Apprehending the Instability and Divergence in Philippine Jurisprudence via Feminist Theories of Public Emotion and Standpoint

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ABSTRACT

Instability and divergence in the decisions rendered by courts of justice are typically accepted with reservations. To better understand this episode of variance, the paper set out to explore how the exercise of judicial discretion contributes to the unpredictability and conflict in jurisprudence or decisions rendered by the Supreme Court of the Republic of the Philippines. Using a case study approach that enabled a comparative examination of two (2) landmark cases decided by the Philippine Supreme Court, which were sourced from the Supreme Court Reports Annotated (SCRA), it was learned that judicial discretion, understood as a variety of public emotion, carries with it normative elements that are, then, grasped via the intersection of the prescriptive and descriptive components of the law. Additionally, the paper had also taken the liberty of utilizing the standpoint theory that enabled the detection of variance and its locus in the individual, at the micro level, at the level of everyday transactions. These perspectives stand to enrich when taken as an adjunct to the widely accepted view that circumstances obtained in each case or controversy determine the latter's outcome and, thus, occasions an experience of a heightened sensibility towards the dynamism of jurisprudence or decisions rendered by the Supreme Court of the Republic of the Philippines.

Keywords: *prescriptive legal positivism, public emotion, discretion, jurisprudence, standpoint theory*

BACKGROUND

The decisions rendered by the Supreme Court of the Philippines it is widely assumed. However, convincing yet may oversimplify the problem that many factors can affect the decisions rendered by judicial bodies, from substantive or procedural to what some quarters may view as excruciating triviality. While others may take this as a joke or

concoct one out of it, it also directs one's attention to seek that which may help us better understand the dynamism of jurisprudence in the Philippines.

As regards the matter of whether to overrule or sustain prior decisions following the doctrine of stare decisis (Latin for "to stand by things decided"[1]), in the United States of America, for example, the US Supreme Court seeks to strike a balance between the boon and bane of overturning a decision and upholding the supremacy of the law by considering practical and cautious elements when acting to resolve a constitutional question.[2] Indeed, the doctrine of stare decisis, notwithstanding, does not dispute that court decisions have had their share of variance and unpredictability.

Statement of the Problem

In rationalizing the unpredictability and variance in Philippine jurisprudence, the paper compared two (2) landmark cases decided by the Philippine Supreme Court. In connection to it, the document intended to answer the following questions: 1) What is the current state of appreciation towards the unpredictability and variance in Philippine jurisprudence vis-à-vis discretion? 2) What is standpoint and how does it relate to discretion? 3) What is public emotion and how does it relate to discretion? and 4) What is the concept of the intersection of prescriptive and descriptive components of the law and how does this concept accommodates and rationalize the variance?

Significance

The significance of this paper is drawn from the benefits of proposing the application of the theoretical sophistication of inclusive or prescriptive legal positivism, feminist insights on standpoint and public emotion that may add nuance and depth to our sensibility towards the unpredictability and variance in Supreme Court decisions in the Philippines. In so doing, this engagement further elevated feminist epistemology while providing not only theoretical reinforcement to the widely accepted and somewhat pragmatic view that circumstances obtaining in a given case or controversy determine the latter's outcome but also prospected for an amplified consideration of feminist philosophy in discursive spheres such as, but not limited to, political science, government – by

[1] The complete Latin phrase is "*stare decisis et non quieta movere*—stand by the thing decided and do not disturb the calm." *See* James C. Rehnquist, *The Power That Shall Be Vested in a Precedent: Stare Decisis, The Constitution, and the Supreme Court,* 66 B.U. L. Rev. 345, 347 (1986). Cited in Name Redacted, Legislative Attorney, "The Supreme Court's Overruling of Constitutional Precedent," EveryCRSReport.com, 2018, accessed on 06 September 2020, https://www.everycrsreport.com/reports/R45319.html#Content.

[2] Name Redacted, "The Supreme Court's Overruling of Constitutional Precedent," 2018.

potentially informing future policy objectives (e.g. equality in the composition of justices in the highest tribunal even in judicial and quasi-judicial bodies) -, moral philosophy, political theory, and philosophy of law. As intimated in the literature review, not much research has examined discretion, and this raises the question of such discretion exerted by magistrates and its weight on how we may understand unpredictability and variability in jurisprudence through a non-detachment view of what the law is and what the law ought to be and not a mere useful modus vivendi – by this is meant here as a way of living for legal practitioners - or distinct from the commonplace reliance on circumstances obtaining in an actual case or controversy.

Objective

This study explored the rationalization of the unpredictability and variance in Philippine jurisprudence. The process provided theoretical reinforcement to the view that circumstances in a given case or controversy determine the latter's outcome. The paper compared two (2) landmark cases decided by the Philippine Supreme Court. In connection to it, the commentary imparted on 1) The current state of understanding towards the unpredictability and variance in Philippine jurisprudence vis-à-vis discretion; 2) Feminist insight on standpoint and how it is related to discretion; 3) Feminist insight on public emotion and how it is related to discretion; and 4) The concept of the intersection of prescriptive and descriptive components of the law and how these concepts accommodate and rationalize the variance.

Scope and Delimitation

The research covered rationalizing the unpredictability and variance in Philippine jurisprudence by understanding discretion through feminist lenses on standpoint and public emotion. The research adopted a case study approach and analyzed two cited documents, exemplars, or landmark cases, in as much as even in this small sampling of topics, such phenomenon problematized herein can be made perceptible. Further, in engaging the issue, the intent to take part in the debate - between detachment and non-detachment views, relativism and objectivism, and the criticism lodged against traditional dichotomies of sex and gender - is not controlling. Instead, glance at certain conceptual strains present in these theories and deploy them to understand better the event of variance and unpredictability in Philippine jurisprudence. Furthermore, constraints in mobility and want of material time due to the pandemic to adequately validate unforeseen or inevitable tensions between the method and framework herein applied and inaccuracies in interpretation and analysis are attributable to the researcher's hurried oversight.

Research Framework

The research proposed the application of inclusive or prescriptive legal positivism, which puts into operation the normative aspects of natural rights theory and the descriptive elements in human or positive law, as well as the dual conceptual approaches of standpoint theory and public emotion propounded by two women philosophers Dorothy Smith and Martha Nussbaum, respectively. The theoretical sophistication of inclusive or prescriptive legal positivism feminist insights on standpoint and public emotion may add nuance and depth to our sensibility towards the unpredictability and variance in Philippine Supreme Court decisions. Unpredictability and conflict in these decisions are commonly associated with the idea that circumstances in a given case or controversy determine the latter's outcome. That adjunct to this conception is the exercise of judicial discretion. When such discretion is taken as an affirmative public emotion, it enters the realm of inclusive positivism, which rationalizes the recognition of the event of variance.

The Philosophical and Legal Context

The provocations for this research stem from the literature that has critical remarks on unpredictability and variation in jurisprudence. Initially, some works have focused on providing a criticism of the exercise of judicial discretion, such as in the case of Duxbury, who mentioned that the term Jurisprudence could be understood to apply to a wide range of cognitive pursuits. The pattern of American Jurisprudence can be appreciated through the idea of the 'Pendulum Swing' or the death to the birth or rebirth from Formalism to Realism.[3] In a published article in Australia, Haig Patapan, the author, said that the Australian High Court's recent decisions reflect a commitment to the Utilitarian conception of rights. The writer also mentioned that the High Court's decision on the Jurisprudence of Rights marks a shift significantly impacting Australian democracy and liberalism.[4]

Additionally, in the essay of D'Amato, he argued against judicial legislation that judges should not legislate in their decisions, for it runs afoul of the sound judicial practice of discovering and applying existing law.[5]

[3] Neil Duxbury, *Patterns of American Jurisprudence*, Clarendon Press, 1995, pp. 1-2.

[4] Haig Patapan, "Rewriting Australian Liberalism: The High Court's Jurisprudence of Rights," *Australian Journal of Political Science*, 1996, 31:2, 225-242, accessed 22 July 2020, DOI: 10.1080/10361149651201.

[5] Anthony D'Amato, "Judicial Legislation," *Faculty Working Papers*, 2010, accessed 22 July 2020, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1106&context=facultyworkingpapers.

The spectacle of self-consciousness coupled with the wealth of information made available via technology modalities afforded a milieu for writers at social criticism evidence is a historical analysis of colonialism and the rule of law. Here, the author traces the tension between liberalism and a regime of regulations and exposes how the colonizing power validates a government of conquest through such tension. This brings to light a conception vital to discerning the West's legal systems- the intersections between the fundamental state sovereignty and the coherent application of laws. Consequently, a rift in the judicial experience becomes evident, and robust influences haul discretion.[6]

Another equally interesting study is a social and legal critique of African countries. The writer posited that one must strictly observe the rule of law to obtain sustainable societal development. The writer, however, averred that the law is prone to being abused by those in power, and the apparent weakness of the adopted Western judicial structure to address such abuses is problematic.

Henceforth, there is a need for present-day Africa to establish an alternate legal system based on analytic and prescriptive philosophy. Judicial discretion here is more a liability than an asset for human development, and the writer's call for the merger between the coherent application of law and the normative archetypes is clear.[7]

Not least in this review is a writer's suspicion that the European Court of Human Rights (ECtHR), a regional court based in France, has made itself vulnerable to strong influences owing to the apparent exceptionalism in the court's application of the rule on a non-reducible life sentence. The author's apprehension was crystalized by comparing and contrasting case samples and the corresponding pieces of jurisprudence issued by the ECtHR.[8]

Throughout the review, there is a clear indication that variability in jurisprudence cannot simply be understood by merely considering the verifiable or attendant circumstances surrounding each actual case or controversy but rather a deliberative regard of discretion, the pernicious tendency of which can only be checked via a non-detached normative element.

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[6] Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, University of Michigan Press, 2019, pp. 1-8.

[7] Charles Nkem Okolie, "Law as a Tool for Social Control: Towards a Philosophy of Law for Contemporary Africa," Nnamdi Azikiwe *Journal of Philosophy (NAJP)*, 2019, https://www.nigerianjournalsonline.com/index.php/najp/article/view/604, accessed 23 July 2020

[8] Ergul Celiksoy, "UK exceptionalism' in the ECtHR's jurisprudence on irreducible life sentences," *The International Journal of Human Rights*, 2020, accessed 23 July 2020, DOI: 10.1080/13642987.2020.1743977.

Verily, a legion of authors, has written and made significant contributions to the prescriptive-descriptive debate. While others devote to the area of judicial discretion, few writings have tackled the topic of how we may understand unpredictability and variability in jurisprudence through a non-detachment view of what the law is and what the law ought to be bolstered by an element of discretion – supplementary to the commonplace reliance on attendant circumstances - in the discursive sphere of which this small work seeks to contribute.

METHODOLOGY

The research adopted a case study approach to describe and gain a better insight into how unpredictability and variability in jurisprudence in Supreme Court decisions in the Philippines can be appreciated via a non-detachment perspective. It analyzed two cited documents, exemplars, or landmark cases sourced from the Supreme Court Reports Annotated (SCRA) through online search engines or the Court's website. More often than not, the view of instability and variance in Supreme Court decisions is taken with a grain of salt that even in this small sampling of cases, such phenomenon problematized herein can be made perceptible. The two selected cases were chosen not only because they altered the complexion and direction of Philippine politics but also because the upheavals of people denominate them. Moreover, the paper explored the cause of variance, judicial discretion that is, between the landmark cases so identified from an inclusive, non-detachment, or prescriptive legal positivist lens as a framework, thereby developing the view that the exercise of judicial discretion, within the vantage of non-detached normative and descriptive components of the law, bolstered by the notion of 'standpoint' and 'public emotion' - that appreciates the particular and microlevel affairs of individuals and discretion as a civic or public emotion, respectively - establishes heightened sensibility towards the unpredictability and variability in Supreme Court decisions in the Philippines. To be clear, the two landmark cases are also known as EDSA 1 and EDSA 2.

DISCUSSION

Philippine history characterized Mssr. Epifanio de los Santos Y Cristobal, a noted Filipino journalist, historian, and civil servant, and in honor of his contributions, the acronym, drawn from his name, 'EDSA,' was predicated on a significant thoroughfare located at the nation's capital region. The term EDSA was coined after two celebrated

People Power Revolutions, being the locus of said event; thus, the words 'EDSA 1'[9] and 'EDSA 2'[10] ' transpired in 1986, the latter in 2001. In this sense, the discussion will commence by presenting a comparison between the two EDSA Revolutions as taught in the subject of Political Law in the Philippines. Although these are denominated as revolutions, their exercise and nature are distinguished. A matrix - from the 2011 University of Santo Tomas Golden Notes, a student-edited work of the university's Faculty of Civil Law - is presented below for brevity and ease of reference:

EDSA 1	EDSA 2
As to power involved or exercised by the people	
Exercise of the people's power of revolution	Exercise of the people's power of freedom of speech and of assembly to petition the government for redress of grievances
Effect of exercise of the power involved	
Overthrows the whole government	Only affected the Office of the President.
Judicial review	
Extra-constitutional. The new government's legitimacy that resulted from it cannot be the subject of judicial review.	Intra-constitutional. The resignation of the sitting President that it caused and the succession of the VP as President is subject to judicial review.
The nature of the question involved	
Presented a political question.	Involves legal questions.

What might give one the impression of commonality is a focus on the performance of revolutionary acts, which is evident. However, the reasons justifying their distinctions are not, and the reasons undergirding such differences relate to the circumstances attendant in either of the two cases. Here, discharging a mandate to magistrates becomes

[9] The terms emerged only years after through writers and ideologues when comparing the two revolutions. The legitimacy of EDSA 1 was ruled by the Supreme Court of the Republic of the Philippines in Joint Resolution, *Lawyers' League for a Better Philippines v. President Aquino*, G.R. No. 73748; *People's Crusade for the Supremacy of the Constitution v. Aquino*, G.R. No. 73972; *Ganay v. Aquino*, G.R. No. 73990, 22 May 1986; the foregoing cited in *In Re: Saturnino v. Bermudez*, G.R. No. 76180 October 24, 1986, accessed 23 July 2020, https://lawphil.net/judjuris/juri1986/oct1986/gr_76180_1986.html.

[10] The constitutionality of EDSA 2 was upheld by the Supreme Court of the Republic of the Philippines in *Estrada vs. Desierto*, G.R. No. 146710-15, March 2, 2001, accessed 23 July 2020, https://lawphil.net/judjuris/juri2001/mar2001/gr_146710_2001.html.

necessary for the citizens' illumination. This constitutional mandate gives the Judiciary the apparent freedom and autonomy to decide over actual cases or controversies presented before it and the recognition of being a co-equal branch of government. This autonomy to decide involves the exercise of discretion whether to entertain such cases or controversies should the courts deem it proper on substantive or procedural grounds. Either way, judges are expected to provide a legal basis for their decisions, and in the Supreme Court of the Philippines, whose decisions form part of the law of the land, judicial discretion means that in cases where the ordinary construction of the law cannot be made to apply in a given case it shifts to legislative intent - at its core is prescriptive and normative since it takes into account fairness, equality, freedom, love, among others – and in the event of further difficulty it orbits out in search for descriptive and normative considerations which it may consistently adopt in this jurisdiction.

This being the case, the general attitude towards Philippine Supreme Court decisions – their instability and variance included -therefore, is that they are accorded with deference by lower courts, evidenced by the tedious task put forth by judges in these courts in finding a relevant similar decision rendered by the Supreme Court in bolstering their own.[11] Further, the formal requisite that legal reasoning be universalizable means that legal doctrines articulated or at least capable of being articulated are imperative in a reliable adjudication system.[12] Thus, fostering the law's doctrinal stability.

The articulation of a standpoint theory is emerging from the contemporary sociology scene. The idea sought to account for the various instances or levels of inequalities experienced by women at the level of the self. It is maintained and coordinated by and from the macro level, male-dominated societal institutions. Smith uses the term standpoint to suggest that a person's situation conditions one's knowledge; that knowledge is determined by where we stand. Our starting point is the world as we concretely experience it, and recognizing the world and others depends on a person's locus.[13]

[11] L. T. Barco Ranera, G. A. Solano and N. Oco, "Retrieval of Semantically Similar Philippine Supreme Court Case Decisions using Doc2Vec," *2019 International Symposium on Multimedia and Communication Technology (ISMAC)*, Quezon City, Philippines, 2019, pp. 1-6, doi: 10.1109/ISMAC.2019.8836165.

[12] Emmanuel Q. Fernando, "Universalizability and Philippine Jurisprudence," *THE PAIDEIA PROJECT ON-LINE*, accessed 28 September 2020, https://www.bu.edu/wcp/Papers/Law/LawFern.htm.

[13] Dorothy E. Smith, *The Everyday World as Problematic* (University of Toronto Press, 1987), p. 89.

To the mind of Smith, standpoint is not taken to mean that we may not be able to view the world from the vantage of others but must be understood to indicate that our assimilation must not be set aside; no two individuals can have the exact comprehension; and that there can be no objective understanding.

Therefore, our entry point is one's experience of being in the world. Since standpoint involves the internalization of things experienced by the individual, it refers, specifically, to emotions, values, and attitudes.[14] For purposes of this research, one may extend the idea to include discretion exercised by magistrates in performing their duties as it carries with it such emotions, values, and attitudes deeply embedded in legal principles and doctrines.

In moral psychology, *Political Emotions* note that freedom and autonomy are public emotions that ought to be cultivated, and their power through representations recommits society's objectives.[1515] The author further mentioned that only when society holds respect for human emotions that we may be able to comprehend civilization's legal practices. This is insightful since the presence of a normative degree of emotions of fear and anger serves as a paradigm for juries and judges in deciding whether to forgive or mitigate punishment for an offender. Thus, legal positivism's view that legal structures can be separated from the normative funds of a community is improbable.[16] One may also elicit that the discretion exercised by a judge - whose exposure to and authority to dispense with the well-entrenched normative aspects of emotion in law – becomes a handmaid of emotion.

From a theoretical convergence project, Campbell (2004) wrote about prescriptive legal positivism, where he ventured into reconfiguring legal positivism. In doing this, he said there should be a deep appreciation of the normative aspects that flow through the writings of Hobbes, Kant, Bentham, Austin, and Hart, to name a few. And that there are adequate prescriptive elements with which to fashion a prescriptive legal positivism towards the establishment of a genuinely positivist legal system.[17]

[14] Dorothy E. Smith, *Institutional Ethnography: A Sociology for People* (Rowman Altamira, 2005), pp. 10-11.

[15] Martha C. Nussbaum, *Political Emotions*, Harvard University Press, 2013, p. 6.

[16] Martha C. Nussbaum, Hiding from Humanity: Disgust, Shame, and the Law, Princeton University Press, 2009, p. 9-11.

[17] Tom Campbell, *Prescriptive Legal Positivism: Law, Rights and Democracy,* Psychology Press, 2004, p. 5.

Further, and quite similar to the project of convergence, Simmonds (2007) asserted that legal institutions and structures of thought should be understood concerning an archetype, which means moral ideal, and that the normative value and justificatory force of law does not depend on contingents but instead is its intrinsic attribute.[18]

The provocations for this convergence project may be fathomed from the works of notable figures in Legal Philosophy. Initially, John Austin argued that the law of nature refers to that set by God for his human creatures and is revealed by God himself or through His representative. In many ways, the divine law, positive law, and moral rubrics are jointly associated since their attributions are analogous.[19] Secondly, Herbert Lionel Adolphus Hart's 'soft positivism' acknowledges that judges are not bound by moral law or prescriptive principles since legal rules need not satisfy the demands of morality.[20]

However, the rules of recognition may accommodate as a criterion for legal validity to conform to substantive rules or moral precepts. Hart's power of credit is one of his secondary rules, which is to remedy uncertainties that may arise from actual cases that, in turn, guide judges in making decisions. It is worth noting that while said rule seeks to remedy delays, it does not arrogate to itself certainty that it lacks that so extends even to the letter or language through which said legal law is couched; hence, all rules have a penumbra of uncertainty where judges must choose between alternatives, and this may as well mean that judges also occupy a space where they can exercise discretion.[21]

These works may be a source of interest that, in reading Austin and Hart, one can draw the impression that both writers have strong positivist orientations. Since Austin merely identifies God as one who can make law and natural law as the effect of God's authority to promulgate rules. While Hart's soft positivism has viewed that morals are often more important than rules of law. These lead us to the second point of interest concerning legal philosophy. These are profound expressions of harmonizing between opposed persuasions to improve the assimilation of legal philosophy's coverage, including the question of variability in jurisprudence.

The learning that one can draw from this non-detachment framework is simple yet significant to the study's purpose.

[18] Nigel Simmonds, *Law as a Moral Idea*, Oxford University Press, 2007, abstract, accessed 23 July 2020, https://philpapers.org/rec/SIMLAA.

[19] John Austin, *The Province of Jurisprudence Determined*, edited by David Campbell, Philip A. Thomas, Routledge, 2019, Analysis of Lectures section.

[20] H.L.A. Hart, *The Concept of Law*, edited by Joseph Raz, Penelope A. Bulloch, with an Introduction by Leslie Green, OUP Oxford, 2012, p. xxxiii.

[21] *Ibid*. pp. 133-134.

In legal positivism, variance in jurisprudence is accommodated. At the same time, natural law tolerates and considers it inferior as they do not cancel out each other in discretion. The intersection of descriptive and normative considerations covers the court magistrates' exercise of discretion. Indeed, the confluence of standpoint-emotion with the convergence project of Campbell is fruitful for the herein objective that insofar as 'EDSA 1' and 'EDSA 2' are concerned, their variance results from the exercise of judicial discretion as when the Philippine Supreme Court did not confine itself to the letter of the law and mere reliance to circumstances obtaining but concurrently exercised judicial control when it paused in its decisions.

Further, it is worth noting that if legislative intent in crafting the law is essentially normative, then applying the law, even before exercising judicial discretion, is, at the outset, a normative act. Furthermore, suppose one should consider looking into the annals of jurisprudential history in the Philippines apart from the small sampling in this study. In that case, it appears that judicial discretion is triggered by influences, bias, or prejudice from within and from without, as judges do not exist within an impenetrable sphere, no matter how ideally sheltered we think or how our laws may describe them to be. In addition, discretion is like a porous object capable of absorbing threat, pressure, or interest and susceptible to turning into that which is absorbed.

For this reason, this study considers discretion as a species of emotion that may be checked via an account of a reasonable and deliberative concept of emotion - which, in the work of Nussbaum where the latter stated that emotions involve cognitive appraisals and exist within a shared political space, the space of fundamental principles and constitutional ideals, thus, normative at its core.[22]

Finally, in recognition of the global and municipal turbulences besetting the Philippines now, it is no doubt inconceivable to maintain a detached standpoint. Considering that an efficient legal system can be fully realized without involving moral principles defeats the very purpose why such a system was established.

CONCLUSION

The primary objective of this paper was to establish that the exercise of judicial discretion contributes to the unpredictability and variance in Philippine jurisprudence, and such an idea of discretion is absorbed in the intersection of the prescriptive and descriptive components of the law that accommodates and rationalizes the clash. In engaging this issue, the study focused on answering three primary inquiries and establishing variance

[22] Nussbaum, 2013, p. 7.

in the selected landmark cases decided by the Supreme Court of the Republic of the Philippines that glancing at certain conceptual strains present in the discussed theories revealed that variance and unpredictability in court decisions can be fully appreciated not only through reliance on the circumstances obtained in a case or controversy but by concurrently considering judicial discretion. Second, on what could be the nature of judicial discretion. In regard to which the study indicated that such discretion is the complementation and concurrence of feminist views on standpoint and public emotion, a handmaiden at that, and susceptible to internal and external factors. The third is as to how discretion fits into the non-detachment scheme. By looking at discretion as a species of emotion, the study shared that it is essentially normative and capable of checking the pernicious tendencies of discretion.

Although the paper was able to illustrate, that judicial discretion is not a mere useful modus vivendi or distinct from the commonplace reliance on circumstances obtained in an actual case or controversy but concurrent with it, thereby providing some theoretical reinforcement, nonetheless, having, thus, limited the rationalization of discretion at the level of the judiciary, future studies may devote attention to the role that discretion plays in the legislative, executive and administrative spheres in government and how the individuals who occupy these public offices wield and dispenses discretion is an important question that needs to be addressed.

REFERENCES

Campbell, Tom. Prescriptive Legal Positivism: Law, Rights, and Democracy. Psychology Press, 2004.

Celiksoy, Ergul. "UK exceptionalism' in the ECtHR's jurisprudence on irreducible life sentences." *The International Journal of Human Rights*, 2020. Accessed 23 July 2020. DOI: 10.1080/13642987.2020.1743977.

D'Amato, Anthony. "Judicial Legislation." *Faculty Working Papers*, 2010. Accessed 22 July 2020.https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1106&context=facultyworkingpapers.

Duxbury, Neil. Patterns of American Jurisprudence. Clarendon Press, 1995.

Fernando, Emmanuel Q. "Universalizability and Philippine Jurisprudence." *THE PAIDEIA PROJECT ONLINE*. Accessed 28 September 2020. https://www.bu.edu/wcp/Papers/Law/LawFern.htm.

Hussain, Nasser. The Jurisprudence of Emergency: Colonialism and the Rule of Law. University of Michigan Press, 2019.

Nussbaum, Martha C. Political Emotion. Harvard University Press, 2013.

Nussbaum, Martha C. Hiding from Humanity: Disgust, Shame, and the Law. Princeton University Press, 2009.

Okolie, Charles Nkem. "Law as a Tool for Social Control: Towards a Philosophy of Law for Contemporary Africa." *Nnamdi Azikiwe Journal of Philosophy (NAJP)*, 2019. Accessed 23 July 2020. https://www.nigerianjournalsonline.com/index.php/najp/article/view/604.

Patapan, Haig. "Rewriting Australian Liberalism: The High Court's Jurisprudence of Rights." *Australian Journal of Political Science,* 1996. 31:2, 225-242. Accessed 22 July 2020. DOI: 10.1080/10361149651201.

Rehnquist, James C. "The Power That Shall Be Vested in a Precedent: Stare Decisis, The Constitution, and the Supreme Court." 66 B.U. L. Rev. 345, 347 (1986). Cited in Name Redacted, Legislative Attorney. "The Supreme Court's Overruling of Constitutional Precedent." *EveryCRSReport.com*, 2018. Accessed on 06 September 2020. https://www.everycrsreport.com/reports/R45319.html#Content.

Smith, Dorothy E. The Everyday World as Problematic. University of Toronto Press, 1987.

Smith, Dorothy E. Institutional Ethnography: A Sociology for People. Rowman Altamira, 2005.

Supreme Court of the Republic of the Philippines in Joint Resolution. Lawyers' League for a Better Philippines v. President Aquino, G.R. No. 73748; People's Crusade for the Supremacy of the Constitution v. Aquino, G.R. No. 73972; Ganay v. Aquino, G.R. No. 73990, 22 May 1986. The preceding is cited in In Re: Saturnino v. Bermudez, G.R. No. 76180, October 24, 1986. https://lawphil.net/judjuris/juri1986/oct1986/gr_76180_1986.html.

Supreme Court of the Republic of the Philippines in Estrada vs. Desierto. G.R. No. 146710-15. March 2, 2001. accessed 23 July 2020. https://lawphil.net/judjuris/juri2001/mar2001/gr_146710_2001.html.

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