has run out of available residential land as compared to the exploding population. I consider it a waste of scarce resources if property worth millions is limited to the use of one solitary family where it could comfortably house 2 or more families in the kind of comfort and luxury which is undreamed of even to upper middle income people.

Provision in the Const. on Social Justice and Human Rights emphasize the social function of land. Congress must give the highest priority to measures which enhance the right of all people to human dignity and reduce social, economic, and political inequalities through the equitable diffusion of wealth and political power (Sec. 1). The State is mandated to undertake, together with the private sector, a continuing housing program and an urban land reform program which seek to make available at affordable cost decent housing and basic services to underprivileged and homeless citizens.

There is the difficulty in pinpointing the line where restrictions of property ownership go beyond the constitutional bounds of reasonableness. Each case must be resolved on its particular merits. Insofar as this petition is concerned, I concur with the dissenting minority.

I. EQUAL PROTECTION CLAUSE

Consti. Art. III, sec. 1

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Consti. Art. II, sec. 14 and 22

Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

Section 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Consti. Art. IV

ARTICLE IV – CITIZENSHIP
Section 1. The following are citizens of the Philippines:

[1] Those who are citizens of the Philippines at the time of the adoption of this Constitution;
[2] Those whose fathers or mothers are citizens of the Philippines;
[3] Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
[4] Those who are naturalized in accordance with law.

Section 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Section 3. Philippine citizenship may be lost or reacquired in the manner provided by law.

Section 4. Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission, they are deemed, under the law, to have renounced it.

Section 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

Consti. Art. XII, sec. 2 and sec. 14.2

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such

agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Section 14. paragraph 2.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

ORMOC SUGAR CO., INC. vs. TREASURER of

FACTS:

- The Municipal Board of Ormoc City passed Ordinance No. 4 imposing "on any and all productions of centrifugal sugar milled at *the Ormoc Sugar Co., Inc.,* in Ormoc City a **municipal tax** equivalent to 1% per export sale to USA and other foreign countries." (Section 1)
- Payments for said tax were made, under protest, by Ormoc Sugar Co, Inc (OSCI) totaling P12,087.50.
- OSCI filed a complaint in the CFI of Leyte alleging:
  1. the ordinance is unconstitutional for being violative of the equal protection clause and the rule of uniformity of taxation
  2. it is an export tax forbidden under Sec. 2887 of the Revised Administrative Code (RAC)
  3. the tax is neither a production nor a license tax which Ormoc City is authorized to impose under Sec. 15-kk of its charter and under Sec 2 of RA 2264 (Local Autonomy Act)
  4. the tax amounts to a customs duty, fee or charge in violation of par. 1 of Sec 2 of RA 2264 because the tax is on both the sale and export of sugar.
- CFI upheld the constitutionality of the ordinance and declared the taxing power of defendant chartered city broadened by the Local Autonomy Act to include all other forms of taxes, licenses or fees not excluded in its charter. Thus, this appeal.

ISSUES:

1. WON defendant Municipal Board has authority to levy such an export tax
2. WON constitutional limits on the power of taxation, specifically the equal protection clause and rule of uniformity of taxation were infringed

RATIO:

1. YES

- OSCI questions the authority of the Mun. Board to levy such an export tax in view of **Sec 2887 of the RAC** which states: "It shall not be in the power of the municipal council to impose a tax in any form whatever, upon goods & merchandise carried into the municipality, or out of the same, and any attempt to impose an import/export tax upon such goods in the guise of an unreasonable charge for wharfage, use of bridges or otherwise, shall be void."
- *Subsequently however*, **Sec 2 of RA 2264** gave chartered cities, municipalities & municipal districts authority to levy for public purposes just & uniform taxes, licenses or fees.
- On the inconsistency between the two provisions, the Court held in *Nin Bay Mining Co v Municipality of Roxas* that **Sec 2887 of RAC has been repealed by Sec 2 of RA 2264**
- Court therein expressed awareness of the transcendental effects that municipal export/import taxes or licenses will have on the national economy and stated that there was no other alternative 'til Congress acts to provide remedial measures to forestall any unfavorable results.

1. YES

- *Felwa v Salas:* The equal protection clause applies only to persons or things identically situated and does not bar a reasonable classification of the subject of legislation.
- A classification is reasonable where **(1)** it is based on substantial distinctions which make real differences **(2)** it is germane to the purpose of the law **(3)** *it applies not only to present conditions but also to future conditions which are substantially identical to those of the present* **(4)** it applies only to those who belong to the same class
- The questioned ordinance does not meet them, **for it taxes only centrifugal sugar produced and exported by the OSCI and none other**.
- While it its true that at the time of the ordinance's enactment the OSCI was the only sugar central in Ormoc City, still, the classification, to be reasonable, should be in terms applicable to future conditions as well.
- The taxing ordinance should not be singular and exclusive as to exclude any subsequently

established sugar central, of the same class as plaintiff, for the coverage of the tax. As it is now, even if later a similar company is set up, it can't be subject to the tax because the ordinance expressly points only to OSCI as the entity to be levied upon.

- OSCI, however, is not entitled to interest on the refund because the taxes were not arbitrarily collected. At the time of collection, the ordinance provided a sufficient basis to preclude arbitrariness, the same being then presumed constitutional until declared otherwise.

HELD:

CFI decision REVERSED. Ordinance declared UNCONSTITUTIONAL. Defendants ordered to refund the P12,087.50 paid.

DUMLAO vs. COMELEC

FACTS:

- Petitioners are Dumalao (as a candidate), Igot and Salapantan (as taxpayers)
- Dumlao questions constitutionality of BP blg 52 alleging it is discriminatory and contrary to equal protection and due process insofar as Sec 4 provides for a special disqualification ("any retired elective provincial, city, or municipal official who has received payment of retirement benefits to which he is entitled under the law and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected, shall not be qualified to run for the same elective local office from which he has retired")
- Igot and Salapantan on the other hand assail the validity of second paragraph of sec 4 providing for disqualifications of certain candidates who have cases against them which are filed but have not yet been decided ("a judgment of conviction for any of the aforementioned crimes shall be conclusive evidence of such fact")

Held: (yup, held agad. Walang issues!!! Kidding! Non justiciable kasi siya in a way except sa isa… yun huli)

- This case is unacceptable for judicial resolution
- For one, there is a misjoinder of parties (dumlao not related to the latter 2)
- Next, there standards to be followed in the exercise of function:
    - Existence of appropriate case
    - Personal and substantial interest in raising the constitutional question
    - Plea that the function be exercised at the earliest opportunity (this has been met by petitioners)
    - Necessity that the constitutional question be passed upon to decide the case
- Explained further…

1. Actual Case and Controversy- judicial review is limited to the determination of actual cases and controversies. Dumlao has not been adversely affected by the application of the assailed provisions. There is no petition seeking for his disqualification (so WTF is his problem?). He's raising a hypothetical issue and his case is within the jurisdiction of respondent COMELEC.
2. Proper Party- person who impugns the validity of a statute 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. Neither Igot nor Salapantan has been alleged to have been adversely affected by the operation of the statutory provisions they assail as unconstitutional. Theirs is a general grievance. There is no personal or substantial interest. Provisions can't be assailed by taxpayers bec they do not involve expenditure of public moneys. Petitioners do not seek to restrain respondent from wasting public funds. Court has discretion as to WON a taxpayer's suit should be entertained
3. Unavoidability of constitutional questions- the issue of constitutionality must be the very lis mota presented. Petitioners are actually without cause of action.

- In the case of a 65-year old elective local official, who has retired from a provincial, city, or municipal office, there is reason to disqualify him from running for the same office from which he had retired. He ha already declared himself tired and unavailable for the same govt work. Equal protection clause does not forbid all legal classification. What is proscribed is a classification which is arbitrary and unreasonable.
- Absent herein is a showing of the clear invalidity of the questioned provision. There must be a clear unequivocal breach of the constitution. Unless the conflict with the constitution is clear beyond reasonable doubt, it is within the competence of he legislature to prescribe qualifications
- HOWEVER!!! Accdg to Igot and Salapantan, second par of sec 4 "a judgment of conviction for any of the aforementioned crimes shall be conclusive evidence of such fact" contravenes the constitutional presumption of innocence. The court agrees with them.
- WHEREFORE, 1st par of sec 4 BP blg52= valid, the portion of the 2nd par of sec 4 providing that "the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be prima facie evidence of such fact"=null and void

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PEOPLE vs. CAYAT

FACTS:

Being a member of a non-Christian tribe, the accused, Cayat, acquired and had under his possession a bottle of A-1-1 gin, a liquor other than the native wines of his tribe. This was in violation of Act. No. 1639 (sec 2 and 3). While he admitted to the facts, the pleaded not guilty. He was found guilty and fined to Php50.

Sec. 2 makes it unlawful for any Philippine non-Christian native to buy or possess any alcoholic beverage or liquor other than the "so-called" native wines and liquors that they have been made accustomed to. It is then the duty

of the police or any authorized agent to seize and destroy the liquor.

Sec. 3 fines a violator of not more than Php200 or imprisoning them of as term not exceeding 6 months.

Cayat now challenges the constitutionality of the Act for being:

1) discriminatory and denies equal protection of the laws
2) violative of due process
3) an improper exercise of police power

ISSUE

1) Whether or not Act. No. 1639 satisfies the requirements of proper classification
2) Whether or not Act. No. 1639 is violative of the due process clause
3) Whether or not it is an improper exercise of police power

HELD

1) Yes it does.
2) No it is not.
3) No it is not.

RATIO

1) So as to qualify under the equal protection of laws, the law in question must satisfy the requirements of proper classification. These are:

1) must rest on substantial distinctions
2) must be germane to the purposes of the law
3) must not be limited to existing conditions only
4) must apply equally to all members of the same class

According to the court, the classification is real and substantial, as the term “non-Christian tribes” refers, not to religious belief, but to geography and to the level of civilization (remember Rubi v. Provincial Board of Mindoro).

Secondly, it has a clear purpose. The prohibition of possessing alcoholic beverages other than local wines is designed to insure peace and order in the tribes, as free use of those prohibited beverages often led to lawlessness and crimes.

Thirdly, it is not limited as it is intended to apply for all times as long as those conditions exist. This is due to the fact that the process of civilization is a slow process.

Lastly, it applies equally to all members of the class.

2) Due process means:

1) there shall be a law prescribed in harmony with the general powers of the legislative department
2) it shall be reasonable in its operation
3) it shall be enforced according to the regular methods of procedure
4) it shall be applicable alike to all citizens of the state or a class

Also noted by the court is that due process does not always accord notice and hearing. Property may be seized by the government in 3 circumstances:

1) in payment of taxes
2) when used in violation of law
3) when property causes a corpus delicti

In this case, the third circumstance is present.

4) In discussing police power, the court states that the Act serves a purpose, that of peace and order. In discussing whether the means are reasonable, the courts merely stated that this is in the realm of the legislative.

ICHONG vs. HERNANDEZ

FACTS:

1. The Legislature passed R.A. 1180 (An Act to Regulate the Retail Business). Its purpose was to prevent persons who are not citizens of the Phil. from having a stranglehold upon the people’s economic life.

    - a prohibition against aliens and against associations, partnerships, or corporations the capital of which are not wholly owned by Filipinos, from engaging directly or indirectly in the retail trade

    - aliens actually engaged in the retail business on May 15, 1954 are allowed to continue their business, unless their licenses are forfeited in accordance with law, until their death or voluntary retirement. In case of juridical persons, ten years after the approval of the Act or until the expiration of term.

    - Citizens and juridical entities of the United States were exempted form this Act.

    - provision for the forfeiture of licenses to engage in the retail business for violation of the laws on nationalization, economic control weights and measures and labor and other laws relating to trade, commerce and industry.

    - provision against the establishment or opening by aliens actually engaged in the retail business of additional stores or branches of retail business

2. Lao Ichong, in his own behalf and behalf of other alien residents, corporations and partnerships affected by the Act, filed an action to declare it unconstitutional for the ff: reasons:

    - **it denies to alien residents the equal protection of the laws and deprives them of their liberty and property without due process**

- the subject of the Act is not expressed in the title
- the Act violates international and treaty obligations
- the provisions of the Act against the transmission by aliens of their retail business thru hereditary succession

IMPT. ISSUE:

WON the Act deprives the aliens of the equal protection of the laws.

HELD:

The law is a valid exercise of police power and it does not deny the aliens the equal protection of the laws. There are real and actual, positive and fundamental differences between an alien and a citizen, which fully justify the legislative classification adopted.

RATIO:

1. The equal protection clause does not demand absolute equality among residents. It merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.

2. The classification is actual, real and reasonable, and all persons of one class are treated alike.

3. The difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of police power.

4. Official statistics point out to the ever-increasing dominance and control by alien of the retail trade. It is this domination and control that is the legislature's target in the enactment of the Act.

5. The mere fact of alienage is the root cause of the distinction between the alien and the national as a trader. The alien is naturally lacking in that spirit of loyalty and enthusiasm for the Phil. where he temporarily stays and makes his living. The alien owes no allegiance or loyalty to the State, and the State cannot rely on him/her in times of crisis or emergency.

6. While the citizen holds his life, his person and his property subject to the needs of the country, the alien may become the potential enemy of the State.

7. The alien retailer has shown such utter disregard for his customers and the people on whom he makes his profit. Through the illegitimate use of pernicious designs and practices, the alien now enjoys a monopolistic control on the nation's economy endangering the national security in times of crisis and emergency.

KOREMATSU vs. U.S.

December 18, 1944
MR. JUSTICE BLACK delivered the opinion of theCourt.

FACTS

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area," contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which directed that after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner's loyalty to the United States. The Circuit Court of Appeals affirmed, and the importance of the constitutional question involved caused the court to grant certiorari.

Prosecution of the petitioner begun by information charging violation of an **Act of Congress, of March 21, 1942**, , which provides that
"*. . . whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $ 5,000 or to imprisonment for not more than one year, or both, for each offense.*"

Exclusion Order No. 34, which the petitioner violated, was one of a number of military orders and proclamations, all of which were substantially based upon Executive Order No. 9066. That order, issued after we were at war with Japan, declared that "*the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities. . . .*"

ISSUE

WON the President and Congress went beyond their war powers by implementing exclusion and restricting the rights of Americans of Japanese descent

HOLDING

No, ruling affirmed. The Court sided with the government and held that the need to protect against espionage outweighed Korematsu's rights. Compulsory exclusion, though constitutionally suspect, is justified in circumstances of "emergency and peril."

RATIO

Validity of Law

In Hirabayashi v. United States, 320 U.S. 81, we sustained a conviction obtained for violation of the curfew order. The Hirabayashi conviction and this one thus rest on the same 1942 Congressional Act and the same basic executive and military orders, all of which orders were aimed at the twin dangers of espionage and sabotage.

The 1942 Act was attacked in the Hirabayashi case as an unconstitutional delegation of power; it was contended that the curfew order and other orders on which it rested were beyond the war powers of the Congress, the military authorities and of the President, as Commander in Chief of the Army; and finally that to apply the curfew order against none but citizens of Japanese ancestry amounted to a constitutionally prohibited discrimination solely on account of race. **To these questions, we gave the serious consideration which their importance justified. We upheld the curfew order as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.**

In the light of the principles we announced in the Hirabayashi case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one's home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. **But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion.**

Petitioner urges that when Order No. 34 was promulgated, all danger of Japanese invasion of the West Coast had disappeared. The court rejects the argument.

Here, as in the Hirabayashi case, **the court cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it."**

Like curfew, **exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country.** It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group. In the instant case, **temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was for the same reason a military imperative answers the contention that the exclusion was in the nature of group punishment based on antagonism to those of Japanese origin.** That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion. Approximately five thousand American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.

“Conflict of Order” contention

It is argued that on May 30, 1942, the date the petitioner was charged with remaining in the prohibited area, there were conflicting orders outstanding, forbidding him both to leave the area and to remain there.

The only order in effect touching the petitioner's being in the area on May 30, 1942, the date specified in the information against him, was the May 3 order which prohibited his remaining there, and it was that same order, which he stipulated in his trial that he had violated, knowing of its existence. There is therefore no basis for the argument that on May 30, 1942, he was subject to punishment, under the March 27 and May 3 orders, whether he remained in or left the area.

“Inseparability of orders” contention

It is argued that the validity of the exclusion order cannot be considered apart from the orders requiring him, to report and to remain in an assembly or relocation center. The contention is that we must treat these separate orders as one and inseparable; if detention in the assembly or relocation center would have illegally deprived the petitioner of his liberty, the exclusion order and his conviction under it cannot stand.

Had petitioner here left the prohibited area and gone to an assembly center the court cannot say either as a matter of fact or law that his presence in that center would have resulted in his detention in a relocation center. This is made clear when we analyze the requirements of the separate provisions of the separate orders. These separate requirements were that those of Japanese ancestry (1) depart from the area; (2) report to and temporarily remain in an assembly center; (3) go under military control to a relocation center there to remain for an indeterminate period until released conditionally or unconditionally by the military authorities. Each of these requirements, it will be noted, imposed distinct duties in connection with the separate steps in a complete evacuation program.

Since the petitioner has not been convicted of failing to report or to remain in an assembly or relocation center, we cannot in this case determine the validity of those separate provisions of the order. It is sufficient here for us to pass upon the order which petitioner violated.

The power to exclude includes the power to do it by force if necessary. And any forcible measure must necessarily entail some degree of detention

or restraint whatever method of removal is selected. But whichever view is taken, it results in holding that the order under which petitioner was convicted was valid.

Conclusion

It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. Regardless of the true nature of the assembly and relocation centers , we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue.

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders determined that they should have the power to do just this. We cannot -- by availing ourselves of the calm perspective of hindsight -- now say that at that time these actions were unjustified.

PLESSY vs. FERGUSON

BROWN, J.

FACTS:

This case centers on the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. The petitioner was a citizen of the United States and a resident of the State of Louisiana, of mixed descent (7/8 Caucasian, 1/8 African). On June 7, 1892 he paid for a first class ticket on the East Louisiana Railway from New Orleans to Covington. Upon entering the passenger train he sat in a vacant seat reserved for white passengers. Despite this, the petitioner was required by the conductor to transfer to the seats assigned to colored passengers. When the petitioner refused he was forcibly ejected from the said coach and was charged with violating the assailed Louisiana statute.
The constitutionality of this act is attacked upon the ground that it conflicts both with the 13th Amendment of the Constitution, abolishing slavery, and the 14th Amendment, which prohibits certain restrictive legislation on the part of the states.

ISSUES/HELD:

1. W/O Not the statute is unconstitutional for being in conflict with the 13th Amendment, abolishing slavery? **NO**

2. W/O Not the statute is unconstitutional for being in conflict with the 14th Amendment, which prohibits certain restrictive legislation in part of the States? **NO**

RATIO:

1. A statute which implies merely a legal distinction between the white and colored races, has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. It is claimed by the plaintiff in error that, in any mixed community, the reputation of belonging to the dominant race, in this instance the white race is property, in the same sense that a right of action, or of inheritance, is property. Conceding this to be so for the purposes of this case, we are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called property. Upon the other hand, if he be a colored man and be, so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man..

2. So far, then. as a conflict with the 14th Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the 14th Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.
   If the two races are to meet on terms of social equality wit must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

DISSENT:

Justice HARLAN

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that state, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several states of the Union, the effect would be in the highest degree mischievous. Slavery as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the states, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community, called the people of the United States, for whom and by whom, through representatives, our government is administered. Such a system is inconsistent with the guarantee given by the Constitution of each state of a republican form of government, and may be stricken down by Congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding.

UNIVERSITY of CALIFORNIA vs. BAKKE

(June 28, 1978)
Ponente: J. Powell

FACTS:

The Medical School of the Univ of California had 2 admissions programs for an entering class of 100 students. Under the **regular admissions program,** candidates who had an undergrad GPA below 2.5 (on a scale of 4.0) were summarily rejected. Applicants who pass this requirement undergo an interview (rated on a scale of 1 to 100 per interviewer), which composed their respective "benchmark scores" based on the interviewers' summaries, overall GPA, science courses GPA, Medical College Admission Test (MCAT), letters of recommendation, extracurricular activities and other biographical data.

A separate committee, a majority of whom were members of minority groups, composed the **special admissions program.** Under it, applicants were asked to indicate in their application forms if they wished to be considered as "economically and/or educationally disadvantaged" applicants/members of a minority group (blacks, Chicanos, Asians, American Indians). If an applicant was found to be "disadvantaged," he would be rated in the same manner as the one employed by the general admissions committee. However, they did not have to meet the 2.5 grade point cutoff and were not ranked against candidates in the general admissions process. No disadvantaged whites were admitted under the special program, though many applied.

Respondent, a white male, applied in 1973 and 1974, in both years being considered only under the general admissions program. Though he had a 468 out of 500 score in 1973, he was rejected since no late general applicants with scores less than 470 were being accepted. At the time, 4 special admission slots were still unfilled. In 1974 respondent applied early, and though he had a score of 549 out of 600, he was again rejected. In both years, special applicants were admitted with significantly lower scores than respondent's.
After his 2nd rejection, respondent filed this action for mandatory, injunctive, and declaratory relief to compel his admission, alleging that the **special admissions program operated to exclude him on the basis of his race** in violation of the **Equal Protection Clause of the 14th Amendment**, a **provision of the California Consti,** and **601 of Title VI of the Civil Rights Act of 1964.**

The trial court found that the special program operated as a **racial quota** because minority applicants in that program were rated only against one another, and 16 places out 100 were reserved for them. Declaring that petitioner could not take race into account in making admissions decisions, the program was held to violate the Federal and State Constis and Title VI. Respondent's admission was not ordered, however, for lack of proof that he would have been admitted but for the special program.

The California SC, applying a **strict-scrutiny standard,** concluded that the special admission program was not the least intrusive means of achieving the goals of the admittedly compelling interests of integrating the medical profession and increasing the number of doctors willing to serve minority patients. Petitioner's special admissions program was held to violate the Equal Protection Clause. Since petitioner could not satisfy its burden of demonstrating that respondent, absent the special program, would not have been admitted, the court ordered respondent's admission.

ISSUES → HELD:

1. WON a right of action for private parties exists under Title VI of the Civil Rights Act of 1964 → YES
2. WON the special admissions program is necessary and appropriate in realizing petitioner's goal of diversifying its student body → NO
3. WON petitioner could satisfy its burden of proving that respondent would not have been admitted even if there had been no special admissions program → NO

RATIO:

1. **601 of Title VI of the Civil Rights Act of 1964:** "No person in the US shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The problem confronting Congress was discrimination against Negro citizens at the hands of recipients of federal moneys. Proponents of the bill detailed the plight of Negroes seeking equal treatment in federally funded programs. The purpose of Title VI was "to insure that

Federal funds are spent in accordance with the Consti and the moral sense of the Nation" and "to give fellow citizens – Negroes – the same rights and opportunities that white people take for granted." In view of the clear legislative intent, Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the 5th Amendment.

2.

Application of Judicial Scrutiny

Parties disagree as to the level of judicial scrutiny to be applied to the special admissions program; but it is undisputed that it makes a classification based on race and ethnic background. Nevertheless, petitioner argues that the court below erred in applying strict scrutiny to the program bec white males, such as respondent, are not a "discrete and insular minority" requiring extraordinary protection from the majoritarian political process. This rationale, however, has not been invoked in decisions as a prerequisite to subjecting racial distinctions to strict scrutiny. Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious. They are subject to stringent examination regardless of these characteristics.

14th Amendment: Equal Protection Clause

- Yick Wo v Hopkins: "The guarantees of equal protection are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."
- Although the framers conceived of its primary function as bridging the vast distance bet members of the Negro race and the white "majority," the Amendment itself was framed in universal terms, without reference to color, ethnic origin, or condition prior to servitude. There is no principled basis for deciding which groups would merit "heightened judicial solicitude" and which would not. Nothing in the Consti supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups.

Purposes and Means

PURPOSE:

1. Reducing the historic deficit of traditionally disfavored minorities in medical schools and in the profession
2. Countering the effects of societal discrimination
3. Increasing the number of physicians who will practice in communities currently underserved
4. Obtaining the educational benefits that flow from an ethnically diverse student body

MEANS: special admissions program

Court, holding that the means is not essential in realizing the purposes:

1. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake.
2. The State certainly has a legitimate and substantial interest in ameliorating or eliminating where feasible, the disabling effects of identified discrimination. However, the Court has never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. Without such findings, it cannot be said that the gov't has any greater interest in helping 1 individual than in refraining from harming another.
3. There is no evidence on record indicating that petitioner's special admissions program is either needed or geared to promote such goal. There are more precise and reliable ways to identify applicants who are genuinely interested in the medical problems of minorities than by race. There is no empirical data to demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive.
4. Academic freedom has long been viewed as a special concern of the 1st Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body. Four essential freedoms: (1) who may teach, (2) what may be taught, (3) how it shall be taught, and (4) who may be admitted. It is true that the contribution of diversity is substantial, with the Court making a specific reference to legal education:

   > "The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."

   HOWEVER, ethnic diversity is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body. Although a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individuals may not be disregarded.

Racial classification = Diversity?

It is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected groups, with the remaining percentage an undifferentiated aggregation of students. **The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.** Petitioner's special program, focused solely on ethnic diversity, would hinder rather than further attainment of genuine diversity. The assignment of a fixed number of places to a minority group is not a necessary means towards that end. Race or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all the other candidates for the available seats. An admissions program should operate in such a way that would be flexible enough to consider all pertinent elements of diversity (i.e. exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, ability to communicate with the poor, etc) in light of the particular qualifications of each applicant, and place them in the same footing for consideration, although not necessarily according them the same weight. This kind of program treats each applicant as an individual in the admissions process.

In sum, the petitioner's special admissions program involves the use of an explicit racial classification never before countenanced by this Court. The fatal flaw in petitioner's preferential program is its disregard of individual rights as guaranteed by the 14th Amendment. Such rights are not absolute; but when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of one's skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest. Petitioner has failed to carry this burden; hence, its special admissions program is constitutionally deemed invalid. However, the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the consideration of race and ethnic origin. Thus, California SC's judgment enjoining petitioner from taking race into account is reversed.

1. Petitioner has conceded that it could not carry its burden of proving that, but for the existence of its unlawful special admissions program, respondent still would not have been admitted. Hence, he is entitled to injunction and should be admitted there.

JJ. Brennan, White, Marshall, and Blackmun; concurring and dissenting.
Gov't may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area.

GRATZ vs. BOLLINGER/ GRUTTER vs.

Grutter v Bollinger, 02-241 (June 2003)

O'Connor, J.
NATURE: certiorari to the US CA

FACTS: The University of Michigan Law School (Law School), one of the Nation's top law schools, follows an official admissions policy that seeks to achieve student body diversity through compliance with *Regents of Univ. of Cal. v. Bakke.* Focusing on students' academic ability coupled with a flexible assessment of their talents, experiences, and potential, the policy requires admissions officials to evaluate each applicant based on all the information available in the file, including a personal statement, letters of recommendation, an essay describing how the applicant will contribute to Law School life and diversity, and the applicant's undergraduate grade point average (GPA) and Law School Admissions Test (LSAT) score. Additionally, officials must look beyond grades and scores to so-called "soft variables," such as recommenders' enthusiasm, the quality of the undergraduate institution and the applicant's essay, and the areas and difficulty of undergraduate course selection. The policy does not define diversity solely in terms of racial and ethnic status and does not restrict the types of diversity contributions eligible for "substantial weight," but it does reaffirm the Law School's commitment to diversity with special reference to the inclusion of African-American, Hispanic, and Native-American students, who otherwise might not be represented in the student body in meaningful numbers. By enrolling a "critical mass" of underrepresented minority students, the policy seeks to ensure their ability to contribute to the Law School's character and to the legal profession.

When the Law School denied admission to petitioner Grutter, a white Michigan resident with a 3.8 GPA and 161 LSAT score, she filed this suit, alleging that respondents had discriminated against her on the basis of race in violation of the *14th Amendment, Title VI of the Civil Rights Act of 1964, and 42 U. S. C. §1981*; that she was rejected because the Law School uses race as a "predominant" factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups; and that respondents had no compelling interest to justify that use of race. The District Court found the Law School's use of race as an admissions factor unlawful. The Sixth Circuit of the CA reversed, holding that Justice Powell's opinion in Bakke was binding precedent establishing diversity as a compelling state interest, and that the Law School's use of race was narrowly tailored because race was merely a "potential 'plus' factor" and because the Law School's program was virtually identical to the Harvard admissions program described approvingly by Justice Powell and appended to his Bakke opinion.

Pettioner (Barbara Grutter) :
- respondents discriminated against her on the basis of race in violation of the *14th Amendment; Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U. S. C. §2000d;* and *Rev. Stat. §1977, as amended, 42 U. S. C. §1981*
- her application was rejected because the Law School uses race as a "predominant" factor, giving applicants who belong to certain minority groups "a significantly greater chance of admission than students with similar credentials from disfavored racial groups."
- respondents "had no compelling interest to justify their use of race in the admissions process"

Respondents (Lee Bollinger, former Law School dean, present UMich pres; jeffrey Lehman, Law School dean; Denis Shield, Admissions Director):
-there was no directive to admit a fixed/particular percentage or number of minority students, but rather to consider an applicant's race along with all other factors
- 'critical mass' " means " 'meaningful numbers' " or " 'meaningful representation,'; there is no number, percentage, or range of numbers or percentages that constitute critical mass.
- the policy did not purport to remedy past discrimination, but rather to include students who may bring to the Law School a perspective different from that of members of groups which have not been the victims of such discrimination
- the Law School actually gives substantial weight to diversity factors besides race
- the university policy of promoting diversity constitutes a "compelling interest"

ISSUES:

1. Whether or not diversity is a compelling interest that can justify the narrowly tailored use of race in selecting applicants for admission to public universities

2. Whether or not the narrowly-tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits of a diverse student body is prohibited by the Equal Protection Clause (14th Amend)

HELD:

1. **YES**. In the landmark *Bakke* case, this Court reviewed a medical school's racial set-aside program that reserved 16 out of 100 seats for members of certain minority groups. The decision produced six separate opinions, none of which commanded a majority. Four Justices would have upheld the program on the ground that the government can use race to remedy disadvantages cast on minorities by past racial prejudice. Four other Justices would have struck the program down on statutory grounds. Justice Powell, announcing the Court's judgment, provided a fifth vote not only for invalidating the program, but also for reversing the state court's injunction against any use of race whatsoever. In a part of his opinion that was joined by no other Justice, Justice Powell expressed his view that attaining a diverse student body was the only interest asserted by the university that survived scrutiny. Grounding his analysis in the academic freedom that "long has been viewed as a special concern of the First Amendment, Justice Powell emphasized that the " 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation." However, he also emphasized that "it is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups," that can justify using race.Rather, "the diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." Since Bakke, Justice Powell's opinion has been the touchstone for constitutional analysis of race-conscious admissions policies. Public and private universities across the Nation have modeled their own admissions programs on Justice Powell's views. Courts, however, have struggled to discern whether Justice Powell's diversity rationale is binding precedent. The Court finds it unnecessary to decide this issue because the Court endorses Justice Powell's view that student body diversity is a compelling state interest in the context of university admissions.

2. **NO**. The Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body is not prohibited by the Equal Protection Clause, Title VI, or §1981

a. All government racial classifications must be analyzed by a reviewing court under strict scrutiny. *Adarand Constructors, Inc. v. Peña*. But not all such uses are invalidated by strict scrutiny. Race-based action necessary to further a compelling governmental interest does not violate the Equal Protection Clause so long as it is narrowly tailored to further that interest. *Shaw v. Hunt*. Context matters when reviewing such action. *Gomillion v. Lightfoot*. Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the government's reasons for using race in a particular context.

b. The Court endorses Justice Powell's view that student body diversity is a compelling state interest that can justify using race in university admissions. The Court defers to the Law School's educational judgment that diversity is essential to its educational mission. The Court's scrutiny of that interest is no less strict for taking into account complex educational judgments in an area that lies primarily within the university's expertise. Attaining a diverse student body is at the heart of the Law School's proper institutional mission, and its "good faith" is "presumed" absent "a showing to the contrary." Enrolling a "critical mass" of minority students simply to assure some specified percentage of a particular group merely because of its race or ethnic origin would be patently unconstitutional. But the Law School defines its critical mass concept by reference to the substantial, important, and laudable educational benefits that diversity is designed to produce, including cross-racial understanding and the breaking down of racial stereotypes. The Law School's claim is further bolstered by numerous expert studies and reports showing that such diversity promotes learning outcomes and better prepares students for an increasingly diverse workforce, for society, and for the legal profession. Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security. Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, *Sweatt v. Painter*, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity. Thus, the Law School has a compelling interest in attaining a diverse student body.

(d) The Law School's admissions program bears the hallmarks of a narrowly tailored plan. To be narrowly tailored, a race-conscious admissions program cannot "insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants." *Bakke*. Instead, it may consider race or ethnicity only as a " 'plus' in a particular applicant's file"; i.e., it must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight." It follows that universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks. The Law School's admissions program, like the Harvard plan approved by Justice Powell, satisfies these requirements. Moreover, the program is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application. The Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. There is no policy, either de jure or de facto, of automatic acceptance or rejection based on any single "soft" variable. *Gratz v. Bollinger*. Also, the program adequately ensures that all factors that may contribute to diversity are meaningfully considered alongside race. Moreover, the Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected. The Court rejects the argument that the Law School should have used other race-neutral means to obtain the educational benefits of student body diversity, e.g., a lottery system

or decreasing the emphasis on GPA and LSAT scores. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative or mandate that a university choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups. *Wygant v. Jackson Bd. of Ed*. The Court is satisfied that the Law School adequately considered the available alternatives. The Court is also satisfied that, in the context of individualized consideration of the possible diversity contributions of each applicant, the Law School's race-conscious admissions program does not unduly harm nonminority applicants. Finally, race-conscious admissions policies must be limited in time. The Court takes the Law School at its word that it would like nothing better than to find a race-neutral admissions formula and will terminate its use of racial preferences as soon as practicable. The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

c. Because the Law School's use of race in admissions decisions is not prohibited by Equal Protection Clause, petitioner's statutory claims based on Title VI and §1981 also fail.

US CA decision affirmed.

BRADWELL vs. ILLINOIS

FACTS:

Mrs. Myra Bradwell, after obtaining the requisite qualifications, applied the the judges of the Supreme Court of Illinois for a license to practice law.

This was accompanied by an affidavit claiming that she was born in Vermont and was formerly a citizen of that state. However, she is now both a citizen of the United States and the state of Illinois after residing in Chicago for many years. According to the Chicago statute, no individual is allowed to practice law without obtaining a license from two justices of the state supreme court.

The Supreme Court refused to issue Bradwell a license for the reason that her marital status would prevent her from being bound by her express or implied contracts which the law upholds between attorney and client.

In providing its decision, the State Supreme Court relied on an existing state statute prohibiting persons from practicing law without a license obtained from two Supreme Court justices. Furthermore, the issuance of a license requires a certificate of good moral character provided by any county court. Other rules of admission are left to the discretion of the members of the Supreme Court.

This discretion is subject to two limitations:

1) The terms of admission must promote the proper administration of justice
2) The court should not admit any persons or class of persons who are not intended by the legislature to be admitted, even though their exclusion is not expressly required by the statute.

The court concentrated on the second limitation, contemplating that admitting women to engage in the practice of law would be exercising authority conferred to them in a manner different from what the legislature intended. It argued that at the time of the establishment of this statute, the U.S. had adopted the Common Law system of England in which female attorneys were unknown. God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth.

Mrs. Bradwell, brought this case to the Federal Supreme Court.

ISSUE:

WON a female, duly qualified in respect of age, character, and learning, claim, under the fourteenth amendment, the privilege of earning a livelihood by practicing at the bar of a judicial court.

DECISION:

Yes, judgement reversed

RATIO:

I. Constitutional amendment:

Original: A citizen emigrating from one state to another carried with him, not the privileges and immunities he enjoyed in his native state, but was entitles, in the state of his adoption, to such privileges and immunities as were enjoyed by the class of citizens to which he belonged by the laws of such adopted state.

14th Amendment: It executes itself in every state of the union. It contains a class of privileges that a state may not abridge.

Question: Does admission to the bar belong to that class of privileges which a state may not abridge, or that class of political rights as to which a state may discriminate between its citizens?

- Court believes that the practice of law is a privilege which belong to a citizen of the United States.

Cases:

Cummings vs. Missouri: all men have certain inalienable rights. In the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law

Ex Parte Garland: Attorneys and counselors are officers of the court and not of the United states. They are not appointed in the manner prescribed by the Constitution. Therefore, they must be admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character.

Conclusion: The profession of the law, like the clerical profession and that of medicine, is an advocation open to every citizen of the United States. The legislature may prescribe qualifications but may not discriminate a class of citizens from admission to the bar.

I. Difficulty of clients in enforcing the contracts they might make with her because of her

being a married woman and on the ground of her sex.

- This kind of malpractice may be punishable by fine, imprisonment, or expulsion from the bar. Her clients would not be compelled to resort to actions at law against her.

JUSTICE MILLER, DISSENTING:

In regard to that amendment counsel for plaintiff claims contains privileges and immunities which belong to a citizen of the U.S., the practice of law has never depended on the concept of citizenship. The right to control and regulate the granting of license to practice law in the courts of a state is one of those powers which are not transferred for its protection to the Federal government.

Judgement affirmed.

JUSTICE BRADLEY, DISSENTING:

The claim that under the 14th amendment of the constitution, which declares that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the U.S. assumes that the practice of law is one of the privileges and immunities of women as citizens to engage in any and every profession.

Civil law has recognized wide differences in the spheres and destinies of man and woman. Man is woman's protector and defender. Timidity and delicacy belong to the female. The founders of the common law believed that a woman had no legal existence apart from her husband. Their destiny is to become wives and mothers.

Judgement affirmed

GOESART vs. CLEARY

FACTS:

As part of the Michigan system for controlling the sale of liquor, bartenders are required to be licensed in all cities, but no female may be so licensed unless she be "the wife or daughter of the male owner" of a licensed liquor establishment.

The case is here on direct appeal from an order of the District Court, denying an injunction to restrain the enforcement of the Michigan law. The claim is that Michigan cannot forbid females generally from being barmaids and at the same time make an exception in favor of the wives and daughters of the owners of liquor establishments.

ISSUE:

WON the Equal Protection of the Laws Clause of the Fourteenth Amendment barred Michigan from making the classification the State has made between wives and daughters of owners of liquor places and wives and daughters of non-owners.

HELD: No.

RATIO:

(The Fourteenth Amendment did not tear history up by the roots, and the regulation of the liquor traffic is one of the oldest and most untrammeled of legislative powers. Michigan could, beyond question, forbid all women from working behind a bar. This is so despite the vast changes in the social and legal position of women. The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certainly, in such matters as the regulation of the liquor traffic.)

The Constitution does not require situations 'which are different in fact or opinion to be treated in law as though they were the same.' Since bartending by women may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures, the legislature need not go to the full length of prohibition if it believes that as to a defined group of females other factors are operating which either eliminate or reduce the moral and social problems otherwise calling for prohibition. Michigan evidently believes that the oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight. This Court is certainly not in a position to gainsay such belief by the Michigan legislature. If it is entertainable, as we think it is, Michigan has not violated its duty to afford equal protection of its laws. We cannot cross-examine either actually or argumentatively the mind of Michigan legislators nor question their motives.

Nor is it unconstitutional for Michigan to withdraw from women the occupation of bartending because it allows women to serve as waitresses where liquor is dispensed. The District Court has sufficiently indicated the reasons that may have influenced the legislature in allowing women to be waitresses in a liquor establishment over which a man's ownership provides control. Nothing need be added to what was said below as to the other grounds on which the Michigan law was assailed.

**What if it's a female owner? Gender classification. What is the basis of distinction?

Heigthened
Mr. Justice RUTLEDGE, with whom Mr. Justice DOUGLAS and Mr. Justice MURPHY join, dissenting.

The statute arbitrarily discriminates between male and female owners of liquor establishments. A male owner, although he himself is always absent from his bar, may employ his wife and daughter as barmaids. A female owner may neither work as a barmaid hereself nor employ her daughter in that position, even if a man is always present in the establishment to keep order. This inevitable result of the classification belies the assumption that the statute was motivated by a

legislative solicitude for the moral and physicial well-being of women who, but for the law, would be employed as barmaids. Since there could be no other conceivable justification for such discrimination against women owners of liquor establishments, the statute should be held invalid as a denial of equal protection.

GEDULDIG vs. AIELLO

Gudeldig, etc. v Aiello et al. 1974

California has administered a disability insurance system that pays benefits to persons in private employment who are temporarily unable to work because of disability not covered by workmen's compensation for almost 30 years. This is funded from contributions deducted from the wages of participating employees. Such participation, which requires an employee to contribute one percent of his salary ($85 max. annually), is mandatory unless the employees are protected by voluntary private medical plans approved by the State. These contributions are placed in the Unemployment Compensation Disability Fund.

In the event a participant employee suffers a compensable disability, he can receive a "weekly benefit amount" to be paid on the eighth day of disability. If he is hospitalized, the payment would be on the 1st day of hospitalization and he can also get additional benefits of $12 per day). Weekly benefit amounts for one disability are payable for 26weeks so long as the total amt paid doesn't exceed one-half of the wages received during the base period while additional benefits are for a max of 20days.

The individual employee is insured against the risk of disability from a no. of mental or physical illness(es) and mental or physical injuries. It is not every disabling condition that triggers the obligation to pay benefits though. No benefits are paid for a single disability beyond 26 weeks or for a disability resulting from individual's court commitment as a dipsomaniac, drug addict or sexual psychopath. **2626** of **Unemployment Insurance Code** also excludes disabilities resulting from pregnancy.

Gudelgig, the Director of the California Dept of Human Resources is responsible for the administration of this program. Aiello et al. became pregnant and suffered employment disability as a result of their pregnancies. Three of the appellees' disabilities are attributable to abnormal complications encountered during their pregnancies while Jaramillo experienced a normal pregnancy, which is the sole cause fo her disability.[8] Gudelgig applied **2626 of UIC** to preclude the payment of benefits to appellees. Thus, the appellees were ruled ineligible for disability benefits and are now suing to enjoin its enforcement and are challenging the constitutionality of such provision.

Because of the **Rentzer v Calif Unemployment Insurance Appeals Board** and the revised administrative guidelines that resulted from it, three of the appellees whose disabilities were attributable to causes other than normal pregnancy and delivery, became entitled to benefits under the program and their claims have since then been paid.

Issue : WON the California disability insurance program invidiously discriminates against Jaramillo and others similarly situated by not paying insurance benefits for disability that accompanies normal pregnancy and childbirth.
\Underlying Issue: WON the Equal Protection Clause requires such policies to be sacrificed in order to finance the payment of benefits to those whose disability is attributable to normal pregnancies.

No.
California intended to establish this benefit system as an insurance program to function in accordance with insurance concepts. It never drew on general state revenues to finance disability or hospital benefits. The one-percent contribution bears a close and substantial relationship to the level of benefits payable and to the disability risks insured under the program. Over the years, California has been committed to not increasing the contribution rate above the one-percent level. It has sought to provide the broadest possible disability protection that would be affordable by even those with low-incomes.

To order the State to pay benefits for disability accompanying normal pregnancy and delivery is to order them to make reasonable changes in the contribution rate, the max benefits allowable and other variables affecting the solvency of the program. These variables represent a policy determination by the State.

California doesn't discriminate with respect to persons or groups which are eligible for disability insurance protection under the program. The classification challenged in this case relates to the asserted "underinclusiveness" of the set of risks that the State has selected to insure. The State has not chosen to insure all risks of employment disability and this decision is reflected in the level of annual contributions exacted from participating employees. Plus, there is no evidence that the selection of risks insured worked to discriminate against any definable group or class from the program.

The Court has held previously that, consistent with the Equal Protection Clause, **"a State may take one step at a time, addressing itself to the phase of the problem which seems acute to the legislative mind…The legislature may select one phase of field and apply a remedy there, neglecting others."** Particularly with respect to social welfare programs, **so long as the line drawn by the State is rationally supportable,** the Courts will not interpose their judgement as to the appropriate stopping point.

With respect to how a change of the variables would result in a more comprehensive program, the Court expressed that such would inevitably require state subsidy or some other measure. The Court held that the State has a legitimate interest in maintaining the self-supporting nature of its insurance program and in distributing the available resources in such a way to keep benefit payments at an adequate level for disabilities covered. Also it has legitimate concern in maintaining the contribution rate at a level that won't unduly burden participating employees. Moreover, it said that here is nothing in the Consti that requires the State to subordinate or compromise its legitimate interests

8 See meaning of disability as defined in 2626 of Unemployment Insurance Code, page 2488 of case.

solely to create a more comprehensive social insurance program that it already has.

Brennan's dissent:
Despite the Code's broad goals and scope of coverage, compensation is denied for disabilities suffered in connection with a "normal pregnancy" – disabilities suffered only by women. By singling out for less favorable treatment a gender-linked disability peculiar to women, the State has created a double standard for disability compensation. One set of rules is applied to females while another to males. This is sex discrimination. Where the State employs legislative classifications with reference to gender-linked disability risks, "the Court is not free to sustain the statute on ground that iot rationally promotes legitimate govtl interests; rather such classifications can be sustained only when the State bears the burden of demonstrating that the challenged legislation serves overriding or compelling interests that cannot be achieved by more carefully tailored legislative classification or by the use of feasible, less drastic means."

MISSISSIPPI UNIV. SCHOOL for WOMEN vs.

July 1, 1982
JUSTICE O'CONNOR

FACTS:

In 1884, the Mississippi Legislature created the Mississippi Industrial Institute and College for the Education of White Girls of the State of Mississippi, now the oldest state-supported all-female college in the United States. The school, known today as Mississippi University for Women (MUW), has from its inception limited its enrollment to women.

In 1971, MUW established a School of Nursing, initially offering a 2-year associate degree. Three years later, the school instituted a 4-year baccalaureate program in nursing and today also offers a graduate program. The School of Nursing has its own faculty and administrative officers and establishes its own criteria for admission.

Respondent, Joe Hogan, is a registered nurse but does not hold a baccalaureate degree in nursing. Since 1974, he has worked as a nursing supervisor in a medical center in Columbus, the city in which MUW is located. In 1979, Hogan applied for admission to the MUW School of Nursing's baccalaureate program. Although he was otherwise qualified, he was denied admission to the School of Nursing solely because of his sex.

Hogan filed an action in the United States District Court for the Northern District of Mississippi, claiming the single-sex admissions policy of MUW's School of Nursing violated the Equal Protection Clause of the Fourteenth Amendment. Hogan sought injunctive and declaratory relief, as well as compensatory damages.

Issue
WON the state statute which prevented men from enrolling in MUW violate the Equal Protection Clause of the Fourteenth Amendment

Holding

Yes The Court held that the state did not provide an "exceedingly persuasive justification" for the gender-based distinction. The state's argument, that the policy constituted educational affirmative action for women, was "unpersuasive" since women traditionally have not lacked opportunities to enter nursing.

Ratio

We begin our analysis aided by several firmly established principles. Because the challenged policy expressly discriminates among applicants on the basis of gender, it is subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. **That this statutory policy discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review. Our decisions also establish that the party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an "exceedingly persuasive justification" for the classification.** The burden is met only by showing at least that the classification serves "important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives."

Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions. Thus, if the statutory objective is to exclude or "protect" members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate.

If the State's objective is legitimate and important, we next determine whether the requisite direct, substantial relationship between objective and means is present. The purpose of requiring that close relationship is to assure that the validity of a classification is determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women.

The State's primary justification for maintaining the single-sex admissions policy of MUW's School of Nursing is that it compensates for discrimination against women and, therefore, constitutes educational affirmative action. As applied to the School of Nursing, we find the State's argument unpersuasive.

In limited circumstances, a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened. However, we consistently have emphasized **that "the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme."**

It is readily apparent that a State can evoke a compensatory purpose to justify an otherwise discriminatory classification only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification. **Mississippi has made no showing that women lacked opportunities to obtain training in the field of nursing or to attain positions of leadership in that field when the MUW School of Nursing opened its door or that women currently are deprived of such**

opportunities. In fact, in 1970, the year before the School of Nursing's first class enrolled, women earned 94 percent of the nursing baccalaureate degrees conferred in Mississippi and 98.6 percent of the degrees earned nationwide. As one would expect, the labor force reflects the same predominance of women in nursing.

Rather than compensate for discriminatory barriers faced by women, **MUW's policy of excluding males from admission to the School of Nursing tends to perpetuate the stereotyped view of nursing as an exclusively woman's job.** By assuring that Mississippi allots more openings in its state-supported nursing schools to women than it does to men, MUW's admissions policy lends credibility to the old view that women, not men, should become nurses, and makes the assumption that nursing is a field for women a self-fulfilling prophecy. **Thus, we conclude that, although the State recited a "benign, compensatory purpose," it failed to establish that the alleged objective is the actual purpose underlying the discriminatory classification.**

Thus, considering both the asserted interest and the relationship between the interest and the methods used by the State, we conclude that the State has fallen far short of establishing the "exceedingly persuasive justification" needed to sustain the gender-based classification. Accordingly, we hold that MUW's policy of denying males the right to enroll for credit in its School of Nursing violates the Equal Protection Clause of the Fourteenth Amendment.

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins, dissenting.

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Of the State's 8 universities and 16 junior colleges, all except MUW are coeducational. At least two other Mississippi universities would have provided respondent with the nursing curriculum that he wishes to pursue. No other male has joined in his complaint.

Nor is respondent significantly disadvantaged by MUW's all-female tradition. His constitutional complaint is based upon a single asserted harm: that he must *travel* to attend the state-supported nursing schools that concededly are available to him. The Court characterizes this injury as one of "inconvenience."

The arguable but recognized benefits of single-sex colleges must also be considered. They provide an element of diversity, and [an environment in which women] generally, speak up more in their classes, hold more positions of leadership on campus, and have more role models and mentors among women teachers and administrators."

The issue in this case is whether a State transgresses the Constitution when it seeks to accommodate the legitimate personal preferences of those desiring the advantages of an all-women's college. **In my view, the Court errs seriously by assuming that the equal protection standard generally applicable to sex discrimination is appropriate here. That standard was designed to free women from "archaic and overbroad generalizations . . . ." In no previous case have we applied it to invalidate state efforts to *expand* women's choices. Nor are there prior sex discrimination decisions by this Court in which a male plaintiff, as in this case, had the choice of an equal benefit.**

By applying heightened equal protection analysis to this case, the Court frustrates the liberating spirit of the Equal Protection Clause. It prohibits the States from providing women with an opportunity to choose the type of university they prefer.

MICHAEL M. vs. SUPERIOR COURT

FACTS:

- Petitioner, then a 17 ½ yr old male, was charged with violation of California's statutory rape law, which defines unlawful sexual intercourse as "an act of sexual intercourse accomplished with a female not the wife of the perpetrator, where the female is under 18"
- Prior to trial, petitioner sought to set aside the information on both state and federal constitutional grounds asserting that the statute unlawfully discriminated on the basis of gender since men alone can be held criminally liable thereunder. The trial court and CA denied petitioner's request for relief and petitioner sought review in the SC of California.
- California SC *upheld* the statute. It justified the gender classification because only females may be victims and only males may violate the section. It subjected the statute to *strict scrutiny* stating that it must be justified by compelling state interest. It found that the classification was "supported not by mere social convention but by the immutable fact that it is the female exclusively who can become pregnant"
- Canvassing the tragic costs of illegitimate teenage pregnancies, including the large number of teenage abortions, increased medical risk associated with teenage pregnancies, & the social consequences of teenage child-bearing, court concluded that the State has a compelling interest in preventing such pregnancies.

ISSUE:

WON California's statutory rape law violates the Equal Protection Clause. NO

RATIO:

On the proper test

- Gender-based classifications are *not "inherently suspect* so as to be subject to the "strict scrutiny" but will be upheld if they bear a "fair and substantial relationship" to legitimate state ends. The traditional minimum rationality test applies.
- Because the Equal Protection Clause does not demand that a statute necessarily apply equally to all persons or require things which are different in fact to be treated in law as though they were the same, a statute will be upheld where the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances.

On the legitimate state interest

- One of the purposes of the California state statute in which the State has a strong interest is

the prevention of illegitimate teenage pregnancies. Teenage pregnancies, which have increased dramatically over the last 2 decades, have significant social, medical, and economic consequences for both the mother and her child, and the State.

- The statute protects women from sexual intercourse and pregnancy at an age when the physical, emotional, and psychological consequences are particularly severe. Because virtually all of the significant harmful & identifiable consequ3ences of teenage pregnancy fall on the female, a legislature acts well within its authority when it elects to punish only the participant who, by nature, suffers few of the consequences of his conduct.
- Moreover, the risk of pregnancy itself constitutes a substantial deterrence to young females. No similar sanctions deter males. A criminal sanction imposed solely on males thus serves to roughly "equalize" the deterrents on the sexes.

On underinclusivity/overbroadness

- There is no merit in petitioner's contention that the statute is impermissibly underinclusive and must, in order to pass judicial scrutiny, be broadened so as to hold the female as criminally liable as the male. The relevant inquiry is not whether the statute is drawn as precisely as it might have been, but whether the line chosen by the California Legislature is w/n constitutional limitations. In any event, a gender-neutral statute would frustrate the State's interest in effective enforcement since a female would be less likely to report violations of the statute if she herself would be subject to prosecution.
- Nor is the statute impermissibly overbroad because it makes unlawful sexual intercourse with prepubescent females, incapable of becoming pregnant. Aside from the fact that the statute could be justified on the grounds that very young females are particularly susceptible to physical injury from sexual intercourse, the Constitution does not require the California Legislature to limit the scope of the statute to older teenagers and exclude young girls.

On age consideration

- And the statute is not unconstitutional as applied to petitioner, who, like the girl involved, was under 18 at the time of the sexual intercourse, on the asserted ground that the statute presumes in such circumstances that the male is the culpable aggressor. The statute does not rest on such an assumption, but is an attempt to prevent illegitimate teenage pregnancy by providing an additional deterrent for men. The age of the man is irrelevant since the young men are as capable as older men of inflicting the harm sought to be prevented.

HELD: US SC affirmed California SC. Statute does not violate the Equal Protection Clause.

PERSONNEL ADMINISTRATOR vs. FEENEY

Personnel Administrator of Mass. v Feeney (1979)

ponente: Stewart J

Facts:

Helen Feeney is a nonveteran. She alleges that the Massachusetts Veterans Preference Statute is unconstitional. The statute grants an absolute lifetime preference to veterans by requiring that "any person male or female, including a nurse," qualifying for a civil service position, who was honorably discharged from the US Armed Forces after at least 90 days of active service, at least one day in wartime, must be considered for appointment to a civil service position ahead of any qualified nonveterans. This formula excludes women from consideration for the best Mass civil service jobs thus denying women the equal protection of laws.

She passed her first civil service exam for the position of Senior Clerk stenographer and was promoted. She competed in other civil service exams during her 12 year career to avail herself of a better job and promotion. She consistently passed and was ranked quite high in some but she was always passed over by lower ranked veterans. She lost her job when it was abolished and concluded that further competing in civil sercice exams is useless
because the veterans would always get ahead of her.

The district Court agreed with her saying that it had a severe exclutionary impact on women hiring. In the 1st appeal to the US Supreme Court, the case was remanded so that the district court can consider it in light of the Washington V Davis ruling that states a neutral law does not violate equal protection solely because it results in a racially disproportionate impact; it must be traced to a purpose to discriminate on race. The district court reaffirmed their judgment.

ISSUE:

Does the Veterans Preference Statute violate equal protection by discriminating against women?

RULE:

When a distinction drawn by a statute is not a pretext for gender discrimination and the law does not reflect a purpose to discriminate then it is constitutional

RATIONALE:

The Mass Veterans Preference statute was a measure designed to ease the transition from military to civil life by veterans and to attract loyal and well-disciplined people to civil service. It is written in gender neutral language (the use of person, male or female), though in 1884, when the 1st such statute was promulgated, no women were in the armed forces. It has been conceded by the appellants that the civil positions open for competition resulted in a disproportionate amount of males being preferred because over 98% of the veterans at that time consisted of men.

Equal protection does not take away the ability of the state to classify as long as it is rationally based though the effects may be uneven. However, certain classifications are, like race, presumptively invalid and can only be upheld upon extraordinary justification, even if that classification is supposedly neutral. If a neutral law has a disproportionate effect on a minority then it
unconstitional only if there can be traced a discriminatory purpose.

Neutrals laws that have a disparate affect on minorities traditionally victims of discrimination may have an unconstitutional purpose. But equal protection means equal laws, not equal results. So long as there is no discrimination in the formulation of a law, it is still constitutional.

When a gender neutral statute is challenged, there must be a two-fold inquiry:
1) Whether or not the statutory classification is indeed neutral; notgender-based,
2) Whether or not the adverse effects reflects invidious gender-based discrimination. In 2 impact is a starting point but it is purposeful discrimination that offends consti.

The appellee acknowledged and the district court found that the distinction between veterans and non-veterans is not a pre-text for gender discrimination.

Veteran is a gender-neutral word. The distinction between vetern and non-veteran is not gender based. Men and women can be veterans.

The appellee and district court contends that
1) there is gender bias because it pefers a status generally reserved for men,
2) the impact of absolute lifetime employment is too inevitable to be unintended.

The 1st contention presumes that the state incorporates a panoply of sex-based laws to favor the employment of men in armed forces to become veterans. But veteran preference is not discriminatory to women and the appellee and district court contradicts itself that a limited hiring preference for veterans could be sustained. Just because few women become veterans does not mean that the veteran preference statute was intended by the state to discriminate against women. There must be discriminatory intent but the state is simply Preferring veterans not men. The legislative classification between vets and non-vets has not been disputed to be illegitimate. The Enlistment policies of the US armed forces may be gender biased but that is not the issue here.

The appellee presumes that a person intends the natural and foreseeable consequences of his voluntary actions. The Veteran preference would necessarily place more men on civil service positions than women and the legislature is aware of this. However, "discriminatory purpose" implies that the legislature selected a particular course "because of", not "in spite of", adverse Effects on an identifiable group. The veteran preference was not shown to be enacted because of gender discrimantion against women.

DISPOSITION:

judgment reversed

CONCURRING: Stevens w/ White

Disadvantaged males are almost as large as disadvantaged females.

DISSENT: Marshall w/ Brennan

There is discriminatory intent because the statutory scheme bears no substantial relationship to a legitimate government objective. Just because the objective of a statute is to prefer one group does not always mean that it does not have another purpose to disadvantage another.

Nobody can ever know what the legislature is thinking at a given time, therefore, critical constitutional inquiry is not whether an illicit consideration was the primary cause but rather whether it had an appreciable role in shaping a given legislative enactment.

There is no reliable evidence for subjective intentions so to discern the purpose of a facially neutral policy, the court must consider the degree, inevitability and foreseeability of any disproportionate impact as well as the alternatives reasonably available. Here, the impact on women is undisputed. The burden of proof should be on the state to prove that sex-based considerations played no part.

To survive a challenge under equal protection clause, statutes must be substantially related to the achievement of important govt objectives.

The appellants contend that the statute:
1) assists veterans in their readjustment to civilian life
2) encourage military reenlistment
3) reward those who have served their country.

To 1st objective, the statute is overinclusive because of it's permanent preference. The majority of those who currently enjoy the system have long been discharged and have no need for readjustment.

To 2nd objective, it does not actually induce reenlistment and there is no proof to be found that the statute influenced reenlistment. Also it bestows benefits equally on those who volunteered and those who were drafted.

To 3rd objective, rewarding veterans does not adequately justify visiting substantial hardships on another class long subject to discrimination. The legislation cant be sustained unless carefully tuned to alternatives. Here there are less discriminatory means available to effect the Compensatory purpose.

YICK WO vs. HOPKINS

** *no digest for this case so I copied the digest from another reviewer.*

Petitioners are Chinese businessmen engaged in the laundry business who question the statute prohibiting the operation and maintenance of fire-operated laundry machines. The reson of the State was to prevent another great fire. SC struck down the statute because it violated the equal protection clause on 2 grounds:

1. it discriminated against those who used fire-operated laundry machines for business (mostly Chinese) and those who used them at home;
2. some people (Caucasians) were still allowed to operate their business provided that they secure a permit which

was given by the police officer at his discretion.

FRAGRANTE vs. CITY & COUNTY of HONOLULU

FACTS:

- At the age of 60, Fragrante immigrated to Hawaii.
- He applied for an entry level job as a Civil Service Clerk at the City's Division of Motor Vehicles and Licensing.
- Fragrante scored the highest among 721 test takers in the written examination and was rank first on a list of eligibles for two clerk positions.
- Following the interview, it was noted by the two interviewers that he had a very pronounced accent and was difficult to understand and therefore, as a result of this, he was not chosen for the job and he was so notified by mail.

ISSUE: W/N unlawful discrimination on the basis of national origin was the reason for denying employment to Fragrante.

HELD: No evidence of unlawful discrimination was found but it is Fragrante's lack of the occupational requirement of being able to communicate effectively with the public that was the reason for his being denied the job.

RATIO:

- In disparate treatment cases, under which theory this case was brought under, the employer is normally alleged to have "treated a person less favorable than others because of the person's race, color, religion, sex or national origin."
    - Plaintiff has the initial burden of proving by preponderance of evidence a prima facie case of discrimination.

→ 4 factors in **McDonnell Douglas test**:

1. that he has an identifiable national origin;
2. that he applied and was qualified for a job which the employer was seeking applicants;
3. that he was rejected despite his qualifications;
4. that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

    - Employer then has burden of "articulating some legitimate, non-discriminatory reason" for the adverse action. → employer still has degree of freedom of choice given to him
    - **To succeed in carrying the ultimate burden of proving intentional discrimination, a plaintiff may establish a pretext either directly, by showing that the employer was more likely motivated by a discriminatory reason, or indirectly, by showing the employer's proffered reason is unworthy of credence.**

- While Fragrante was able to establish a prima facie case since jurisprudence and the guidelines of the Equal Employment Oppurtunity Commission has defined discrimination to include denial of equal employment opportunity on the basis that a person has the linguistic characteristics of a national origin group... **an adverse employment decision may be predicated upon an individuals accent when it interferes materially with job performance.**
    - The oral ability to communicate effectively in English is reasonable related to the normal operations of the clerk's office who must often be able to respond to the public's questions in a manner in which they can understand.
- In sum, the record conclusively shows that Fragante was passed over because of the deleterious effect of his Filipino accent on his ability to communicate orally, not merely because he had such an accent.

Supreme Court of the United States

Manuel T. FRAGANTE, petitioner,
v.
CITY AND COUNTY OF HONOLULU, et al

No. 89-1350

April 16, 1990

Case below, 699 F.Supp. 1429; 888 F.2d 591.

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

Denied.

494 U.S. 1081, 110 S.Ct. 1811, 108 L.Ed.2d 942, 52 Fair Empl.Prac.Cas. (BNA)
848, 53 Empl. Prac. Dec. P 39,796

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DEFENSOR-SANTIAGO ARTICLE ***(****The "New" Equal Protection)*

The Phil. Consti. Provides "nor shall any person be denied the equal protection of the laws" which it got from the American Const. Amendment "no state shall... deny to any person within its jurisdiction the equal protection of the laws". EP is generally based on moral equality- "although not every person is the moral equal others, there are some traits and factors, of which race is a paradigmatic example, by virtue of which no person ought to be deemed morally inferior to any other person" where race-dependent , gender-dependent and illegitimacy-dependent classifications are now generally disfavored. Therefore the threshold question is whether similarly situated individuals are being treated differently.

In the US, it was substantive due process instead of EP which was used to justify court intervention with state economic legislation but in the 1960s the Warren Court

went further where it used EP as a far-reaching umbrella for judicial protection of fundamental rights not specified in the Const. One difference is that if the governmental act classifies persons, it will be subjected to EP analysis; otherwise, it would be subjected to due process analysis. EP tests whether the classification is properly drawn, while procedural due process tests the process to find out whether an individual falls within or without a specific classification.

Standards of Judicial Review
There must be a sufficient degree of relationship between the perceived purpose of the law and the classification which the law makes. The choice of a standard of review reflects whether the Court will assume the power to override democratic political process, or whether it will limit the concept of a unique judicial function.
The old EP doctrine applies the rational relationship test- it will be upheld if it bears a rational relationship to an end of government which is not prohibited by the Const.
The new EP doctrine applies the strict scrutiny test. It will not accept every permissible governmental purpose as to support a classification; it will require that it is pursuing a compelling end.
The newer EP doctrine of the past 10 years has gone beyond the two-tiered level of review, and applies the intensified means test. According to Prof. Gunther of Stanford, the Court should accept the articulated purpose of the legislation, but it should closely scrutinize the relationship between the classification and purpose.

Two-tiered standard of review
Under this, the first tier consists of the rational relationship test and the second tier the strict scrutiny test. Strict judicial scrutiny is applied when legislation impinges on fundamental tights, or implicates suspect classes (classification based on race or ethnicity).
According to American cases, fundamental rights are:

a. marriage and procreation- "fundamental to the very existence and survival of the race
b. voting- "preservative of other basic civil and political rights"
c. fair administration of justice- fundamental as established in Griffin v. Illinois
d. interstate travel- started with the landmark decision in Shapiro v. Thompson
e. other constitutional rights- fundamental rights protected by the first 8 amendments

Suspect classes include:

a. race or national origin- in the case of Korematsu v. US "all legal restrictions which curtail the civil rights of a single racial groups are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny"
b. alienage- established in the case of In re Griffiths

Benign classifications and affirmative action
The US SC has held that racial classifications which discriminate against minorities are inherently "suspect" and will be subject to strict scrutiny and upheld only if necessary to promote a compelling state interest. Thee question of benign classification is will the same standard of review apply to government action which discriminates in favor of racial or ethnic minorities? It was addressed in the case of Regents of the University of California v. Bakke where they held it is not prohibited if discrimination remedies disadvantages of members of a group resulting from past unlawful discrimination but is still open to questions (intermediate or strictest standard) as to what level of standard to applied. In the Phil. Benign classification and affirmative action does not necessarily fall under EP. It is specified in the Const. Art. XV, Sec. 11 "the state shall consider the customs, traditions, beliefs, and interests of national cultural minorities in the formulation and implementation of state policies". (it has only to show rational relationship in order to survive judicial challenge)

Appraisal of the Two-tiered standard
Criticized by Justice Harlan, he was saying "classifications which are either based upon certain "suspect" criteria or affect "fundamental rights" will be held to deny EP unless justified by a compelling governmental interest (calling it the compelling interest doctrine). He was saying that if classification is based upon the exercise of rights guaranteed against state infringement by the Federal Const., then there is no need for any resort to the EP clause. He was also saying that the fundamental right is unfortunate and unnecessary since it creates an exception which threatens to swallow the standard equal protection rule. In extending the compelling interest rule to all such cases would go far toward making the Court a super-legislature.

Notwithstanding such criticisms, the Warren Court gave crucial support saying that since total equality is impossible and undesirable, the judiciary in the name of the constitution must select the areas in which quality is to be imposed.

With the advent of the new legal equality, the US has declared it the duty of government to take positive action to reduce social discrimination. In the Phil. It is not necessary since the Const. makes the positive commands: "the state shall promote social justice to ensure dignity, welfare and security", "shall maintain and ensure adequate social services in the field of education, health, housing, employment, welfare and social security..." , "it shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed". Therefore in the Phil. it will not always be necessary to extend the two-tiered standard of judicial review to cases involving social discrimination.

Models for an open-ended standard
Under the traditional approach, the ideal limit of reasonableness is reached when the public mischief sought to be eliminated is interchangeable with the trait, as the defining characteristics of the legislative classification. Problems only arise when it is under-inclusive or over-inclusive.
There are 3 models drawn by Prof. Nowak of the Univ. of Illinois for determining the approach that the Court should take:

a. suspect-prohibited classification- whenever a classification burdens persons on the basis of their race, the court would invalidate the law unless the legislature can prove that the classification is necessary to achieve a compelling state interest. This standard will be almost impossible to meet.
b. Neutral classifications- neutral whenever it treats persons in a dissimilar manner on the basis of some inherent human characteristic or status

(other than racial heritage) or limit the exercise of a fundamental right by a class of persons. The court should validate a statute only if the means used bear a factually demonstrable relationship to a state interest capable of withstanding analysis.

c. Permissive classification- whenever legislation treats classes in a dissimilar manner but does not employ a prohibited or neutral classification as the basis of dissimilar treatment, it will be upheld as long as there is any conceivable basis upon which the classification could bear a rational relationship to the state end.

Another model drawn by Prof. Gary Simson of Univ. of Texas (discriminatory effect test)
His model is based upon the prescribed balance between discriminatory effect and governmental justification:

1) courts should first decide whether the individual interest affected by the classification before them is fundamental, significant, or insignificant.
2) Whether the disadvantage to the affected interest is total, significant, or insignificant.
3) Next is ascertaining whether the interest informing the classification is compelling, significant, insignificant, or unlawful
4) Courts should also determine the necessary, significant, insignificant, or non-existent character of the relationship between means and ends.

After all the factors, they should compute:
Nature of the affected interest x magnitude of disadvantage
Nature of the state's interest x relationship between means and end

The Philippine Experience
The Phil. SC continues to apply the permissive criteria of the traditional EP. The Phil. Court while ostensibly applying the rational relationship test, was implicity applying the strict scrutiny test in People v. Vera where it held that the Phil. Probation Act was unconstitutional because application of the statute depended upon salary appropriations for probation officers by the provincial boards (since residents of a province could be denied of the benefits of probation if the provincial board failed to appropriate the necessary amount).

In an unfortunate development, the court upheld the Act which made it unlawful for any native of the Phil. who was a member of non-Christian tribe to possess or drink intoxicating liquors other than native liquors. It was held to be reasonable because it was designed to insure peace and order among non-Christian tribes but the rational relationship test would consider this distasteful.
There are still other cases such as the Laurel v. Misa where the court failed to use the strict scrutiny test and was considered unworthy of emulation.
The lengthy search in Phil. jurisprudence can be abbreviated by adopting the category which the American Court labeled under the two-tiered standard of judicial review, as the category of cases calling for strict judicial scrutiny.

Scenario for the "new" equal protection

The tired slogan of Filipino politicians "those who have less in life should have more in law" should be taken on a serious level as an affirmative action on the part of the government, and perhaps the formulation of "benign" classifications. Contemporary developments argue for expanding the contours of constitutional equality, by adopting strict judicial scrutiny in cases where the laws seek to restrict fundamental rights or to classify on the basis of suspect criteria.

In the Phil. the equal protection clause, phrased as it is after the American model, may pose problems of legislative and administrative classifications, of linkages between legal and socio-economic opportunity, of equal rewards, and most fundamentally of the extent of compatibility of political liberty and economic equality. In the resolution of these problems, the "new" equal protection could prove to be a useful and equitable technique of judicial analysis, in the hands of a SC sentient to the continuing need to prevent invidious discrimination against disadvantaged victims of legislative classification or in the exercise of certain fundamental rights by the Filipino people, as a justice constituency.

INTERNATIONAL SCHOOL ALLIANCE vs. QUISIMBING

FACTS

International School Inc., pursuant to PD 732, is an educational institution targeted towards dependents of foreign diplomats and other temporary residents. As such, they hire their teachers both from the Philippines and from abroad.

To indicate whether they are foreign hires or local hires, they take into consideration 1) domicile 2) home economy 3) economic allegiance 4) was the school responsible for bringing the individual to the Philippines.

The problem lies in the salary of the teachers. As foreign hires, they are accorded benefits that local hires do not have. These include, housing, transportation, shipping costs, taxes, and home leave travel allowance. Their salaries are also higher by 25%. The school gives 2 reasons: 1) dislocation factor and 2) limited tenure.

In a new collective bargaining agreement, ISA educators contested this difference in salary. Filing a strike, DOLE assumed jurisdiction. Acting secretary Trajano decided in favor of the school, and DOLE secretary Quisumbing denied the motion for reconsideration.

Petitioner claims that the point-of-hire classification is discriminatory to Filipinos. Respondents claim, however, that this is not so as a number of their foreign educators are in fact local-hires.

ISSUE:

Whether or not the 25% difference in salary is discriminatory.

HELD:

Yes it is.

RATIO:

In deciding the case, the court points first to the 1987 Constitution, particularly the Article on Social Justice and

Human Rights, which the court says this discrimination is against.

They also point to international law, which likewise looks down on discrimination. It then goes further to say that this is even worse when the discrimination is done in the workplace. Pointing again to the Constitution, they assert that it promotes “equality of employment opportunities to all”, as well as the Labor Code, which ensure equal opportunity for all.

Article 135 of the Labor Code looks down on discrimination in terms of wages. Article 248 declares such a practice unfair.

Also cited is the International Covenant on Economic, Social and Cultural Rights. Article 7 talks about the ensuring of remuneration, as well as fair and equal wages and remuneration.

In this case, there is no evidence in a difference of workload nor of performance, so the presumption is that all the employees are performing at equal levels. There is no evidence of the foreign hires being 25% more efficient. The school’s claimed need to entice these foreign hires is not a good defense, either. As for compensation, the other forms of compensation are enough.
Before ending, the court says, however, that the foreign and local hires are not part of the same bargaining unit, nor is there any showing of an attempt to consolidate the two.

BOARD of DIRECTORS vs. ROTARY CLUB

May 4, 1987
JUSTICE POWELL

FACTS:

When the Duarte chapter of Rotary International violated club policy by admitting three women into its active membership its charter was revoked and it was expelled. The California Court of Appeals, however, in reversing a lower court decision, found that Rotary International's action violated a California civil rights act prohibiting sexual discrimination.

Rotary International, "an organization of business and professional men united worldwide who provide humanitarian service, encourage high ethical standards in all vocations, and help build goodwill and peace in the world." Individual members belong to a local Rotary Club rather than to International. In turn, each local Rotary Club is a member of International. Individuals are admitted to membership in a Rotary Club according to a "classification system" The general rule is that "one active member is admitted for each classification, but he, in turn, may propose an additional active member, who must be in the same business or professional classification."

Subject to these requirements, each local Rotary Club is free to adopt its own rules and procedures for admitting new members. Rotary International has promulgated Recommended Club By-laws providing that candidates for membership will be considered by both a "classifications committee" and a "membership committee."

Membership in Rotary Clubs is open only to men. It was testified that the exclusion of women results in an "aspect of fellowship, that is enjoyed by the present male membership," and also allows Rotary to operate effectively in foreign countries with varied cultures and social mores. Women are however, permitted to attend meetings, give speeches, and receive awards. Women relatives of Rotary members may form their own associations, and are authorized to wear the Rotary lapel pin. Young women between 14 and 28 years of age may join Interact or Rotaract, organizations sponsored by Rotary International.

In 1977 the Rotary Club of Duarte, California, admitted Donna Bogart, Mary Lou Elliott, and Rosemary Freitag to active membership. Rotary International notified the Duarte Club that admitting women members is contrary to the Rotary constitution. After an internal hearing, Rotary International's board of directors revoked the charter of the Duarte Club and terminated its membership. The Duarte Club's appeal to the International Convention was unsuccessful.

The Duarte Club and two of its women members filed a complaint in the California Superior Court. The complaint alleged that appellants' actions violated the **Unruh Civil Rights Act, Cal. Civ. Code T**he court ruled in favor of Rotary International citing that neither Rotary International nor the Duarte Club is a "business establishment" within the meaning of the Unruh Act.

The California Court of Appeal reversed. It held that both Rotary International and the Duarte Rotary Club are business establishments subject to the provisions of the Unruh Act. The Court of Appeal identified several "businesslike attributes" of Rotary International, including its complex structure, large staff and budget, and extensive publishing activities. The court held that the trial court had erred in finding that the business advantages afforded by membership in a local Rotary Club are merely incidental. In particular, the court noted that members receive copies of the Rotary magazine and numerous other Rotary publications, are entitled to wear and display the Rotary emblem, and may attend conferences that teach managerial and professional techniques.

The court also held that membership in Rotary International or the Duarte Club does not give rise to a "continuous, personal, and social" relationship that "takes place more or less outside public view." The court further concluded that admitting women to the Duarte Club would not seriously interfere with the objectives of Rotary International. Finally, the court rejected appellants' argument that their policy of excluding women is protected by the First Amendment principles set out in Roberts v. United States Jaycees. The court ordered appellants to reinstate the Duarte Club as a member, and permanently enjoined them from enforcing or attempting to enforce the gender requirement against the Duarte Club.

ISSUE:
WON a California statute (Unruh Act) that requires California Rotary Clubs to admit women members violates the First Amendment.

HOLDING:

No. The Court found that the relationship among the club's members was not of the intimate or private variety which warrants First Amendment protection. Because many of Rotary's activities are conducted in the presence of strangers, and because women members would not prevent the club from carrying out its purposes, there was no violation of associational rights. Even if there were a slight encroachment on the rights of Rotarians to associate, that minimal infringement would be justified since it "serves the State's compelling interest" in ending sexual discrimination.

RATIO

Application of the Act to local Rotary Clubs does not interfere unduly with club members' freedom of private association

In Roberts v. United States Jaycees, the court upheld against First Amendment challenge a Minnesota statute that required the Jaycees to admit women as full voting members. Roberts provides the framework for analyzing appellants' constitutional claims. **As observed in Roberts, our cases have afforded constitutional protection to freedom of association in two distinct senses. First, the Court has held that the Constitution protects against unjustified government interference with an individual's choice to enter into and maintain certain intimate or private relationships. Second, the Court has upheld the freedom of individuals to associate for the purpose of engaging in protected speech or religious activities.**

The Court has recognized that the freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights. Such relationships may take various forms. In determining whether a particular association is sufficiently personal or private to warrant constitutional protection, we consider factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship

The evidence in this case indicates that the relationship among Rotary Club members is not the kind of intimate or private relation that warrants constitutional protection. The size of local Rotary Clubs ranges from fewer than 20 to more than 900. There is no upper limit on the membership of any local Rotary Club. About 10 percent of the membership of a typical club moves away or drops out during a typical year. The clubs therefore are instructed to "keep a flow of prospects coming" to make up for the attrition and gradually to enlarge the membership. The purpose of Rotary "is to produce an inclusive, not exclusive, membership, making possible the recognition of all useful local occupations, and enabling the club to be a true cross section of the business and professional life of the community." However beneficial this is to the members and to those they serve, it does not suggest the kind of private or personal relationship to which we have accorded protection under the First Amendment.

Application of the Act to California Rotary Clubs does not violate the First Amendment right of expressive association.

Many of the Rotary Clubs' central activities are carried on in the presence of strangers. Rotary Clubs are required to admit any member of any other Rotary Club to their meetings. Members are encouraged to invite business associates and competitors to meetings. In sum, Rotary Clubs, rather than carrying on their activities in an atmosphere of privacy, seek to keep their "windows and doors open to the whole world," We therefore conclude that application of the Unruh Act to local Rotary Clubs does not interfere unduly with the members' freedom of private association.

The Court also has recognized that the right to engage in activities protected by the First Amendment implies "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." **In this case, however, the evidence fails to demonstrate that admitting women to Rotary Clubs will affect in any significant way the existing members' ability to carry out their various purposes.**

As a matter of policy, Rotary Clubs do not take positions on "public questions," including political or international issues. To be sure, Rotary Clubs engage in a variety of commendable service activities that are protected by the First Amendment. But the Unruh Act does not require the clubs to abandon or alter any of these activities. Nor does it require them to abandon their classification system or admit members who do not reflect a cross section of the community. **Indeed, by opening membership to leading business and professional women in the community, Rotary Clubs are likely to obtain a more representative cross section of community leaders with a broadened capacity for service.**

Even if the Unruh Act does work some slight infringement on Rotary members' right of expressive association, that infringement is justified because it serves the State's compelling interest in eliminating discrimination against women.. On its face the Unruh Act, like the Minnesota public accommodations law we considered in Roberts, makes no distinctions on the basis of the organization's viewpoint. Moreover, public accommodations laws "plainly serve compelling state interests of the highest order." **In Roberts we recognized that the State's compelling interest in assuring equal access to women extends to the acquisition of leadership skills and business contacts as well as tangible goods and services. The Unruh Act plainly serves this interest. We therefore hold that application of the Unruh Act to California Rotary Clubs does not violate the right of expressive association afforded by the First Amendment.**

Finally, appellants contend that the Unruh Act is unconstitutionally vague and overbroad. We conclude that these contentions were not properly presented to the state courts. It is well settled that this Court will not review a final judgment of a state court unless "the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." Appellants

did not present the issues squarely to the state courts until they filed their petition for rehearing with the Court of Appeal. The court denied the petition without opinion.

BOY SCOUTS of AMERICA vs. DALE

BOY SCOUTS OF AMERICA V. DALE (2000)

(ponente: Chief Justice Rehnquist)

FACTS:

1. James Dale was a former Eagle Scout who also became an assistant scoutmaster. While in college, he was very active in gay and lesbian issues. He even became the copresident of his university's Gay/Lesbian Alliance.

2. When the Boy Scouts of America learned that he is an avowed homosexual and gay rights activist, it revoked his adult membership in the Boy Scouts of America (BSA) because the organization forbids membership to homosexuals.

3. Dale filed a complaint against the BSA in the New Jersey Superior Court alleging that the BSA had violated New Jersey's public accommodations statute by revoking his membership based solely on his sexual orientation. The NJ Superior Court granted judgment in favor of Dale. The decision was affirmed by the NJ Appellate Division.

4. The New Jersey Supreme Court affirmed the judgment of the Appellate Division. It held that the Boy Scouts was a place of public accommodation subject to the public accommodations law; that the organization was not exempt from the law under any of its express exceptions; and that the Boy Scouts violated the law by revoking Dale's membership based on his avowed homosexuality.

5. BSA raised the issue in the US Supreme Court.

ISSUES:

1. WON Boy Scouts is an expressive association and that the forced inclusion of Dale would significantly affect its expression. - **YES**

2. WON applying New Jersey's public accommodations law in the way applied by the NJ Supreme Court violates the Boy Scouts' right of expressive association. - **YES**

RATIO:

1. Forcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express. "Freedom of association ... plainly presupposes a freedom not to associate."

2. The constitution's protection of expressive association is not reserved for advocacy groups. But to come within its ambit, a group must engage in some form of expression, whether it be public or private.

3. The Boy Scouts seeks to instill values in young people by having its adult leaders spend time with the youth members, instructing and engaging them in activities like camping, archery, and fishing. During the time spent with the youth members, the scoutmasters inculcate them with the Boy Scouts' values–both expressly and by example. It seems indisputable that an association that seeks to transmit such a system of values engages in expressive activity.

4. The values the Boy Scouts seeks to instill are "based on" those listed in the Scout Oath and Law. The Boy Scouts explains that the Scout Oath and Law provide "a positive moral code for living; they are a list of 'do's' rather than 'don'ts.' " The Boy Scouts asserts that homosexual conduct is inconsistent with the values embodied in the Scout Oath and Law, particularly with the values represented by the terms "morally straight" and "clean."

5. The terms "morally straight" and "clean" are by no means self-defining. Different people would attribute to those terms very different meanings. The BSA, through its official written statements, believes that engaging in homosexual conduct is contrary to being "morally straight" and "clean."

6. It is not the role of the courts to reject a group's expressed values because they disagree with those values or find them internally inconsistent. As is true of all expressions of constitutional freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational. As we give deference to an association's assertions regarding the nature of its expression, we must also give deference to an association's view of what would impair its expression.

7. Dale, by his own admission, is one of a group of gay Scouts who have "become leaders in their community and are open and honest about their sexual orientation. . Dale's presence in the Boy Scouts would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior.

8. Associations do not have to associate for the "purpose" of disseminating a certain message in order to be entitled to the protections of the constitution. An association must merely engage in expressive activity that could be impaired in order to be entitled to protection.

9. State public accommodations laws were originally enacted to prevent discrimination in traditional places of public accommodation–like inns and trains. New Jersey's statutory definition of " '[a]

place of public accommodation' " is extremely broad. The term is said to "include, but not be limited to," a list of over 50 types of places. . Many on the list are what one would expect to be places where the public is invited. For example, the statute includes as places of public accommodation taverns, restaurants, retail shops, and public libraries. But the statute also includes places that often may not carry with them open invitations to the public, like summer camps and roof gardens. In this case, the New Jersey Supreme Court went a step further and applied its public accommodations law to a private entity without even attempting to tie the term "place" to a physical location. As the definition of "public accommodation" has expanded from clearly commercial entities, such as restaurants, bars, and hotels, to membership organizations such as the Boy Scouts, the potential for conflict between state public accommodations laws and the constitutional rights of organizations has increased.

10. In the Hurley case, we said that public accommodations laws "are well within the State's usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First Amendment. But we went on to note that in that case "the Massachusetts [public accommodations] law has been applied in a peculiar way" because "any contingent of protected individuals with a message would have the right to participate in petitioners' speech, so that the communication produced by the private organizers would be shaped by all those protected by the law who wish to join in with some expressive demonstration of their own."

11. A state requirement that the Boy Scouts retain Dale as an assistant scoutmaster would significantly burden the organization's right to oppose or disfavor homosexual conduct. The state interests embodied in New Jersey's public accommodations law do not justify such a severe intrusion on the Boy Scouts' rights to freedom of expressive association. That being the case, we hold that the constitution prohibits the State from imposing such a requirement through the application of its public accommodations law.

12. Justice Stevens' dissent makes much of its observation that the public perception of homosexuality in this country has changed. Indeed, it appears that homosexuality has gained greater societal acceptance. But this is scarcely an argument for denying protection to those who refuse to accept these views. The constitution protects expression, be it of the popular variety or not. And the fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the rights of those who wish to voice a different view.

13. We are not, as we must not be, guided by our views of whether the Boy Scouts' teachings with respect to homosexual conduct are right or wrong; public or judicial disapproval of a tenet of an organization's expression does not justify the State's effort to compel the organization to accept members where such acceptance would derogate from the organization's expressive message. "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government."

GOODRIDGE vs. DEPT. of PUBLIC HEALTH

HELD:
The Court concluded

RATIO:

TECSON vs. COMELEC

(March 3, 2004)
Ponente: J. Vitug

FACTS:

- Dec 31, 2003: respondent Ronald Allan Kelly Poe (FPJ) filed his certificate of candidacy (COC) for the position of President of the Republic of the Philippines under the Koalisyon ng Nagkakaisang Pilipino. In his COC, FPJ represented himself to be a natural-born citizen of the Phils with his date of birth to be Aug 20, 1939 and his place of birth in Manila.
- Jan 9, 2004: petitioner Victorino Fornier filed with the Comelec a petition to disqualify FPJ and to deny due course or to cancel his COC upon the claim that **FPJ made a material misrepresentation in his COC by claiming to be a natural-born Filipino** when in truth:
  1. **his parents were foreigners** – his mother, Bessie Kelley Poe, was an American and his father, Allan F. Poe, was a Spanish national, being the son of Lorenzo Pou, a Spanish subject
  2. granting that Allan F. Poe was a Filipino citizen, he could not have transmitted his Filipino citizenship to FPJ, the latter being an **illegitimate child of an alien mother** (Allan F. Poe contracted a prior marriage to a certain Paulita Gomez before his marriage to Bessie Kelley. Even if no such prior marriage existed, Allan F. Poe married Bessie Kelly only a year after the birth of respondent.)
- Jan 23: Comelec dismissed the petition for lack of merit; subsequent MFR was denied
- Petitioner Fornier invokes § 78 of the Omnibus Election Code:
  "§ 78. Petition to deny due course to or cancel a COC. – A verified petition seeking to deny due course or to cancel a COC may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under § 74 hereof is false."
- Petitioners Tecson, et al. and Velez invoke Article VII, § 4, par. 7 of the Consti in assailing the jurisdiction of the Comelec.

ISSUES → HELD:

1. WON the Court has jurisdiction over the petitions → YES, but only with regard to Fornier's petition
2. WON FPJ made a material misrepresentation in his COC → NO, hence, he is indeed a natural-born Filipino citizen

RATIO:

1. With regard to petitioner Fornier's petition, the Court recognizes its own jurisdiction under § 78 of the Omnibus Election Code in consonance with the general powers of the Comelec. Their decisions on disqualification cases may be reviewed by the SC per Rule 64 of the Revised Rules of Civil Procedure as well as § 7, Art IX of the Consti. The petition was aptly elevated to and could well be taken cognizance by the CS, as opposed to that of petitioner Tecson's, which refers to a contest in a *post-election scenario,* and hence, not applicable in this case.

2.

Citizenship: Brief Historical Background

During the Spanish regime, there was no such term as "Philippine citizens" but "subjects of Spain" or "Spanish subjects." The natives, as we know, were called "indios," denoting a lower regard for the inhabitants of the archipelago. The **Civil Code of Spain** came out with the 1st categorical enumeration of who were Spanish citizens. Upon ratification of the **Treaty of Paris** and pending legislation by the US Congress, the native inhabitants of the Phils ceased to be Spanish subjects. The term "citizens of the Philippines" first appeared in the **Phil Bill of 1902**, the 1st comprehensive legislation of the US Congress on the Phils. Under this organic act, a "citizen of the Philippines" was one who was an inhabitant of the Phils, and a Spanish subject on the 11th day of April 1899. The term "inhabitant" was taken to include 1) a native-born inhabitant, 2) an inhabitant who was a native of Peninsular Spain, and 3) an inhabitant who obtained Spanish papers on or before 11 April 1899. While there were divergent views on WON *jus soli* was a mode of acquiring citizenship, the **1935 Consti** brought an end to any such link with common law by adopting *jus sanguinis* or blood relationship as the basis of Filipino citizenship:

"Sec 1, Art III: The following are citizens of the Phils:

1. Those who are citizens of the Phil Islands at the time of the adoption of this Consti
2. Those born in the Phils of foreign parents who, before the adoption of this Consti, had been elected to public office in the Phil Islands
3. **Those whose fathers are citizens of the Phils**
4. Those whose mothers are citizens of the Phils and upon reaching the age of majority, elect Phil citizenship
5. Those who are naturalized in accordance with law"

Subsection 4 of the above provision resulted in discriminatory situations that incapacitated women from transmitting their Filipino citizenship to their legitimate children and required illegitimate children of Filipino mothers to still elect Filipino citizenship. The **1973 Consti** corrected this by adding the provision:

"2. **Those whose fathers and mothers are citizens of the Phils**

3. Those who elect Phil citizenship pursuant to the provisions of the 1935 Consti"

The **1987 Consti** generally adopted the provision of the 1973 Consti, except for subsection 3:

"3. Those born before Jan 17, 1973 of Filipino mothers, who elect Phil citizenship upon reaching the age of majority"

The Case of FPJ

Sec 2, Art VII of the 1987 Consti states that "No person may be elected President unless he is a natural-born citizen of the Phils," among other qualifications. The term "natural-born citizens" is defined to include "those who

are citizens of the Phils from birth without having to perform any act to acquire or perfect their Phil citizenship." Considering the reservations made by the parties on the veracity of the evidence, the only conclusions that could be drawn with some degree of certainty are that:

1. the parents of FPJ were Allan F. Poe and Bessie Kelley
2. FPJ was born to them on 20 Aug 1939
3. Allan F. Poe and Bessie Kelley were married to each other on 16 Sept 1940
4. the father of Allan F. Poe was Lorenzo Pou
5. at the time of his death on 11 Sept 1954, Lorenzo Pou was 84 years old

The death certificate of Lorenzo Pou would indicate that he died in San Carlos, Pangasinan. It could thus be assumed that he was born sometime in 1870 when the Phils was still a colony of Spain. Petitioner argues that Lorenzo Pou was not in the Phils during the crucial period of 1898 to 1902, considering there was no existing record about such fact. However, he failed to show that Lorenzo Pou was at any other place during the same period. **In the absence of any evidence to the contrary, it should be sound to conclude, or at least to presume, that the place of residence of a person at the time of his death was also his residence before death.**

Proof of Paternity and Filiation

Under the Civil Code of Spain until the effectivity of the 1950 Civil Code, acknowledgement (judicial/compulsory or voluntary) was required to establish filiation or paternity. In FPJ's birth certificate, nowhere in the document was the signature of Allan F. Poe found. There being no will apparently executed by decedent Allan F. Poe, the only other proof of voluntary recognition remained to be "some other public document." The 1950 Civil Code, on the other hand, categorized recognition of illegitimate children into voluntary, legal, or compulsory. Unlike an action to claim legitimacy which would last during the lifetime of the child, an action to claim acknowledgement could only be brought during the lifetime of the presumed parent. The Family Code, however, liberalized the rules, as found in Articles 172, 173 and 175 re: filiation.

Civil law provisions point out to an obvious bias against illegitimacy. Such discrimination may be traced to the Spanish family and property laws that sought to distribute inheritance of titles and wealth strictly according to bloodlines. These distinctions between legitimacy and illegitimacy were thus codified in the Spanish Civil Code and later survived in our Civil Code. **Such distinction, however, remains and should remain only in the sphere of civil law and not unduly impede or impinge on the domain of political law. The proof of filiation or paternity for purposes of determining his citizenship status should thus be deemed independent from and not inextricably tied up with that prescribed for civil law purposes. The Civil Code or Family Code provisions of proof of filiation or paternity, although good law, do not have preclusive effects on matters alien to personal and family relations.** The ordinary rules on evidence could well and should govern. Thus, the duly notarized declaration made by Ruby Kelly Mangahas, sister of Bessie Kelley Poe, might be accepted to prove the acts of Allan F. Poe recognizing his own paternal relationship with FPJ (i.e. living together with Bessie Kelley and their children in 1 house and as 1 family).

FPJ's citizenship

Petitioner argues that, since FPJ was an illegitimate child, he followed the citizenship of his mother, Bessie Kelley, an American citizen. Amicus curiae Joaquin Bernas, SJ states:

> "If the pronouncement of the Court on *jus sanguinis* was on the *lis mota,* it would be a decision constituting doctrine under *stare decisis;* but if it was irrelevant to the *lis mota,* it would not be a decision but a mere *obiter dictum,* which did not establish doctrine. (He then proceeds to discredit all the cases cited by petitioner, as being obiter dicta). Aside from the fact that such a pronouncement would have no textual basis in the Consti, **it would also violate the Equal Protection Clause TWICE. First, it would make an illegitimate distinction between a legitimate and illegitimate child, and second, it would make an illegitimate distinction between the illegitimate child of a Filipino father and the illegitimate children of a Filipina mother.**
>
> **The distinction between legitimate children and illegitimate children rests on real differences. But real differences alone do not justify invidious distinction. Real differences may justify distinction for 1 purpose but not for another purpose.**
>
> **What possible state interest can there be for disqualifying an illegitimate child from being a public officer? It was not the child's fault that his parents had illicit liaison. Why deprive him of the fullness of political rights for no fault of his own? To disqualify an illegitimate child from holding an important public office is to punish him for the indiscretion of his parents. There is neither justice nor rationality in that. And if there is neither justice nor rationality in the distinction, then it transgresses the equal protection clause and must be reprobated."**

WOOHOO! Nai-imagine ko si Father Bernas…

Hence, where jurisprudence regarded an illegitimate child as taking after the citizenship of its mother, it did so for the benefit of the child. It was to ensure a Filipino nationality for the illegitimate child of an alien father in line with the assumption that the mother, who had custody, would exercise parental authority and had the duty to support her illegitimate child. It was to help the child, not to prejudice or discriminate against him. In fact, the 1935 Consti can never be more explicit than it is. Providing neither conditions nor distinctions, it states that **among the citizens of the Phils are "those whose fathers are citizens of the Phils" regardless of whether such children are legitimate or not.**

IV. FREEDOM OF EXPRESSION

Consti. Art. III, sec. 4

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of

the people peaceably to assemble and petition the government for redress of grievances.

A. Protected Speech

PRIOR RESTRAINT

NEAR vs. MINESOTA

Near v Minnesota (06/01/31)
Hughes, C.J.

Facts: A Minnesota statute (*Chap285, Session Laws 1925*) provides for the abatement, as a public nuisance, of a "malicious, scandalous & defamatory newspaper, [702] magazine or other periodical. Participation in such business shall constitute a commission of such nuisance and render the participant liable & subject to the proceedings, orders & judgments provided for in the Act. Ownership, in whole or in part, directly or indirectly, of any such periodical, or of any stock or interest in any corporation or organization which owns the same in whole or in part, or which publishes the same, shall constitute such participation. In actions brought under above, there shall be available the defense that the truth was published with good motives & for justifiable ends & in such actions the plaintiff shall not have the right to report to issues or editions of periodicals taking place more than three months before the commencement of the action. The statute also provides that the County Atty, or any citizen of the county, may maintain an action in the district court of the county in the name of the State to enjoin perpetually the persons committing or maintaining any such nuisance from further committing or maintaining it. It was under this statue that the County Atty filed an action against Near (herein petitioner) for allegedly publishing & circulating a periodical that charged public & law enforcement officials, including the Mayor of Minneapolis, of inefficiency, gross neglect of duty & graft for failing to quell the city''s gangster problem. The articles made serious accusations against the public officers named & others in connection with the prevalence of crimes & the failure to expose & punish them. The District Court made findings of fact which followed the allegations of the complaint & found that the editions in question were "chiefly devoted to malicious, scandalous & defamatory articles" concerning the individuals named. The court further found that the defendants, through these publications, "did engage in the business of regularly & customarily producing, publishing & circulating a malicious, scandalous & defamatory newspaper," & that "the said publication" "under said name of The Saturday Press, or any other name, constitutes a public nuisance under the laws of the State." Judgment was thereupon entered adjudging that "the newspaper, magazine & periodical known as The Saturday Press," as a public nuisance, "is hereby abated. Near appealed to State supreme court, which upheld the decision. Near now appeals to the US SC.

Petitioner (Near):

- statute violates the due process clause of the 14th Amendment as it deprives him of liberty (his right to free speech & liberty of the press) & property (his publication)

- District Court decision violates the due process clause of the 14th Amendment as it deprives him of any future livelihood (appellant sees the decision as a bar against his establishing any further business involving publication)

Defendants:

-insists that the questions of the application of the statute to appellant's periodical, & of the construction of the judgment of the trial court, are not presented for review; that appellant's sole attack was upon the constitutionality of the statute, however it might be applied

- that no question either of motive in the publication, or whether the decree goes beyond the direction of the statute, is before the court

-the statute deals not with publication per se, but with the "business" of publishing defamation.

-the constitutional freedom from previous restraint is lost because charges are made of derelictions which constitute crimes.

- the publisher is is permitted to show, before injunction issues, that the matter published is true & is published with good motives & for justifiable ends

-the statute is designed to prevent the circulation of scandal which tends to disturb the public peace & to provoke assaults & the commission of crime

Issues:

1. w/n the statute is unconstitutional for being violative of the due process clause

Held: YES

To start, the SC notes that the liberty of the press is under the ambit of "liberty" which is guaranteed by the 14th Amendment. *Gitlaw v NY, Whitney v California*. In maintaining this guarantee, the State has the power to enact laws to promote the safety, health,morals & general welfare of the people, but this power is to be determined with appropriate regard to the particular subject of its exercise. Liberty of speech, & of the press, is also not an absolute right, & the State may punish its abuse. *Whitney v. California.* In the present instance, the inquiry is as to the historic conception of the liberty of the press & whether the statute under review violates the essential attributes of that liberty.

In passing upon constitutional questions, the court has regard to substance, & not to mere matters of form, & that, in accordance with familiar principles, the statute must be tested by its operation & effect. *Henderson v. Mayor. 1st* The statute is not aimed at the redress of individual or private wrongs. Remedies for libel remain available & unaffected. The statute, said the state court, "is not directed at threatened libel, but at an existing business which, generally speaking, involves more than libel." It is alleged, & the statute requires the allegation, that the publication was "malicious." But, as in prosecutions for libel, there is no requirement of proof by the State of malice in fact, as distinguished from malice inferred from the mere publication of the defamatory matter. The judgment in this case proceeded upon the mere proof of publication. It is apparent that under the statute the publication is to be regarded as defamatory if it injures reputation, & scandalous if it circulates charges of reprehensible conduct, whether criminal or otherwise, & the publication is thus deemed to invite public reprobation & to constitute a public scandal. 2*nd* The statute is directed not simply at the circulation of scandalous & defamatory statements with regard to private citizens, but at the continued publication by

newspapers & periodicals of charges against public officers of corruption, malfeasance in office, or serious neglect of duty. 3*rd* The object of the statute is not punishment but suppression of the offending newspaper or periodical. The reason for the enactment is that prosecutions to enforce penal statutes for libel do not result in "efficient repression or suppression of the evils of scandal." Under this statute, a publisher of a newspaper or periodical, undertaking to conduct a campaign to expose & to censure official derelictions, & devoting his publication principally to that purpose, must face not simply the possibility of a verdict against him in a suit or prosecution for libel, but a determination that his newspaper or periodical is a public nuisance to be abated, & that this abatement & suppression will follow unless he is prepared with legal evidence to prove the truth of the charges & also to satisfy the court that, in addition to being true, the matter was published with good motives & for justifiable ends. 4*th.* The statute not only operates to suppress the offending newspaper or periodical, but to put the publisher under an effective censorship. Cutting through mere details of procedure, the operation & effect of the statute is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous & defamatory matter -- in particular, that the matter consists of charges against public officers of official dereliction -- &, unless the owner or publisher is able & disposed to bring competent evidence to satisfy the judge that the charges are true & are published with good motives & for justifiable ends, his newspaper or periodical is suppressed & further publication is made punishable as a contempt. This is of the essence of censorship.

The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically conceived & guaranteed. In determining the extent of the constitutional protection, it has been generally if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication. This Court said, in *Patterson v. Colorado,* "the main purpose of such constitutional provisions is "to prevent all such previous restraints "upon publications as had been practiced by other governments," & they do not prevent the subsequent "punishment of such as may be deemed contrary to the public welfare.For whatever wrong the appellant has committed or may commit by his publications the State "appropriately affords both public & private redress by its libel laws. As has been noted, the statute in question "does not deal with punishments; it provides for no punishment, except in case of contempt for violation of the "court's order, but for suppression & injunction, that is, for restraint upon publication.

The protection even as to "previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases: "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their "utterance will not be endured so long as men fight, & that no Court could regard them as protected by any "constitutional right." *Schenck v. United States* These limitations are not applicable here. Nor are we now concerned with "questions as to the extent of authority to prevent publications in order to protect private rights according to the "principles governing the exercise of the jurisdiction of courts of equity. The fact that, for approximately one hundred & fifty years, there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character & conduct remain open to debate & free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress & punishment, & not in proceedings to restrain the publication of newspapers & periodicals.

re: defendant's contention that the statute deals not with publication per se, but with the "business" of publishing defamation: If the publisher has a constitutional right to publish, without previous restraint, an edition of his newspaper charging official derelictions, it cannot be denied that he may publish subsequent editions for the same purpose.

re: the constitutional freedom from previous restraint is lost because charges are made of derelictions which constitute crimes: The freedom of the press from previous restraint has never been regarded as limited to such animadversions as lay outside the range of penal enactments. It is inconsistent with the reason which underlies the privilege, as the privilege so limited would be of slight value for the purposes for which it came to be established

re:is permitted to show, before injunction issues, that the matter published is true & is published with good motives & for justifiable ends: If such a statute, authorizing suppression & injunction on such a basis, is constitutionally valid, it would be equally permissible for the legislature to provide that at any time the publisher of any newspaper could be brought before a court & required to produce proof of the truth of his publication, or of what he intended to publish, & of his motives, or stand enjoined. If this can be done, the legislature may provide machinery for determining in the complete exercise of its discretion what are justifiable ends, & restrain publication accordingly. It would be but a step to a complete system of censorship.

re:the statute is designed to prevent the circulation of scandal which tends to disturb the public peace & to provoke assaults & the commission of crime: Charges of reprehensible conduct, & in particular of official malfeasance, unquestionably create a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication. As was said in *New Yorker Staats-Zeitung v. Nolan,*"If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, & resent its circulation by resorting to physical violence, there is no limit to what may be prohibited." The danger of violent reactions becomes greater with effective organization of defiant groups resenting exposure, & if this consideration warranted legislative interference with the initial freedom of publication, the constitutional protection would be reduced to a mere form of words.

Judgment reversed. Statute declared unconstitutional

NEW YORK TIMES vs. US

403 U.S. 713 (1971)

Voting: 5-4

FACTS:

In what became known as the "Pentagon Papers Case," the Nixon Administration attempted to prevent the New York Times and Washington Post from publishing materials belonging to a classified Defense Department study regarding the history of United States activities in Vietnam. The President argued that prior restraint was necessary to protect national security. This case was decided together with United States v. Washington Post Co.

ISSUE:

Did the Nixon administration's efforts to prevent the publication of what it termed "classified information" violate the First Amendment? ▪ **YES**

RATIO:

In its per curiam opinion the Court held that the government did not overcome the "heavy presumption against" prior restraint of the press in this case. Justices Black and Douglas argued that the vague word "security" should not be used "to abrogate the fundamental law embodied in the First Amendment." Justice Brennan reasoned that since publication would not cause an inevitable, direct, and immediate event imperiling the safety of American forces, prior restraint was unjustified.

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, concurring.

Madison proposed the First Amendment in three parts, one of which proclaimed: "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." The amendments were offered to curtail and restrict the general powers granted to the branches of gov't. The Bill of Rights changed the original Constitution into a new charter under which no branch of government could abridge the people's freedoms of press, speech, religion, and assembly.

Solicitor General argues that the general powers of the Gov't adopted in the original Constitution should be interpreted to limit and restrict the guarantees of the Bill of Rights. Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints.

First Amendment gave the free press the protection it must have to fulfill its role in our democracy. The press was to serve the governed, not the governors. Only a free and unrestrained press can effectively expose deception in govt. In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.

The Solicitor General stated:

"... `no law' does not mean `no law', and I would seek to persuade the Court that is true. . . . [T]here are other parts of the Constitution that grant powers and responsibilities to the Executive, and . . . the First Amendment was not intended to make it impossible for the Executive to function or to protect the security of the United States."

And the Government argues that in spite of the First Amendment, "[t]he authority of the Exec Dept to protect the nation against publication of information whose disclosure would endanger the national security stems from two interrelated sources: the constitutional power of the President over the conduct of foreign affairs and his authority as Commander-in-Chief."

To find that the President has "inherent power" to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Govt hopes to make "secure."

The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic. The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK joins, concurring.

There is no statute barring the publication by the press of the material which the Times and the Post seek to use.

Title 18 U.S.C. 793 (e) provides that "[w]hoever having unauthorized possession of, access to, or control over any document, writing . . . or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates . . . the same to any person not entitled to receive it . . . [s]hall be fined not more than $10,000 or imprisoned not more than ten years, or both."

The Government suggests that the word "communicates" is broad enough to encompass publication. There are eight sections in the chapter on espionage and censorship, 792-799. In three of those eight "publish" is specifically mentioned:

794 (b) applies to "Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates . . . [the disposition of armed forces]."

Section 797 applies to whoever "reproduces, publishes, sells, or gives away" photographs of defense installations.

Section 798 relating to cryptography applies to whoever: "communicates, furnishes, transmits, or otherwise makes available . . . or publishes" the described material. 2 (Emphasis added.)

Thus it is apparent that Congress was capable of and did distinguish between publishing and communication in the various sections of the Espionage Act.

The other evidence that 793 does not apply to the press is a rejected version of 793 which read: "During any

national emergency resulting from a war to which the United States is a party, or from threat of such a war, the President may, by proclamation, declare the existence of such emergency and, by proclamation, prohibit the publishing or communicating of, or the attempting to publish or communicate any information relating to the national defense which, in his judgment, is of such character that it is or might be useful to the enemy.". During the debates in the Senate the First Amendment was specifically cited and that provision was defeated.
The Act of September 23, 1950, in amending 18 U.S.C. 793 states in 1 (b) that: "Nothing in this Act shall be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated hereunder having that effect."

So any power that the Government possesses must come from its "inherent power."

The power to wage war stems from a declaration of war. The Constitution gives Congress power to declare War. Nowhere are presidential wars authorized.

These disclosures 3 may have a serious impact. But that is no basis for sanctioning a previous restraint on the press. As stated by Chief Justice Hughes in Near v. Minnesota: "The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct."

Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions there should be "uninhibited, robust, and wide-open" debate.

MR. JUSTICE BRENNAN, concurring.
The First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result.

There is a single, extremely narrow class of cases in which the First Amendment's ban on prior judicial restraint may be overridden. Such cases may arise only when the Nation is at war, during which times no one would question but that a govt might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. In neither of these actions has the Govt presented or even alleged that publication of items based upon the material at issue would cause the happening of an event of that nature. Only gov'tal allegation and proof that publication must inevitably, directly, and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order.

MR. JUSTICE STEWART, with whom MR. JUSTICE WHITE joins, concurring.

The Executive is endowed with power in the two related areas of nat'l defense and int'l relations.

In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power may lie in an informed and critical public opinion which alone can here protect the values of democratic government.

The successful conduct of intl diplomacy and the maintenance of an effective natl defense requires both confidentiality.

The responsibility must be where the power is. If the Constitution gives the Executive a large degree of unshared power in the conduct of foreign affairs and the maintenance of our national defense, then under the Constitution the Executive must have the largely unshared duty to determine and preserve the degree of internal security necessary to exercise that power successfully. Moral, political, and practical considerations would dictate that a very first principle would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. A truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained. But be that as it may, it is clear to me that it is the constitutional duty of the Executive is to protect the confidentiality necessary to carry out its responsibilities in the fields of intl relations and natl defense.

I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our Nation or its people. That being so, there can be but one judicial resolution of the issues before us.

MR. JUSTICE WHITE, with whom MR. JUSTICE STEWART joins, concurring.

United States has not satisfied the very heavy burden that it must meet to warrant an injunction against publication in these cases, at least in the absence of express and appropriately limited congressional authorization for prior restraints in circumstances such as these.]

In the absence of legislation by Congress, based on its own investigations and findings, I am quite unable to agree that the inherent powers of the Executive and the courts reach so far as to inhibit publications by the press. Much of the difficulty inheres in the **"grave and irreparable danger" standard** suggested by the US.

In Gorin v. United States, 312 U.S. 19, 28 (1941), the words "national defense" as used in a predecessor of 793 were held by a unanimous Court to have "a well understood connotation" - a "generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness" - and to be "sufficiently definite to apprise the public of prohibited activities" and to be consonant with due process. Also, as construed by the Court in Gorin, information "connected with the national defense" is obviously not limited to that threatening "grave and irreparable" injury to the United States.

It has apparently been satisfied to rely on criminal sanctions and their deterrent effect on the responsible as well as the irresponsible press. I am not, of course, saying that either of these newspapers has yet

committed a crime or that either would commit a crime if it published all the material now in its possession. That matter must await resolution in the context of a criminal proceeding if one is instituted by the United States. In that event, the issue of guilt or innocence would be determined by procedures and standards quite different from those that have purported to govern these injunctive proceedings.

MR. JUSTICE MARSHALL, concurring.

It would, however, be utterly inconsistent with the concept of separation of powers for this Court to use its power of contempt to prevent behavior that Congress has specifically declined to prohibit. There would be a similar damage to the basic concept of these co-equal branches of Government if when the Executive Branch has adequate authority granted by Congress to protect "national security" it can choose instead to invoke the contempt power of a court to enjoin the threatened conduct. The Constitution provides that Congress shall make laws, the President execute laws, and courts interpret laws. It did not provide for government by injunction in which the courts and the Executive Branch can "make law" without regard to the action of Congress.

Congress has on several occasions given extensive consideration to the problem of protecting the military and strategic secrets of the United States. This consideration has resulted in the enactment of statutes making it a crime to receive, disclose, communicate, withhold, and publish certain documents, photographs, instruments, appliances, and information. The bulk of these statutes is found in chapter 37 of U.S.C., Title 18, entitled Espionage and Censorship.

There has been no attempt to make such a showing. The Solicitor General does not even mention in his brief whether the Government considers that there is probable cause to believe a crime has been committed or whether there is a conspiracy to commit future crimes.

If the Government had attempted to show that there was no effective remedy under traditional criminal law, it would have had to show that there is no arguably applicable statute.

Even if it is determined that the Government could not in good faith bring criminal prosecutions against the New York Times and the Washington Post, it is clear that Congress has specifically rejected passing legislation that would have clearly given the President the power he seeks here and made the current activity of the newspapers unlawful.

On at least two occasions Congress has refused to enact legislation that would have made the conduct engaged in here unlawful and given the President the power that he seeks in this case. In 1917 during the debate over the original Espionage Act, still the basic provisions of 793, Congress rejected a proposal to give the President in time of war or threat of war authority to directly prohibit by proclamation the publication of information relating to national defense that might be useful to the enemy.

MR. CHIEF JUSTICE BURGER, dissenting.

These cases are not simple for another and more immediate reason. We do not know the facts of the cases. No District Judge knew all the facts. No Court of Appeals judge knew all the facts. No member of this Court knows all the facts.

The haste is due in large part to the manner in which the Times proceeded from the date it obtained the documents. It seems reasonably clear now that the haste precluded reasonable and deliberate judicial treatment of these cases and was not warranted. The precipitate action of this Court aborting trials not yet completed is not the kind of judicial conduct that ought to attend the disposition of a great issue.

It is not disputed that the Times has had unauthorized possession of the documents for three to four months, during which it has had its expert analysts studying them, presumably digesting them and preparing the material for publication. During all of this time, the Times, presumably in its capacity as trustee of the public's "right to know," has held up publication for purposes it considered proper and thus public knowledge was delayed.

Would it have been unreasonable, since the newspaper could anticipate the Government's objections to release of secret material, to give the Government an opportunity to review the entire collection and determine whether agreement could be reached on publication? Stolen or not, if security was not in fact jeopardized, much of the material could no doubt have been declassified, since it spans a period ending in 1968. It is hardly believable that a newspaper would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents. That duty, was to report forthwith, to responsible public officers.

MR. JUSTICE HARLAN, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, dissenting.

In order to decide the merits of these cases properly, some or all of the following questions should have been faced:

1. WON the Atty Gen is authorized to bring these suits in the name of the US.
2. WON the First Amendment permits the federal courts to enjoin publication of stories which would present a serious threat to national security.
3. WON the threat to publish highly secret documents is of itself a sufficient implication of natl security to justify an injunction regardless of the contents of the documents.
4. WON the unauthorized disclosure of any of these particular documents would seriously impair the natl security.
5. WON weight should be given to the opinion of high officers in the Exec Branch of the Govt with respect to questions 3 and 4.
6. WON the newspapers are entitled to retain and use the documents notwithstanding the uncontested facts that the documents were stolen from the Govt's possession and that the newspapers received them with knowledge that they had been feloniously acquired.

7. WON the threatened harm to the natl security or the Govt's possessory interest in the documents justifies the issuance of an injunction against publication in light of –
   a. The strong First Amendment policy against prior restraints on publication;
   b. The doctrine against enjoining conduct in violation of criminal statutes; and
   c. The extent to which the materials at issue have apparently already been otherwise disseminated.

It is plain to me that the scope of the judicial function in passing upon the activities of the Exec Branch in the field of foreign affairs is very narrowly restricted.

The power to evaluate the "pernicious influence" of premature disclosure is not lodged in the Exec alone. The judiciary must review the initial Exec determination to the point of satisfying itself that the subject matter of the dispute does lie within the President's foreign relations power. Constitutional considerations forbid a complete abandonment of judicial control. Moreover, the judiciary may properly insist that the determination that disclosure of the subject matter would irreparably impair the natl security be made by the head of the Exec Dept.

But in my judgment the judiciary may not properly go beyond these two inquiries and redetermine for itself the probable impact of disclosure on the national security.

I can see no indication in the opinions of either the DC or the CA in the Post litigation that the conclusions of the Exec were given even the deference owing to an administrative agency, much less that owing to a co-equal branch of the Govt.

MR. JUSTICE BLACKMUN, dissenting.

Holmes observation certainly has pertinent application: "The NY Times secretly devoted a period of 3 months to examine the 47 volumes. Once it had begun publication, the NY case now before us emerged. It immediately assumed hectic pace and character. Once publication started, the material could not be made public fast enough. From then on, every delay was abhorrent and was to be deemed violative of the First Amendment and of the public's "right immediately to know."

The District of Columbia case is much the same.

There has been much writing about the law and little knowledge and less digestion of the facts. The most recent of the material, it is said, dates no later than 1968, already about 3 years ago, and the Times itself took 3 months to formulate its plan of procedure and, thus, deprived its public for that period.

The First Amendment is only one part of an entire Constitution. Art II of the great document vests in the Exec Branch power over the conduct of foreign affairs and the responsibility for the Nation's safety. Even the newspapers concede that there are situations where restraint is constitutional.

therefore would remand these cases to be developed expeditiously, of course, but on a schedule permitting the orderly presentation of evidence from both sides, with the use of discovery as authorized by the rules, and with the preparation of briefs, oral argument, and court opinions of a quality better than has been seen to this point.

FREEDMAN vs. MARYLAND

J. Brennan

FACTS:

- Appellant exhibited the film "Revenge at Daybreak" at his Baltimore theatre without first submitting the picture to the State Board of Censors as required by

  Md. Ann. Code, 1957, Art. 66A, 2: "It shall be **unlawful to sell, lease, lend, exhibit or use any motion picture film** or view in the State of Maryland unless the said film or view has been **submitted** by the exchange, owner or lessee of the film or view **and duly approved and licensed by the Maryland State Board of Censors**, hereinafter in this article called the Board."

  Sec 19 : (if the film is disapproved/ eliminations ordered)
  "the person submitting such film or view for examination will receive immediate notice of such elimination or disapproval, and if appealed from, such film or view will be promptly re-examined, in the presence of such person, by two or more members of the Board, and the same finally approved or disapproved promptly after such re-examination, with the right of appeal from the decision of the Board to the Baltimore City Court of Baltimore City. There shall be a further right of appeal from the decision of the Baltimore City Court to the Court of Appeals of Maryland, subject generally to the time and manner provided for taking appeal to the Court of Appeals."

- State concedes that the picture does not violate the statutory standards & would have received a license if properly submitted, but the appellant was still convicted of a violation of the statute
- Appellant's contention: statute in its entirety unconstitutionally impaired freedom of expression.

ISSUE:

1. WON the CA was correct in using the doctrine in Times Film Corp. vs. Chicago as precedence in this case.
2. WON the Maryland statute presents a danger of unduly **suppressing protected expression.**
3. WON the statute **lacks sufficient safeguards** thus resulting to a delegation of excessive admin discretion on the part of the Board of censors.

HELD & RATIO:

1. No. The CA was misplaced in relying on the Times Film. In that case, the court upheld a requirement of submission of motion pictures in advance of exhibition. But the question tendered for decision was "whether a prior restraint was necessarily unconstitutional under all circumstances." The Court quoted the statement from Near v. Minnesota that "the protection even as to previous restraint is not absolutely unlimited." Appellant presents a question quite distinct from that passed on in

Times Film. He argues that it constitutes an invalid prior restraint because, in the context of the remainder of the statute, it presents a danger of unduly suppressing protected expression.

2. Yes. Under the 14th Amendment, a State is not free to adopt whatever procedures it pleases for dealing with obscenity... without regard to the possible consequences for constitutionally protected speech." The administration of a censorship system for motion pictures presents peculiar dangers to constitutionally protected speech. Unlike a prosecution for obscenity, a **censorship proceeding puts the initial burden on the exhibitor or distributor.** Because the censor's business is to censor, there inheres the danger that he may well be less responsive than a court to the constitutionally protected interests in free expression. And if it is made unduly onerous, by reason of delay or otherwise, to seek judicial review, the censor's determination may in practice be final.

Only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint.

3. YES. Maryland's scheme fails to provide adequate safeguards against undue inhibition of protected expression, thus rendering the requirement of prior submission of films to the Board an invalid previous restraint.

How can prior submission of films avoid infirmity?

1. The burden of proving that the film is unprotected expression must rest on the censor. Due process requires that the State bear the burden of persuasion to show that the appellants engaged in criminal speech."
2. While the State may require advance submission of all films, in order to proceed effectively to bar all showings of unprotected films, the requirement cannot be administered in a manner which would lend an effect of finality to the censor's determination whether a film constitutes protected expression.

The Maryland procedural scheme does not satisfy these criteria.
First, once the censor disapproves the film, the exhibitor must assume the burden of instituting judicial proceedings and of persuading the courts that the film is protected expression.
Second, once the Board has acted against a film, exhibition is prohibited pending judicial review, however protracted. Under the statute, appellant could have been convicted if he had shown the film after unsuccessfully seeking a license, even though no court had ever ruled on the obscenity of the film.
Third, it is Maryland statute provides no assurance of prompt judicial determination. There is no time limit that is imposed for completion of Board action. There is no statutory provision for judicial participation in the procedure which bars a film, nor even assurance of prompt judicial review. Risk of delay is built into the Maryland procedure, as is borne out by experience; in the only reported case indicating the length of time required to complete an appeal, the initial judicial determination has taken four months and final vindication of the film on appellate review, six months.

Without these safeguards, it may prove too burdensome to seek review of the censor's determination. Particularly in the case of motion pictures, it may take very little to deter exhibition in a given locality. The exhibitor's stake in any one picture may be insufficient to warrant a protracted and onerous course of litigation. The distributor, on the other hand, may be equally unwilling to accept the burdens and delays of litigation in a particular area when, without such difficulties, he can freely exhibit his film in most of the rest of the country; for we are told that only four States and a handful of municipalities have active censorship laws.

What they can do:

In Kingsley Books, Inc. v. Brown, the court upheld a New York injunctive procedure designed to prevent the sale of obscene books. That procedure postpones any restraint against sale until a judicial determination of obscenity following notice and an adversary hearing. The statute provides for a hearing one day after joinder of issue; the judge must hand down his decision within two days after termination of the hearing.

In the film industry: allow the exhibitor or distributor to submit his film early enough to ensure an orderly final disposition of the case before the scheduled exhibition date - far enough in advance so that the exhibitor could safely advertise the opening on a normal basis. Failing such a scheme or sufficiently early submission under such a scheme, the statute would have to require adjudication considerably more prompt than has been the case under the Maryland statute.

SUBSEQUENT PUNISHMNENT

PEOPLE vs. PEREZ

FACTS:
Isaac Perez, the municipal secretary of Pilar, Sorsogon, and Fortunato Lodovice, a citizen of that municipality, meet on the morning of April 1, 1922, in the presidencia of Pilar, and became engaged in a discussion regarding the administration of Governor-General Wood, which resulted in Perez shouting a number of times: **"The Filipinos, like myself, should get a bolo and cut off the head of Governor-General Wood, because he has recommended a bad administration in these Islands and has not made a good recommendation; on the contrary, he has asassinated the independence of the Philippines and for this reason, we have not obtained independence and the head of that Governor-General must be cut off."** Charged in the Court of First Instance of Sorsogon with a violation of article 256. of the Penal Code having to do with contempt of ministers of the Crown or other persons in authority, and convicted thereof, Perez has appealed the case to this court.

ISSUE:
1. WON article 256 of the Penal Code, the provision allegedly violated, is still enforceable
2. WON the appellant committed libel

HOLDING:
1. Yes
2. No, however, he was guilty of a portion of treason and sedition. Trial court decision affirmed with modification

RATIO:
Enforceability of Art. 256

The first error assigned by counsel for the appellant is to the effect that article 256 of the Penal Code is no longer in force.

In the case of United States vs. Helbig, Mr. Helbig was prosecuted under article 256, and though the case was eventually sent back to the court of origin for a new trial, the appellate court by majority vote **held as a question of law that article 256 is still in force.**

It may therefore be taken as settled doctrine, that until otherwise decided by higher authority, so much of **article 256 of the Penal Code as does not relate to ministers of the Crown or to writings coming under the Libel Law, exists and must be enforced.**

The Crime Committed

Accepting the above statements relative to the continuance and status of article 256 of the Penal Code, it is our opinion that the law infringed in this instance is not this article but rather a portion of the Treason and Sedition Law. In other words, as will later appear, we think that the words of the accused did not so much tend to defame, abuse, or insult, a person in authority, as they did to raise a disturbance in the community.

In criminal law, there are a variety of offenses which are not directed primarily against individuals, but rather against the existence of the State, the authority of the Government, or the general public peace. The offenses created and defined in Act No. 292 are distinctly of this character. Among them is sedition, which is the raising of commotions or disturbances 'in the State. Though the ultimate object of sedition is a violation of the public peace or at least such a course of measures as evidently engenders it, yet it does not aim at direct and open violence against the laws, or the subversion of the Constitution.

It is of course fundamentally true that the provisions of Act No. 292 must not be interpreted so as to abridge the freedom of speech and the right of the people peaceably to assemble and petition the Government for redress of grievances. **Criticism is permitted to penetriate even to the foundations of Government. Criticism, no matter how severe, on the Executive, the Legislature, and the Judiciary, is within the range of liberty of speech, unless the intention and effect be seditious. But when the intention and effect of the act is seditious, the constitutional guaranties of freedom of speech and press and of assembly and petition must yield to punitive measures designed to maintain the prestige of constituted authority, the supremacy of the constitution and the laws, and the existence of the State.**

Here, the person maligned by the accused is the Chief Executive of the Philippine Islands. His official position seems rather to invite abusive attacks. But in this instance, the attack on the Governor-General passes the furthest bounds of free speech and common decency. More than a figure of speech was intended. There is a seditious tendency in the words used, which could easily produce disaffection among the people and a state of feeling incompatible with a disposition to remain loyal to the Government and obedient to the laws. The Governor-General is the representative of executive civil authority in the Philippines and of the sovereign power. A seditious attack on the Governor-General is an attack on the rights of the Filipino people and on American sovereignty.

Section 8 of Act No. 292 of the Philippine Commission, as amended by Act No. 1692, appears to have been placed on the statute books exactly to meet such a situation. This section reads as follows:

"Every person who shall utter seditious words or speeches, or who shall write, publish or circulate scurrilous libels against the Government of the United States or against the Government of the Philippine Islands, or who shall print, write, publish, utter or make any statement, or speech, or do any act which tends to disturb or obstruct any lawful officer in executing his office or in performing his duty, or which tends to instigate others to cabal or meet together for unlawful purposes, or which suggests or incites rebellious conspiracies or which tends to stir up the people against the lawful authorities, or which tends to disturb the peace of the community or the safety or order of the Government, or who shall knowingly conceal such evil practices from the constituted authorities, shall be punished by a fine not exceeding two thousand dollars United States currency or by imprisonment not exceeding two years, or. both, in the discretion of the court."

In the words of the law, Perez has uttered seditious words. He has made a statement and done an act which tended to instigate others to cabal or meet together for unlawful purposes. He has made a statement and done an act which suggested and incited rebellious conspiracies. He has made a statement and done an act which tended to stir up the people against the lawful authorities. He has made a statement and done an act which tended to disturb the peace of the community and the safety or order of the Government.

While our own sense of humor is not entirely blunted, we nevertheless entertain the conviction that the courts should be the first to stamp out the embers of insurrection. The fugitive flame of disloyalty, lighted by an irresponsible individual, must be dealt with firmly before it endangers the general public peace.

VILLAMOR, J., with whom concurs AVANCEÑA, J., concurring and dissenting:
I agree in that the accused should be sentenced to suffer two months and one day of arresto mayor with costs, as imposed by the court a quo, under the provisions of article 256 of the Penal Code, but not under section 8 of Act No. 292. The accused should not be convicted of the crime of sedition because there is no allegation in the complaint nor proof in the record, showing that when the accused uttered the words that gave rise to these proceedings, he had the intention of inciting others to gather for an illicit purpose, or to incite any conspiracy or rebellion, or to disturb the peace of the community or the safety and order of the Government

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DENNIS vs. US

FACTS:

Eugene Dennis and others were convicted of conspiring to organize the Communist Party of the United States as

a group to teach and advocate the overthrow of the Government of the United States by force and violence in violation of the conspiracy provisions of the Smith Act-- **sec 2 and 3 of the Smith Act, 18 U.S.C.A.**

In this certiorari they assail the constitutionality of this said act alleging that it violates their freedom of speech and that it is void for indefiniteness/vagueness.

ISSUES:

1. WON sec 2 or 3 of the Smith Act inherently or as construed and applied in the instant case, violates the First Amendment and other provisions of the Bill of Rights→ no.
2. WON either s 2 or s 3 of the Act, inherently or as construed and applied in the instant case, violates the First and Fifth Amendments because of indefiniteness. → no

HELD:

Sections 2 and 3 of the Smith Act do not violate the 1st amendment and other provisions of the Bill of Rights, or the 1st and 4th amendments for indefiniteness. Petitioners intended to overthrow the Government of the US as speedily as the circumstances would permit. Conspiracy to organize the Communist Party and tot each and advocate the overthrow of the government of the US by force and violence created a **clear and present danger**. Convictions affirmed.

RATIO:

1. Sections 2 and 3 of the Smith Act provide as follows:

'Sec. 2.

'(a) It shall be unlawful for any person--

'(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

'(2) with intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

'(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate ****861** with, any such society, group, or assembly of persons, knowing the purposes thereof.

'(b) For the purposes of this section, the term 'government in the United States' means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the ***497** government of any political subdivision of any of them.

'Sec. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of * * * this title.'

- The general goal of the communist party is to achieve a successful overthrow of the existing order by force and violence
- Purpose of the statute: to protect the existing government not from change by peaceable, lawful and constitutional means, but from change by violence, revolution and terrorism.
- argument that there is a 'right' to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change.
- Petitioners contend that the Act prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press. The court held that the language of the Smith Act is directed at advocacy not discussion.
- Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged.
- Re free speech: basis of the First Amendment is the hypothesis that speech can rebut speech, propaganda will answer propaganda, free debate of ideas will result in the wisest governmental policies. Court have recognized that this is not an unlimited, unqualified right, but that the societal value of speech must, on occasion, be subordinated to other values and considerations.
- Justice Holmes stated that **the 'question in every case is whether the words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress has a right to prevent.'**
- The constitutionality of the statute is adjudged y whether or not it is reasonable. Since it was entirely reasonable for a state to attempt to protect itself from violent overthrow the statute was perforce reasonable.
- wherever speech was the evidence of the violation, it was necessary to show that the speech created the 'clear and present danger' of the substantive evil which the legislature had the right to prevent.
- Court's interpretation of the 1st amendment: '(The First) Amendment requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom.' However, speech is not an absolute, above and beyond control by the legislature when its judgment, subject to review here, is that certain kinds of speech are so undesirable as to warrant criminal sanction.

- This case warrants a restriction of speech because overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected.
- As to the meaning of clear and present danger, court adopts the rule by Chief Justice Hand. Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows: 'In each case (courts) must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.'
- In this case, the requisite danger existed the petitioner's activities were from 1945-48 (formation of a highly organized conspiracy) when there was inflammable nature of world conditions, touch-and-go relationship of the US with other countries. Court is convinced that these satisfy convictions. It is the existence of the conspiracy which creates the danger; we cannot bind the Government to wait until the catalyst is added.

2.

- Re vagueness: arguments by petitioners are nonpersuasive
- We agree that the standard as defined is not a neat, mathematical formulary. Like all verbalizations it is subject to criticism on the score of indefiniteness. But petitioners themselves contend that the verbalization, 'clear and present danger' is the proper standard.
- Court has attempted to sum up the factors that are included within its scope

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** **ABRAMS vs. US**

another reviewer.

Five plaintiffs were charged and convicted of conspiring to violate the provisions of the Espionage Act. They wrote, printed, and distributed pamphlets in NY, which criticized the US War Program in Russia. They claim that it's their intention to prevent injury to the Russian cause; their immediate reason was resentment caused by the US gov't sending troops into Russia as a strategic operation against the Germans on the eastern battle front. The SC held that there was a violation of the Espionage Act. Men must be held to have intended, and to be accountable for, the effects which their acts were likely to have produces. The possible effect of their acts was the defeat of the US war program. Further, the plain purpose of their propaganda was to excite dissatisfaction, sedition, riots, and revolution in the US, to defeat US military plans in Europe. Note the Holmes dissent, which discussed the thory that the constitution is a mer experiment; we should not seek too much certainty from rules. He further said that intent must be clearly shown, and used in a strict and accurate sense, since it was not shown that petitioners did, in fact, attack the government.

EASTERN BROADCASTING vs. DANS

(1985) [2nd last Marcos year]

Gutierrez Jr J

FACTS:

Radio Station DYRE was summarily closed on grounds of nat'l security. It was alleged that DYRE was used to incite people to sedition which arose because they were shifting to coverage of public events and airing programs geared towards public affairs. Petitioner raises freedom of speech. Before court could promulgate it's decision, the petitioner suddenly withdrew its petition because DYRE was bought by another company and it had no more interest in the case, nor does the buying company have an interest. Moot and academic.

ISSUES:

WON my beautifully written ponencia will go to waste?

HELD:

No dammit! I'll use cut and paste to make a guideline for inferior courts thus my glorious role in protecting freedom of speech will be enshrined in SCRA forever! BWAHAHAHA!

RATIO:

The cardinal requirements for an administrative proceeding was already laid down in Ang Tibay v Industrial Relations (hearing, substantial evidence, etc). Although there is no precise and controlling definition of due process, it does furnish an unavoidable standard to which gov't action must conform before depriving a persons rights. All forms of media are entitled to freedom of speech as long as they pass the *clear and present danger rule*. If they say words that are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the **substantive** evils that a lawmaker has a right to prevent, screw them.

The rule does not have an all-embracing character for all utterances in every form, however. Broadcast media is necessarily under stricter supervision than written media. Radio and TV are easily accessible in the country and confront people in public and private, unlike written media that some people can't afford nor read. The clear and present danger rule must take this into account. The gov't has a right to protect itself against broadcasts which incite sedition. But the people have the right to be informed too and obsequious programming will not serve. The freedom to comment on public affairs is essential to the vitality of a representative democracy. Broadcast media as the most popular and convenient info disseminators around deserve special protection by the due process and freedom of speech clauses.

DISPOSITION:

Moot and academic. But the petitioners would have won.

OTHERS:

Fernando CJ, concurs:

Oooh, guidelines are good, even if the case is moot and academic.

Teehankee J, concurs:

Because cut and paste did not actually exist in 1985, I am still going to submit my concurring opinion for Gutierrez' ponencia but with an added prefatory statement.

Good job, ponente, for pulling off the clear and present danger rule as the standard for limiting "preferred" rights [freedom of expression, etc]. Good job too in Salonga vs Paño[!] which went back to fundamentals and states: citizen's right to be free from arbitrary arrest, punishment and unwarranted prosecution is more impt than crimproc; freedom of expression is a preferred right and therefore stands on a higher level than substantive economic or other liberties because it is the indispensable condition of nearly every other form of freedom. Debate on public issues should be wide open, maybe even nasty, as long as the debate or the words do not lead to the violent overthrow of gov't.

In this case the ponente restates basic and established constitutional principles. Public officials do not possess absolute power to summarily close down a station or deprive it's license. Broadcast media deserve the preferred right of free press and speech. It is in the interest of society to have a full discussion of public affairs. Free speech is a safety valve that allows parties to vent their views even if contrary to popular opinion. Through free expression, assembly and petition, citizens can participate not only during elections but in every facet of gov't. People v Rubio: commendable zeal if allowed to override constitutional limitations would become obnoxious to fundamental principles of liberty. Primicias v Fugoso: disorderly conduct by individual members is not an excuse to characterize the assembly as seditious. If that is so then the right to assembly becomes a delusion. German v Barangan, *my* dissent: to require a citizen to assert his rights and to go to court is to render illusory his rights. After five years of closure, reopen.

Abad Santos J:

Everybody should read the ponencia, Teehankee and Ang Tibay.

"SPEECH PLUS": SYMBOLIC SPEECH

U.S. vs. O'BRIEN

WARREN, CJ

FACTS:
David Paul O'Brien and 3 companions burned their Selective Service registration certificates on the steps of the South Boston Courthouse. A crowd, including several agents of the FBI, witnessed the event. After the burning, members of the crowd began attacking O'Brien and his companions. An FBI agent ushered O'Brien to safety inside the courthouse. O'Brien stated to FBI agents that he had burned his registration certificate because of his beliefs, knowing that he was violating federal law.

For this act, O'Brien was indicted, tried, convicted, and sentenced in the US DC for the District of Mass. He stated in argument to the jury that he burned the certificate publicly to influence others to adopt his antiwar beliefs, "so that other people would reevaluate their positions with Selective Service, with the armed forces, and reevaluate their place in the culture of today, to hopefully consider my position."
The DC rejected O'Brien's arguments. CA held the 1965 Amendment unconstitutional under the First Amendment as singling out for special treatment persons engaged in protests, on the ground that conduct under the 1965 Amendment was already punishable since a Selective Service System regulation required registrants to keep their registration certificates in their personal possession at all times.

ISSUE:

I. WON the 1965 Amendment to 462 (b) (3) abridges freedom of speech. ▪ **NO**

When a male reaches 18, he is required by the Universal Military Training and Service Act of 1948 to register with a local draft board. He is assigned a Selective Service number, and within 5 days he is issued a registration certificate He is also assigned a classification denoting his eligibility for induction, and is issued a Notice of Classification.

Under 12 (b) (3) of the 1948 Act, it was unlawful to forge, alter, "or in any manner" change a certificate. In addition, regulations of the SSS required registrants to keep both their registration and classification certificates in their personal possession at all times. (nonpossession)

By the 1965 Amendment, Congress added to 1948 Act the provision punishing also one who "knowingly destroys, or knowingly mutilates" a certificate. **The 1965 Amendment does not abridge free speech on its face**, it deals with conduct having no connection with speech. It prohibits the knowing destruction of certificates issued by the SSS, and there is nothing necessarily expressive about such conduct. The Amendment does not distinguish between public and private destruction, and it does not punish only destruction engaged in for the purpose of expressing views.

II. WON the 1965 Amendment is unconstitutional as applied to him. → **NO**

O'Brien argues that his act of burning his registration certificate was protected "**symbolic speech**" within the First Amendment. Freedom of expression which the First Amendment guarantees includes all modes of "communication of ideas by conduct," and that his conduct is within this definition because he did it in demonstration against the war and against the draft.

Even on the assumption that the communicative element in O'Brien's conduct is sufficient to bring into play the

First Amendment, **it does not necessarily follow that the destruction of a registration certificate is constitutionally protected activity**. When "speech" and "nonspeech" elements are combined, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.
Govt regulation is sufficiently justified if:

1. it is within the const'l power of the Govt
2. it furthers an important or substantial gov'tal interest;
3. the gov'tal interest is unrelated to the suppression of free expression; and
4. the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

All requirements met therefore O'Brien can be constitutionally convicted for violating it.

O'Brien's argues that once the registrant has received notification there is no reason for him to retain the certificates. O'Brien notes that most of the information on a registration certificate serves no notification purpose at all; the registrant hardly needs to be told his address and physical characteristics.

The registration certificate serves purposes in addition to initial notification:

1. as proof that the individual described thereon has registered for the draft.
2. facilitates communication between registrants and local boards.
3. reminders that the registrant must notify his local board of any change of address, and other specified changes in his status.

The many functions performed by SS certificates establish beyond doubt that Congress has a legitimate and substantial interest in preventing their unrestrained destruction. The nonpossession regulations does negates this interest.

<u>multiple punishment?</u>
it is not improper for Congress' to provide alternative statutory avenues of prosecution to assure the effective protection of one and the same interest. Here, the pre-existing avenue of prosecution(nonpossession) was not even statutory. Congress may change or supplement a regulation. (see difference between pre-existing and new)

Nonpossession vs. Destruction(new)

- They protect overlapping but not identical governmental interests.
- They reach different classes of wrongdoers.
- Whether registrants keep their certificates in their personal possession at all times, is of no particular concern under the 1965 Amendment, as long as they do not mutilate or destroy the certificates.
- The Amendment is concerned with abuses involving any issued SS certificates, not only with the registrant's own certificates. The knowing destruction or mutilation of someone else's certificates would therefore violate the statute but not the nonpossession regulations.

Both the gov'tal interest and the operation of the 1965 Amendment are limited to the noncommunicative aspect of O'Brien's conduct. The gov'tal interest and the scope of the 1965 Amendment are limited to preventing harm to the smooth and efficient functioning of the SSS. The case at bar is therefore unlike one where the alleged gov'tal interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful.

Because of the Govt's substantial interest in assuring the continuing availability of issued SS certificates, and because amended 462 (b) is a narrow means of protecting this interest and condemns only the noncommunicative impact of conduct within its reach, and because the noncommunicative impact of O'Brien's act of burning his registration certificate frustrated the Govt's interest, a sufficient governmental interest has been shown to justify O'Brien's conviction.
III. WON the 1965 Amendment is unconstitutional as enacted because the alleged purpose of Congress was "to suppress freedom of speech." → **NO**

The purpose of Congress is not a basis for declaring this legislation unconstitutional. The Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.

The statute attacked in this case has no "inevitable unconstitutional effect", since the destruction of SS certificates is in no respect inevitably or necessarily expressive. Accordingly, the statute itself is constitutional.
There was little floor debate on this legislation in either House. Reports of the Senate and House Armed Services Committees make clear a concern with the "defiant" destruction of so-called "draft cards" and with "open" encouragement to others to destroy their cards, both reports also indicate that this concern stemmed from an apprehension that unrestrained destruction of cards would disrupt the smooth functioning of the Selective Service System

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TINKER vs. DES MOINES SCHOOL DISTRICT

FACTS:

1. John Tinker (15), Mary Beth Tinker (John's 13 yr old sis) and Christopher Eckhardt (16), were all attending high schools in Des Moines, Iowa, decided to join a meeting at the Eckhardt residence. There they decided to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Years Eve.
2. The principals of the Des Moines schools became aware of their plan to were armbands and adopted a policy that any student wearing an armband to school would be asked to remove it and if he refused he would be suspended until he returned without the armband.
3. The petitioners still wore black armbands to their schools. They were sent home and suspended until they came back without the armbands. They did not return until the planned period for wearing the armbands expired-on New Year's Day.

4. They filed complaints through their fathers and prayed for injunctions restraining the school officials plus nominal damages. District Court rendered in favor of the school officials saying that it was reasonable in order to prevent disturbance of school discipline. Court of Appeals affirmed.

ISSUE:
WON the wearing of black armbands is an expression of speech and protected by the Constitution?

HELD: YEAH

RATIO:

- it can hardly be argued that either the students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate
- in West Virginia v Barnette, it was held that a student may not be compelled to salute the flag
- the school officials sought to punish the petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. Only a few of the 18,000 students wore the armbands wherein only 5 were suspended. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.
- In our system, undifferentiated fear or apprehension is not enough to overcome the right to freedom of expression.
- There is no finding and showing that engaging in of the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.
- School officials do not possess absolute authority over their students. They are possessed of fundamental rights which the State must respect just as they themselves must respect their obligations to the State. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

(reversed and remanded)

Assembly & Petition

PRIMCIAS vs. FUGOSO

Petitioner Cipriano Primicias is the campaign manager of the Coalesced Minority Parties. Respondent Valeraino Fugoso is the Mayor of Manila. Primicias would like to compel Fugoso, by means of a mandamus, to issue a permit for the holding of a public meeting in Plaza Miranda, as respondent Fugoso has denied the request.

ISSUE: WON the denial of the permit for holding a public meeting is proper.

HELD: No it is not.

RATIO:

The court first states the importance of the right of freedom of speech and to peacefully assemble, stating, however, that these rights have their limits in that they should not be injurious to the rights of the community or society.

Then they discuss the other side, the right to regulate these rights. This brings a discussion of police power, saying that the legislature delegated police power to the Municipal Board of the City of Manila, giving it regulatory powers regarding the use of public places. These powers, however, according to the court, are not absolute. If these powers were absolute, then the Municipal or City government would have sole and complete discretion as to what to allow and what not to allow. This would be wrong as it would leave decisions open to the whims of those in power. While these rights should be regulated, they should be regulated in a reasonable manner, and giving unbridled deciding power to the government is not reasonable.

Also, looking at the ordinance Sec. 1119, the courts said there there were 2 ways to interpret such an ordinance:

1) The mayor has unregulated discretion
2) Applications are subject to reasonable discretion to determine which areas to use to avoid confusion and minimize disorder

The court took the 2nd interpretation.

To justify their stand, the court went through a series of U.S. cases that handled similar circumstances. Many of these cases struck down ordinances and laws requiring citizens to obtain permits for public meetings, events, parades, processions, and the like.

Lastly, the court states that there is no reasonable reason to deny this public meeting. As such, the mandamus is granted.

Note: SEC. 1119 *Free for use of public* — The streets and public places of the city shall be kept free and clear for the use of the public, and the sidewalks and crossings for the pedestrians, and the same shall only be used or occupied for other purposes as provided by ordinance or regulation: *Provided*, that the holding of athletic games, sports, or exercise during the celebration of national holidays in any streets or public places of the city and on the patron saint day of any district in question, may be permitted by means of a permit issued by the Mayor, who shall determine the streets or public places or portions thereof, where such athletic games, sports, or exercises may be held: *And provided, further,* That the holding of any parade or procession in any streets or public places is prohibited unless a permit therefor is first secured from the Mayor who shall, on every such ocassion, determine or specify the streets or public places for the formation, route, and dismissal of such parade or procession: And *provided, finally*, That all applications to hold a parade or procession shall be submitted to the Mayor not less than twenty-four hours prior to the holding of such parade or procession.

HILADO DISSENT:

The dissent of J. Hilado is divided into 4 parts: a, b, c and d.

a) Right not absolute but subject to regulation. Mainly says that the right to freedom of speech and assembly are not absolute rights. After citing U.S. cases, J. Hilado moves to the case at bar and points out that the Mayor of Manila had the "duty and power" to grant or deny permits. Moreover, he says that the government has the right to regulate the use of public places. Pointing to the case at bar, Plaza Miranda is a public place in that it is a high traffic area, whether for vehicles or pedestrians. As such, holding the meeting there would have caused an "inconvenience and interfere with the right of the people in general". He again states that the right is not absolute, but "subject to regulation as regards the time, place and manner of its exercise".

b) No constitutional right to use public places under government control, for the right of assembly and petition, etc. Here, J. Hilado explains that the action that the Mayor of Manila took was not one of denying the public meeting and regulating the right to speech and assembly, but was merely one of denying the use of a public place in the conducting of the meeting. In this interpretation, there was no constitutional right infringed.

c) Here J. Hilado goes through his own list of U.S. cases to cite as authority. I don't think dean will make us enumerate them. Anyways the summaries in the case are short.

d) Mandamus unavailable. Here, J. Hilado cites section 2728 of Municipal Corporations, 2nd ed., a source of American municipal rules. In this rule, it is stated that in the issuance of permits, if the power is discretionary, it cannot ordinarily be compelled by mandamus. The refusal must be arbitrary or capricious so as to warrant mandamus. He then points to certain allegations of the Mayor of Manila pointing to the high possibility of trouble that would result from the meeting taking place. His reason in denying the permit is that of peace and order. As such, the refusal was not capricious or arbitrary and does not warrant a mandamus.

NAVARRO vs. VILLEGAS

Jan 26, 1970, Congress opened. Student demonstration in front of the Congress, followed by a series of demonstrations, rallies, marches and pickets, many of which ended in the destruction of public and private property, loss of a few lives, and injuries to a score of other persons. Schools, offices and many stores were forced to close.

Feb 24 1970, Petitioner, Nelson Navarro, acting in behalf of the Movement for a Democratic Philippines, an association of students, workers and peasants wrote a letter to respondent, Mayor of Manila Antonio Villegas, applying for a permit to hold a rally (at the Plaza Miranda on Feb 26 [Tuesday], from 4:00-11:00pm).

On the same day, respondent denied his request saying that "In the greater interest of the community, this office, guide by a lesson gained from the events of the past few weeks, has temporarily adopted the policy of not issuing any permit for the use of Plaza Miranda for rallies or demonstration during weekdays." He suggested that they use the Sunken Gardens and to hold the rally earlier during the day in order that it may end before dark.

Petitioner filed a suit contesting the Mayor's action on the ground that it is violative of the petitioner's right, among others, to peaceably assemble and to petition. In reply to the contention of the responded that the permit to hold a rally was not being denied and in fact the Sunken Gardens was offered as a place of said rally, the petitioner argued that for obvious reasons the right to peaceful assembly cannot be fully enjoyed without the corresponding right to use public places for the purpose and that therefore, a denial of the use of public place amounts to the violation of the freedom of assembly. For the complete enjoyment of the right, it may be necessary that a particular public place be used for purposes of greater publicity and effectiveness.

ISSUE: Whether or not there was a denial of the right to freedom of Assembly. NO.

RATIO:
Mayor possesses reasonable discretion to determine the streets or public places to be used in order to secure convenient use thereof and provide adequate and proper policing to minimize the risk of disorder and maintain public safety and order.

(Note that the Mayor expressed his willingness to grant permits for assemblies at Plaza Miranda during weekends and holidays when they would not cause unnecessarily great disruption of the normal activities of the community and has further offered Sunken Gardens as an alternative.) The court believes in the Mayor's appraisal that a public rally at the Plaza Miranda, as compared to the Sunken Gardens, poses a clearer and more imminent danger of public disorders, breaches of peace, and criminal acts. Noting that every time such assemblies are announced, the community is placed in such a state of fear and tension that offices are closed early and employees dismissed, storefronts boarded up, classes suspended, and transportation disrupted, to the general detriment of the public.

Villamor, concurring:
The right to freedom of assembly is not denied, but this right is neither unlimited nor absolute. The Mayor did not refuse to grant the permit, he offered an alternative which is not unreasonable. There being no arbitrary refusal, petitioner is not entitled to the writ.

Castro and Fernando, dissenting:
The right to freedom of assembly, while not unlimited is entitled to be accorded the utmost deference and respect. The effect of the Mayor's ground for refusal amounts to one of prior restraint of a constitutional right, which is not allowable. Laws subjecting freedoms to the prior restraint of a license, without narrow, objective and definite standards to guide the licensing authority, is unconstitutional.

NOTES:

Right of Assembly – a right on the part of citizens to meet peaceably for consultation in respect to public affairs.
Right to Petition – any person or group of persons can apply, without fear of penalty, to the appropriate branch or office of the government for redress of grievances.
Guide to interpretation – The spirit of our free institutions allows the broadest scope and widest latitude in public parades and demonstrations, whether religious or political. The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change.
Limitations – any citizen may criticize his government and government officials. However, such criticism should be specific and therefore constructive, specifying particular objectionable actuations of the government; it being reasoned or tempered, and not of contemptuous condemnation of the entire government set-up. Criticism is within the range of liberty of speech unless the intention and effect be seditious. When the intention and effect is seditious, the constitutional guarantees of freedom of speech and press and of assembly and petition must yield to punitive measures designed to maintain the prestige of constituted authority, the supremacy of the Constitution and the laws and the existence of the State. These rights are subject to regulation, termed the sovereign "police power."
Criterion for permissible restriction – The "Dangerous Tendency" rule is explained as "if the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonable calculated to incite persons to acts of force, violence or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent."
This doctrine was later superseded by the "Clear and Present Danger" rule which lays down the test: "whether the words are used in such circumstances and are of a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." It means that the evil consequence of the comment or utterance must be extremely serious and the degree of imminence extremely high before the utterance can be punished. Clear: a causal connection with the danger of the substantive evil arising from the utterance questioned. Present: imminent, urgent and impending. Danger: requires an unusual quantum of proof.

PBM EMPLOYEES vs. PBM

1973
Makasiar, J.

FACTS:

1. Philippine Blooming Mills Employees Organization (PBMEO) is a legitimate labor union composed of the employees of the respondent Philippine Blooming Mills Co., Inc. The leaders of the union that on March 1, 1969, they decided to stage a mass demonstration at Malacañang on March 4, 1969, in protest against alleged abuses of the Pasig police, to be participated in by the workers in the first shift (from 6 A.M. to 2 P.M.) as well as those in the regular second and third shifts (from 7 A.M. to 4 P.M. and from 8 A.M. to 5 P.M., respectively); and that they informed the Company of their proposed demonstration.

2. On March 2, 1969 the company learned of the projected mass demonstration at Malacañang. A meeting between the members of the union and the Company was called by the Company the next day. The Company asked the union panel to confirm or deny said projected mass demonstration at Malacañang on March 4. PBMEO confirmed the planned demonstration and stated that the demonstration cannot be cancelled because it has already been agreed upon in the meeting. PBMEO explained further that the demonstration has nothing to do with the Company because the union has no quarrel or dispute with Management.

3. The Management informed PBMEO that the demonstration is an inalienable right of the union guaranteed by the Constitution but emphasized, however, that any demonstration for that matter should not unduly prejudice the normal operation of the Company. The Company warned the PBMEO representatives that workers who belong to the first and regular shifts, who without previous leave of absence approved by the Company, the officers present who are the organizers of the demonstration, who shall fail to report for work the following morning shall be dismissed, because such failure is a violation of the existing CBA and, therefore, would be amounting to an illegal strike.

4. At about 5:00 P.M. on March 3, 1969, another meeting was convoked by the Company wherein it reiterated and appealed to the PBMEO representatives that while all workers may join the Malacañang demonstration, the workers for the first and regular shift of March 4, 1969 should be excused from joining the demonstration and should report for work; and thus utilize the workers in the 2nd and 3rd shifts in order not to violate the provisions of the CBA, particularly Article XXIV: NO LOCKOUT — NO STRIKE'. All those who will not follow this warning of the Company shall be dismissed; the Company reiterated its warning that the officers shall be primarily liable being the organizers of the mass demonstration. The union panel countered that it was rather too late to change their plans inasmuch as the Malacañang demonstration will be held the following morning.

5. Because the petitioners and their members numbering about 400 proceeded with the demonstration despite the pleas of the Company that the first shift workers should not be required to participate in the demonstration and that the

workers in the second and third shifts should be utilized for the demonstration from 6 A.M. to 2 P.M. on March 4, 1969, a charge against petitioners and other employees who composed the first shift was filed in the Court of Industrial Relations (CIR), charging them with a "violation of Section 4(a)-6 in relation to Sections 13 and 14, as well as Section 15, all of Republic Act No. 875, and of the CBA providing for 'No Strike and No Lockout.'

6. In their answer, petitioners claim that they did not violate the existing CBA because they gave the Company prior notice of the mass demonstration on March 4, 1969; that the said mass demonstration was a valid exercise of their constitutional freedom of speech against the alleged abuses of some Pasig policemen; and that their mass demonstration was not a declaration of strike because it was not directed against the respondent firm.

7. The CIR found the PBMEO guilty of bargaining in bad faith and the leaders of the union as directly responsible for perpetrating the said unfair labor practice and were, as a consequence, considered to have lost their status as employees of the respondent Company.

8. Petitioners filed with the CIR a petition for relief from the CIR dismissal order, on the ground that their failure to file their motion for reconsideration on time was due to excusable negligence and honest mistake committed by the president of the Union and of the office clerk of their counsel. Without waiting for any resolution on their petition for relief, petitioners filed a notice of appeal with the SC.

ISSUE:

WON the CIR was correct in dismissing the officers of the union for unfair labor practice for organizing and pushing through with the rally at Malacañang despite the pleas of the company for workers who belong to the 1st shift to report to work.

DECISION:

1. The order of the CIR was declared null and void.
2. The SC ordered the reinstatement of eight (8) union leaders who were dismissed, with full back pay from the date of their separation from the service until re instated, minus one day's pay and whatever earnings they might have realized from other sources during their separation from the service.

RATIO:

1. **The demonstration held by petitioners before Malacañang was against alleged abuses of some Pasig policemen, not against their employer. The demonstration was purely and completely an exercise of their freedom of expression in general and of their right of assembly and petition for redress of grievances in particular before appropriate governmental agency, the Chief Executive, against the police officers of the municipality of Pasig.**

2. The freedoms of expression and of assembly as well as the right to petition are included among the immunities reserved by the sovereign people, in the rhetorical aphorism of Justice Holmes, to protect the ideas that we abhor or hate more than the ideas we cherish; or as Socrates insinuated, not only to protect the minority who want to talk, but also to benefit the majority who refuse to listen.

3. The rights of free expression, free assembly and petition, are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. **Thru these freedoms the citizens can participate not merely in the periodic establishment of the government through their suffrage but also in the administration of public affairs as well as in the discipline of abusive public officers. The citizen is accorded these rights so that he can appeal to the appropriate governmental officers or agencies for redress and protection as well as for the imposition of the lawful sanctions on erring public officers and employees.**

4. The petitioners exercised their civil and political rights for their mutual aid protection from what they believe were police excesses. As matter of fact, it was the duty of herein private respondent firm to protect herein petitioner Union and its members fro the harassment of local police officers. It was to the interest herein private respondent firm to rally to the defense of, and take up the cudgels for, its employees, so that they can report to work free from harassment, vexation or peril and as consequence perform more efficiently their respective tasks enhance its productivity as well as profits. Herein respondent employer did not even offer to intercede for its employees with the local police.

5. In seeking sanctuary behind their freedom of expression well as their right of assembly and of petition against alleged persecution of local officialdom, the employees and laborers of herein private respondent firm were fighting for their very survival, utilizing only the weapons afforded them by the Constitution — the untrammelled enjoyment of their basic human rights. The pretension of their employer that it would suffer loss or damage by reason of the absence of its employees from 6 o'clock in the morning to 2 o'clock in the afternoon, is a plea for the preservation merely of their property rights. Such apprehended loss or damage would not spell the difference between the life and death of the firm or its owners or its management. The employees' pathetic situation was a stark reality — abused, harassment and persecuted as they believed they were by the peace officers of the municipality. As above intimated, the condition in which the employees found themselves vis-a-vis the local police of Pasig, was a matter that vitally affected their right to individual existence as well as that of their families.

6. To regard the demonstration against police officers, not against the employer, as evidence of bad faith in collective bargaining and hence a violation of the collective bargaining agreement and a cause for the dismissal from employment of the demonstrating employees, stretches unduly the compass of the collective bargaining agreement, is "a potent means of inhibiting speech" and therefore inflicts a moral as well as mortal wound on the constitutional guarantees of free expression, of peaceful assembly and of petition.

7. The mass demonstration staged by the employees on March 4, 1969 could not have been legally enjoined by any court, such an injunction would be trenching upon the freedom expression of the workers, even if it legally appears to be illegal picketing or strike. The respondent Court of Industrial Relations in the case at bar concedes that the mass demonstration was not a declaration of a strike "as the same not rooted in any industrial dispute although there is concerted act and the occurrence of a temporary stoppage work."

8. The respondent company is the one guilty of unfair labor practice. Because the refusal on the part of the respondent firm to permit all its employees and workers to join the mass demonstration against alleged police abuses and the subsequent separation of the eight (8) petitioners from the service constituted an unconstitutional restraint on the freedom of expression, freedom of assembly and freedom petition for redress of grievances.

JBL REYES vs. BAGATSING

November 9, 1983
CJ Fernando

FACTS:
J.B.L. Reyes, on behalf of the Anti-Bases Coalition, sought a permit from the City of Manila to hold a peaceful march and rally on October 26, 1983 from Luneta to the US Embassy. Once there, the rallyists would deliver a petition to the US Ambassador based on the resolution adopted on the last day by the International Conference for General Disarmament, World Peace and the Removal of All Foreign Military Bases held in Manila. On October 19, such permit was denied. However, petitioner was unaware of such a fact as the denial was sent by ordinary mail. The reason for refusing a permit was due to a)"police intelligence reports which strongly militate against the advisability of issuing such permit at this time and at the place applied for" b) Ordinance 7295, in accordance with the Vienna Convention, prohibits rallies or demonstrations within a radius of 500 feet from any foreign mission or chancery. On October 20, the petitioner filed this suit for mandamus with alternative prayer for writ of preliminary mandatory injunction. On October 25, 1983 a minute resolution was issued by the Court granting the mandatory injunction prayed for on the ground that there was no showing of the existence of a clear and present danger of a substantive evil that could justify the denial of a permit.

ISSUE/HELD:
Should permit be granted by the City of Manila? YES

RATIO:
To justify limitations on freedom of assembly there must be proof of sufficient weight to satisfy the Clear and Present Danger Test. The general rule is that a permit should recognize the right of the applicants to hold their assembly at a public place of their choice. However, another place may be designated by the licensing authority if it be shown that there is a clear and present danger. The mere assertion that subversives may infiltrate the ranks of the demonstrators does not suffice. Furthermore, there was assurance that the police force is in a position to cope with such emergency should it arise. In this case, there is no showing that the circumstances would satisfy such a test.

Ordinance No. 7295 of the City of Manila prohibiting the holding or staging of rallies or demonstrations within a radius of five hundred (500) feet from any foreign mission or chancery finds support in Article 22 of the Vienna Convention on Diplomatic Relations.
However, there is no showing that that the distance between the chancery and the gate is less than 500 feet. Even if it were, the ordinance would not be conclusive because it still must be measured against the requirement of the Constitution.

Rules on Assembly and Petition:
The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority.

Justice Makasiar (Concurring): With the qualification that, in case of conflict, the Philippine Constitution - particularly the Bill of Fights should prevail over the Vienna Convention.

Justice Aquino (Dissenting): Voted to dismiss the petition on the ground that the holding of the rally in front of the US Embassy violates Ordinance No. 7295 of the City of Manila.

MALABANAN vs. RAMENTO

(05/21/84)
Fernando, C.J.

FACTS: Petitioners were officers of the G. Araneta University Supreme Student Council who were granted a permit to hold a meeting from 8am-12nn on Aug 27, '82. Along with other students they held a general assembly at the Vet Med & Animal Sci basketball court, not in the

2nd flr lobby where the perit stated. In such gathering they manifested in vehement & vigorous languange their opposition to the proposed merger of the Institutes of Animal Science & Agriculture. By 10:30 they marched to the Life Science bldg (outside of he area of the permit) & continued their rally, disrupting classes that were being held. The student were notified via a memo on Sept 9 that they were under preventive suspension. Respondent Ramento as NCR Director of the Ministry of Education found the petitioners guilty of violating *par.146(c) of the Manual for Private Schools* & suspended them for 1 yr. On Nov 16, SC issued a TRO enjoining the respondents from enforcing the order, thus allowing the students to enroll.

Petitioners: (Malabanan, Jalos, Lucas, Leonero, Lee-students)
- invoke their right ot peaceably assemble & freedom of speech

Respondents: (Ramento-NCR Dir; G.Araneta University Foundation; Mijares-President GAUF;etc)
- maintain that there was no grave abuse of discretion in affirming the decision of the Universirty finding the students guilty
- the motion is moot & academic in light of the TRO which allowed the students to enroll & for Malabanan, Lucas & Leonero to finish their schooling
- object to the tenor of the speeches of the students
- petitioners failed to exhaust administrative remedies

ISSUES:
1. w/n the petition is moot & academic
2. w/n on the facts of the case there was an infringement of the right to peaceably assemble & free speech

HELD:
1. **YES**, if viewed solely from the fact of the TRO allowing the peititioners to enroll the ensuing semester, with 3 of them doing so & the two equally entitiled to do so, plus the fact that more than 1 yr has elasped from the issuance of the Ramento's decision. But the Court decides to tackle the questions on view of the constitutional nature of the right to free speech & peaceable assembly
2. **YES**. According to *Reyes v Bagatsing* the right to peaceably assemble & free speech are "both embraced in the concept of freedom of expression, w/c is identified w/ the liberty to discuss publicly & truthfully any matter of public interest w/o censorship or punishment except on a showing...of a clear & present danger of a substantive evil w/c the state has the right to prevent." Also, "the applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where & the time when the it will take place. If it were a public place, only the consent of the owner or the one entitled to legal possesion is required." Such a permit was sought by petitioner-students & was granted. The Court also held, consistent w/ Tinker v Des Moines, that the students were covered by the constitutional right to free speech & expression, "but conduct by the student...that materially disrupts classwork or involves the substantial disorder or invasion of the rights of others is...not immunized by the consitutional guarantee of the freedom of speech." using this standard, the SC held that the rights to free expression of the petitioners where violated.
re: respondents objecting to the tenor of the speeches of the students: "That there would be a vigorous presentation of views opposed to the merger..was to be expected". The student leaders, being goaded on by an enthusiastic crowd, uttering extremely critical statements was "understandable"
BUT: it does not follow that the students would be totally absolved of the events, since they did transgress the limits of their permit. Private respondents were within their rights in imposing diciplinary actions. But the punishment should be proportionate to the transgression. While the discretion of the respondents is recognized, the rule of reason dictates a lesser penalty.

Petition granted. Decision nullified & set aside.

Free Speech & Suffrage

GONZALEZ vs. COMELEC

(April 18, 1969)
Ponente: Fernando, J.

FACTS:

- Petitioners challenge the validity of two sections now included in the Revised Election Code under Republic Act No. 4880 which was approved and took effect on June 17, 1967

The Act:

1) Prohibits the too early nomination of candidates

"It shall be unlawful for any political party, political committee or political group to nominate candidates for any elective public office voted for at large earlier than 150 days immediately preceding an election, and for any other elective public office earlier than 90 days..."

2) Limits the period of election campaign or partisan political activity

"It shall be unlawful for any person... or any group... to engage in an election campaign or partisan political activity except during the period 120 days immediately preceding an election (national) and 90 (local)..."

*"**Candidate** refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate or has been nominated by any political party. **Election campaign**...refers to acts design to have a candidate elected ot not or promote the candidacy of a person or persons to public office."*

- It is claimed by the petitioners (Cabigao was at the time of filing of petition an incumbent councilor in the 4th District of Manila and the Nationalista Party official candidate for Vice-Mayor to which he was subsequently elected; Gonzales is a private individual and a registered voter) that **the enactment of RA 4880 under the guise of regulation is but a clear and simple abridgment of the constitutional rights of freedom of speech, assembly and the right to form associations for purposes not contrary to law.**

- For the Legislature, the R.A. No. 4880 was passed to insure a free, orderly and honest election by regulating conduct determined by Congress to be harmful because if unrestrained and carried for a long

period before elections it necessarily entails huge expenditures, precipitates violence and even death... resulting in the corruption of the electorate and inflicts dire consequences upon public interests.

ISSUE: WON the enforcement of RA No. 4880 would prejudice their basic rights such as their freedom of speech, their freedom of assembly and their right to form associations... for purposes not contrary to law, guaranteed under the Philippine Constitution.

HELD: Yes, but there is a lack of the necessary vote to declare it unconstitutional

DISCUSSION OF THE BASIC RIGHTS INVOLVED...

- Freedom of expression is not absolute... There are other societal values that press for recognition. How is it to be limited then?

1. **Clear and Present Danger Rule**
   - Evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before it can be punished
   - Brandeis: Evil apprehended is so imminent that it may befall before there is opportunity for full discussion
   - Holmes: It is a question of proximity and degree

1. **Dangerous Tendency Rule**
   - If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable.

- Freedom of assembly... the very idea of a gov't, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances... complements the right of free speech.
  - Limited when their purpose is contrary to law

DISCUSSION OF THE ISSUES INVOLVED…

- It cannot be denied that the limitations imposed by the statute on the rights of free speech, press and assembly and association cut deeply into their surface but it also cannot be denied that evils substantial in character taint the purity of the electoral process
  - **But even with such evils present the clear and present danger doctrine rightly viewed requires not only should there be an occasion for the imposition of such restriction but also that they be limited in scope.**
- In striving to remove vagueness the statute listed down the acts included in the terms "election campaign" and "partisan political activity"...
  - **No unconstitutional infringement exists** insofar as the formation of organizations, associations, etc. for the purpose of soliciting votes or undertaking any campaign and/or propaganda for or against a candidate or party... prohibition against giving, soliciting, receiving contribution for election purposes is free from constitutional infirmity... holding political conventions, rallies, etc. for the purpose of soliciting votes or for campaign or propaganda also should not be annulled.
  - The majority of the Court is thus of the belief that the solicitation or undertaking of any campaign or propaganda... by an individual, the making of speeches, commentaries, holding interviews for or against election of any party or candidate, publication or distribution of campaign materials **suffer from the corrosion of invalidity. It lacks however one more affirmative vote to call for a declaration of unconstitutionality.**
- It is the opinion of the majority, though lacking the necessary vote for an adjudication of invalidity, that **the challenged statute could have been more narrowly drawn and the practices prohibited more precisely delineated to satisfy the constitutional requirements as to a valid limitation under the clear and present danger doctrine.**
- For the minority the provisos of the statute saying, "That simple expressions or opnions and thoughts concerning the election shall not be considered as part of an election campaign and that nothing in the Act shall be understood to prevent any person from expressing his views on current political problems or issues or from mentioning the names of the candidates... whom he supports" if properly implemented, the barrier to free expression becomes minimal and far from unwarranted.
- They are also of the opinion that the need for adjudication arises only if in the implementation of the Act, there is in fact an unconstitutional application of its provisions... the present action for them then is immature.

SANIDAD vs. COMELEC

(January 29, 1990)

J. Medialdea

FACTS:

- Petitioner assails the constitutionality of **Sec 19 of Comelec Resolution #2167** on the ground that it violates the constitutional guarantees of the freedom of expression and of the press.
- **RA 6766 or "An Act Providing for an Organic Act for the Cordillera Autonomous Region"** mandated that the City of Baguio and the provinces consisting of the Cordilleras shall take part in a plebiscite for the ratification of said Organic Act on Dec 27, 1989. The assailed Resolution was promulgated to govern the conduct of the plebiscite on the said Organic Act for the CAR.
- **Sec 19 of Comelec Resolution #2167** states:
  "Sec 19. *Prohibition on columnists, commentators or announcers.* – During the plebiscite campaign period, on the day before and on plebiscite day, no mass media columnist, commentator, announcer or personality shall use his column or radio or television time to campaign for or against the plebiscite issues."
- Petitioner, who claims to be a newspaper columnist of Overview for the Baguio Midland Courier, maintains that as a columnist, his column obviously and necessarily contains and reflects his opinions, views and beliefs. Said Comelec Resolution 2167

constitutes a prior restraint on his constitutionally guaranteed freedom of the press and further imposes subsequent punishment for those who may violate it because it contains a penal provision. He believes that if media practitioners were allowed to express their views on the issue, it would in fact help in the gov't drive and desire to disseminate information, and hear, as well as ventilate, all sides of the issue.

- Respondent Comelec maintains that the questioned provision is a valid implementation of its power to supervise and regulate media during election or plebiscite periods as enunciated in **Sec 4, Art IX of the Consti.** They state further that the Resolution does not absolutely bar petitioner from expressing his views. He may still express his views or campaign for or against the act through the **Comelec space and airtime,** which is provided in **Sec 90 & 92 of BP 881.**

ISSUE → HELD: WON Sec 19 of Comelec Resolution #2167 is unconstitutional ▪ YES

RATIO:

- Respondent Comelec relies much on Art IX of the Consti & Sec 11 of RA 6646 (Electoral Reform Law) as the basis for the promulgation of the questioned Resolution. However, what was granted to the Comelec by Art IX of the Consti was the power to supervise and regulate the use and enjoyment of *franchises, permits or other grants* issued for the operation and transportation of other public utilities, media or communication to the end that equal opportunity, time and space, and the right to reply for public information campaigns and forums *among candidates* are ensured. The evil sought to be avoided is the possibility that a franchise holder may favor or give any undue advantage *to a candidate* in terms of advertising space or radio or television time. This is the reason why a columnist, commentator, announcer or personality, *who is also a candidate for any elective office* is required to take a leave of absence from his work during the campaign period.
- Neither Art IX of the Consti nor Sec 11 of RA 6646 can be construed to mean that the Comelec has been granted the right to supervise and regulate the exercise *by media practitioners themselves* of their right to expression during plebiscite periods. In fact, **there are no candidates involved in a plebiscite.** Therefore, Sec 19 of Comelec Resolution #2167 has no statutory basis.
- Respondent's argument with regard to Sec 90 & 92 of BP 881 is not meritorious. While the limitation does not absolutely bar petitioner's freedom of expression, it is still *a restriction on his choice* of the forum where he may express his view.
- Plebiscite issues are matters of public concern and importance. The people's right to be informed and to be able to freely and intelligently make a decision would be better served by access to an unabridged discussion of issues, including the forum. The people affected by the issues presented in a plebiscite should not be unduly burdened by restrictions on the forum where the right to expression may be exercised.

Petition granted; Sec 19 of Comelec Resolution 2167 is declared null and void and unconstitutional.

NATIONAL PRESS CLUB vs. COMELEC

J. Feliciano

FACTS:

Petitioners are:

1. representatives of the mass media which are prevented from selling or donating space and time for political advertisements;
2. two (2) individuals who are candidates for office in the coming May 1992 elections;
3. taxpayers and voters who claim that their right to be informed of election issues and of credentials of the candidates is being curtailed.

Petitioners argue that : **Sec 11 (b) of Republic Act No. 6646 invades and violates the constitutional guarantees comprising freedom of expression.**

They maintain that: the prohibition:

1. amounts to censorship coz it selects and singles out for suppression and repression with criminal sanctions, only publications of a particular content, namely, media-based election or political propaganda during the election period of 1992.
2. is a derogation of media's role, function and duty to provide adequate channels of public information and public opinion relevant to election issues
3. abridges the freedom of speech of candidates, and that the suppression of media-based campaign or political propaganda except those appearing in the COMELEC space of the newspapers and on COMELEC time of radio and television broadcasts, would bring about a substantial reduction in the quantity or volume of information concerning candidates and issues in the election thereby curtailing and limiting the right of voters to information and opinion.

Sec 11(b) RA 6646 Electoral Reforms Law of 1987: *Prohibited Forms of Election Propaganda*

b) for any *newspapers, radio broadcasting or television station, other mass media,* or any person making use of the mass media *to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881.*

taken together with Sections 90 and 92 of B.P. Blg. 881, **Omnibus Election Code** of the Philippines:

Sec. 90. *COMELEC space.* — The Commission *shall procure space* in at least one newspaper of general circulation wherein candidates can announce their candidacy. Such space shall be *allocated, free of charge, equally* and *impartially* by the Commission *among all candidates*

Sec. 92. *COMELEC time.* — The Commission *shall procure radio and television time* which shall be *allocated equally* and *impartially* among the candidates within the area of coverage of all radio and television stations.

ISSUES:

1. WON sec 11(b) of RA 6646 is unconstitutional.
2. WON the provisions constitute a permissible exercise of the power of supervision or regulation of the operations of communication and information enterprises during an election period

HELD & RATIO:

1. **No. sec 11(b) is not unconstitutional.** There exists a reasonable nexus with the constitutionally sanctioned objective.

Purpose: equalizing the situations of rich and poor candidates by preventing the rich from enjoying the undue advantage offered by political advertisements

Means: prohibit the sale or donation of print space and air time "for campaign or other political purposes" except to the COMELEC (COMELEC time & space)

- Purpose is not only a legitimate one but it also has a constitutional basis: of the 1987 Constitution

Art IX C sec 4. The Commission [on Elections] may, during the election period, *supervise or regulate the enjoyment or utilization of all franchises or permits ...* Such *supervision* or *regulation* shall ***aim to ensure equal opportunity, time, and space, and the right to reply,*** **including reasonable, equal rates** therefor, *for public information campaigns and forums among candidates* in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

ART II, sec 26: the egalitarian demand that "the State shall guarantee *equal access to opportunities for public service* and prohibit political dynasties as may be defined by law."

1. **Yes. Sec 11(b) is still within the permissible bounds of supervision** –regulation of media operations during the election period.
   - the rights of free speech and free press are not unlimited rights for they are not the only important and relevant values even in the most democratic of polities, equality of opportunity to proffer oneself for public office, without regard to the level of financial resources that one may have at one's disposal is also an important value
   - such restrictive impact upon freedom of speech & freedom of the press is circumscribed by certain limitations:
     1. limited in the duration of its applicability & enforceability – limited only during the election period from Jan 12- June 10, 1992)
     2. limited in its scope of application – it only covers political ads of particular candidates & does not extend to reporting of news or commentaries or other expressions of belief
     3. limitation exempts from its prohibition the purchase by or donation to the COMELEC of print space or air time, which space and time COMELEC is then affirmatively required to allocate on a fair and equal basis, free of charge, among the individual candidates for elective public offices in the province or city served by the newspaper or radio or television station.— candidates are still given equal media exposure in the COMELEC time & space that shall give equal opportunities to all the candidates irregardless of their financial status
   - Sec 11b does *not* cut off the flow of media reporting, opinion or commentary about candidates, their qualifications and platforms and promises. Newspaper, radio broadcasting and television stations remain quite free to carry out their regular and normal information and communication operations.
   - Sec 11b does *not* authorize any intervention and much less control on the part of COMELEC in respect of the *content* of the normal operations of media, nor in respect of the *content* of political advertisements which the individual candidates are quite free to present within their respective allocated COMELEC time and COMELEC space.
   - There is here no censorship, whether disguised or otherwise. What Section 11 (b), viewed in context, in fact does is to limit *paid partisan political advertisements* to *fora other than* modern mass media, and to "COMELEC time" and "COMELEC space" in such mass media.
   - The freedom of speech & access to media, not being absolute, its limitation bears a clear and reasonable connection with the constitutional objective in equalizing situations of the candidates in order to promote equal opportunity, and equal time and space, for political candidates to inform all and sundry about themselves.
   - The nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded. Repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate. The right of the general listening and viewing public to be free from such intrusions and their subliminal effects is at least as important as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.

ADIONG vs. COMELEC

FACTS:
On January 13, 1992, the COMELEC promulgated Resolution No. 2347 pursuant to its powers granted by the Constitution, the Omnibus Election Code, Republic Acts Nos. 6646 and 7166 and other election laws.

Section 15(a) of the resolution provides:
"*SEC. 15. Lawful Election Propaganda. -The following are lawful election propaganda:*
(a) Pamphlets, leaflets, cards, decals, stickers, handwritten or printed letters, or other written or printed materials not more than eight and one-half (8-1/2) inches in width and fourteen (14) inches in length: Provided, That decals and stickers may be posted only in

any of the authorized posting areas provided in paragraph (f) of Section 21 hereof."

Section 21 (f) of the same resolution provides:
"*SEC. 21(f). Prohibited forms of election propaganda It is unlawful:*
(f) To draw, paint, inscribe, post, display or publicly exhibit any election propaganda in anyplace, whether public or private, mobile or stationary, except in the COMELEC common posted areas and/or billboards, at the campaign headquarters of the candidate or political party, organization or coalition, or at the candidate's own residential house or one of his residential houses, if he has more than one: Provided, that such posters or election propaganda shall not exceed two (2) feet by three (3) feet in size."

The statutory provisions sought to be enforced by COMELEC are Section 82 of the Omnibus Election Code on lawful election propaganda.

Petitioner Blo Umpar Adiong, a senatorial candidate in the May 11, 1992 elections assails the COMELEC's Resolution as it prohibits the posting of decals and stickers in 'mobile" places like cars and other moving vehicles. According to him such prohibition is violative of Section 82 of the Omnibus Election Code and Section 11(a) of Republic Act No. 6646. In addition, the petitioner believes that with the ban on radio, television and print political advertisements, he, being a neophyte in the field of politics stands to suffer grave and irreparable injury with this prohibition. The posting of decals and stickers on cars and other moving vehicles would be his last medium to inform the electorate that he is a senatorial candidate in the May 11, 1992 elections, Finally, the petitioner states that as of February 22, 1992 he has not received any notice from any of the Election Registrars in the entire country as to the location of the supposed "Comelec Poster Areas."

ISSUE:
WON the Commission on Elections may prohibit the posting of decals and stickers on "mobile" places, public or private, and limit their location or publication to the authorized posting areas that it fixes.

HOLDING:
The petition is impressed with merit and is granted. The COMELEC's probibition on posting of decals and stickers on "mobile' places whether public or private except in designated areas provided for by the COMELEC itself is null and void on constitutional grounds.

RATIO:
1. The prohibition unduly infringes on the citizen's fundamental right of free speech enshrined in the Constitution (Sec. 4, Article III)

There is no public interest substantial enough to warrant the kind of restriction involved in this case.There are various concepts surrounding the freedom of speech clause which we have adopted as part and parcel of our own Bill of Rights provision on this basic freedom.All of the protections expressed in the Bill of Rights are important but we have accorded to free speech the status of a preferred freedom.

This qualitative significance of freedom of expression arises from the fact that it is the matrix, the indispensable condition of nearly every other freedom. It is difficult to imagine bow the other provisions of the Bill of Rights and the right to free elections may be guaranteed if the freedom to speak and to convince or persuade is denied and taken away.

We have adopted the principle that debate on public issues should be uninhibited, robust, and wide open. Too many restrictions will deny to people the robust, uninhibited, and wide open debate, the generating of interest essential if our elections will truly be free, clean and honest.

The determination of the limits of the Government's power to regulate the exercise by a citizen of his basic freedoms in order to promote fundamental public interests or policy objectives is always a difficult and delicate task. We recognize the fact that under the Constitution, the COMELEC during the election period is granted regulatory powers. The variety of opinions expressed by the members of this Court in the recent case of National Press Club v. Commission on Elections and its companion cases underscores this difficulty. However, i**n the National Press Club case, the Court had occasion to reiterate the preferred status of freedom of expression even as it validated COMELEC regulation of campaigns through political advertisements.**

Another problem is the fairly limited period for campaigning. For persons who have to resort to judicial action to strike down requirements which they deem inequitable or oppressive, a court case may prove to be a hollow remedy. By the time we revoke an unallowably restrictive regulation or ruling, time being of the essence to a candidate may have lapsed and irredeemable opportunities may have been lost. **When faced with border line situations where freedom to speak by a candidate or party and freedom to know on the part of the electorate are invoked against actions intended for maintaining clean and free elections, the police, local officials and COMELEC should lean in favor of freedom.**

We examine the limits of regulation and not the limits of free speech. The carefully worded opinion of the Court, through Mr. Justice Feliciano, shows that regulation of election campaign activity may not pass the test of validity if it is too general in its terms or not limited in time and scope in its application, if it restricts one's expression of belief in a candidate or one's opinion of his or her qualifications, if it cuts off the flow of media reporting, and if the regulatory measure bears no clear and reasonable nexus with the constitutionally sanctioned objective.

The posting of decals and stickers in mobile places like cars and other moving vehicles does not endanger any substantial government interest. There is no clear public interest threatened by such activity so as to justify the curtailment of the cherished citizen's right of free speech and expression. Under the clear and present danger rule not only must the danger be patently clear and pressingly present but the evil sought to be avoided must be so substantive as to justify a clamp over one's mouth or a writing instrument to be stilled:

“priority (for freedom of speech) gives these liberties a sanctity and a sanction not permitting dubious intrusions and it is the character of the right, not of the limitation, which determines what standard governs the choice.” The rational connection between the remedy provided and the evil to be curbed, which in other context might support legislation against attack on due process grounds, will not suffice.

The regulation strikes at the freedom of an individual to express his preference and, by displaying it on his car, to convince others to agree with him. A sticker may be furnished by a candidate but once the car owner agrees to have it placed on his private vehicle, the expression becomes a statement by the owner, primarily his own and not of anybody else.

2. The questioned prohibition premised on the statute and as couched in the resolution is void for overbreadth.

A statute is considered void for overbreadth when "it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject, to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

"In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.

The resolution prohibits the posting of decals and stickers not more than eight and one-half (8-1/2) inches in width and fourteen (14) inches in length in any place, including mobile places whether public or private except in areas designated by the COMELEC. Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated, Section 1, Article III of the Bill of Rights provides that no person shall be deprived of his property without due process of law.

"Property is more than the mere thing which a person owns, it includes the right to acquire, use, and dispose of it; and the Constitution, in the 14th Amendment, protects these essential attributes.

The prohibition would not only deprive the owner who consents to such posting of the decals and stickers the use of his property but more important, in the process, it would deprive the citizen of his right to free speech and information.

The right to property may be subject to a greater degree of regulation but when this right is joined by a "liberty" interest, the burden of justification on the part of the Government must be exceptionally convincing and irrefutable. The burden is not met in this case.

Section 11 of Rep. Act 6646 is so encompassing and invasive that it prohibits the posting or display of election propaganda in any place, whether public or private, except in the common poster areas sanctioned by COMELEC. This means that a private person cannot post his own crudely prepared personal poster on his own front door or on a post in his yard.

3. Tthe constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Art 11, Sec 26 and Art XIII, Sec I in relation to Art IX (c) Sec 4 of the Constitution, is not impaired by posting decals and stickers on private vehicles.

Compared to the paramount interest of the State in guaranteeing freedom of expression, any financial considerations behind the regulation are of marginal significance.

In sum, the prohibition on posting of decals and stickers on 'mobile" places whether public or private except in the authorized areas designated by the COMELEC becomes censorship which cannot be justified by the Constitution:

Use of Private Property as a forum for other’s speech

1980

PRUNEYARD SHOPPING CENTER vs. ROBINS

FACTS:

PruneYard is a privately-owned shopping center open to public for purpose of encouraging the patronizing of its commercial establishments. Appellees are hschool students who sought to solicit support for their opposition to a UN resolution against Zionism. One Sat, they set up a table in a corner of PruneYard’s central courtyard. They distributed pamphlets, asked passersby to sign petitions (were sent to Pres and Congressmen). They were peaceful and orderly. None of PruneYard’s patrons objected.
Pursuant to PruneYard’s policy “not to permit any visitor or tenant to engage in any publicly expressive activity including the circulation of petitions, that’s not directly related to its commercial purposes”, the security guard asked them to leave because they were violating PruneYard regulations. Guard suggested they may transfer to the public sidewalk at the PruneYard’s perimeter. They left and filed this lawsuit seeking to enjoin PY from denying them access to it for such purpose.
ISSUE:
WON Do state constitutional provisions, construed to permit individuals to exercise free speech and petition rights on the property of a privately owned center to which the public is invited, violate the center’s property rights and his free speech rights?
HELD:
NO.

RATIO:
- The State, in the exercise of police power and its sovereign right to adopt Constitutional individual liberties, may adopt restrictions on private property so long as the restrictions do not amount to a taking

without just compensation or contravene any law. Appellants were not denied their property without due process of law. They failed to show that due process test whereby the challenged law must not be reasonable, arbitrary or capricious and the means selected must have a real and substantial relation to the obj obtained, is not satisfied by the State's asserted interest in promoting more expansive rights of free speech.

- While it is true that the 5th A guarantee against the taking of property without just compensation includes the "right to exclude others," nothing suggests that preventing appellants from prohibiting this sort of activity will unreasonably impair the value or use of their property as a shopping center. Appellees were orderly and PruneYard could have restricted expressive activity by adopting time, place and manner regulations that would minimize interference with its commercial functions.
- As to a private owner's right not to be forced by the State to use his property as a forum for the speech of others, the shopping center by choice of its owner is not limited to the personal use of appellants or the owners themselves. It is a business establishment that's open to the public. The views expressed by those who come and go will not be identified with those of the owner. Plus, the owners may disavow any connection with the message by simply posting signs. Second, no specific message is dictated by the State to be displayed. There's no danger of governmental discrimination for or against a certain message.

A. Unprotected Speech

Defamatory Speech

POLICARPIO vs. MANILA TIMES

FACTS:

- Plaintiff Policarpio seeks to recover damages against the Manila Times Publishing Co. by reason of the publication in the Saturday Mirror of Aug 11, 1956, and in the Daily Mirror of Aug 13, 1956 of 2 articles or news items which are claimed to be per se defamatory, libelous and false.
- CFI dismissed the complaint on the ground that the plaintiff had not proven that defendants had acted maliciously in publishing the articles, although portions thereof were inaccurate or false.
- *Background:* Policarpio was executive secretary of UNESCO Nat'l Commission. As such, she had filed charges against Herminia Reyes, one of her subordinates in the Commission, & caused the latter to be separated from the service. Reyes, in turn, filed counter-charges which were referred for investigation. Pending completion, Reyes filed a complaint against Policarpio for alleged malversation of public funds & another complaint for estafa thru falsification of public documents. Meanwhile the following articles were published:

  Saturday Mirror (Aug 11, 1956):
  "WOMAN OFFICIAL SUED
  PCAC RAPS L. POLICARPIO ON FRAUDS
  Unesco Official Head Accused on Supplies, Funds Use by Colleague"

  Daily Mirror (Aug 13, 1956):
  "PALACE OPENS INVESTIGATION OF RAPS AGAINST POLICARPIO
  Alba Probes Administrative Phase of Fraud Charges Against Unesco Woman Official; Fiscal Sets Prelim Quiz of Criminal Suit on Aug 22"

- The articles contain news on Reyes' charges against Policarpio for having malversed public property and of having fraudulently sought reimbursement of supposed official expenses. It was said that Policarpio used several sheets of govt stencils for her private and personal use. The other charge refers to the supposed reimbursements she had made for a trip to Quezon and Pangasinan. Reyes' complaint alleged that Policarpio had asked for refund of expenses for use of her car when she had actually made the trip aboard an army plane. Policarpio was said to be absent from the Bayambang conference for which she also sought a refund of expenses.

ISSUE: WON defendant is guilty of having published libelous/defamatory articles. YES

RATIO:

- The title of the Aug 11 article was given prominence w/ a 6-column (about 11 inches) banner headline of 1-inch types. Its sub-title – 'PCAC raps Policarpio on fraud" – printed in bold 1 cm type is **not true**. Also, the statement in the 1st paragraph of the article, to the effect that plaintiff "was charged w/ malversation & estafa *by the Pres'l Complaint & Action Commission"* (PCAC) is **not true**, the complaints for said offenses having been filed *by Reyes*. Neither is it true that said "criminal action was initiated as a result of current administrative investigation."
- PLAINTIFF maintains that the effect of these false statements was to give the general impression that said investigation by Col. Alba had shown that plaintiff was guilty and that, as a consequence, PCAC had filed the corresponding complaints w/ the fiscal's office. She also said that the article did not mention that fact that the number of stencils involved in the charge was only 18 or 20; that the sum allegedly misappropriated by her was only P54, and that the falsification imputed to her was said to have been committed by claiming that certain expenses for which she had sought reimbursement were incurred in trips during the period from July 1 – Sept 30 1955, although the trips *actually were made* from Jul 8-Aug 31, 1955. By omitting these details, plaintiff avers that the Aug 11 article had the effect of conveying the idea that the offenses imputed to her were more serious than they really were.
- DEFENDANTS contend that though the complaints were filed, not by the PCAC but by Reyes, this inaccuracy is insignificant & immaterial to the case for the fact is that said complaints were filed. As regards the number of sheets & the nature of the falsification charged, they argue that these "details" do not affect the truthfulness of the article as a whole. Besides,

defendants had no means of knowing such "details."

- SC: Prior to Aug 11, Col. Alba had already taken the testimony of witnesses, hence, defendants could have ascertained the "details" had they wanted to. The number of stencil sheets used was actually mentioned in the Aug 13 article.
- Moreover, the penalty for estafa/embezzlement depends partly upon the amount of the damage caused to the offended party. Hence, the amount or value of the property embezzled is material to said offense.
- It is obvious that the filing of criminal complaints *by another agency of the Govt*, like the PCAC, particularly after an investigation conducted by the same, imparts the ideal that the probability of guilt is greater than when the complaints are filed by a private individual, specially when the latter is a former subordinate of the alleged offender, who was responsible for the dismissal of the complainant from her employment.
- Newspapers must enjoy a certain degrees of discretion in determining the manner in which a given event should be presented to the public, and the importance to be attached thereto, as a news item, and that its presentation in a sensational manner is not per se illegal. Newspapers may publish news items relative to judicial, legislative or other official proceedings, which are not of confidential nature, because the public is entitled to know the truth with respect to such proceedings. **But, to enjoy immunity, a publication containing derogatory information must be *not only true, but, also, fair,* and it must be made in good faith and without any comments or remarks.**
- Art. 354, RPC provides:
  "Every defamatory imputation is *presumed to be malicious* even if it be true, if no good intention & justifiable motive for making it is shown, except:
  1. xxx
  2. A fair and true report, made in good faith, w/o any comments or remarks...."
- In the case at bar, aside from containing information derogatory to the plaintiff, the Aug 11 article presented her in a worse predicament than that in which she, in fact was. Said article was not a fair and true report of the proceedings therein alluded to. What is more, its sub-title "PCAC raps Policarpio on fraud" is a comment or remark, besides being false. Accordingly, the defamatory imputations contained in said article are "*presumed to be malicious"*
- In falsely stating that the complaints were filed by PCAC, either defendants knew the truth or they did not. If they did, then the publication would actually be malicious. I f they did not, or if they acted under a misapprehension of the facts, they were guilty of negligence in making said statement.
- We note that the Aug 13 article rectified a major inaccuracy in the 1st article, by stating that neither Col. Alba nor the PCAC had filed the complaints. It likewise indicated the number of stencil sheets involved. But, this rectification or clarification does not wipe out the responsibility arising from the publication of the Aug 11 article, although it should mitigate it.

HELD: Decision reversed. Defendants ordered to pay plaintiff moral damages, atty's fees plus cost.

LOPEZ vs. CA

(1970)

Ponente: Fernando J

FACTS:

This Week Magazine of the Manila Chronicle published a series of articles in January, 1956 about the Hoax of the Year. It also erupted in the earlier part of that month. The story goes that Fidel Cruz was a sanitary inspector in the Babuyan Islands. He sent out a distress signal to a US air force plane who relayed it to Manila. Another US plane dropped emergency supplies together with a two-way radio. Cruz told of killings committed since Christmas, 1955 which terrorized the populace. The Philippine army was sent out only to find Cruz who only wanted transportation home to Manila. The army branded it as a hoax.

The series of articles published the photo of Fidel Cruz. However, it was not the sanitary inspectors photo that was published but that of former Mayor Fidel G. Cruz of Sta. Maria, Bulacan, businessman and contractor. As soon as the error was noticed, a correction was immediately published.

Fidel G. Cruz sued and the trial court awarded him damages which was affirmed by the Court of Appeals.

ISSUE:

WON the Publishers were guilty of libel?

HELD:

Yes, though the standard is "actual malice", in weekly magazines there is little excuse for errors in data.

RATIONALE:

No liability would be incurred if the petitioners could prove that their actions are embraced by press freedom. Included therein is the widest latitude of choice as to what items should see the light of day as long as they are relevant to a matter of public interest, the insistence on the requirement as to its truth yielding at times to unavoidable inaccuracies attendant on newspapers and other publications being subject to the tyranny of deadlines. If there is no such showing, there is a quasi-delict. Libel has both a criminal and civil aspect because it induces breach of the peace by the defamed person and it deprives him of his good reputation.

Libel was defined in the old libel law as "a malicious defamation expressed either in writing, printing or by signs or pictures or like... exposing [someone, dead or alive] to public hatred, contempt or ridicule". Newell (Slander and Libel) states that libel is incurred when the wrong person's photograph was published with a libelous article. Holmes points out that publishing a portrait by mistake was no excuse. The publisher took the risk in publishing a libelous article and he publishes at his peril. Learned Hand states that when a photo exposes a person to ridicule it is libelous. Cardozo states that though words dissolve, writings persevere and writings include any symbol as long as it is intelligible.

Criticism, however, is justified in the interest of society and the maintenance of good gov't. Liberty to comment on public affairs creates a full discussion and public officers should not be too thin skinned that they can't take it. Newspapers have the legal right to have and express opinions on legal questions. Debate on public issues should be uninhibited, robust, wide-open, even allowing vehement, caustic and sharp attacks. Criticism turns to libel when "actual malice" is used – when a statement was made with knowledge that it was false or with reckless disregard that it was false or not (US SC, NY Times vs Sullivan).

Paras as ponente in Quisumbing vs Lopez states that newspapers should not be held to account for honest mistakes or imperfection in the choice of words. However this is not the case here. A weekly magazine is not oppressed by the tyranny of deadlines as much as dailies. There is no need to act in haste.

Retractions do not absolve one from pecuniary liability. There is still responsibility arising from the publication of the first article

DISPOSITION:

Libelous. Affirmed with lower costs because of retraction

OTHER OPINIONS:

Dizon J, dissent:

The facts do not bear out the conclusion that actual malice was involved. Damages on the basis of tort are untenable because the articles do not involve moral turpitude. Whatever negligence there is in the case should be considered as excusable.

NEW YORK TIMES vs. SULLIVAN

(1964)

FACTS:

- A full-page advertisement came out in the New York Times on March 29, 1960 which talked about the non-violent demonstrations being staged by Southern Negro students in positive affirmation of the right to live in human dignity as guaranteed in the Constitution and the Bill of Rights signed at the bottom by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South"
- L.B. Sullivan, the Commissioner of Public Affairs of Montgomery, Alabama, whose duties include supervision of the Police and Fire Department, brought a civil libel suit against those those who came out with the ad (4 Negro clergymen) and the NY Times Company.
    - Basis of the suit was statements in the text of the ad saying in the 3rd par. that after students sang "My Country, 'Tis of Thee" on the State Capitol steps their leaders were expelled from school, policemen armed with shotguns and tear gas ringed the State College Campus, their dining hall was padlocked to starve them when the student body protested... and in the 6th par. that again and again the Southern violators have answered Dr. Kings peaceful protest with violence and intimidation going on to cite instances in which They have done this (e.g. They have assaulted his person).
    - Neither of these statements mentions the respondent by name but he argues that the word "police" in the 3rd par referred to him as Commissioner who supervised the Police Department and that the word "They" used in the 6th par would be equated with the ones did the other described acts and hence be read as accusing the Montgomery police and therefore him, of answering Dr. Kings protests with violence and intimidation.
- Trial judge submitted the case to the jury under instructions that the statements made were "libelous per se", which implies legal injury from the bare fact of publication itself, and were not privileged therefore the only things left to be proven are whether petitioners published the ad and whether the statements were made "of and concerning" respondent. ▪ trial judge found for Sullivan, sustained by the Alabama SC
- A publication is "libelous per se" if the words tend to injure a person in his reputation or to "bring him in public contempt" ▪ this standard is met if the words are such as to "injure him in his public office, impute misconduct to him in his office, or want of official integrity.
    - Once libel per se has been established the defendant has no defense as to stated facts unless he can persuade the jury that they were true in their particulars. Unless he can discharge the burden of proving truth, general damages are presumed and may be awarded w/o proof of pecuniary injury.

ISSUE:

1. W/N the rule of liability (regarding libel per se) regarding an action brought by a public official against critics of his official conduct abridges the freedom of speech and of the press that is guaranteed by the 1st and 14th Amendments. YES
    a. W/N the advertisement forfeits the protection guaranteed to free speech

and the press by the falsity of some of its factual statements and by its alleged defamation of respondent. NO

- "The maintenance of the opportunity for free political discussion to the end that gov't may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

Factual error of statement:

Authoritative interpretations of the First Amendment guarantees have refused to recognize an exception for any test of truth especially one that puts the burden of proving truth on the speaker.

- Cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors. The interest of the public outweighs the interest of any other individual. The protection of the public requires not merely discussion, but information. Errors of fact... are inevitable. Whatever is added to the field of libel is taken from the field of free debate.
- A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions--and to do so on pain of libel judgments virtually unlimited in amount--leads to a comparable 'self-censorship.' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred.
    - Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone. The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

Defamatory character:

Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations.

- **If neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct, the combination of the two elements is no less inadequate.**

When an article is considered privileged:

"Where an article is published and circulated among voters for the sole purpose of giving what the defendant believes to be truthful information concerning a candidate for public office and for the purpose of enabling such voters to cast their ballot more intelligently, and the whole thing is done in good faith and without malice, the article is privileged, although the principal matters contained in the article may be untrue in fact and derogatory to the character of the plaintiff; and in such a case the burden is on the plaintiff to show actual malice in the publication of the article."

- Privilege for criticism of public official is appropriately analogues to the protection accorded a public official when he is sued for libel by a private citizen. Actual malice must be proved.
    - Proof of actual malice should be presented

In cases where that line must be drawn, the rule is that we examine for ourselves the statements in issue and the circumstances under which they were made to see whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect. We must make an independent examination of the whole record, so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression.

- Proof showing actual malice not sufficiently shown to support judgment. On the part of the NY Times, statement does not indicate malice at the time of publication and even if the ad was not substantially correct the opinion presented therein was a reasonable one and there is no evidence to impeach the good faith of the Times in publishing it.

Reference to respondent in the ads:

Evidence is incapable of supporting conclusion that statements were made "of and concerning" respondent. No reference to respondent was made either by name or official position. None of the statements made suggested any basis for the belief that respondent was himself attached beyond the bare fact that he was in overall charge of the Police Department.

With regard to damages:

General and punitive damages must be differentiated and since the judge did not instruct the jury to differentiate it would then be impossible to know which one they awarded and if adequate proof was presented warranting such an award of damages. Because of this uncertainty in addition to the those discussed above, **the judgment must be reversed and remanded.**

ROSENBLOOM vs. METROMEDIA

(**Brennan)**

FACTS

1. 1n 1963, Rosenbloom was a distributor of nudist magazines. The Special Investigations Squad of the Philadelphia Police Department, headed by Cpt. Ferguson, purchased magazines from more than 20 newsstands. Based on the Captain's own determination that the magazines were obscene, they arrested most of the newsstand operators.
2. Rosenbloom was about to deliver his magazines while the arrests were taking place. As a result, he was also arrested.
3. 3 days later police obtained a warrant to search his home and his rented barn which was used as a warehouse where further seizures took place.

He paid bail for the 1st arrest but was again detained.

4. Cpt. Ferguson telephoned the respondent's radio station WIP, a local radio station, a wire service and a local newspaper to inform them of the raid and his arrest. In WIP's broadcast they used the words "allegedly" and "reportedly" obscene more than five times.
5. Rosenbloom brought action in the Federal District Court for an injunctive relief to prohibit the police and further publicity in interfering with his business.
6. There was a second broadcast which did not mention the petitioner's name about the case described as: as action by "smut distributors" or "girlie book peddlers" seeking the defendants to "lay off the smut literature racket".
7. Rosenbloom went personally to the radio station (through a lobby telephone talk with a part-time newscaster) and said that his magazines were found to be completely legal and legit by the US SC. The newscaster said it was the district attorney who said it was obscene, Rosenbloom countered saying that he had a public statement of the district attorney declaring the magazines legal and alleged that at that moment, the telephone conversation was terminated.
8. In 1964, he was acquitted by a jury saying that the magazines were not obscene as a matter of law. Following the acquittal, he filed for damages under Pennsylvania's libel laws saying that the characterization of the books seized as obscene was proved false by the acquittal. WIP's defenses were truth (since Penn. Law recognizes truth as a complete defense) where their source was Cpt. Ferguson, and privilege (where a conditional privilege is recognized for news media to report judicial, administrative, or legislative proceedings if the account is fair and accurate and not published solely for the purpose of causing harm <but this may be defeated by showing want of reasonable care and diligence to ascertain the truth, where burden of proof is upon defendant>)
9. Court said that 4 findings were necessary to return a verdict for pet. 1) that one or more of the broadcasts were defamatory 2) a reasonable listener would conclude that the defamatory statements referred to pet 3) WIP either intended to injure the plaintiff personally or there is unreasonable care 4) the reporting was false. Judgment awarded him with $25,000 in general damages and $250,000 in punitive damages.
10. CA reversed saying that the broadcasts concerned matters of public interest and they involved "hot news" published under pressure. Even though he is not a public figure, the standards should still be applied to implement the First Amendment.

ISSUE:
Whether because he is not a "public official" or a "public figure" but a private individual that he still needs to prove the falsehoods resulting from a failure to exercise reasonable care, or that it was broadcast with knowledge of its falsity, or with reckless disregard if whether they were false or not (ang gulo no? hehe)

HELD: Yeah. CA affirmed. Evidence was insufficient to support a verdict.

RATIO:
If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not "voluntarily" choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect, and significance of the conduct, not the participant's prior anonymity or notoriety. The present case illustrates the point. The community has a vital interest in the proper enforcement of its criminal laws, particularly in an area such as obscenity where a number of highly important values are potentially in conflict: the public has an interest both in seeing that the criminal law is adequately enforced and in assuring that the law is not used unconstitutionally to suppress free expression. Whether the person involved is a famous large-scale magazine distributor or a "private" businessman running a corner newsstand has no relevance in ascertaining whether the public has an interest in the issue. We honor the commitment to robust debate on public issues, which is embodied in the First Amendment, by extending constitutional protection to all discussion and communication involving matters of public or general concern, without regard to whether the persons involved are famous or anonymous.

Rosenbloom's arguments.
First, he argues that the private individual, unlike the public figure, does not have access to the media to counter the defamatory material and that the private individual, unlike the public figure, has not assumed the risk of defamation by thrusting himself into the public arena.

COURT SAID:
Analysis of the particular factors involved, however, convinces us that petitioner's arguments cannot be reconciled with the purposes of the First Amendment, with our cases, and with the traditional doctrines of libel law itself. Drawing a distinction between "public" and "private" figures makes no sense in terms of the First Amendment guarantees.The *New York Times* standard was applied to libel of a public official or public figure to give effect to the Amendment's function to encourage ventilation of public issues, not because the public official has any less interest in protecting his reputation than an individual in private life. While the argument that public figures need less protection because they can command media attention to counter criticism may be true for some very prominent people, even then it is the rare case where the denial overtakes the original charge. Denials, retractions, and corrections are not "hot" news, and rarely receive the prominence of the original story. When the public official or public figure is a minor functionary, or has left the position that put him in the public eye, the argument loses all of its force. In the vast majority of libels involving public officials or public figures, the ability to respond through the media will depend on the same complex factor on which the ability of a private individual depends: the unpredictable event of the media's continuing interest in the story.

R 2nd argument:
Second, petitioner focuses on the important values served by the law of defamation in preventing and redressing attacks upon reputation.

COURT ELUCIDATING (naks):

General references to the values protected by the law of libel conceal important distinctions. Traditional arguments suggest that libel law protects two separate interests of the individual: first, his desire to preserve a certain privacy around his personality from unwarranted intrusion, and, second, a desire to preserve his public good name and reputation. The individual's interest in privacy--in preventing unwarranted intrusion upon the private aspects of his life--is not involved in this case , the idea that certain "public" figures have voluntarily exposed their entire lives to public inspection, while private individuals have kept theirs carefully shrouded from public view is, at best, a legal fiction.. In the present case, however, petitioner's business reputation is involved, and thus the relevant interests protected by state libel law are petitioner's public reputation and good name.

These are important interests. Consonant with the libel laws of most of the States, however, Pennsylvania's libel law subordinates these interests of the individual in a number of circumstances. Thus, high government officials are immune from liability--absolutely privileged--even if they publish defamatory material from an improper motive, with actual malice, and with knowledge of its falsity. This absolute privilege attaches to judges, attorneys at law in connection with a judicial proceeding, parties and witnesses to judicial proceedings, Congressmen and state legislators, and high national and state executive officials. Moreover, a conditional privilege allows newspapers to report the false defamatory material originally published under the absolute privileges listed above, if done accurately.

Even without the presence of a specific constitutional command, therefore, Pennsylvania libel law recognizes that society's interest in protecting individual reputation often yields to other important social goals. In this case, the vital needs of freedom of the press and freedom of speech persuade us that allowing private citizens to obtain damage judgments on the basis of a jury determination that a publisher probably failed to use reasonable care would not provide adequate "breathing space" for these great freedoms. Fear of guessing wrong must inevitably cause self-censorship and thus create the danger that the legitimate utterance will be deterred.

This Court has recognized this imperative: "To insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones." We thus hold that a libel action, as here, by a private individual against a licensed radio station for a defamatory falsehood in a newscast relating to his involvement in an event of public or general concern may be sustained only upon clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether it was false or not. Calculated falsehood, of course, falls outside "the fruitful exercise of the right of free speech.

Finding of SC regarding the “alleged” and “reportedly” issue:
Our independent analysis of the record leads us to agree with the Court of Appeals that none of the proofs, considered either singly or cumulatively, satisfies the constitutional standard with the convincing clarity necessary to raise a jury question whether the defamatory falsehoods were broadcast with knowledge that they were false or with reckless disregard of whether they were false or not. That portion of petitioner's case was based upon the omission from the first two broadcasts at 6 and 6:30 p. m. on October 4 of the word "alleged" preceding a characterization of the magazines distributed by petitioner. But that omission was corrected with the 8 p. m. broadcast and was not repeated in the five broadcasts that followed.

Regarding the “smut literature” and “girlie book peddler”
The transcript of the testimony shows that plaintiff's own attorney, when questioning defendant's representative concerning the allegedly defamatory portion of the last broadcast, said that he was not questioning its 'accuracy'. Furthermore, his examination of the same witness brought out that defendant's representative confirmed the story with the judge involved before the broadcast was made. We think that the episode described failed to provide evidence of actual malice with the requisite convincing clarity to create a jury issue under federal standards

Petitioner argues finally that WIP's failure to communicate with him to learn his side of the case and to obtain a copy of the magazine for examination, sufficed to support a verdict under the *New York Times* standard. But our "cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." Respondent here relied on information supplied by police officials. Following petitioner's complaint about the accuracy of the broadcasts, WIP checked its last report with the judge who presided in the case. While we may assume that the District Court correctly held to be defamatory respondent's characterizations of petitioner's business as "the smut literature racket," and of those engaged in it as "girlie-book peddlers," there is no evidence in the record to support a conclusion that respondent "in fact entertained serious doubts as to the truth" of its reports.

AYER PRODUCTION vs. JUDGE CAPULONG

FACTS:
Petitioner Hal McElroy is an Australian filmmaker planning to reenact the “historic peaceful struggle of the Filipinos at EDSA”, in a film. The motion picture is entitled “The Four Day Revolution”. This would be done through the eyes of 4 fictional characters situated in the Philippines during the days surrounding the revolution. The project was also to be done with the help of Australian playwright David Williamson and American historian Al McCoy.

When discussed with local movie producer, lope V. Juban, Ayer Productions was told to get the consent of certain government agencies, as well as that of Gen. Ramos and Sen. Enrile. All the proper consent was given, except by Enrile who did not want his name, or that of his family, to be used in the film. Ayer Productions decided to go on with the film, but delete the name of Sen. Enrile.

During the filming, Sen. Enrile filed a complaint in Court for a TRO to enjoin petitioner Ayer from filming, saying

that the making of the movie without respondent's consent as a **violation of his right to privacy.** A writ of preliminary injunction was issued upon Ayer as a result.

Ayer then filed with the SC through a petition of certiorari. The court granted a TRO on the injunction, allowing Ayer to film those parts of the movie not related to Sen. Enrile.

Respondent invokes the right to privacy. Petitioner invokes **freedom of expression.**

ISSUE:
WON the media's freedom of expression may encroach on the right to privacy of a public figure.

HELD: Yes it may

RATIO:
The case is basically one of superiority of rights; the filmmaker's freedom of expression vs. Enrile's right to privacy. In the case at bar, the Court decided that freedom of expression must prevail.

(Some important things to note are that freedom of expression extends to local and foreign filmmakers in the country. It also extends to public and private film companies.)

Now the court says that the right to privacy is not absolute. Allowable is a limited intrusion where the person is a public figure and the information is of public interest. In this case, the subject matter is of public interest as it was a historical event, and Sen. Enrile played a big part in this event, thus making his character a public figure. Therefore, a limited intrusion is allowable. Furthermore, the portrayal of Sen. Enrile is not the main focus of the film, but is necessary, again, due to the large part he played in it. "Private respondent is a "public figure" precisely because, inter alia, of his participation as a principal actor in the culminating events of the change of government in February 1986".

(This was contrasted to an earlier ruling regarding the life of Moises Padilla. But in that case, Moises Padilla was the main focus of the film. Enrile is not so in this one.)

The Court also talks about the "privilege of enlightening the public", which is the privilege of the press. The Court said that this privilege is also extended to film.

Brought up were 2 doctrines. The "clear and present danger" doctrine and the "balancing of interest" doctrine. These are seen as limitations upon the freedom of expression. However, use of either would not matter as the result would be the same.

On the "balancing of interest" rule: The principle requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.

SOLIVEN vs. MAKASIAR

BELTRAN vs. MAKASIAR

Petition for Certiorari and Prohibition to review the decision of the RTC

FACTS:
Then President of the Philippines (Aquino) filed Informations for libel against the petitioners. Manila RTC (Makasiar, J) issued a warrant of arrest for petitioners.

ISSUES: Whether or not the RTC erred in issuing the warrants of arrest.

RATIO-HELD: DISMISSED.

Ground 1: Petitioners were denied due process when the informations for libel were filed against them although the finding of the existence of a prima facie case was still under review by the Secretary of Justice and by the President.
Court: Moot and Academic. On March 30, 1988, the Secretary of Justice denied petitioners' motion for reconsideration and upheld the resolution of the USec of Justice sustaining the City Fiscal's finding of a prima facie case against petitioners.

Ground 2: Beltran's constitutional rights were violated when respondent RTC judge issued a warrant for his arrest without personally examining the complainant and the witnesses to determine probable cause.
Court: (Please see Art 3, sec 2 of the Consti) In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witness. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and then issue a warrant of arrest, or (2) if he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavit of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Ground 3: The President's immunity from suits imposes a correlative disability to file a suit. If criminal proceedings ensue by virtue of the President's filing of her complaint-affidavit, she may subsequently have to be a witness for the prosecution, bringing her under the trial court's jurisdiction. This would be in an indirect way *defeat her privilege of immunity from suit*, as by testifying on the witness stand, *she would be exposing herself to possible contempt of court or perjury*. (Beltran)

May the privilege of immunity be waived?
There is nothing in our laws that would prevent the President from waiving the privilege.
The privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf. An accused in a criminal case in which the President is complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused.

What is the rationale for the privilege of immunity from suit?
The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that demands undivided attention.

(November 14, 1988)
Per Curiam

FACTS:
Petition for Certiorari and Prohibition to review the decision of the RTC
Then President of the Philippines (Aquino) filed Informations for libel against the petitioners. Manila RTC (Makasiar, J) issued a warrant of arrest for petitioners.

ISSUE: WON the RTC erred in issuing the warrants of arrest ▪ NO

RATIO:
Ground 1: Petitioners were denied due process when the Informations for libel were filed against them although the finding of the existence of a prima facie case was still under review by the Secretary of Justice and by the President.
Court: Moot and Academic. On March 30, 1988, the Secretary of Justice denied petitioners' motion for reconsideration and upheld the resolution of the USec of Justice sustaining the City Fiscal's finding of a prima facie case against petitioners.

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Ground 4: Petitioner contends that he could not be held liable for libel because of the privileged character of the publication.
Court: The Court is not a trier of facts. Such a defense is best left to the trial court to appreciate after receiving the evidence of the parties.

Ground 5: Petitioner claims that to allow a libel case to prosper would produce a "chilling effect" on press freedom.
Court: There is no basis at this stage to rule on the point.

Gutierrez, concurring:
J. Gutierrez concurs with the majority as regards the first 3 issues but reserves his vote with regard to the "chilling effect" of the prosecution of the libel case on press freedom.

Salonga v Cruz Paño: the Court should not hesitate to quash a criminal prosecution in the interest of more enlightened and substantial justice where it is not only the criminal liability of an accused in a seemingly minor libel case which is involved but broader considerations of governmental power versus a preferred freedom.

I am fully in accord with an all out prosecution if the effect will be limited to punishing a newspaperman who, instead of observing accuracy and fairness, engages in unwarranted personal attacks, irresponsible twisting of facts, of malicious distortions of half-truths which tend to cause dishonor, discredit, or contempt of complainant. **However, this case is not a simple prosecution for libel. We have as complainant a powerful and popular President who heads the investigation an prosecution service and appoints members of appellate courts but who feels so terribly maligned that she has taken the unorthodox step of going to court in spite of the invocations of freedom of press which would inevitably follow.** I believe the Court should have acted on this issue now instead of leaving the matter to fiscals and defense lawyers to argue before a trial judge.

US v Bustos (to be discussed in Crim2): Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound can be assuaged with the balm of clear conscience. → While defamation is not authorized, criticism is to be expected and should be borne for the common good.

High official position, instead of affording immunity from slanderous and libelous charges, would actually invite attacks by those who desire to create sensation. What would ordinarily be slander if directed at the typical person should be examined from various perspectives if directed at a high gov't official. The SC should draw this fine line instead of leaving it to lower tribunals.

Elizalde v Gutierrez: A prosecution for libel lacks justification if the offending words find sanctuary within the shelter of free press guaranty. It should not be allowed to continue where, after discounting the possibility that the words may not be really that libelous, there is likely to be a chilling effect, a patently inhibiting factor on the willingness of newspapermen, especially editors and publishers to courageously perform their critical role in society.

Ordinarily, libel is not protected by the free speech clause but we have to understand that some provocative words, which if taken literally may appear to shame or disparage a public figure, may really be intended to provoke debate on public issues when uttered or written by a media personality. Will not a criminal prosecution in the type of case now before us dampen the vigor and limit the variety of public debate?

MVRS vs. ISLAMIC DA'WAH COUNCIL

(January 2003, Bellosillo)

FACTS:

1. ISLAMIC DA'WAH COUNCIL OF THE PHILIPPINES, INC., a local federation of more than seventy (70) Muslim religious organizations, and some individual Muslims field in the RTC of Manila a complaint for damages in their own behalf and as a class suit in behalf of the Muslim members nationwide against MVRS PUBLICATIONS, INC and some its staff arising from an article published in the 1 August 1992 issue of *Bulgar*, a daily tabloid.

2. The article reads:

   "ALAM BA NINYO?

   Na ang mga baboy at kahit anong uri ng hayop sa Mindanao ay hindi *kinakain ng mga Muslim?*

   Para sa kanila ang mga ito ay isang sagradong bagay. Hindi nila ito kailangang kainin kahit na sila pa ay magutom at mawalan ng ulam sa tuwing sila ay kakain. Ginagawa nila itong Diyos at sinasamba pa nila ito sa tuwing araw ng kanilang pangingilin lalung-lalo na sa araw na tinatawag nilang 'Ramadan'."

3. The complaint:

   a) The statement was insulting and damaging to the Muslims;

   b) that these words alluding to the pig as the God of the Muslims was not only published out of sheer ignorance but with intent to hurt the feelings, cast insult and disparage the Muslims and Islam, as a religion in this country, in violation of law, public policy, good morals and human relations;

   c) that on account of these libelous words *Bulgar* insulted not only the Muslims in the Philippines but the entire Muslim world, especially every Muslim individual in non-Muslim countries.

4. MVRS PUBLICATIONS, INC. and BINEGAS, JR., in their defense, contended that the article did not mention respondents as the object of the article and therefore were not entitled to damages; and, that the article was merely an expression of belief or opinion and was published without malice nor intention to cause damage, prejudice or injury to Muslims.

5. The RTC dismissed the complaint holding that Islamic Da'wah et al. failed to establish their cause of action since the persons allegedly defamed by the article were not specifically identified. *The alleged libelous article refers to the larger collectivity of Muslims for which the readers of the libel could not readily identify the personalities of the persons defamed. Hence, it is difficult for an individual Muslim member to prove that the defamatory remarks apply to him.*

6. The Court of Appeals reversed the decision of the RTC. It opined that it was "clear from the disputed article that the defamation was directed to all adherents of the Islamic faith. This libelous imputation undeniably applied to the plaintiff-appellants who are Muslims sharing the same religious beliefs." It added that the suit for damages was a "class suit" and that ISLAMIC DA'WAH COUNCIL OF THE PHILIPPINES, INC.'s religious status as a Muslim umbrella organization gave it the requisite personality to sue and protect the interests of all Muslims.

7. MVRS brought the issue to the SC.

IMPT.ISSUE:

WON there was an existence of the elements of libel in the *Bulgar* article.

DECISION:

The article was not libelous. Petition GRANTED. The assailed Decision of the Court of Appeals was REVERSED and SET ASIDE and the decision of the RTC was reinstated.

RATIO:

1. There was no fairly identifiable person who was allegedly injured by the *Bulgar* article. An individual Muslim has a reputation that is personal, separate and distinct in the community. Each has a varying interest and a divergent political and religious view. There is no injury to the reputation of the individual Muslims who constitute this community that can

give rise to an action for group libel. Each reputation is personal in character to every person. Together, the Muslims do not have a single common reputation that will give them a common or general interest in the subject matter of the controversy.

2. Defamation, which includes libel (in general, written) and slander (in general, oral), means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff.

3. Defamation is an invasion of a *relational interest* since it involves the opinion which others in the community may have, or tend to have, of the plaintiff. Words which are merely insulting are not actionable as libel or slander *per se*, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages.

4. Declarations made about a large class of people cannot be interpreted to advert to an identified or identifiable individual. Absent circumstances specifically pointing or alluding to a particular member of a class, no member of such class has a right of action without at all impairing the equally demanding right of free speech and expression, as well as of the press, under the *Bill of Rights*.

5. The SC used the reasoning in Newsweek v IAC: *where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately.*

6. The SC cited some US cases wherein the rule on libel has been restrictive. It was held that there could be no libel against an extensive community in common law. With regard to the largest sectors in society, including religious groups, it may be generally concluded that no criminal action at the behest of the state, or civil action on behalf of the individual, will lie.

7. "Emotional distress" tort action has no application in this case because no particular individual was identified in the *Bulgar article.* "Emotional distress" means any highly unpleasant mental reaction such as extreme grief, shame, humiliation, embarrassment, anger, disappointment, worry, nausea, mental suffering and anguish, shock, fright, horror, and chagrin. This kind of tort action is personal in nature, i.e., it is a civil action filed by an *individual* to assuage the injuries to his emotional tranquility due to personal attacks on his character. Under the *Second Restatement of the Law*, to recover for the intentional infliction of emotional distress the plaintiff must show that:

   (a) The conduct of the defendant was intentional or in reckless disregard of the plaintiff;

   (b) The conduct was extreme and outrageous;

   (c) There was a causal connection between the defendant's conduct and the plaintiff's mental distress;

   (d) The plaintiff's mental distress was extreme and severe.

8. "Extreme and outrageous conduct" means conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. The actions must have been so terrifying as naturally to humiliate, embarrass or frighten the plaintiff.

9. Any party seeking recovery for mental anguish must prove more than mere worry, anxiety, vexation, embarrassment, or anger. Liability does not arise from mere insults, indignities, threats, annoyances, petty expressions, or other trivialities. Intentional tort causing emotional distress must necessarily give way to the fundamental right to free speech.

10. The doctrines in *Chaplinsky* and *Beauharnais* had largely been superseded by subsequent First Amendment doctrines. Back in simpler times in the history of free expression the Supreme Court appeared to espouse a theory, known as the *Two-Class Theory*, that treated certain types of expression as taboo forms of speech, beneath the dignity of the First Amendment such as lewd and obscene, the profane, the libelous, and the insulting or “fighting” words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. Today, however, the theory is no longer viable; modern First Amendment principles have passed it by.

11. **American courts no longer accept the view that speech may be proscribed merely because it is "lewd," "profane," "insulting" or otherwise vulgar or offensive**.(Cohen v California) Similarly**, libelous speech is no longer**

outside the First Amendment protection. Only one small piece of the *Two-Class Theory* in *Chaplinsky* survives - U.S. courts continue to treat "obscene" speech as not within the protection of the First Amendment at all. With respect to the "fighting words" doctrine, while it remains alive it was modified by the current rigorous clear and present danger test.

12. Respondents' lack of cause of action cannot be cured by the filing of a class suit. An element of a class suit is the adequacy of representation. In determining the question of fair and adequate representation of members of a class, the court must consider:

(a) whether the interest of the named party is coextensive with the interest of the other members of the class;

(b) the proportion of those made parties as it so bears to the total membership of the class; and,

(c) any other factor bearing on the ability of the named party to speak for the rest of the class.

Islamic Da'wah Council of the Philippines, Inc., seeks in effect to assert the interests not only of the Muslims in the Philippines but of the whole Muslim world as well. Private respondents obviously lack the sufficiency of numbers to represent such a global group; neither have they been able to demonstrate the identity of their interests with those they seek to represent.

"Fighting words", Offensive Words

CHAPLINSKY vs. NEW HAMPSHIRE

(1942)
Ponente: J. Murphy

FACTS:

In 1940 Walter Chaplinsky, a Jehovah's Witness, was distributing literature on the streets of Rochester, New Hampshire, when he created quite a stir by loudly telling everyone he encountered that organized religions are "a racket" and by specifically condemning several major ones by name in great detail. Members of the local citizenry complained to the City Marshal, Bowering, that Chaplinsky was denouncing all religion as a 'racket'. Bowering told them that Chaplinsky was lawfully engaged, and then warned Chaplinsky that the crowd was getting restless. Some time later a disturbance occurred and the traffic officer on duty at the busy intersection started with Chaplinsky for the police station, but did not inform him that he was under arrest or that he was going to be arrested. On the way they encountered Marshal Bowering who had been advised that a riot was under way and was therefore hurrying to the scene. Bowering repeated his earlier warning to Chaplinsky who then addressed to Bowering the words set forth in the complaint.

The complaint charged that appellant "with force and arms, in a certain public place in said city of Rochester, on the public sidewalk on the easterly side of Wakefield Street, near unto the entrance of the City Hall, did unlawfully repeat, the words following, addressed to the complainant, 'You are a God damned racketeer' and 'a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists". He was arrested an eventually convicted under a state law (Chapter 378, Section 2, of the Public Laws of New Hampshire) that made it an offense to speak "any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation."

Chaplinsky was found guilty by the lower court for violating the said statute. Whereupon the appellant raised the questions that the statute was invalid under the Fourteenth Amendment of the Constitution of the United States in that it placed an unreasonable restraint on freedom of speech, freedom of the press, and freedom of worship, and because it was vague and indefinite.

ISSUE/HELD:
W/O Not the New Hampshire statute is a violation of the freedom of speech? **NO**

RATIO:

Under the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words-those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

The word 'offensive' is not to be defined in terms of what a particular addressee thinks. ... The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight. Argument is unnecessary to demonstrate that the appellations 'damn racketeer' and 'damn Fascist' are epithets likely to provoke the average person to retaliation, and thereby cause a breach of the peace. The Court held that the limited scope of the statute does not contravene the constitutional right of free expression nor does it contravene the constitutional right of free expression. It is a statute narrowly drawn and limited to define and punish specific conduct lying within the domain of state power.

COHEN vs. CALIFORNIA

(June 17, 1971)
Ponente: J. Harlan

FACTS:

- Appelant Paul Robert Cohen was convicted in the CA of Cal. for violating part of **Cal. Penal Code 415,** which prohibits "maliciously and willfully disturbing the peace or quiet of any neighborhood or person... by offensive conduct," for wearing a jacket bearing the words **"FUCK THE DRAFT"** in a corridor of the LA Courthouse. The defendant testified that he wore the jacket knowing that the words were on the jacket as a means of informing the public of the depth of his feelings against the Vietnam War and the draft. He did not engage in, nor threaten to engage in, nor did anyone, as the result of his conduct, in fact commit or threaten to commit, any act of violence.
- In affirming the conviction, the CA held that **offensive conduct** means "behavior which has a tendency to provoke others to acts of violence or to in turn disturb the peace" and that the State has proved this because "it was certainly reasonably foreseeable that such conduct might cause others to rise up to commit a violent act against the person of the defendant or attempt to forceably remove his jacket."

ISSUE ▪ HELD:

1. WON the conviction should be sustained ▪ NO
2. WON Cal. can excise, as "offensive conduct," one particular scurrilous epithet from the public discourse (upon a theory that its use is inherently likely to cause violent reaction or upon a more general assertion that States may properly remove this offensive word from the public vocabulary) → HELL, NO!!!

RATIO:

1.
The only "conduct" which the State sought to punish is the fact of communication. Thus, we deal here with a conviction resting solely upon "speech," not upon any separately identifiable conduct which allegedly was intended by Cohen to be perceived by others as expressive of particular views by which, on its face, does not necessarily convey any message and hence arguably could be regulated without effectively repressing Cohen's ability to express himself. So long as there is no showing of intent to incite disobedience to or disruption of the draft, Cohen could not, consistently with the 1st and 14th Amendments, be punished for asserting the evident position on the inutility or immorality of the draft his jacket reflected.

This Court has held that States are free to ban the simple use of so-called **fighting words,** those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction. While the 4-letter word displayed by Cohen in relation to the draft is not uncommonly employed in a personally provocative fashion; in this instance, it was clearly not "directed to the person of the hearer." No individual actually or likely to be present could reasonably have regarded those words on appellant's jacket as a direct personal insult. There is no showing that anyone who saw Cohen was in fact violently aroused or that appellant intended such result.

Moreover, the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense. It has been consistently stressed that "we are often 'captives' outside the sanctuary of the home and subject to objectionable speech." The ability of gov't, consonant with the Consti, to shut off discourse solely to protect others from hearing it, is dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner.

2.
The rationale of the Cal. court is untenable. At most it reflects an "undifferentiated fear or apprehension of disturbance which is not enough to overcome the right to freedom of expression," (Tinker v Des Moines). The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce amore capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests.

The principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet, no readily ascertainable general principle exists for stopping short of that result if the judgment below was affirmed. **For, while the particular 4-letter word being litigated hers is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric.**
Also, we cannot overlook the fact that much linguistic expression serves a dual communication function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as well as their cognitive force. We cannot sanction the view that the Consti, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.

Lastly, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, gov't might soon seize upon the censorship of particular words as a convenient guise for banning the expression or unpopular views.

In sum, absent a more particularized and compelling reason for its action, the State may not, consistently with the 1st and 14th Amendments, make the simple public display of this single 4-letter expletive a criminal offense.

Obscenity

ROTH vs. US

(6/24/57)
Brennan, J.

FACTS:
Roth (New York) is in the business of publishing & selling books, photographs & magazines. He used circulars which he mailed in order to advertise. He was convicted on the basis of a federal obscenity statute for mailing obscene circulars & advertisements. Alberts (Los Angeles) operates a mail-order business. He was charged for violation of a California Penal Statute, for "lewdly keeping for sale obscene & indecent books".

Petitioners: obscenity statutes offend the constitutional guaranties because they punish incitation to impure sexual thoughts, not shown to be related to any overt antisocial conduct which is or may be incited in the persons stimulated to such thoughts.
2.the constitutional guaranties are violated because convictions may be had without proof either that obscene material will perceptibly create a clear and present danger of antisocial conduct, or will probably induce its recipients to such conduct.

ISSUES:
1. In Roth-w/n the federal obscenity statute is in violation of the 1st Amendment;
w/n the power to punish speech and press offensive to decency and morality is in the States alone, so that the federal obscenity statute violates the Ninth and Tenth Amendments (raised in Roth
2. In Alberts- w/n the obscenity provisions fo the Cal Penal Code invade freedom of speech & press as they may be incorporated with the liberty protected from state action by the 14th Amend;
w/n Congress, by enacting the federal obscenity statute, under the power delegated by Art. I, 8, cl. 7, to establish post offices and post roads, pre-empted the regulation of the subject matter
3. w/n these statutes violate due process for vagueness

HELD: Obscenity is not an utterance that is within the defintion of protected speech & press.

RATIO:
Numerous opiniosn of the court have held that obscenity is not covered by the guarantee on the freedom of speech & press. *Ex parte Jackson; United States v. Chase; Near v. Minnesota.* Though this freedom may be in the consitution, it is not absolute. As early as 1712, Massachusetts made it criminal to publish "any filthy, obscene, or profane song, pamphlet, libel or mock sermon" in imitation or mimicking of religious services. Thus, profanity and obscenity were related offenses. In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance. This phrasing did not prevent this Court from concluding that libelous utterances are not within the area of constitutionally protected speech. *Beauharnais v. Illinois*
All ideas having even the slightest redeeming social importance - unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion - have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.
re: petitioner's contention on the presence of "clear & present danger of antisocial conduct"
"Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase `clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a showing of such circumstances. Libel, as we have seen, is in the same class.
Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period
therefore vital that the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest

Standard:
1.*Regina v Hicklin*: effect of a single excerpt of the supposedly "obscene" material upon particularly susceptibel persons- rejected
2. whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest- proper standard.
re: lack of reasonable ascertainable standards of guilt whic violates due process; words are not sufficiently precise because they do not mean the same thing to all people, all the time, everywhere- lack of precision is not itself offensive to the requirements of due process. the Constitution does not require impossible standards; all that is required is that the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices" *United States v. Petrillo*
3. the second issues in both Roth & Alberts fail because of the holding initially stated.
Judgment affirmed.

MILLER vs. CALIFORNIA

Burger, CJ 5-4 vote

FACTS:

Miller was convicted of mailing unsolicited sexually explicit material (titles were: “Intercourse”, “Man-Woman”, “Sex Orgies Illustrated”, “Illustrated History of Pornography”, “Marital Intercourse”) in violation of a California statute (punishes distribution of obscene materials, solicited or not) that approximately used the obscenity test formulated in *Memoirs v. Mass*. The trial court instructed the jury to evaluate the materials by the contemporary community standard of California. Appellant’s conviction was affirmed on appeal.

ISSUES/HELD:

1. WON obscene material is protected by 1st Amendment. → NO. see Roth vs. Us.

2. WON obscene material can be regulated by the States. ▪ YES, subject to safeguards enumerated in this case (the New Obscenity Test).
3. WON the use of contemporary community standards, instead of a national standard, is constitutional. → YES. Standards of decency differ. (ex. NY-Mississippi, UP-Miriam)

STUFF FROM THE CASE:

Landmark Obscenity Cases:

Roth vs. US, 1957

- obscenity is not within the area of constitutionally protected speech
- presumption that porn is utterly without redeeming social value

Memoirs vs. Mass, 1966

- Obscenity Test:
  a) dominant theme appeals to prurient interest in sex
  b) patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters
  c) utterly without redeeming social value.
- 'Utterly without redeeming social value' MUST BE PROVED by prosecution. (almost impossible)

The Present Case:

It is settled that obscene material is not protected by the 1st Amendment. A work may be subject to state regulation where that work, taken as a whole, falls within the realm of obscenity.

In lieu of the obscenity test in Memoirs, the Court used a NEW Obscenity Test:

a) WON 'the average person applying contemporary community standards' would find that the work appeals to the prurient interest.
b) WON the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law
c) WON the work lacks serious literary, artistic, political, or scientific value.

The test of 'utterly without redeeming social value' articulated in Memoirs is rejected as a constitutional standard.

In cases like this one, reliance must be placed in the jury system, accompanied the safeguards that judges, rules of evidence, presumption of innocence, etc.. provide. The mere fact that juries may reach different conclusions as to obscenity of the same material does not mean that constitutional rights are abridged. The jury may measure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the community, and need not employ a national standard.

Obscene (as defined by California Penal Code) – to the average person, applying contemporary standards, the predominant appeal of the material, taken as a whole, is to prurient interest, i.e. a shameful or morbid interest in nudity, sex, or excretion, which goes beyond the limits of candor in description or representation of such matters and is matter which is utterly without redeeming social importance.

Prurient (adj.) – characterized by or arousing an interest in sexual matters.

GONZALEZ vs. KALAW KATIGBAK

Ponente: Chief Justice Fernando

Petitioner: Jose Antonio U. Gonzalez, President of the Malaya Films
Respondent: Board of Review of Motion Pictures and Television **(BRMPT)**, with Maria Kalaw Katigbak as Chairman

FACTS:

October 23, 1984 – Permit to exhibit film "Kapit sa Patalim under the classification "For Adults Only," with certain changes and deletions was granted by the BRMPT.
October 29, 1984 – the BRMPT, after a motion for reconsideration from the petitioners, affirmed their original ruling, directing the Chairman of the Board to withhold the permit until the enumerated deficiencies were removed.
January 12, 1985 – Court required respondent to answer petitioner's motion. The BRMPT alleges that the petition is moot since it had already granted the company the permit to exhibit without any deletions or cuts while maintaining the original "For Adults Only" classification. The validity of such classification was not raised by the petitioners.
January 25, 1985 – **Petitioners amended the petition, including in the main objection the legal and factual basis of the classification and its impermissible restraint upon artistic expression.**

-The BRMPT argued that the standard provided by law in classifying films allows for a "practical and determinative" yardstick for the exercise of judgment and that the sufficiency of the standards should be the only question in the case.

- The Supreme Court rejects such limitation of the scope of the case, pointing that the justification of the standard to warrant such a classification is still in question since its basis, obscenity, is the yardstick used by the courts in determining the validity of any invasion of the freedom of artistic and literary expression.

ISSUE:
WON there was a grave abuse of discretion by the respondent Board in violating the right of the petitioners to artistic and literary expression.

HELD: There exists an abuse of discretion, but inadequate votes to qualify it as grave.

RATIO:

1. Motion pictures are important as medium of communication of Ideas and the expression of the artistic impulse. This impresses upon motion pictures as having both informative and entertainment value. However, there is no clear dividing line with what involves knowledge and what involves entertainment. Providing a strict delineation between the both aspects of motion pictures would lead to a diminution of the freedom of expression. In *Reyes v. Bagatsing,* press freedom is the liberty to discuss publicly and truthfully any matter of public concern without censorship. Its limitation comes only upon proof of a clear and present danger of a substantive evil that the state has a right to prevent.
2. The SC affirms the well-settled principle of freedom of expression established by both *U.S. v Sedano*, in the press, and *Morfe vs. Mutuc*, in considering the ban on jingles in mobile units for election purposes as an abridgement of this freedom, amounting to censorship. At the same time, it limits the power of the BRMPT to classification of films. The court affirms its power to determine what constitutes general patronage, parental guidance or what is "For Adults Only," following the principle that freedom of expression is the rule and restrictions the exemption.

3. Test of Clear and Present Danger:

a. There should be no doubt that what is feared may be traced to the expression complained of. The casual connection must be evident
b. There must be reasonable apprehension about its imminence. There is the requirement of its being well-nigh inevitable.

Postulate: Censorship is only allowable under the clearest proof of a clear and present danger of a substantive evil to public morals, public health, or any legitimate public interest.

4. *Roth v. U.S.*: This case gives a preliminary definition of obscenity and establishes the courts' adverse attitude towards it. According to Brennan: "All ideas having the slightest social importance have the full protection of the guarantees unless it encroaches upon 1st amendment rights. Obscenity is thus rejected as utterly without redeeming social importance.

5. *Hicklin Test:* The early leading standard of obscenity allowed material to be judged merely by the effect of an isolated excerpt upon particularly susceptible persons. The problem is that such a standard might involve legitimate material and so violate the freedom of speech and press.
   Later Tests: This early standard was modified with the standard of whether or not to the average person, applying contemporary community standards, the dominant theme of the material as a whole appeals to **prurient** interest.

6. Sex and obscenity are not synonymous. Obscene material is material appealing to prurient interest.
7. Executive Order No. 876: "applying contemporary Filipino values as standard." Vs. the Constitutional mandate of arts and letters being under the patronage of the state.
   - There is no orthodoxy in what passes for beauty or reality. It is for the artist to determine what for him is a true representation.
8. Yu Chon Eng v. Trinidad: It is an elementary, fundamental and universal rule of construction that when law is susceptible of two constructions one of which will maintain and the other destroy it, the courts will adopt the former. Thus there can be no valid objection to the sufficiency of the controlling standard and its conformity to what the constitution ordains.
9. There is an abuse of discretion by the board due to the difficulty an travail undergone by the petitioners before Kapit sa Patalim was classified for adults only without deletion. Its perception of obscenity appears to be unduly restrictive. However, such abuse cannot be considered grave due to lack of votes. The adult classification is simply a stern warning that the material viewed is not fit for the youth since they are both vulnerable and imitative. Nonetheless, the petitioners were given an option to be re-classified to For-general-Patronage with deletions and cuts. The court however stresses that such a liberal view might need a more restrictive application when it comes to televisions.

PITA vs. CA

Sarmiento, j.:

FACTS

On December I and 3,1983, Manila Mayor, Ramon D. Bagatsing, initiated an Anti-Smut Campaign which seized and confiscated from dealers, distributors, newsstand owners and peddlers magazines, publications and other reading materials believed to be obscene, pornographic and indecent. **Among the publications seized, and later burned, was "Pinoy 'Playboy" magazines published and co-edited by plaintiff Leo Pita.**

On December 7, 1983, plaintiff filed a case for injunction with prayer for issuance of the writ of preliminary injunction against Mayor Bagatsing and Narcisco Cabrera, as superintendent of Western Police District of the City of Manila, **seeking to enjoin and/or restrain said defendants and their agents from confiscating plaintiff's magazines or from otherwise preventing the sale or circulation claiming that the magazine is a decent, artistic and educational magazine which is not obscene, and that the publication is protected by the**

Constitutional guarantees of freedom of speech and of the press.

On December 12, 1983, plaintiff filed an Urgent Motion for issuance of a temporary restraining order. against indiscriminate seizure, confiscation and burning of plaintiffs "Pinoy Playboy" Magazines, pending hearing on the petition for preliminary injunction in view of Mayor Bagatsing's pronouncement to continue the Anti-Smut Campaign. **The Court granted the temporary restraining order**.

In his Answer and Opposition filed on December 27, 1983 **defendant Mayor Bagatsing admitted the confiscation and burning of obscence reading materials but claimed that the said materials were voluntarilv surrendered by the vendors to the police authorities,** and that the said confiscation and seizure was undertaken pursuant to P.D. No. 960, as amended by P.D. No. 969, which amended Article 201 of the Revised Penal Code.

On January 5, 1984, plaintiff filed his Memorandum in support of the issuance of the writ of preliminary injunction, raising the issue as to "whether or not the defendants and/or their agents can without a court order confiscate or seize plaintiff's magazine before any judicial finding is made on whether said magazine is obscene or not".

The restraining order having lapsed, the plaintiff filed an urgent motion for issuance of another restraining order, which was opposed by defendant on the ground that issuance of a second restraining order would violate the Resolution of the Supreme Court dated January 11, 1983, providing for the Interim Rules Relative to the Implementation of Batas Pambansa Blg. 129, which provides that a temporary restraining order shall be effective only for twenty days from date of its issuance.

On February 3, 1984, the trial court promulgated the Order appealed from denying the motion for a writ of preliminary injunction, and dismissing the case for lack of merit. The Appellate Court dismissed the appeal.

ISSUES
WON.the Court of Appeals erred in affirming the decision of the trial court and, in effect, holding that the police officers could without any court warrant or order seize and confiscate petitioner's magazines on the basis simply of their determination that they are obscene.

HOLDING
Yes. Petition granted. CA ruling reversed and set aside (Note: the dispository portion of this case is quite complicated due to the concept of seizures and searches. This is the ruling in terms of whether obscenity is protected by the freedom of speech but you may check the actual case for your own peace of mind)

RATIO
Tests of Obscenity
In People vs. Kottinger, the Court laid down the test, in determining the existence of obscenity, as follows: "whether the tendency of the matter charged as obscene, is to deprave or corrupt those whose minds are open to such immoral influences and into whose hands a publication or other article charged as being obscene may fall." "Another test," so Kottinger further declares, "is that which shocks the ordinary and common sense of men as an indecency." Kottinger hastened to say, however, that "[w]hether a picture is obscene or indecent must depend upon the circumstances of the case," and that ultimately, the question is to be decided by the "judgment of the aggregate sense of the community reached by it."

As the Court declared, the issue is a complicated one, in which the fine lines have neither been drawn nor divided. It was People v. Padan y Alova, that introduced to Philippine jurisprudence the "redeeming" element that should accompany the work, to save it from a valid prosecution. We quote:

We have had occasion to consider offenses like the exhibition of still or moving pictures of women in the nude, which we have condemned for obscenity and as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models in tableaux vivants. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art.

Padan y Alova, like Go Pin, however, raised more questions than answers. For one thing, if the exhibition was attended by "artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes,"could the same legitimately lay claim to "art"? For another, suppose that the exhibition was so presented that "connoisseurs of [art], and painters and sculptors might find inspiration," in it, would it cease to be a case of obscenity?

In a much later decision, Gonzalez v. Kalaw Katigbak, the Court, following trends in the United States, adopted the test: "Whether to the average person, applying contemporary standards, the dominant theme of the material taken as a whole appeals to prurient interest." Kalaw Katigbak represented a marked departure from Kottinger in the sense that it measured obscenity in terms of the "dominant theme" of the work, rather than isolated passages, which were central to Kottinger (although both cases are agreed that "contemporary community standards" are the final arbiters of what is "obscene").

Memoirs v. Massachusettes, a 1966 decision, which characterized obscenity as one "utterly without any redeeming social value,"21 marked yet another development.

The latest word, however, is Miller v. California, which expressly abandoned Massachusettes, and established "basic guidelines, to wit: "(a) whether 'the average person, applying contemporary standards' would find the work, taken as a whole, appeals to the prurient interest ... ; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

DISCUSSION OF THE CASE

In the case at bar, there is no challenge on the right of the State, in the legitimate exercise of police power, to suppress smut-provided it is smut. For obvious reasons, smut is not smut simply because one insists it is smut. So is it equally evident that individual tastes develop, adapt to wideranging influences, and keep in step with the rapid advance of civilization.

Undoubtedly, "immoral" lore or literature comes within the ambit of free expression, although not its protection. In free expression cases, this Court has consistently been on the side of the exercise of the right, barring a "clear and present danger" that would warrant State interference and action. But, so we asserted in Reyes v. Bagatsing, "the burden to show the existence of grave and imminent danger that would justify adverse action. . . lies on the ... authorit[iesl."

"There must be objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger." "It is essential for the validity of ... previous restraint or censorship that the ... authority does not rely solely on his own appraisal of what the public welfare, peace or safety may require." "To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test."

As we so strongly stressed in Bagatsing, a case involving the delivery of a political speech, the presumption is that the speech may validly be said. The burden is on the State to demonstrate the existence of a danger, a danger that must not only be: (1) clear but also, (2) present, to justify State action to stop the speech. Meanwhile, the Government must allow it (the speech). It has no choice. However, if it acts notwithstanding that (absence of evidence of a clear and present danger), it must come to terms with, and be held accountable for, due process.

The Court is not convinced that the private respondents have shown the required proof to justify a ban and to warrant confiscation of the literature for which mandatory injunction had been sought below. First of all, they were not possessed of a lawful court order: (1) finding the said materials to be pornography, and (2) authorizing them to carry out a search and seizure, by way of a search warrant.

The fact that the former respondent Mayor's act was sanctioned by "police power" is no license to seize property in disregard of due process. Presidential Decrees Nos. 960 and 969 are, police power measures, but they are not, by themselves, authorities for high-handed acts. (The Decrees provides procedures for implementation)

It is basic that searhes and seizures may be done only through a judicial warrant, otherwise, they become unreasonable and subject to challenge. In Burgos v. Chief of Staff, AFP,43 We countermanded the orders of the Regional Trial Court authorizing the search of the premises of We Forum and Metropolitan Mail, two Metro Manila dailies, by reason of a defective warrant. We have greater reason here to reprobate the questioned rand, in the complete absence of a warrant, valid or invalid. The fact that the instant case involves an obscenity rap makes it no different from Burgos, a political case, because, and as we have indicated, speech is speech, whether political or "obscene"

We reject outright the argument that "[t]here is no constitutional nor legal provision which would free the accused of all criminal responsibility because there had been no warrant," and that "violation of penal law [must] be punished." For starters, there is no "accused" here to speak of, who ought to be "punished". Second, to say that the respondent Mayor could have validly ordered the raid (as a result of an anti-smut campaign) without a lawful search warrant because, in his opinion, "violation of penal laws" has been committed, is to make the respondent Mayor judge, jury, and executioner rolled into one. And precisely, this is the very complaint of the petitioner.

DEFAMATION & DISCRIMINATION by:

Pornography is a constitutionally protected speech. Ours is a society saturated by pornography. 36% of women were molested as girls, 24% suffers from marital rape, 50% from rape or attempted rape, 85% are sexually harassed by employers in one way or another.

A long time before the women's movement, legal regulation of pornography was framed as a question of the freedom of expression of the pornographers and their consumers—government's interest in censoring expressions of sex vs the publisher's right to express them and the consumer's right to read and think about them.

In this new context, protecting pornography means protecting sexual abuse as speech and its protection have deprived women of speech against sexual abuse.

In the US, pornography is protected. Sexual abuse becomes a consumer choice of expressive content, abused women become a pornographer's "thought" or "emotion".

Pornography falls into the legal category of "speech" rendered in terms of "content", "message", "emotion", what it "says", its "viewpoint", its "ideas"

Pornography is essentially treated as defamation rather than as discrimination, conceived in terms of what it says; a form of communication cannot, as such, do anything bad except offend. The trade or the sending and receiving is protected by the 1st amendment, the defamatory or offending element is a cost of freedom.

A theory of protected speech begins here: words express, hence are presumed "speech" in the protected sense. But social life is full of words that are legally treated as the acts they constitute without so much as a whimper from the first amendment. For example: saying "kill" to a trained attack dog, saying "ready, aim, fire" to a firing squad. Words like "not guilty and "I do". A sign saying "white only". These are considered as "only

words"; doing not saying, not legally seen as expressing viewpoint.

In pornography, it is unnecessary to do any of these things to express, as ideas, the ideas pornography expresses. It is essential to do them to make pornography. Pornography, not its ideas, gives men erections. Erection is neither a thought nor a feeling but a behavior.

Speech conveys more than its literal meaning, and its nuances and undertones must be protected but what the 1st amendment in effect protects is the unconscious mental intrusion and physical manipulation, even by pictures and words, particularly when the results are further acted out through aggression and other discrimination.

Porn=sex
Sex= not thinking
(from the text: try arguing with an orgasm sometime)

Pornography is protected as a constitutional right. Its effects depend upon "mental intermediation". It is protected unless you can show what it and it alone does. Empirically, all pornography is made under conditions of inequality based on sex, overwhelmingly by poor, desperate, homeless, pimped women who were sexually abused as children.

Pornography contains ideas like any other social practice. But the way it works is not as a thought or in the way thoughts and ideas are protected as speech. The message is "get her" pointing at all women addressed directly to the penis, delivered through an erection, and taken out on women in the real world. What is more protected, his sensation or her life?

Author's proposal: law against pornography that defines it as graphic sexually explicit materials that subordinate women through pictures or words. This definition includes porn as defamation or hate speech, its role as subordination, as sex discrimination, including what it does through what it says. Such material with activities like hurting, degrading, violating, and humiliating, that is, actively subordinating, treating unequally, as less than human, on the basis of sex.

The idea that pornography conveys: male authority in a naturalized gender hierarchy, male possession of an objectified other. Porn provides a physical reality i.e. erections and ejaculations. None of this starts or stops as a thought or feeling. Beyond bringing a message from reality, it stands in for reality. What was words and pictures becomes, through masturbation, sex itself. In pornography, pictures and words are sex. As sex becomes speech, speech becomes sex.

Denials and justifications include:
1. porn reflects or depicts subordination that happens elsewhere
2. porn is a fantasy, unreal, an internal reality
3. simulated
4. it's a representation

In constructing pornography as speech is gaining constitutional protection for doing what pornography does: subordinating women through sex. Law's proper concern here is not with what speech says, but what it does.

The doctrinal distinction between speech and action is on one level obvious, on another level it makes little sense. In social inequality, it makes almost none. Discrimination does not divide into acts on one side and speech on the other. (speech acts)

Words and images are how people are placed in hierarchies. Social supremacy is made, inside and between people, through making meanings. .

Example of "just words"—expressions that are not regulated:
1. Ku Klux Klan
2. segregating transportation bet blacks and whites
3. ads for segregated housing

Should their racist content protect them as political speech since they do their harm through conveying a political ideology?

Supreme Court referred to porn as "pure speech' thus converting real harm to the *idea* of harm, discrimination into defamation (meaning they contain defamatory ideas, they are protected , even as they discriminate against women)

1st amendment protects ideas regardless of the mischief they do in the world. This was construed to apply favorably to communist cases but in effect, it protects pornography. However there are substantial differences which must be noted:
1. pornography has to be done to women to be made, no government has to be overthrown to make a communist speech
2. pornography is more than mere words, words of communism are only words

Porn is more comparable to law-- utterance of legal words as tantamount to imposing their reality. Government speech backed by power are seen as acts. So is pornography: the power of men over women expressed through unequal sex. It makes no more sense to treat pornography as mere abstraction and representation than it does to treat law as simulation or fantasy.

Porn is law for women. It does what it says.

RENO vs. ACLU

[June 26, 1997]
Justice Stevens delivered the opinion of the Court.

FACTS:
Two provisions of the Communications Decency Act of 1996 (CDA or Act) seek to protect minors from harmful material on the Internet, an international network of interconnected computers that enables millions of people to communicate with one another in "cyberspace" and to access vast amounts of information from around the world. **Criminalizes the "knowing" transmission of "obscene or indecent" messages to any recipient under 18 years of age. Section 223(d) prohibits the "knowin[g]" sending or displaying to a person under 18 of any message "that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory**

activities or organs." Affirmative defenses are provided for those who take "good faith, . . . effective . . . actions" to restrict access by minors to the prohibited communications, and those who restrict such access by requiring certain designated forms of age proof, such as a verified credit card or an adult identification number.

The court's judgment enjoins the Government from enforcing prohibitions insofar as they relate to "indecent" communications, but expressly preserves the Government's right to investigate and prosecute the obscenity or child pornography activities prohibited therein. The injunction against enforcement of CDA is unqualified because that section contains no separate reference to obscenity or child pornography. The Government appealed to this Court under the Act's special review provisions, arguing that the District Court erred in holding that the CDA violated both the First Amendment because it is overbroad and the Fifth Amendment because it is vague.

ISSUE:

1. WON CDA is a valid prohibition? Nope…

2. WON the CDA act 1996 violates the First and Second amendments by its definition of “obscene” and “patently offensive” prohibitions on internet information. YES…… vague and overbroad.

RATIO:

- The CDA differs from the various laws and orders upheld in those cases in many ways, including that it does not allow parents to consent to their children's use of restricted materials; is not limited to commercial transactions; fails to provide any definition of "indecent" and omits any requirement that "patently offensive" material lack socially redeeming value; neither limits its broad categorical prohibitions to particular times nor bases them on an evaluation by an agency familiar with the medium's unique characteristics; is punitive; applies to a medium that, unlike radio, receives full First Amendment protection; and cannot be properly analyzed as a form of time, place, and manner regulation because it is a content-based blanket restriction on speech.
- The special factors recognized in some of the Court's cases as justifying regulation of the broadcast media—the history of extensive government regulation of broadcasting, the scarcity of available frequencies at its inception, and its "invasive" nature,—are not present in cyberspace.
- Regardless of whether the CDA is so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for First Amendment purposes. For instance, its use of the undefined terms "indecent" and "patently offensive" will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean.
- The CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. **Although the Government has an interest in protecting children from potentially harmful materials the CDA pursues that interest by suppressing a large amount of speech that adults have a constitutional right to send and receive.** Its breadth is wholly unprecedented. The CDA's burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the Act's legitimate purposes.
- The contention that the Act is constitutional because it leaves open ample "alternative channels" of communication is unpersuasive because the CDA regulates speech on the basis of its content, so that a "time, place, and manner" analysis is inapplicable.
- The assertion that the CDA's "knowledge" and "specific person" requirements significantly restrict its permissible application to communications to persons the sender knows to be under 18 is untenable, given that most Internet forums are open to all comers and that even the strongest reading of the "specific person" requirement would confer broad powers of censorship, in the form of a "heckler's veto," upon any opponent of indecent speech.

PERSONAL OPINION:

Computer technology evolves over time, every 9 months if I’m not mistaken, rather than spend money on litigation or a better construction of a Prohibitive internet law why not spend it on Research and Development to come up with a screening technology that allows computers to recognize if it is a minor using the computer and automatically blocks off all “offensive” sites? Of course by that time a better definition of “obscene” or “patently offensive” should have been constructed?

ASHCROFT vs. ACLU

May 13, 2002

The case presents the “narrow question” whether the Child Online Protection Act’s (COPA) use of “community standards” to identify “material that is harmful to minors” violates the First Amendment. We hold that this aspect of COPA does not render the statute facially unconstitutional.

BACKGROUND [Please Note]:

1. The Internet offers a forum for a true diversity of political discourse, cultural development and intellectual activity. By “surfing”, the primary method of remote information retrieval on the internet, individuals can access various materials in the World Wide Web which also contains a wide array of sexually explicit material, including hardcore pornography. In 1998, there were about 28,000 adult sites promoting pornography on the Web. Children discover pornographic material by deliberate access or by stumbling upon them.
2. **Communications Decency Act of 1996 (CDA)** (As contrasted to COPA). Congress first attempted to protect children from exposure to pornographic material on the Internet through the CDA. CDA prohibited the knowing transmission over the internet of obscene or indecent messages to any recipient under 18 years of age. The prohibition covers “any comment, request, suggestion, proposal, image, or other communication that, in context, depicted or described, in terms patently offensive as

measured by contemporary community standards, sexual or excretory activities or organs."
- CDA had "two affirmative defenses":
(1) It protected individuals who took "good faith, reasonable, effective, and appropriate actions" to restrict minors from accessing obscene, indecent, and patently offensive material over the Internet; and
(2) Individuals who restricted minors from accessing such material "by requiring a verified credit card, debit account, adult access code, or adult personal identification number."
- Court concluded in Reno v. ACLU that the CDA lacked the precision that the First Amendment requires when a statute regulates the content of speech because in order to deny minors access to potentially harmful speech, the CDA effectively suppressed a large amount of speech that adults had a constitutional right to receive and to address to one another.
- Holding CDA unconstitutional was based on "three crucial considerations":
(1) Existing technology did not include any effective method for a sender to prevent minors from accessing the communications in the Internet without also denying access to adults.
(2) Its "open-ended prohibition" embraced commercial speech and all "nonprofit entities and individuals" posting indecent messages or displaying them on their own computers in the presence of minors. "Indecent" and "patently offensive" were not defined.
(3) The two affirmative defenses offered did not "narrowly tailor" the coverage of the Act. Only the ban on the "knowing transmission of obscene message survived because "obscene speech" enjoys no First Amendment protection.

3. **Child Online Protection Act.** It prohibited any person from "knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, making any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors."
- Congress limited the scope of COPA's coverage in three ways:
(1) It applies only to material displayed on the World Wide Web as contrasted to CDA which applied to all communications over the Internet including e-mail messages.
(2) It covers only communications made "for commercial purposes."
(3) COPA restricts only the narrower category of "material that is harmful to minors."
- COPA uses the "**three part test for obscenity**" set in **Miller v. California** to define "material that is harmful to minors" as "any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that –
(1) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;
(2) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or lewd exhibition of the genitals or post-pubescent female breasts; and
(3) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- COPA also provides "affirmative defenses": An individual may have a defense if he in "good faith, has restricted access by minors to material that is harmful to minors –
(1) By requiring the use of a credit card, debt account, adult access code, or adult personal identification number;
(2) By accepting a digital certificate that verifies age; or
(3) By any other reasonable measures that are feasible under available technology.
- Violators have a civil penalty of up to $50,000 for each violation or a criminal penalty of up to six month imprisonment or a maximum fine of $50,000.

FACTS:

One month before the COPA was scheduled to go into effect, the respondents filled a lawsuit challenging the constitutionality ("facial challenge") of the statute in the United States District Court for the Eastern District of Pennsylvania. Respondents are a diverse group of organizations, most of which maintain their own Web sites. Respondents all derive income from their sites. All of them either post or have members that post sexually oriented material on the Web. They believe that their material on their Web sites was valuable for adults but they fear that they will be prosecuted under the COPA because some of the material could be construed as "harmful to minors" in some communities. Their "facial challenge" claimed that the COPA violated adults' rights under the First and Fifth Amendments because COPA:

(1) It created an effective ban on the constitutionally protected speech by and to adults.
(2) It was not the least restrictive means of accomplishing any compelling governmental purpose.
(3) It was substantially overbroad.

The District Court granted respondent's motion for a preliminary injunction barring the Government from enforcing the Act until the merits of respondent claims could be adjudicated. The District Court reasoned that the statute is "presumptively invalid" and "subject to "strict scrutiny" because COPA constitutes content-based regulation of sexual expression protected by the First Amendment. Court of Appeals for the Third Circuit affirmed. CA concluded that COPA's use of "contemporary community standards" to identify material that is harmful to minors rendered that statute substantially overbroad. CA concluded that COPA would require any material that might be deemed harmful by the "most puritan of communities" in any state since Web publishers are without any means to limit access to their sites based on geographical location of particular Internet users.

Issues:

1. **WON COPA violates the First Amendment because it relies on "community standards" to identify material that is "harmful to minors."** – **NO.**
   - The Court upheld the use of "community standards" in Roth v. United States which was later adopted by Miller v. California. Miller set the governing "three-part test for obscenity" (discussed earlier) for assessing whether material is obscene

and thus unprotected by the First Amendment. Roth earlier reputed the earlier approach of "sensitive person standard" (what is obscene is dictated by well-known individuals) by English courts and some American courts in the 19th century. In lieu of the "sensitive person standards", which was held to be unconstitutionally restrictive of the freedoms of speech and press, the Court approved the "community standard" requiring that material be judged from the perspective of "the average person, applying contemporary community standards."

2. **WON the Court's prior jurisprudence on "community standards" is applicable to the Internet and the Web [considering that Web publishers right now do not have the ability to control the geographic scope of the recipients of their communications]. – YES.**
   - "Community standards" need not be defined by reference to a precise geographic area. In Jenkins v. Georgia, the Court said that "[a] State may choose to define an obscenity offense in terms of 'contemporary community standards' as defined in Miller without further specification ... or it may choose to define the standards in more precise geographic terms..."
   - Remarkably, the value of a work as judged using community standards does not vary from community to community based on the "degree of local acceptance" it has won.
   - When the scope of an obscenity statute's coverage is sufficiently narrowed by a "**serious vale prong**" and a "**prurient interest prong**" (refer to the Miller three-part test for obscenity), we have held that requiring a speaker disseminating material to a national audience to observe varying community standards does not violate the First Amendment. We noted that the community standards' criterion "as applied" to the Internet means that any communication available to a nationwide audience will be judged by the standards of the community most likely to be offended by the message. COPA applies to significantly less material that did the CDA and defines the "harmful-to-minors" material restricted by the statue in a manner parallel to the Miller definition of obscenity.
   - In fact, in **Hamling v. United States**, which used the "prurient interest" and the "redeeming social value" requirements, and **Sable Communications of Cal. Inc. v. FCC**, which used these requirements on the "dial-a-porn" case, the ability to limit the distribution of material into particular geographic areas is not a crucial prerequisite. Even if these two cases refer to published books and to telephone calls, we do not believe that the Internet's "unique characteristics" justify adopting a different approach.

3. **WON the COPA is "unconstitutionally overbroad" because it will require Web publishers to "shield" some materials behind age verification screens that could be displayed openly in many communities. – NO.**
   - To prevail in a "facial challenge", it is not enough for a plaintiff to show some overbreadth; but rather the overbreadth must not only be "real" but "substantial" as well. Respondents failed to prove it. Congress has already narrowed the range of content of COPA.

HOLDING:

The scope of the decision is "quite limited." COPA's reliance on community standards to identify "material that is harmful to minors" does not **by itself** [I think the Court is saying that it could be unconstitutional "as applied" as expressed by Justice O'Connor in his concurring opinion] render the statute substantially overbroad.
- The Court did not decide whether the COPA is unconstitutionally vague for other purposes or that the Act will not survive if strict scrutiny is applied.
- Since petitioner did not ask to vacate the preliminary injunction, the Government remains enjoined from enforcing COPA without the further action by the Court of Appeals of the District Court.

Justice O'Connor, concurring in part and concurring in the judgment.

I agree that even if obscenity on the Internet is defined in terms of local community standards, respondent have not shown that the COPS is overbroad solely on the basis of the variation in the standards of different communities. But the respondents' failure still leaves possibility that the Act could be unconstitutional "as applied." To avoid this, a national standard is necessary for a reasonable regulation of Internet obscenity. O'Connor does not share the "skepticism" in Miller in having a national standard. He believe that although the Nation is diverse, many local communities encompass a similar diversity.

Justice Breyer, concurring in part and concurring in the judgment.

Breyer thinks that the statutory word "community" in the Act refers to the "Nation's adult community taken as a whole, not to geographically separate local areas." The statutory language does not explicitly describe the specific "community" to which it refers. It only pertains to the "average person, applying contemporary community standards."

Justice Kennedy, with who Justice Souter and Justice Ginsburg join, concurring in the judgment.

There is a very real likelihood that the COPA is overbroad and cannot survive a facial challenge because content-based regulation like this one are presumptively invalid abridgements of the freedom of speech. Thus, even if this facial challenge has considerable merit, the Judiciary must proceed with caution and identify overbreadth with care before invalidating the Act.

We cannot know whether variation in community standards renders the Act substantially overbroad without first assessing the extent of the speech covered and the variations in community standards with respect to that speech. Two things must be noted in this respect:

(1) The breadth of the Act itself will dictate the degree of overbreadth caused by varying community standards.

(2) Community standards may have different degrees of variation depending on the question posed to the community.

Kennedy then argues that any problem caused by variation in community standards cannot be evaluated in a vacuum. To discern overbreadth, it is necessary to know what speech COPA regulates and what community standards it invokes. He also noted that the decision did not address the issue of "venue" where

one surfs the Internet [He does not know the Net that well.]

Justice Stevens, dissenting.

In the context of the Internet, "community standards become a sword rather that a shield." If a a prurient appeal is offensive in a puritan village, it may be a crime to post it on the Web. Stevens reminded the Court of Justice Frankfurter's admonition **not to "burn the house to roast the pig."**

His arguments:

(1) The COPA restricts access by adults as well as children to materials that are deemed "harmful to minors" by the relative "community standards' criterion."

(2) COPA restricts speech that is made available to the general public. COPA covers a "medium" [The World Wide Web] in which speech cannot be segregated to avoid communities where it is likely to be considered harmful to others.

(3) COPA's adoption of the Miller test for obscenity do not cure its overbreadth.

Using community standards to differentiate "permissible" and "impermissible" speech could either be a "shield" to protect speakers from the least tolerant members of society. Or it could act as a "sword", to especially in the context of cyberspace, to remove obscene material from the offended community that defined it as such, and deprive the same material to all else who may think otherwise.

Notes: