

Judicial Activism Reins in Executive Power: The Philippine Experience

Prof. Gloria Estenzo Ramos
University of Cebu College of Law
Philippines
Email: gollyrams@gmail.com

INTRODUCTION

The Philippines was under American Rule beginning 1898, when it was ceded by the Spanish colonial masters in 1898 through the Treaty of Paris, until July 4, 1946 when the Philippines obtained its full independence. The influence of the American government system is palpable, with the presidency largely patterned after that of the United States. The Presidency is the most sought-after elective position in the Philippines, and the President, undoubtedly, the most influential figure in the political landscape. As then Associate Justice of the Supreme Court, now Chief Justice Reynato Puno, pointed out in his Dissenting Opinion, in the case of Secretary of Justice v. Lantion (2000),

“Beyond debate, the President is the single most powerful official in our land for Section 1 of Article VII provides that “the executive power shall be vested in the President of the Philippines,” whereas Section 1 of Article VI states that “the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives . . . except to the extent reserved to the people by the provision on initiative and referendum,” while Section 1 of Article VIII provides that “judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.” Thus, we can see that executive power is vested in the President alone whereas legislative and judicial powers are shared and scattered.”

Executive power is vested in the President.¹ While executive power has no precise definition in the Constitution, the exercise of powers by the President is enumerated therein. These include the power of control over all executive departments, bureaus and offices, supervisory power over the local government units, power to execute the laws, appointing powers, attendant power as the commander-in-chief of the armed forces of the Philippines, the power to grant reprieves, commutations and pardons, the power to grant amnesty with the concurrence of Congress, the power to contract or guarantee loans, the power to enter into treaties or international conventions, the power to submit the budget to Congress, and the power to address Congress.

Executive power was held to be more than the specific powers so enumerated. The President has unstated residual powers which are implied from the grant of the executive power and which are necessary to comply with the duties as President (Marcos v. Manglapus, 1989).

¹ Article VII, section 1, 1987 Constitution

Among the ten presidents of the Republic, the much-admired President Corazon Aquino was instrumental in restoring democracy and the Rule of Law which were lost during the dictatorship of Ferdinand E. Marcos. While the 1935 Constitution, like the present Constitution, provided for a separation of powers among the executive, legislative and judicial branches of government, "it created a strong President with explicitly broad powers than the President of the United States" (Marcos v. Manglapus, 1989). By issuing Proclamation No. 1081 declaring Martial Law, President Marcos paved the way for the onset of the darkest era in the tradition of constitutionalism in the country. His martial law authority allowed the exercise of both executive and legislative powers in one person. Although judicial power was vested in the Supreme Court, just like other institutions then operating, it was considerably weakened when the justices generally treated the issues related to acts of the deposed dictator as "political questions" and thus, beyond the power of judicial review.

POLITICAL AND JUSTICIABLE QUESTIONS

"Political questions" are one class of cases where the Supreme Court hesitates to rule on. These refer to issues which concern not the legality, but the wisdom and discretionary powers of a particular act or measure of the political departments and the sovereign act of the people. "The political question being a function of the separation of powers, the courts will not normally interfere with the workings of another co-equal branch, unless the case shows a clear need for the courts to step in to uphold the law and the Constitution" (Integrated Bar of the Philippines, v. Zamora, 2000). Absent any clear showing of grave abuse of discretion on the part of respondent government agency, the Supreme Court refuses to take cognizance of matters which are within the aforesaid powers of the executive and legislative branches.

In *Casibang v. Aquino*, the Court stated that a "purely justiciable question implies a given right, legally demandable and enforceable, an act or omission violative of such right, and a remedy granted and sanctioned by law, for said breach of right." "Where the vortex of the controversy refers to the legality or validity of the contested act, that matter is definitely justiciable or non-political." ²

SEPARATION OF POWERS

The 1987 Constitution restored the principle of separation of powers where executive, legislative and judicial departments act within the limits and confines of their office. "The doctrine of separation of powers imposes upon the courts a proper restraint, born of the nature of their functions and of their respect for the other departments, in striking down the acts of the legislative and the executive as unconstitutional. The policy, indeed, is a blend of courtesy and caution... The theory is that before the act was done or the law was enacted,

² *Sanidad v. Commission on Elections* (1976)

earnest studies were made by Congress or the President, or both, to insure that the Constitution would not be breached.”³

CONSTITUTIONAL LIMITATIONS ON THE EXERCISE OF EXECUTIVE POWER

Because the Martial Law experience considerably weakened the institutions essential to a vibrant and functioning democracy, including the judiciary, the 1987 Constitution “curtailed” the vast powers of the President, as a response to the abuses during the reign of President Marcos. It subjected certain specific powers of the President to the concurrence of Congress, such as the power to declare martial law and suspend the privilege of the writ of habeas corpus. In addition to the three independent constitutional commissions,⁴ the office of the Ombudsman and a Commission on Human Rights were created to check on abuse of position and trust in the branches, agencies and instrumentalities of the State.

Equally as important and learning the lessons from the dark past of the Martial Law years, the framers of the Constitution deemed it necessary for the Supreme Court, as the last bastion of democracy, and to strengthen its power to say what the law is, to possess the expanded power of judicial review⁵ as well its rule-making power.⁶ These constitutionally mandated powers have made it possible for the Supreme Court of the Philippines to assume the role of an activist court and a pro-active player in policy-making process.

SUPREME COURT: AN ACTIVIST COURT AND PRO-ACTIVE POLICY MAKER

The 1987 Constitution widened the scope of judicial inquiry into areas normally left to the political departments to decide. The Supreme Court is given not only a right but “the duty to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”⁷ Grave abuse of discretion implies “capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law.”⁸ The constitutional

³ Association Of Small Landowners In The Philippines, Inc. v. Secretary of Agrarian Reform (1989)

⁴ Civil Service Commission, Commission on Audit and Commission on Elections

⁵ “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.” (Article VIII, Section 1, Constitution)

⁶ “ Promulgate the rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts...” (Section 5, (5) Constitution)

⁷ Article VIII, Section 1, Constitution

⁸ BAYAN v. Executive Secretary Ronaldo Zamora (2000)

mandate that the Supreme Court settle only actual cases or controversies makes the requirement of proving standing, or *locus standi* on the part of the petitioners inevitable.⁹The Court may relax the rule on standing in the event of transcendental significance of the issues raised.

The Supreme Court is now a key institution that ensures the performance by the President's alter egos, the department heads, of their respective mandate. The most recent illustrative case is *MMDA vs. Manila Bay Residents* (December, 2009). In the said Ruling, petitioner executive agencies were required to restore the ecological health of the polluted Manila Bay and submit to the Court a quarterly progress report by unsheathing, for the first time, the legal remedy of "continuing mandamus."

Chief Justice Puno shared the shift towards adoption of the best practices of other jurisdictions especially in environmental cases.¹⁰ "He cited India where the precautionary principle derived from international norms has been held as part of its municipal law. In one case, the High Court of India interpreted the precautionary principle to mean: (a) where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation, and (b) the onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign. He said that it is also from India that the Supreme Court adopted the doctrine of continuing mandamus which was applied in the Oil Depot and Manila Bay clean-up cases."¹¹

The rule-making power of the Supreme Court has also given it the much-needed muscle to promulgate rules concerning the protection and enforcement of constitutional rights. It's much-heralded Rules on the writ of amparo¹² and the writ of habeas data¹³ contributed immensely to the reduction of the cases of involuntary disappearances, salvaging and murder of union and militant leaders, lawyers and journalists in the country.

CONCLUSION

The Supreme Court has helped, in no small measure, in stabilizing our fledgling democracy by putting a leash on the excessive exercise of executive power. It has evolved to be a key policy maker where executive visibility or "political will" is most wanting, specifically in the protection of human rights and ensuring the integrity of the degraded ecosystem.

⁹ "Legal standing" or *locus standi* has been defined as 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. (*IBP v. Zamora*, 2000).

¹⁰ Speech before the participants of the Supreme Court-initiated Environmental Forum, April 16, 2009,

¹¹ Forum Bulletin, Day 2, p. 4, <http://sc.judiciary.gov.ph/publications/ejforum/FOEJ-04-17-09.pdf>

¹² <http://sc.judiciary.gov.ph/rulesofcourt/2008/jan/A.M.No.08-1-16-SC.pdf>

¹³ http://sc.judiciary.gov.ph/RULE_AMPARO.pdf

As the 22nd Chief Justice of the Philippines, Reynato S. Puno, succinctly puts it, “The Judiciary may not have the power of the sword, may not have the power of the purse, but it has the power to interpret the Constitution, and the unerring lessons of history tell us that rightly wielded, that power can make a difference for good.”¹⁴

¹⁴ Supreme Court Annual Report - 2006