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The Problem of Standing in Philippine Law

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THE PROBLEM OF STANDING IN PHILIPPINE LAW

SOLOMON F. **LUMBA***

I. INTRODUCTION

Law is like a virtual machine.[1] Its parts are rules, principles, doctrines, and other constructs which cannot be seen, touched, tasted, heard or smelled because they exist primarily in our minds. However, it is not without 'real world' effects. For instance, the separate personality of a corporation may be a legal fiction, but it is a fiction that has facilitated the tremendous concentration of wealth which is arguably one of the driving forces for the Industrial Revolution.[2]

As with other machines, law can sometimes be dysfunctional, either because its parts do not mesh or, whether they mesh or not, because it no longer produces the desired real world effects. Sometimes, this dysfunctionality can be ignored, as when it works 'well enough'. However, when it can no longer be ignored, it may become necessary to tweak its parts, create new parts, or overhaul it entirely. Such is the case for the Philippine law on standing. As currently formulated, its parts are not fitted in a way that is coherent. Neither can it be applied in an acceptably consistent manner as to provide meaningful guidance to anyone in terms of real world effects.

The purpose of this paper is four-fold. The first is to offer a slight shift in perspective with which to view the various parts of Philippine standing law. This perspective will be based on the relationship between interests and rights of action. The second is to use this perspective to fit the various parts in a manner that is acceptably coherent, not only as between themselves, but with Philippine law in general. The third is to suggest dispensing with some parts and recasting old ones to make standing law simpler and more powerful in producing real world effects. The fourth is to test the efficacy of all the foregoing by applying it to some landmark decisions in the Philippines and the United States.[3]

II. OF INTERESTS & RIGHTS OF ACTION

The Philippine legal system recognizes a variety of interests which give a private person a *right of action*, i.e., the right to bring a specific case to court.[4] Typically, these interests involve legal rights and legal duties. The most familiar interest is *legal injury* or *injury-in-law*, also known in the Philippines as a *cause of action*.[5] A legal injury is a violation of a legal right. It is irrelevant whether the person whose legal right was violated suffered any *actual injury* or *injury-in-fact*. It suffices that his legal right was violated in order to give him a right of action. If he also suffered an injury-in-fact, he may be awarded compensatory, moral, temperate, liquidated or exemplary damages. But even without an

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[1] *Cf.* David Gelernter, "Truth, Beauty, and the Virtual Machine" *DISCOVER* (1 September 1997), online: <http://discovermagazine.com/1997/sep/truthbeautyandth1217>. The author compared software to a virtual machine whose beauty lies in a happy marriage of simplicity and power.

[2] Alvin Toffler, *The Third Wave* (Bantam Books, 1981) at 30.

[3] Since a significant portion of Philippine standing law is borrowed from United States standing law, the efficacy will also be tested against some landmark decisions in the Philippines and the United States.

[4] *Black's Law Dictionary*, 7th ed., *s.v.* "right of action".

[5] *Rules of Court of the Philippines*, rule 2, s. 2 [*Rules of Court*].

injury-in-fact, he would still be awarded nominal damages, if only to acknowledge the violation of his legal right.[6]

Even without a violation, a legal right may by itself also give a person a right of action. For instance, co-owners have a legal right to demand partition of co-owned property at any time.[7] Accordingly, co-owners are entitled to institute a special civil action for partition.[8] A legal duty, when asserted against an obligor by conflicting claimants, may also give a person a right of action. Accordingly, the obligor is entitled to institute a special civil action for interpleader to compel the claimants to litigate their conflicting claims among themselves.[9] An uncertainty in legal rights or legal duties under an ambiguous or possibly invalid contract or law may also give a person a right of action. Accordingly, a person may institute an action for declaratory relief to ask for a declaration of his legal rights and legal duties under the contract or law.[10]

Sometimes, the recognized interest does not involve legal rights and legal duties, but rather it involves power. For instance, a court may try to exercise a power it does not lawfully have, either because it has no jurisdiction or because it acts with grave abuse of discretion amounting to lack or excess of jurisdiction. Accordingly, the party against whom the power is being asserted may institute a special civil action for certiorari or prohibition to set aside or prevent the unlawful exercise of that power.[11]

The foregoing interests are held by persons in their capacity as individuals. This is to say that these interests are *private*, or *personal*, or *individualized*, or *particularized*. The opposite of these interests are those which are held by persons as members of a political community. This is to say that these interests are *public* or *generalized*. These would include an interest in a disturbance of public order arising from crimes, or a violation of law by the government or even by private persons[12] However, this is not to say that just because everyone may have an interest, then that interest is automatically public. For instance, even though a person may commit a mass tort against everyone, everyone will still have a private interest arising from legal injury. The mere fact that everyone may have the interest does not make it any less private, because it is not the number of people having

[6] *New Civil Code*, art. 221.
[7] *Ibid.*, art. 494.
[8] *Rules of Court*, *supra* note 5, rule 69.
[9] *Ibid.*, rule 62
[10] *Ibid.*, rule 63
[11] *Ibid.*, rule 65.
[12] Some might be of the view that private persons do not have any interest in violations of law committed by private persons which do not constitute a crime, as long as the violation is not committed against them. Others might be of the view that such violations may cause sufficient externalities as to give other private persons a public interest therein. The author's view is that any violation of law gives everyone a public interest. It is just that the legal system normally does not recognize that public interest. Accordingly, they cannot sue to vindicate such interest. This view appears to find some support in *Kilosbayan v. Guingona*, G.R. No. 113375 (5 May 1994), where the Court held that:

> [t]hen there is the attack on the standing of petitioners, as vindicating at most what they consider a public right and not protecting their rights as individuals. This is to conjure the specter of the public right dogma as an inhibition to parties intent on keeping public officials staying, the path of constitutionalism. As was so well put by Jaffe: "The protection of private rights is an essential constituent of public interest and, conversely, without a well-ordered state there could be no enforcement of private rights. Private and public interests are, both in a substance and procedural sense, aspects of the totality of the legal order."

the interest but the capacity in which the interest is held which determines whether it is public or private.[13]

Traditionally, the primary purpose of civil actions is to vindicate private interests. On the other hand, the primary purpose of criminal actions is to vindicate a public interest in a disturbance of public order. However, this is not to say that to have a private interest is to have a right of action to institute a civil action, or to have a public interest in a disturbance of public order is to have a right of action to institute a criminal action. This is to say that there is a disconnect between the kind of action (civil or criminal) and who can institute the action. The former depends on the purpose of the action while the latter depends on which interest the legal system will recognize.

For instance, if A commits a tort against B, then B has a private interest based on a legal injury, while everyone including B has a public interest in A's violation of the law. However, since the Philippine legal system only recognizes B's private interest, then only B (or his successors-in-interest) can file a civil action against A, but based on his private interest and not on his public one. Similarly, if A commits a crime against B, then B has a private interest based on a legal injury, while everyone including B has a public interest in the disturbance of public order. For crimes within the jurisdiction of the Regional Trial Court, the Philippine legal system does not recognize any of these interests. Accordingly, private persons cannot institute a criminal action directly in court.[14] For crimes within the jurisdiction of the Municipal Trial Court, the legal system recognizes B's private interest based on legal injury. Accordingly, B can institute a criminal action directly in court.[15]

The recognition or non-recognition of an interest is a policy choice which the actors in a legal system make. Sometimes, the actor is the political community and the choice is expressed in a written constitution. For instance, under the Philippine Constitution, the President may declare martial law in cases of invasion or rebellion when public safety requires it.[16] Suppose that the President declares martial law and imposes a curfew pursuant to his martial powers. Suppose further that A is arrested for violating the curfew. Under the circumstances, A will have at least four interests. The first is a private interest arising from the arrest, as the martial powers are being exercised against A in particular. The second is a private interest like everyone else's arising from the curfew, as the martial powers are being exercised against everyone. The third is a public interest in the violation by the government of the law. This is fundamentally different from the public interest in the violation by private persons of the law because of its historical context, i.e., mankind's experience with tyranny.[17] This interest is actually none other than the *public interest in breaches of the rule of law*[18] and will hereafter be referred to as such. The fourth is a public interest in the violation by the government of this particular law – the law on martial law. Again, this interest has a historical context arising from the Filipino people's experience under twenty (20) years of martial rule, distinguishing it from a public interest

[13] For emphasis, it is the commission of the crime or violation of the law which gives a person an interest. This parallels private actions wherein it is legal injury, or the assertion of a legal duty against a person by conflicting claimants, or the unlawful exercise of judicial or quasi-judicial power against a party to a case which gives a person an interest. However, to have an interest is not necessarily to have a right of action. The legal system must first recognize the interest before in order for the right of action to exist.

[14] *Rules of Court*, *supra* note 5, rule 110, s. 1(b). A private person has to file a criminal complaint with the executive branch which determines whether to file a criminal action in court.

[15] *Ibid.*

[16] *1987 Constitution of the Republic of the Philippines*, art. VII, s. 18 [*1987 Constitution*].

[17] See Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004) at 1-59. While the rule of law has been conceptualized in many ways, its most basic conception is that the government is not above the law.

[18] *Ibid.* at 92.

in breaches of the rule of law. This is to say that the former is a subset of the latter. Given these various interests, the political community has made a policy choice expressed in the Constitution to give a *constitutional right of action* to any citizen to enable them to challenge the factual basis of a declaration of martial law.[19] It is not unreasonable to suppose that this is based on a recognition by the community that every citizen has a public interest in an unlawful declaration of martial law arising from the Filipino people's experience under twenty (20) year of martial rule.

Sometimes, the actor is a law-making body or person and the choice is expressed in a statute. For instance, then Philippine President Aquino, in the exercise of her law-making powers after the 1986 EDSA Revolution, promulgated the Administrative Code of 1987 which granted a *statutory right of action* to "any party aggrieved or adversely affected by an agency decision."[20]

Sometimes, the actors are the courts and the choice is expressed in decisions. The 20th century has seen the growth in the Philippines of civil actions instituted by private persons who have none of the traditionally recognized interests which would give them a right of action.[21] These civil actions are in the nature of criminal actions in the sense that they are primarily meant to vindicate public interests, for which reason they are sometimes called *public actions* or *public interest actions*. The growth of these actions has compelled courts to make a choice. To illustrate the compulsion, suppose that the law prohibits public buildings from being named after living persons. Suppose further that a local government unlawfully names a public building after a living person. Suppose finally that A institutes a civil action to challenge said act. The court before which the action is brought may choose to dismiss the action because A has none of the traditionally recognized interests which would give him a right of action. For instance, A cannot be said to have suffered any legal injury since there is no right-duty correlative between him and the local government under these circumstances. Neither is A a victim of an abuse of judicial or quasi-judicial power which would entitle him to institute a special civil action for certiorari or prohibition, because the naming of the building is an exercise of an executive or legislative power against no one in particular. However, to dismiss the case on this ground would effectively mean that no private person can ever challenge before the courts unlawful governmental acts of a similar nature. A court within a legal system steeped in certain notions of the rule of law might find this result unpalatable or even dangerous. To avoid this result, the court may choose to recognize other interests to give private persons the right to institute a civil action, the primary purpose of which is to vindicate the public interest in the violation by the government of the law. This right of action in public actions is what will be referred to henceforth as *standing*.[22]

III. FITTING IT ALL TOGETHER, DISPENSING & RECASTING

A. *The Interests Which Will Give Standing under Philippine Law.*

The grant of standing is not a choice that is lightly made by the courts. For instance, there is the practical concern that the judiciary may be flooded with public actions against the executive and legislative departments, overwhelming its resources and resulting in a

[19] *1987 Constitution, supra* note 16, art. VII, s. 18.
[20] *Administrative Code of the Philippines*, Book VII, Ch. 4, s. 25.
[21] Such actions might include legal injury, the assertion of a legal duty against a person by conflicting claimants, the unlawful exercise of judicial or quasi-judicial power against a party to a case, etc.
[22] Standing is used in different contexts in different legal systems. In this paper, it is a subset of a right of action. This is to say that standing is a right of action in public actions.

degradation or breakdown of the judicial system. There is also the constitutional concern that by passing upon executive and legislative acts, the judiciary may effectively assume supremacy over the executive and legislative branches of government. With these concerns as a backdrop, the Philippine Supreme Court has made a choice expressed in its decisions to recognize the standing of private persons who are in possession of certain interests.

The first of these is the public interest in breaches of the rule of law. One of the first decisions in which this choice was arguably articulated was in *Severino v. Governor General*. The Supreme Court rationalized its choice thus:

> [w]hen the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject-matter, since he is regarded as the real party in interest and his right must clearly appear. Upon the other hand, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, *it being sufficient to show that he is a citizen and as such interested in the execution of the laws.* [23]

The second is the private interest based on an actual injury or injury-in-fact. This choice was arguably articulated in its seminal form in *Abendan v. Llorente*.[24] However, one of the first decisions in which it was articulated in its modern form was *People v. Vera*, where the Court held that the "unchallenged rule is that the 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."[25] To recap, there is a disconnect between the purpose of the action and who can file the action. Accordingly, even if the purpose of a public action is to vindicate a public interest, courts may limit standing only to those who hold a private interest such as an injury-in-fact.

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[23]G.R. No. 6250, August 3, 1910 [*emphasis added*]. See also *Costas v. Aldanese*, G.R. No. 21042, October 25, 1923; *Miguel v. Zulueta*, G.R. No. L-19869, April 30, 1966; *De La Llana v. Alba*, G.R. No. 57883, March 12, 1982; *Tanada v. Tuvera*, G.R. No. 63915, April 24, 1985; *Legaspi v. Civil Service Commission*, G.R. No. 72119, May 29, 1987; *Albano v. Reyes*, G.R. No. 83561, July 11, 1989; *Garcia v. Board of Investments*, G.R. No. 88637, September 7, 1989; *Chavez v. PEA (2002)*, G.R. No. 133250, July 9, 2002; *Senate v. Ermita*, G.R. No. 169777, April 20, 2006.

[24] G.R. No. L-4512, February 25, 1908. The decision relates to an election dispute. Court held that the:

> only allegation in the complaint in this action which can be claimed to show any right upon the part of this plaintiff to have the judgment in that proceeding reviewed is the allegation that he is a duly qualified elector of the municipality of Cebu. In our opinion, this fact does not give him any standing in this court to ask for the review of that judgment. There is nothing in the complaint to show whether or not he voted at the election, in question, or if he did so vote, whether he voted for Llorente, Sotto, or Timoteo de Castro.

[25] G.R. No. 45685, November 16, 1937 [*emphasis added*]. See also *Tan v. Macapagal*, G.R. No. L-34161, February 29, 1972; *Dumlao v. COMELEC*, G.R. No. 52245, January 22, 1980; *De La Llana v. Alba*, *supra* note 23; *NEPA v. Ongpin*, G.R. No. 67752, April 10, 1989; *Association of Small Land Owners v. Secretary*, G.R. No. 78742, July 13, 1989; *Garcia v. Board of Investments*, *supra* note 23; *Basco v. PAGCOR*, G.R. No. 91649, May 14, 1991; *De Guia v. COMELEC*, G.R. No. 1044712, May 6, 1992; *Kilosbayan v. Morato*, G.R. No. 118910, July 17, 1995; *Gonzales v. Narvasa*, G.R. No. 140835, August 14, 2000; *Soriano v. Estrada*, G.R. No. 146528, February 6, 2001; *AIWA v. Romulo*, G.R. No. 157509, January 18, 2005; *Domingo v. Caragues*, G.R. No. 161065, April 15, 2005; *Pimentel v. Executive Secretary*, G.R. 158088, July 6, 2005; *Jumamil v. Cafe*, G.R. No. 144579, September 21, 2005; *Didipidio v. Gozun*, G.R. No. 157882, March 30, 2006; *Senate v. Ermita*, *supra* note 23; *Abaya v. Ebdane*, G.R. No. 167919, February 14, 2007.

B. *The Relation between Injury-in-Fact and Taxpayer's Suits: Recasting Taxpayer's Suits*

A taxpayer's suit is an action filed by a taxpayer to challenge an unlawful disbursement of funds raised by taxation.[26] A taxpayer's standing can be expediently collapsed as a subset of a private interest based on an injury-in-fact. This is to say that a taxpayer suffers monetary injury when moneys paid by him to the government to be used for lawful purposes are used in an unlawful way. Injury-in-fact requires that the injury be personal, substantial and direct. In the United States, federal taxpayers were considered to have no standing because their injury was held to be *de minimis*, as the burden of taxation was shared by many, and the causal link between the unlawful act and the injury was tenuous. As explained by the Supreme Court of the United States in *Frothingnham v. Mellon*:

> [t]he relation of a taxpayer of the United States to the federal government is very different. His interest in the moneys of the treasury-partly realized from taxation and partly from other sources-is shared with millions of others, is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity. [27]

However, in the Philippines, the rule is different. In *Pascual v. Secretary*,[28] the Court reasoned that *Frothingham* cannot apply to the Philippines because the relationship between a Filipino taxpayer and the national government is not the same as the relationship between an American taxpayer and the Federal Government, but more analogous to the relationship between an American taxpayer and his state government.[29] Accordingly, in the Philippines, the injury suffered by a taxpayer is considered acceptably personal, substantial and direct to give him standing.

C. *The Relationship between Injury-in-Fact and Redressability: Recasting Redressability*

In *Kilusang Mayo Uno v. Garcia*, the Supreme Court, borrowing from a U.S. Supreme Court decision,[30] held that the:

> rule therefore requires that a party must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant an invocation of the court's jurisdiction and to justify the exercise of the court's remedial powers in his behalf.[31]

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[26] *Kilosbayan v. Guingona*, G.R. 113375, May 5, 1994.
[27] 262 U.S. 447 (1923).
[28] G.R. L-10405, December 29, 1960; See also *PHILCONSA v. Mathay*, G.R. No. L-25554, October 4, 1996; *Tan v. Macapagal*,*supra* note 25; *Dumlao v. COMELEC*, *supra* note 25; *De La Llana v. Alba*, *supra* note 23; *Demetria v. Alba*, G.R. No. L-71977, February 27, 1987; *Macalintal v. COMELEC*, G.R. 157013, July 10, 2003; *Information Technology v. COMELEC*, G.R. No. 159139, January 3, 2004; *Constantino v. Cuisia*, G.R. No. 106064, October 13, 2005; *Abaya v. Ebdane*, *supra* note 25.
[29] The Court was citing *Crampton v. Zabriskie*, 101 U.S. 601 (1879), where the Supreme Court of the United States recognized the right of taxpayers to assail the constitutionality of legislation appropriating state funds.
[30] *Warth v. Seldin*, 422 U.S. 490 (1975).
[31] G.R. No. 115381, December 23, 1994. See also *Telecommunications and Broadcast Attorneys v. COMELEC*, G.R. 132922, April 21, 1998; *Gonzalez v. Narvasa*, *supra* note 25; *Lacson v. Perez*, G.R. No.

Essentially, the Court was saying that standing requires injury-in-fact and *redressability*. This can be read in at least two ways. One is that standing exists when courts recognize an interest (injury-in-fact) and a condition that it set have been met (that the injury-in-fact is redressable). Another is that the injury-in-fact will only be recognized if it is redressable. This is to say that redressability is a condition precedent for recognition of an injury-in-fact, which recognition will give rise to standing. In terms of effect, it does not really matter whichever way it is read because the result would still be the same. However, in terms of simplicity, the latter reading is preferred because it means that the operative act which gives rise to standing is the recognition of an interest. Accordingly, this is the way it will be read henceforth.

D. *The Relationship between the Public Interest in Breaches of the Rule of Law and the Private Interest Based on an Injury-in-Fact*

To recap, the Philippine legal system recognizes both the public interest in breaches of the rule of law and the private interest based on injury-in-fact. However, they are fitted in a way that makes them fundamentally incompatible with each other. This is to say that they are dysfunctional because they do not mesh. To illustrate, in *Kilosbayan v. Guingona*, the Supreme Court upheld the standing of one of the parties because the "he certainly falls within the principle set forth in Justice Laurel's opinion in *People v. Vera*. Thus: 'The unchallenged rule is that the person who impugns the validity of a statue 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.'" [32]

Essentially, the Court held that the party had standing because he suffered an injury-in-fact. As for the other parties, the Court upheld their standing, essentially because they held a public interest in breaches of the rule of law. To quote:

> [t]hen there is the attack on the standing of petitioners, as vindicating at most what they consider a public right and not protecting their rights as individuals. This is to conjure the specter of the public right dogma as an inhibition to parties intent on keeping public officials staying, the path of constitutionalism. As was so well put by Jaffe: "The protection of private rights is an essential constituent of public interest and, conversely, without a well-ordered state there could be no enforcement of private rights. Private and public interests are, both in a substance and procedural sense, aspects of the totality of the legal order."

Kilosbayan is characteristic of the way the Court fits these two interests within the Philippine legal system. In effect, a person instituting a public action will have standing if he holds either of these interests. However, the flaw in this reasoning is that, if the legal system recognizes the public interest in breaches of the rule of law, everyone would have standing to challenge an unlawful government of act, whether or not they have suffered an injury-in-fact. This is to say that injury-in-fact becomes irrelevant. On the other hand, if the legal system requires a private interest based on injury-in-fact in order to have standing,

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147780, May 10, 2001; *Sanlakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004; *AIWA v. Romulo*, *supra* note 25; *Domingo v. Caragu*e, *supra* note 25.

[32] *Supra* note 26.

then it doesn't matter that a person holds a public interest in breaches of the rule of law. This is to say that this public interest becomes irrelevant.

E. *Dispensing with Injury-in-Fact*

One arguably desirable effect of standing law is that it can be applied in an acceptably consistent manner so as to provide meaningful guidance to people. This cannot be achieved with injury-in-fact. For instance, recall the previous illustration about a local government which names a public building after a living person in violation of a national law. Suppose that A, who lives in another locality 500 miles away, reads about this unlawful act in the newspaper and becomes depressed. Suppose finally that A institutes a public action against the local government. Now A's right of action would depend on whether the injury he suffered is personal enough, substantial enough and direct enough, with the latter pertaining to the causal relation between the unlawful government act and the injury. Taken together, these determinations are too subjective in the sense that the probability that reasonable judges will regularly reach different conclusions on substantially similar actions is unacceptably high.[33] Accordingly, people cannot reliably predict how judges will decide, and whatever is decided upon cannot serve as a reliable guide for future decisions or behavior. For this reason, the private interest in injury-in-fact should no longer be recognized.

F. *The relationship between standing and transcendental importance; dispensing with transcendental importance*

Transcendental importance is a judicial construct which has at least two variants. The first variant states that courts may decide a case even though the person who instituted it has no standing if the issues raised are of transcendental importance. As held in *Araneta v. Dinglasan*:

> [w]e will pass up the objection to the personality or sufficiency of interest of the petitioners…. No practical benefit can be gained from a discussion of these procedural matters, since the decision in the cases wherein the petitioners' cause of action or the propriety of the procedure followed is not in dispute, will be controlling authority on the others. Above all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.[34]

[33] If only causality was involved, it is arguable that injury-in-fact can be applied in an acceptably consistent manner as to provide meaningful guidance to people. Judges make causal determinations all the time, whether implicitly or explicitly, and such determinations are in a large measure unavoidable. For instance, to say that A should pay B damages for a tort is to imply that A is the proximate cause of the damage, even though proximate cause was never the main issue in the action. Hence, over the centuries, courts have a built a body of decisions and a level of institutional expertise that may guide judges in their determinations. Accordingly, given that causal determinations are in a large measure unavoidable, courts perform it in a manner that arguably works 'well-enough'.

[34] G.R. L-2044, August 26, 1949. See also *Barredo v. COMELEC*, G.R. L-3055-3056, August 26, 1949; *Kapatiran v. Tan*, G.R. L-81311, June 30, 1988; *Association of Small Land Owners v. Secretary*, *supra* note 25; *Bugnay v. Development Corporation*, G.R. No. 79983, August 10, 1989; *Basco v. PAGCOR*, *supra* note 25; *Osmena v. COMELEC*, G.R. No. 100318, July 30, 1991; *De Guia v COMELEC*, *supra* note 25; *Tatad v. Secretary*, G.R. 124360, November 5, 1997; *Bayan v Zamora*, G.R. 138570, October 10, 2000; *Del Mar v PAGCOR*, G.R. 138298, November 29, 2000; *Lim v. Executive Secretary*, G.R. 151445, April 11, 2002; *Macalintal v. COMELEC*, G.R. 157013, July 10, 2003; *Velarde v. SJS*, G.R. No. 159357, April 28, 2004;

This variant is dysfunctional for three reasons. First, what is of transcendental importance is again a very subjective interpretation in the sense that the probability that reasonable judges will regularly reach different conclusions in substantially similar actions is unacceptably high. Second, it does not mesh with Court decisions recognizing a public interest in breaches of the rule of law. Since everyone holds this interest, everyone has standing to challenge unlawful acts of the government. Consequently, there is no occasion where transcendental importance will apply. Third, it does not mesh with Court decisions that the Case and Controversy clause of the Constitution[35] requires that those who institute actions must have an interest. As explained in *Sanlakas v. Reyes*:

> [t]hese 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 Art. VIII, §5. This requirement lies at the very heart of the judicial function. It is what differentiates decision-making in the courts from decision-making in the political departments of the government and bars the bringing of suits by just any party.[36]

The second variant states that if the issues raised are of transcendental importance, courts may recognize a person's standing. Thus, in *Kilusang Mayo Uno v. Garcia*, the Court held that:

> [a]ssuming arguendo that petitioner is not possessed of the standing to sue, this court is ready to brush aside this barren procedural infirmity and recognize the legal standing of the petitioner in view of the transcendental importance of the issues raised.[37]

Similarly, in *Agan v. PIATCO*, the Court held that in "view of the serious legal questions involved and their impact on public interest, we resolve to grant standing to the petitioners."[38] This can be read to mean that transcendental importance is a condition precedent for the recognition of an interest, which recognition will give a person standing. This reading meshes with Court decisions that the Case and Controversy clause of the Constitution requires that those who institute actions must have an interest. However, it still does not mesh with Court decisions recognizing a public interest in the rule of the law for reasons already explained. But whatever the reading, the variant is still dysfunctional because what is of transcendental importance is a very subjective interpretation in the sense that the probability that reasonable judges will regularly reach different conclusions in substantially similar actions is unacceptably high. People cannot reliably predict how judges will decide, and whatever decisions they make are not reliable guides for future

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Disomangcop v. Secretary, G.R. No. 149848, November 25, 2004; *AIWA v. Romulo*, *supra* note 35; *Jaworski v Philippine Gaming Corporation*, G.R. No. 144463, January 14, 2004; *Information Technology v. COMELEC*, G.R. No. 159139, January 3, 2004; *Jumamil v. Cafe*, *supra* note 25; *Didipidio v. Gozun*, *supra* note 25; *Abaya v. Ebdane*, *supra* note 25.

[35] *1987 Constitution*, *supra* note 16, art. VIII, s. 1.

[36] G.R. Nos. 159085, 159103, 159185, 159196, February 3, 2004.

[37] *Supra* note 31.

[38] G.R. No. 155001, May 5, 2003.

behavior. Because of these dysfunctionalities, transcendental importance should be dispensed with.

G. *The Relationship between Standing and the Grave Abuse of Discretion Clause: Dispensing with One Interpretation*

To recap, the Case and Controversy clause of the Constitution requires that those who institute actions must have an interest. However, in *Kapatiran v. Tan*, the Supreme Court held that:

> [o]bjections to taxpayers' suit for lack of sufficient personality standing, or interest are, however, in the main procedural matters. Considering the importance to the public of the cases at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of these petitions.[39]

Essentially, the Court interpreted the Grave Abuse of Discretion clause of the Constitution[40] as an exception to the Case and Controversy clause. This is to say that courts have the power to decide an action even though the person who instituted it has no standing provided that the government committed a grave abuse of discretion amounting to lack or excess of jurisdiction.

This interpretation does not mesh with other interpretations of the Court. For instance, the Court in *Oposa v. Factoran,* commenting on the relationship between the Case and Controversy and Grave Abuse of Discretion clauses, held that:

> [i]t must, nonetheless, be emphasized that the political question doctrine is no longer the insurmountable obstacle to the exercise of judicial power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review. The second paragraph of section 1, Article VIII of the Constitution states that: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Commenting on this provision in his book, Philippine Political Law, Mr. Justice Isagani A. Cruz, a distinguished member of this Court, says: "The first part of the authority represents the traditional concept of judicial power, involving the settlement of conflicting rights as conferred by law. The second part of the authority represents a broadening of judicial power to enable the courts of justice to review what was before forbidden territory, to wit, the discretion of the political departments of the government. As worded, the new provision vests in the judiciary, and particularly the Supreme Court, the power to rule upon even the wisdom of the decisions of the executive and the legislature and to declare their acts invalid for lack or excess of jurisdiction because tainted with grave abuse of discretion…"[41]

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[39] *Ibid.*
[40] *Supra* at note 35.
[41] G.R. No. 101083, July 30, 1993.

Essentially, the Court interpreted the Grave Abuse of Discretion clause, not as an exception to the Case or Controversy clause, but as a conferral of an additional power to decide even those controversies involving political questions, provided that the government committed a grave abuse of discretion. This is to say that courts have the power to decide an action involving political questions, provided that the government committed a grave abuse of discretion and the person who instituted it has standing as required by the Case or Controversy clause.

This appears to be the better interpretation for two reasons. First, it meshes with the general theme of Philippine law to require that persons who institute actions have an interest or personal stake in the outcome of the controversy. Second, it is consistent with the historical context of the Grave Abuse of Discretion clause. As explained in *Marcos v. Manglapus*, it was a response to the inability of courts during the Marcos years to strike down abuses of power because they were precluded from passing judgment upon political questions. Thus:

> the framers of the Constitution believed that the free use of the political question doctrine allowed the Court during the Marcos years to fall back on prudence, institutional difficulties, complexity of issues, momentousness of consequences or a fear that it was extravagantly extending judicial power in the cases where it refused to examine and strike down an exercise of authoritarian power. Parenthetically, at least two of the respondents and their counsel were among the most vigorous critics of Mr. Marcos (the main petitioner) and his use of the political question doctrine. The Constitution was accordingly amended. We are now precluded by its mandate from refusing to invalidate a political use of power through a convenient resort to the political question doctrine. We are compelled to decide what would have been non-justiceable under our decisions interpreting earlier fundamental charters.[42]

For these reasons, the first interpretation of the Grave Abuse of Discretion clause should be dispensed with.

H. *The Relationship between Standing and Constitutional Questions: Dispensing with Constitutional Questions*

In *Kilosbayan v. Morato*, the Court held that:

> [n]ot only is petitioners' standing a legal issue that may be determined again in this case. It is, strictly speaking, not even the issue in this case, since standing is a concept in constitutional law and here no constitutional question is actually involved.[43]

Essentially, the Court held that standing is only relevant when constitutional questions are raised. This view is not consistent with the facts that the political community and the legislature have the power to provide for constitutional and statutory rights of action regardless of whether constitutional questions are raised. For instance, some of the landmark standing decisions of the United States Federal Supreme Court such as as

[42]G.R. No. 88211, September 15, 1989.

[43]*Supra* note 25. See also *Anti-Graft League v. San Juan*, G.R. 97787, August 1, 1996; *Jumamil v. Cafe*, *Didipidio v. Gozun*, and *Abaya v. Ebdane*, *supra* note 25.

Associated Data Processing v. Camp,[44] *Lujan v. Defenders of Wildlife*,[45] *Sierra Club v. Morton*[46] and *Simon v. Eastern*[47] do not raise constitutional questions. However, one of the main issues in these cases was whether plaintiffs had standing under the statute. While it may be true that standing is a concept in constitutional law, this is not because only constitutional questions can be raised, but because it involves an interpretation of the Case or Controversy clause. Accordingly, this view should be dispensed with.

I. *Quo Vadis? Recasting the Relationship between the Public Interest in Breaches of the Rule of Law and Grave Abuse of Discretion*

Dispensing with injury-in-fact, transcendental importance, the first interpretation of the Grave Abuse of Discretion clause and constitutional questions leaves us with only two parts with which to craft a standing law that is simpler and more powerful in producing real world effects. These two parts are: (a) the public interest in breaches of the rule of law; and (b) the second interpretation of the Grave Abuse of Discretion clause. However, to do this, it will be necessary to mesh the two.

Every discretionary act of the government which violates the law is necessarily a grave abuse of discretion. However, not every act of the government which is a grave abuse of discretion violates the law. For instance, the President may decide to enter into a treaty with another country binding the Philippines to deliver one billion tons of rice per second to said country. This is not unlawful but is arguably a grave abuse of discretion. Accordingly, grave abuse of discretion is the larger field, while violation of the law is a subset thereof. One way to mesh the two would be to recast "the public interest in breaches of the rule of law" as "the public interest in grave abuses of discretion by the government". This is to say that persons have a public interest in grave abuses of discretion committed by the government, which necessarily includes all violations of the law. Another way is to recast "law" in the "rule of law" as to include grave abuses of discretion. This is to say that the interpretation of the rule of law should be broadened so as to require not only that the government follows the law, but also that laws and government acts must be reasonable. This appears to be the better view because it represents an arguably more evolved notion of the rule of law.

One consequence of this meshing is that it can justify requiring public actions be instituted only by way of certiorari, prohibition or mandamus.[48] The 'nice' thing about said petitions is that they may be summarily dismissed if the allegations in the petition are patently without merit, or if the questions raised therein are too insubstantial to require consideration, or if the action is being prosecuted manifestly for delay.[49] Accordingly, it has the arguably desirable real world effect of allowing judges to dismiss the action without having all the actors go through the rigors and expenses of a trial. Another nice thing is that grave abuse of discretion is a standard that can be applied in an acceptably consistent manner so as to provide meaningful guidance to everyone. This is to say that the probability that reasonable judges will regularly come to similar conclusions in substantially the same cases is acceptably high. For instance, the vast bulk of public actions in the Philippines are instituted to challenge perceived unlawful governmental acts and do not raise political questions. Normally, the determination of the lawfulness of an

[44] 397 U.S. 150 (1970).
[45] 504 U.S. 555 (1992).
[46] 405 U.S. 727 (1972).
[47] 426 U.S. 26 (1976).
[48] Mandamus is the action to compel the performance of a ministerial duty, *i.e.* a non-discretionary act.
[49] *Rules of Court*, *supra* note 5, rule 65, s. 8.

act is something wherein judges will come to similar conclusions. The weightier concern would be with those public actions which raise political questions. But even with these actions, it is not as if judges have nothing to guide them in their determination. Unlike transcendental importance or injury-in-fact, grave abuse of discretion is a standard that has existed and been applied by judges for centuries, resulting in a body of decisional law and a level of institutional expertise. This is to say that if it has worked 'well enough' in private actions for the past few centuries, then it might probably also work 'well enough' with public ones.

J. *Addressing the Concerns about Granting Standing to Private Persons so that They Can Institute Public Actions*

To recap, the grant of standing is not a choice that is lightly made because of concerns that may have to be addressed. The first is the practical concern that the judiciary may be inundated with public actions against the executive and legislative departments, overwhelming its resources and resulting in a degradation or breakdown of the judicial system. Actually, this concern is not unique to public actions but to all actions. This is to say that anyone can inundate the courts by instituting baseless actions against anyone else. In traditional civil actions, this behavior is disincentivized by making the person who instituted the action internalize its costs through filing fees and awards of counter-claims, litigation expenses, attorney's fees and costs, etc. Accordingly, the solution is not to prohibit public actions if such actions are deemed to have an acceptable level of social utility, but to mitigate the perceived drawbacks of such actions.

One possible solution is to make persons who institute public actions internalize the costs, as in traditional civil actions. Another possible solution is to create *standing courts* in order to centralize public actions, in the same way that the Supreme Court has designated other special courts such as environmental courts and small claims courts. Another possible solution is to require the person instituting the action to give sufficient public notice to everyone, and to allow concerned persons to intervene and participate in the action. The purpose of these last two possible solutions is to prevent public actions challenging the same unlawful governmental act from being instituted in and decided by courts all over the Philippines. Another possible solution is to delimit the field of potential plaintiffs when practicable, by providing for conditions precedent before an interest will be recognized. For instance, recall the previous illustration about a local government which names a public building after a living person in violation of a national law. Recall further that A, who lives in another locality 500 miles away, reads about this unlawful act in the newspaper, becomes depressed, and institutes a public action against the local government. A court can choose to recognize a person's public interest only if he lives in the locality. This is to say that, since the purpose of public actions is to vindicate public interests, courts are not without discretion to delimit the field of potential plaintiffs to a class of persons they reasonably believe will be sufficient to vindicate said interests.

The second concern is the constitutional concern that by carrying out executive and legislative acts, the judiciary becomes effectively supreme over the executive and legislative departments. Suffice it to say, under the Constitution courts are vested not only with the power but the duty to pass upon grave abuses of discretion committed by any branch of government.[50] Accordingly, when the Court strikes down a governmental act for being a grave abuse of discretion, it is not an exercise of supremacy but of a performance of a constitutional duty.

[50] *1987 Constitution*, *supra* note 16, art. VIII, s. 1.

IV. APPLICATION TO LANDMARK DECISIONS

It is sometimes easy to mischaracterize public actions as private actions and vice versa. For instance, *Kilosbayan v. Morato*[51] involved a petition for prohibition to prevent the government and a private corporation from carrying out a contract in connection with the operation of an on-line lottery system. The contract was put out to tender, and was awarded to the private corporation. Allegedly, the contract violated a law prohibiting the privatization of such operation. Essentially, the Court held that since the action was for annulment of a contract, only the contracting parties had a right of action, since only they could suffer legal injury. Accordingly, the action was dismissed since the persons who instituted the action were not parties to the contract. To quote:

> thus, while constitutional policies are invoked, this case involves basically questions of contract law. More specifically, the question is whether petitioners have legal right which has been violated.
>
> In action for annulment of contracts such as this action, the real parties are those who are parties to the agreement or are bound either principally or subsidiarily or are prejudiced in their rights with respect to one of the contracting parties and can show the detriment which would positively result to them from the contract even though they did no intervene in it (Ibañez v. Hongkong & Shanghai Bank, 22 Phil. 572 (1912)), or who claim a right to take part in a public bidding but have been illegally excluded from it. (See De la Lara Co., Inc. v. Secretary of Public Works and Communications, G.R. No. L-13460, Nov. 28, 1958)[52]

Kilosbayan has absurd implications. For instance, everyone is conclusively presumed to know the law. Accordingly, everyone who enters into an unlawful government contract is deemed to have entered into it knowing its illegality. However, because of *Kilosbayan*, it is only these parties who knowingly entered into the illegal government contract who can challenge its illegality. This is a perfect crime, so to speak. Another absurd implication is this. Suppose that the unlawful government contract was tendered out but no one has yet won. Because of *Kilosbayan,* no one can yet challenge its illegality, since there are not yet any parties to the contract. And then when there are parties to contract, they will be the only ones who can challenge its illegality.

These absurd implications arose because the Court from the very start mischaracterized the action as one for annulment of the contract when on its face it was one for prohibition. There is a world of a difference between the two, although the effect in the end might be the same – a declaration that the contract is illegal. The former is a private action which requires that the plaintiff have a legal injury. The latter is a public action which only requires that the plaintiff has an interest in breaches of the rule of law. Because of this initial mischaracterization, the Court necessarily had to dismiss the action.

Another instance of mischaracterization is *Chavez v. PCGG*, involving an action filed to compel the government to make public all negotiations and agreements relating to the recovery of the Marcos wealth. Essentially, the Court held that the person who instituted the action had standing based on his constitutional right to information. Thus:

[51] *Supra* note 25.
[52] *Ibid.*

> [t]he instant petition is anchored on the right of the people to information and access to official records, documents and papers — a right guaranteed under Section 7, Article III of the 1987 Constitution. Petitioner, a former solicitor general, is a Filipino citizen. Because of the satisfaction of the two basic requisites laid down by decisional law to sustain petitioner's legal standing, i.e. (1) the enforcement of a public right (2) espoused by a Filipino citizen, we rule that the petition at bar should be allowed. In any event, the question on the standing of Petitioner Chavez is rendered moot by the intervention of the Jopsons, who are among the legitimate claimants to the Marcos wealth. The standing of the Jopsons is not seriously contested by the solicitor general. Indeed, said petitioners-intervenors have a legal interest in the subject matter of the instant case, since a distribution or disposition of the Marcoses' ill-gotten properties may adversely affect the satisfaction of their claims.[53]

However, standing was not relevant in *Chavez* because it did not involve a public action. The action was based on a legal injury arising from the breach by the government of a person's constitutional right to information. Accordingly, the action was a private one. In any event, whether public or private, the result would have been the same, *i.e.* the government had the legal duty to provide the information.

Another instance of mischaracterization is *Linda R.S. v. Richard D.*,[54] decided by the Supreme Court of the United States. This involved a Texas statute criminally penalizing the failure of a father to provide support to his child. The district attorney interpreted the statute as penalizing only fathers of legitimate children, and refused to file actions against fathers of illegitimate children. A mother of an illegitimate child whose father failed to give support filed an action to challenge this interpretation, alleging that it discriminated against illegitimate children in violation of the Equal Protection clause of the Constitution. The Court dismissed the action because the mother did not suffer an injury-in-fact. She was unable to show that the failure of the district attorney to prosecute the father was the direct cause of his failure to give support. Thus:

> [a]pplying this test to the facts of this case, we hold that, in the unique context of a challenge to a criminal statute, appellant has failed to allege a sufficient nexus [410 U.S. 614, 618] between her injury and the government action which she attacks to justify judicial intervention. To be sure, appellant no doubt suffered an injury stemming from the failure of her child's father to contribute support payments. But the bare existence of an abstract injury meets only the first half of the standing requirement. "The party who invokes [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury as the result of [a statute's] enforcement." Massachusetts v. Mellon, 262 U.S. 447, 488 (1923) (emphasis added). See also Ex parte Levitt, 302 U.S. 633, 634 (1937). As this Court made plain in Flast v. Cohen, supra, a plaintiff must show "a logical nexus between the status asserted and the claim sought to be adjudicated. . . . Such inquiries into the nexus between the status asserted by the litigant and the claim he presents are essential to assure that he is a proper and appropriate party to invoke federal judicial power." Id., at 102.

[53] G.R. No. 130716, December 9, 1998.
[54] 410 U.S. 614 (1973).

However, like *Chavez*, standing was not relevant in *Linda* because it did not involve a public action. The action was based on a legal injury arising from the breach by the government of a person's constitutional right to equal protection. Accordingly, the action was a private one. While the causal determinations that were made in this case were very difficult, this does not make it a public action. The same difficulties are encountered in tort cases when questions of proximate cause are involved. In any event, whether treated as public or private action, the result would have been the same because of the Court believed that the causal nexus between the failure of the district attorney to prosecute the father and his failure to give support was insufficient.

V. FINAL NOTE

It is usual to view standing law as relating to the proper role of the judiciary *vis-à-vis* the other branches of government. However, it might be more evolved to view standing law as relating to the proper role of the People *vis-à-vis* the other branches of government. This is to say that the People have expressed their choice, through the Constitution, to participate in government either through the political process or through the judicial process. Accordingly, the judiciary is just an instrument for this participation. This participation is not without limits, although these limits have been set by the political community itself, *i.e.* to strike down those acts which constitute a grave abuse of discretion. Viewed in this light, standing law should be made simpler and more powerful in order to facilitate the political community's participation in government.