

**LITO CORPUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.***G.R. No. 180016. April 29, 2014*

Ponente: PERALTA, J.

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This is to resolve the Petition for Review on Certiorari, under Rule 45 of the Rules of Court, dated November 5, 2007, of petitioner Lito Corpuz (petitioner), seeking to reverse and set aside the Decision[1] dated March 22, 2007 and Resolution[2] dated September 5, 2007 of the Court of Appeals (CA), which affirmed with modification the Decision[3] dated July 30, 2004 of the Regional Trial Court (RTC), Branch 46, San Fernando City, finding the petitioner guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph (1), sub-paragraph (b) of the Revised Penal Code.

The antecedent facts follow.

Private complainant Danilo Tangcoy and petitioner met at the Admiral Royale Casino in Olongapo City sometime in 1990. Private complainant was then engaged in the business of lending money to casino players and, upon hearing that the former had some pieces of jewelry for sale, petitioner approached him on May 2, 1991 at the same casino and offered to sell the said pieces of jewelry on commission basis. Private complainant agreed, and as a consequence, he turned over to petitioner the following items: an 18k diamond ring for men; a woman's bracelet; one (1) men's necklace and another men's bracelet, with an aggregate value of P98,000.00, as evidenced by a receipt of even date. They both agreed that petitioner shall remit the proceeds of the sale, and/or, if unsold, to return the same items, within a period of 60 days. The period expired without petitioner remitting the proceeds of the sale or returning the pieces of jewelry. When private complainant was able to meet petitioner, the latter promised the former that he will pay the value of the said items entrusted to him, but to no avail.

Thus, an Information was filed against petitioner for the crime of estafa, which reads as follows:

That on or about the fifth (5th) day of July 1991, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, after having received from one Danilo Tangcoy, one (1) men's diamond ring, 18k, worth P45,000.00; one (1) three-baht men's bracelet, 22k, worth P25,000.00; one (1) two-baht ladies' bracelet, 22k, worth P12,000.00, or in the total amount of Ninety-Eight Thousand Pesos (P98,000.00), Philippine currency, under expressed obligation on the part of said accused to remit the proceeds of the sale of the said items or to return the same, if not sold, said accused, once in possession of the said items, with intent to defraud, and with unfaithfulness and abuse of confidence, and far from complying with his aforesaid obligation, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the aforesaid jewelries (sic) or the proceeds of the sale thereof, and despite repeated demands, the accused failed and refused to return the said items or to remit the amount of Ninety- Eight Thousand Pesos (P98,000.00), Philippine currency, to the damage and prejudice of said Danilo Tangcoy in the aforementioned amount.

CONTRARY TO LAW.

On January 28, 1992, petitioner, with the assistance of his counsel, entered a plea of not guilty. Thereafter, trial on the merits ensued.

The prosecution, to prove the above-stated facts, presented the lone testimony of Danilo Tangcoy. On the other hand, the defense presented the lone testimony of petitioner, which can be summarized, as follows:

Petitioner and private complainant were collecting agents of Antonio Balajadia, who is engaged in the financing business of extending loans to Base employees. For every collection made, they earn a commission. Petitioner denied having transacted any business with private complainant. However, he admitted obtaining a loan from Balajadia sometime in 1989 for which he was made to sign a blank receipt. He claimed that the same receipt was then dated May 2, 1991 and used as evidence against him for the supposed agreement to sell the subject pieces of jewelry, which he did not even see.

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged in the Information. The dispositive portion of the decision states:

WHEREFORE, finding accused LITO CORPUZ GUILTY beyond reasonable doubt of the felony of Estafa under Article 315, paragraph one (1), subparagraph (b) of the Revised Penal Code;

there being no offsetting generic aggravating nor ordinary mitigating circumstance/s to vary the penalty imposable;

accordingly, the accused is hereby sentenced to suffer the penalty of deprivation of liberty consisting of an imprisonment under the Indeterminate Sentence Law of FOUR (4) YEARS AND TWO (2) MONTHS of Prison Correccional in its medium period AS MINIMUM, to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS of Reclusion Temporal in its minimum period AS MAXIMUM; to indemnify private complainant Danilo Tangcoy the amount of P98,000.00 as actual damages, and to pay the costs of suit.

SO ORDERED.

The case was elevated to the CA, however, the latter denied the appeal of petitioner and affirmed the decision of the RTC, thus:

WHEREFORE, the instant appeal is DENIED. The assailed Judgment dated July 30, 2004 of the RTC of San Fernando City (P), Branch 46, is hereby AFFIRMED with MODIFICATION on the imposable prison term, such that accused-appellant shall suffer the indeterminate penalty of 4 years and 2 months of prison correccional, as minimum, to 8 years of prison mayor, as maximum, plus 1 year for each additional P10,000.00, or a total of 7 years. The rest of the decision stands.

SO ORDERED.

Petitioner, after the CA denied his motion for reconsideration, filed with this Court the present petition stating the following grounds:

A. THE HONORABLE COURT OF APPEALS ERRED IN CONFIRMING THE ADMISSION AND APPRECIATION BY THE LOWER COURT OF PROSECUTION EVIDENCE, INCLUDING ITS EXHIBITS, WHICH ARE MERE MACHINE COPIES, AS THIS VIOLATES THE BEST EVIDENCE RULE;

B. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S FINDING THAT THE CRIMINAL INFORMATION FOR ESTAFA WAS NOT FATALY DEFECTIVE ALTHOUGH THE SAME DID NOT CHARGE THE OFFENSE UNDER ARTICLE 315 (1) (B) OF THE REVISED PENAL CODE IN THAT -

1. THE INFORMATION DID NOT FIX A PERIOD WITHIN WHICH THE SUBJECT [PIECES OF] JEWELRY SHOULD BE RETURNED, IF UNSOLD, OR THE MONEY TO BE REMITTED, IF SOLD;
2. THE DATE OF THE OCCURRENCE OF THE CRIME ALLEGED IN THE INFORMATION AS OF 05 JULY 1991 WAS MATERIALLY DIFFERENT FROM THE ONE TESTIFIED TO BY THE PRIVATE COMPLAINANT WHICH WAS 02 MAY 1991;

C. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S FINDING THAT DEMAND TO RETURN THE SUBJECT [PIECES OF] JEWELRY, IF UNSOLD, OR REMIT THE PROCEEDS, IF SOLD – AN ELEMENT OF THE OFFENSE – WAS PROVED;

D. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S FINDING THAT THE PROSECUTION'S CASE WAS PROVEN BEYOND REASONABLE DOUBT ALTHOUGH -

1. THE PRIVATE COMPLAINANT TESTIFIED ON TWO (2) VERSIONS OF THE INCIDENT;
2. THE VERSION OF THE PETITIONER – ACCUSED IS MORE STRAIGHTFORWARD AND LOGICAL, CONSISTENT WITH HUMAN EXPERIENCE;
3. THE EQUIPOISE RULE WAS NOT APPRECIATED IN AND APPLIED TO THIS CASE;
4. PENAL STATUTES ARE STRICTLY CONSTRUED AGAINST THE STATE.

In its Comment dated May 5, 2008, the Office of the Solicitor General (OSG) stated the following counter-arguments:

The exhibits were properly admitted inasmuch as petitioner failed to object to their admissibility.

The information was not defective inasmuch as it sufficiently established the designation of the offense and the acts complained of.

The prosecution sufficiently established all the elements of the crime charged.

This Court finds the present petition devoid of any merit.

The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.[4] Petitioner is of the opinion that the CA erred in affirming the factual findings of the trial court. He now comes to this Court raising both procedural and substantive issues.

According to petitioner, the CA erred in affirming the ruling of the trial court, admitting in evidence a receipt dated May 2, 1991 marked as Exhibit “A” and its submarkings, although the same was merely a photocopy, thus, violating the best evidence rule. However, the records show that petitioner never objected to the admissibility of the said evidence at the time it was identified, marked and testified upon in court by private complainant. The CA also correctly pointed out that petitioner also failed to raise an objection in his Comment to the prosecution's formal offer of evidence and even admitted having signed the said receipt. The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.[5]

Another procedural issue raised is, as claimed by petitioner, the formally defective Information filed against him. He contends that the Information does not contain the period when the pieces of jewelry were supposed to be returned and that the date when the crime occurred was different from the one testified to by private complainant. This argument is untenable. The CA did not err in finding that the Information was substantially complete and in

reiterating that objections as to the matters of form and substance in the Information cannot be made for the first time on appeal. It is true that the gravamen of the crime of estafa under Article 315, paragraph 1, subparagraph (b) of the RPC is the appropriation or conversion of money or property received to the prejudice of the owner[6] and that the time of occurrence is not a material ingredient of the crime, hence, the exclusion of the period and the wrong date of the occurrence of the crime, as reflected in the Information, do not make the latter fatally defective. The CA ruled:

x x x An information is legally viable as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof. Then Section 6, Rule 110 of the Rules of Court provides that a complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. In the case at bar, a reading of the subject Information shows compliance with the foregoing rule. That the time of the commission of the offense was stated as “on or about the fifth (5th) day of July, 1991” is not likewise fatal to the prosecution's cause considering that Section 11 of the same Rule requires a statement of the precise time only when the same is a material ingredient of the offense. The gravamen of the crime of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC) is the appropriation or conversion of money or property received to the prejudice of the offender. Thus, aside from the fact that the date of the commission thereof is not an essential element of the crime herein charged, the failure of the prosecution to specify the exact date does not render the Information ipso facto defective. Moreover, the said date is also near the due date within which accused-appellant should have delivered the proceeds or returned the said [pieces of jewelry] as testified upon by Tangkoy, hence, there was sufficient compliance with the rules. Accused-appellant, therefore, cannot now be allowed to claim that he was not properly apprised of the charges proffered against him.[7]

It must be remembered that petitioner was convicted of the crime of Estafa under Article 315, paragraph 1 (b) of the RPC, which reads:

ART. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow.

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property; x x x

The elements of estafa with abuse of confidence are as follows: (a) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.[8]

Petitioner argues that the last element, which is, that there is a demand by the offended party on the offender, was not proved. This Court disagrees. In his testimony, private complainant narrated how he was able to locate petitioner after almost two (2) months from the time he gave the pieces of jewelry and asked petitioner about the same items with the latter promising to pay them. Thus:

PROS. MARTINEZ

q Now, Mr. Witness, this was executed on 2 May 1991, and this transaction could have been finished on 5 July 1991, the question is what happens (sic) when the deadline came?

a I went looking for him, sir.

q For whom?

a Lito Corpuz, sir.

q Were you able to look (sic) for him?

a I looked for him for a week, sir.

q Did you know his residence?

a Yes, sir.

q Did you go there?

a Yes, sir.

q Did you find him?

a No, sir.

q Were you able to talk to him since 5 July 1991?

a I talked to him, sir.

q How many times?

a Two times, sir.

q What did you talk (sic) to him?

a About the items I gave to (sic) him, sir.

q Referring to Exhibit A-2?

a Yes, sir, and according to him he will take his obligation and I asked him where the items are and he promised me that he will pay these amount, sir.

q Up to this time that you were here, were you able to collect from him partially or full?

a No, sir. [9]

No specific type of proof is required to show that there was demand.[10] Demand need not even be formal; it may be verbal.[11] The specific word “demand” need not even be used to show that it has indeed been made upon the person charged, since even a mere query as to the whereabouts of the money [in this case, property], would be tantamount to a demand.[12] As expounded in *Asejo v. People*: [13]

With regard to the necessity of demand, we agree with the CA that demand under this kind of estafa need not be formal or written. The appellate court observed that the law is silent with regard to the form of demand in estafa under Art. 315 1(b), thus:

When the law does not qualify, We should not qualify. Should a written demand be necessary, the law would have stated so. Otherwise, the word "demand" should be interpreted in its general meaning as to include both written and oral demand. Thus, the failure of the prosecution to present a written demand as evidence is not fatal.

In *Tubb v. People*, where the complainant merely verbally inquired about the money entrusted to the accused, we held that the query was tantamount to a demand, thus:

x x x [T]he law does not require a demand as a condition precedent to the existence of the crime of embezzlement. It so happens only that failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation. The same way, however, be established by other proof, such as that introduced in the case at bar.[14]

In view of the foregoing and based on the records, the prosecution was able to prove the existence of all the elements of the crime. Private complainant gave petitioner the pieces of jewelry in trust, or on commission basis, as shown in the receipt dated May 2, 1991 with an obligation to sell or return the same within sixty (60) days, if unsold. There was misappropriation when petitioner failed to remit the proceeds of those pieces of jewelry sold, or if no sale took place, failed to return the same pieces of jewelry within or after the agreed period despite demand from the private complainant, to the prejudice of the latter.

Anent the credibility of the prosecution's sole witness, which is questioned by petitioner, the same is unmeritorious. Settled is the rule that in assessing the credibility of witnesses, this Court gives great respect to the evaluation of the trial court for it had the unique opportunity to observe the demeanor of witnesses and their deportment on the witness stand, an opportunity denied the appellate courts, which merely rely on the records of the case.[15] The assessment by the trial court is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence, especially when such finding is affirmed by the CA.[16] Truth is established not by the number of witnesses, but by the quality of their testimonies, for in determining the value and credibility of evidence, the witnesses are to be weighed not numbered.[17]

As regards the penalty, while this Court's Third Division was deliberating on this case, the question of the continued validity of imposing on persons convicted of crimes involving property came up. The legislature apparently pegged these penalties to the value of the money and property in 1930 when it enacted the Revised Penal Code. Since the members of the division reached no unanimity on this question and since the issues are of first impression, they decided to refer the case to the Court en banc for consideration and resolution. Thus, several amici curiae were invited at the behest of the Court to give their academic opinions on the matter. Among those that graciously complied were Dean Jose Manuel Diokno, Dean Sedfrey M. Candelaria, Professor Alfredo F. Tadiar, the Senate President, and the Speaker of the House of Representatives. The parties were later heard on oral arguments before the Court en banc, with Atty. Mario L. Bautista appearing as counsel of the petitioner.

After a thorough consideration of the arguments presented on the matter, this Court finds the following:

There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. However, this Court cannot modify the said range of penalties because that would constitute judicial legislation. What the legislature's perceived failure in amending the penalties provided for in the said crimes cannot be remedied through this Court's decisions, as that would be encroaching upon the power of another branch of the government. This, however, does not render the whole situation without any remedy. It can be appropriately presumed that the framers of the Revised Penal Code (RPC) had anticipated this matter by including Article 5, which reads:

ART. 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. - Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.[18]

The first paragraph of the above provision clearly states that for acts borne out of a case which is not punishable by law and the court finds it proper to repress, the remedy is to render the proper decision and thereafter, report to

the Chief Executive, through the Department of Justice, the reasons why the same act should be the subject of penal legislation. The premise here is that a deplorable act is present but is not the subject of any penal legislation, thus, the court is tasked to inform the Chief Executive of the need to make that act punishable by law through legislation. The second paragraph is similar to the first except for the situation wherein the act is already punishable by law but the corresponding penalty is deemed by the court as excessive. The remedy therefore, as in the first paragraph is not to suspend the execution of the sentence but to submit to the Chief Executive the reasons why the court considers the said penalty to be non-commensurate with the act committed. Again, the court is tasked to inform the Chief Executive, this time, of the need for a legislation to provide the proper penalty.

In his book, *Commentaries on the Revised Penal Code*,^[19] Guillermo B. Guevara opined that in Article 5, the duty of the court is merely to report to the Chief Executive, with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh. Thus:

This provision is based under the legal maxim “*nullum crimen, nulla poena sine lege*,” that is, that there can exist no punishable act except those previously and specifically provided for by penal statute.

No matter how reprehensible an act is, if the law-making body does not deem it necessary to prohibit its perpetration with penal sanction, the Court of justice will be entirely powerless to punish such act.

Under the provisions of this article the Court cannot suspend the execution of a sentence on the ground that the strict enforcement of the provisions of this Code would cause excessive or harsh penalty. All that the Court could do in such eventuality is to report the matter to the Chief Executive with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh.^[20]

Anent the non-suspension of the execution of the sentence, retired Chief Justice Ramon C. Aquino and retired Associate Justice Carolina C. Griño-Aquino, in their book, *The Revised Penal Code*,^[21] echoed the above-cited commentary, thus:

The second paragraph of Art. 5 is an application of the humanitarian principle that justice must be tempered with mercy. Generally, the courts have nothing to do with the wisdom or justness of the penalties fixed by law. “Whether or not the penalties prescribed by law upon conviction of violations of particular statutes are too severe or are not severe enough, are questions as to which commentators on the law may fairly differ; but it is the duty of the courts to enforce the will of the legislator in all cases unless it clearly appears that a given penalty falls within the prohibited class of excessive fines or cruel and unusual punishment.” A petition for clemency should be addressed to the Chief Executive.^[22]

There is an opinion that the penalties provided for in crimes against property be based on the current inflation rate or at the ratio of P1.00 is equal to P100.00 . However, it would be dangerous as this would result in uncertainties, as opposed to the definite imposition of the penalties. It must be remembered that the economy fluctuates and if the proposed imposition of the penalties in crimes against property be adopted, the penalties will not cease to change, thus, making the RPC, a self-amending law. Had the framers of the RPC intended that to be so, it should have provided the same, instead, it included the earlier cited Article 5 as a remedy. It is also improper to presume why the present legislature has not made any moves to amend the subject penalties in order to conform with the present times. For all we know, the legislature intends to retain the same penalties in order to deter the further commission of those punishable acts which have increased tremendously through the years. In fact, in recent moves of the legislature, it is apparent that it aims to broaden the coverage of those who violate penal laws. In the crime of Plunder, from its original minimum amount of P100,000,000.00 plundered, the legislature lowered it to P50,000,000.00. In the same way, the legislature lowered the threshold amount upon which the Anti-Money Laundering Act may apply, from P1,000,000.00 to P500,000.00.

It is also worth noting that in the crimes of Theft and Estafa, the present penalties do not seem to be excessive

compared to the proposed imposition of their corresponding penalties. In Theft, the provisions state that:

Art. 309. Penalties. — Any person guilty of theft shall be punished by:

1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos, but if the value of the thing stolen exceeds the latter amount the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.
2. The penalty of prision correccional in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.
3. The penalty of prision correccional in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.
4. Arresto mayor in its medium period to prision correccional in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.
5. Arresto mayor to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.
6. Arresto mayor in its minimum and medium periods, if such value does not exceed 5 pesos.
7. Arresto menor or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provision of any of the five preceding subdivisions shall be made applicable.
8. Arresto menor in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

In a case wherein the value of the thing stolen is P6,000.00, the above-provision states that the penalty is prision correccional in its minimum and medium periods (6 months and 1 day to 4 years and 2 months). Applying the proposal, if the value of the thing stolen is P6,000.00, the penalty is imprisonment of arresto mayor in its medium period to prision correccional minimum period (2 months and 1 day to 2 years and 4 months). It would seem that under the present law, the penalty imposed is almost the same as the penalty proposed. In fact, after the application of the Indeterminate Sentence Law under the existing law, the minimum penalty is still lowered by one degree; hence, the minimum penalty is arresto mayor in its medium period to maximum period (2 months and 1 day to 6 months), making the offender qualified for pardon or parole after serving the said minimum period and may even apply for probation. Moreover, under the proposal, the minimum penalty after applying the Indeterminate Sentence Law is arresto menor in its maximum period to arresto mayor in its minimum period (21 days to 2 months) is not too far from the minimum period under the existing law. Thus, it would seem that the present penalty imposed under the law is not at all excessive. The same is also true in the crime of Estafa.[23]

Moreover, if we apply the ratio of 1:100, as suggested to the value of the thing stolen in the crime of Theft and the damage caused in the crime of Estafa, the gap between the minimum and the maximum amounts, which is the basis of determining the proper penalty to be imposed, would be too wide and the penalty imposable would no longer be commensurate to the act committed and the value of the thing stolen or the damage caused:

- I. Article 309, or the penalties for the crime of Theft, the value would be modified but the penalties are not changed:

1. P12,000.00 to P22,000.00 will become P1,200,000.00 to P2,200,000.00, punished by prision mayor minimum to prision mayor medium (6 years and 1 day to 10 years).
2. P6,000.00 to P12,000.00 will become P600,000.00 to P1,200,000.00, punished by prision correccional medium and to prision correccional maximum (2 years, 4 months and 1 day to 6 years).[24]
3. P200.00 to P6,000.00 will become P20,000.00 to P600,000.00, punishable by prision correccional minimum to prision correccional medium (6 months and 1 day to 4 years and 2 months).
4. P50.00 to P200.00 will become P5,000.00 to P20,000.00, punishable by arresto mayor medium to prision correccional minimum (2 months and 1 day to 2 years and 4 months).
5. P5.00 to P50.00 will become P500.00 to P5,000.00, punishable by arresto mayor (1 month and 1 day to 6 months).
6. P5.00 will become P500.00, punishable by arresto mayor minimum to arresto mayor medium.

x x x x.

II. Article 315, or the penalties for the crime of Estafa, the value would also be modified but the penalties are not changed, as follows:

1st. P12,000.00 to P22,000.00, will become P1,200,000.00 to P2,200,000.00, punishable by prision correccional maximum to prision mayor minimum (4 years, 2 months and 1 day to 8 years).[25]

2nd. P6,000.00 to P12,000.00 will become P600,000.00 to P1,200,000.00, punishable by prision correccional minimum to prision correccional medium (6 months and 1 day to 4 years and 2 months).[26]

3rd. P200.00 to P6,000.00 will become P20,000.00 to P600,000.00, punishable by arresto mayor maximum to prision correccional minimum (4 months and 1 day to 2 years and 4 months).

4th. P200.00 will become P20,000.00, punishable by arresto mayor maximum (4 months and 1 day to 6 months)

An argument raised by Dean Jose Manuel I. Diokno, one of our esteemed amici curiae, is that the incremental penalty provided under Article 315 of the RPC violates the Equal Protection Clause.

The equal protection clause requires equality among equals, which is determined according to a valid classification. The test developed by jurisprudence here and yonder is that of reasonableness,[27] which has four requisites:

- (1) The classification rests on substantial distinctions;
- (2) It is germane to the purposes of the law;
- (3) It is not limited to existing conditions only; and
- (4) It applies equally to all members of the same class.[28]

According to Dean Diokno, the Incremental Penalty Rule (IPR) does not rest on substantial distinctions as P10,000.00 may have been substantial in the past, but it is not so today, which violates the first requisite; the IPR was devised so that those who commit estafa involving higher amounts would receive heavier penalties; however, this is no longer achieved, because a person who steals P142,000.00 would receive the same penalty as someone who steals hundreds of millions, which violates the second requisite; and, the IPR violates requisite no. 3, considering that the IPR is limited to existing conditions at the time the law was promulgated, conditions that no longer exist today.

Assuming that the Court submits to the argument of Dean Diokno and declares the incremental penalty in Article 315 unconstitutional for violating the equal protection clause, what then is the penalty that should be applied in

case the amount of the thing subject matter of the crime exceeds P22,000.00? It seems that the proposition poses more questions than answers, which leads us even more to conclude that the appropriate remedy is to refer these matters to Congress for them to exercise their inherent power to legislate laws.

Even Dean Diokno was of the opinion that if the Court declares the IPR unconstitutional, the remedy is to go to Congress. Thus:

X X X X

JUSTICE PERALTA:

Now, your position is to declare that the incremental penalty should be struck down as unconstitutional because it is absurd.

DEAN DIOKNO:

Absurd, it violates equal protection, Your Honor, and cruel and unusual punishment.

JUSTICE PERALTA:

Then what will be the penalty that we are going to impose if the amount is more than Twenty-Two Thousand (P22,000.00) Pesos.

DEAN DIOKNO:

Well, that would be for Congress to ... if this Court will declare the incremental penalty rule unconstitutional, then that would ... the void should be filled by Congress.

JUSTICE PERALTA:

But in your presentation, you were fixing the amount at One Hundred Thousand (P100,000.00) Pesos ...

DEAN DIOKNO:

Well, my presen ... (interrupted)

JUSTICE PERALTA:

For every One Hundred Thousand (P100,000.00) Pesos in excess of Twenty-Two Thousand (P22,000.00) Pesos you were suggesting an additional penalty of one (1) year, did I get you right?

DEAN DIOKNO:

Yes, Your Honor, that is, if the court will take the route of statutory interpretation.

JUSTICE PERALTA:

Ah ...

DEAN DIOKNO:

If the Court will say that they can go beyond the literal wording of the law...

JUSTICE PERALTA:

But if we de ... (interrupted)

DEAN DIOKNO:

....then....

JUSTICE PERALTA:

Ah, yeah. But if we declare the incremental penalty as unconstitutional, the court cannot fix the amount ...

DEAN DIOKNO:

No, Your Honor.

JUSTICE PERALTA:

... as the equivalent of one, as an incremental penalty in excess of Twenty-Two Thousand (P22,000.00) Pesos.

DEAN DIOKNO:

No, Your Honor.

JUSTICE PERALTA:

The Court cannot do that.

DEAN DIOKNO:

Could not be.

JUSTICE PERALTA:

The only remedy is to go to Congress...

DEAN DIOKNO:

Yes, Your Honor.

JUSTICE PERALTA:

... and determine the value or the amount.

DEAN DIOKNO:

Yes, Your Honor.

JUSTICE PERALTA:

That will be equivalent to the incremental penalty of one (1) year in excess of Twenty-Two Thousand (P22,000.00) Pesos.

DEAN DIOKNO:

Yes, Your Honor.

JUSTICE PERALTA:

The amount in excess of Twenty-Two Thousand (P22,000.00) Pesos.

Thank you, Dean.

DEAN DIOKNO:

Thank you.

x x x x[29]

Dean Diokno also contends that Article 315 of the Revised Penal Code constitutes cruel and unusual punishment. Citing *Solem v. Helm*,^[30] Dean Diokno avers that the United States Federal Supreme Court has expanded the application of a similar Constitutional provision prohibiting cruel and unusual punishment, to the duration of the penalty, and not just its form. The court therein ruled that three things must be done to decide whether a sentence is proportional to a specific crime, viz.: (1) Compare the nature and gravity of the offense, and the harshness of the penalty; (2) Compare the sentences imposed on other criminals in the same jurisdiction, i.e., whether more serious crimes are subject to the same penalty or to less serious penalties; and (3) Compare the sentences imposed for commission of the same crime in other jurisdictions.

However, the case of *Solem v. Helm* cannot be applied in the present case, because in *Solem* what respondent therein deemed cruel was the penalty imposed by the state court of South Dakota after it took into account the latter's recidivist statute and not the original penalty for uttering a "no account" check. Normally, the maximum punishment for the crime would have been five years imprisonment and a \$5,000.00 fine. Nonetheless, respondent was sentenced to life imprisonment without the possibility of parole under South Dakota's recidivist statute because of his six prior felony convictions. Surely, the factual antecedents of *Solem* are different from the present

controversy.

With respect to the crime of Qualified Theft, however, it is true that the imposable penalty for the offense is high. Nevertheless, the rationale for the imposition of a higher penalty against a domestic servant is the fact that in the commission of the crime, the helper will essentially gravely abuse the trust and confidence reposed upon her by her employer. After accepting and allowing the helper to be a member of the household, thus entrusting upon such person the protection and safekeeping of the employer's loved ones and properties, a subsequent betrayal of that trust is so repulsive as to warrant the necessity of imposing a higher penalty to deter the commission of such wrongful acts.

There are other crimes where the penalty of fine and/or imprisonment are dependent on the subject matter of the crime and which, by adopting the proposal, may create serious implications. For example, in the crime of Malversation, the penalty imposed depends on the amount of the money malversed by the public official, thus:

Art. 217. Malversation of public funds or property; Presumption of malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
3. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.
4. The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.

The above-provisions contemplate a situation wherein the Government loses money due to the unlawful acts of the offender. Thus, following the proposal, if the amount malversed is P200.00 (under the existing law), the amount now becomes P20,000.00 and the penalty is prision correccional in its medium and maximum periods (2 years 4 months and 1 day to 6 years). The penalty may not be commensurate to the act of embezzlement of P20,000.00 compared to the acts committed by public officials punishable by a special law, i.e., Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, specifically Section 3,[31] wherein the injury caused to the government is not generally defined by any monetary amount, the penalty (6 years and 1 month to 15 years)[32] under the Anti-Graft Law will now become higher. This should not be the case, because in the crime of malversation, the public official takes advantage of his public position to embezzle the fund or property of the government entrusted to him.

The said inequity is also apparent in the crime of Robbery with force upon things (inhabited or uninhabited)

where the value of the thing unlawfully taken and the act of unlawful entry are the bases of the penalty imposable, and also, in Malicious Mischief, where the penalty of imprisonment or fine is dependent on the cost of the damage caused.

In Robbery with force upon things (inhabited or uninhabited), if we increase the value of the thing unlawfully taken, as proposed in the ponencia, the sole basis of the penalty will now be the value of the thing unlawfully taken and no longer the element of force employed in entering the premises. It may likewise cause an inequity between the crime of Qualified Trespass to Dwelling under Article 280, and this kind of robbery because the former is punishable by prision correccional in its medium and maximum periods (2 years, 4 months and 1 day to 6 years) and a fine not exceeding P1,000.00 (P100,000.00 now if the ratio is 1:100) where entrance to the premises is with violence or intimidation, which is the main justification of the penalty. Whereas in the crime of Robbery with force upon things, it is punished with a penalty of prision mayor (6 years and 1 day to 12 years) if the intruder is unarmed without the penalty of Fine despite the fact that it is not merely the illegal entry that is the basis of the penalty but likewise the unlawful taking.

Furthermore, in the crime of Other Mischiefs under Article 329, the highest penalty that can be imposed is arresto mayor in its medium and maximum periods (2 months and 1 day to 6 months) if the value of the damage caused exceeds P1,000.00, but under the proposal, the value of the damage will now become P100,000.00 (1:100), and still punishable by arresto mayor (1 month and 1 day to 6 months). And, if the value of the damaged property does not exceed P200.00, the penalty is arresto menor or a fine of not less than the value of the damage caused and not more than P200.00, if the amount involved does not exceed P200.00 or cannot be estimated. Under the proposal, P200.00 will now become P20,000.00, which simply means that the fine of P200.00 under the existing law will now become P20,000.00. The amount of Fine under this situation will now become excessive and afflictive in nature despite the fact that the offense is categorized as a light felony penalized with a light penalty under Article 26 of the RPC.[33] Unless we also amend Article 26 of the RPC, there will be grave implications on the penalty of Fine, but changing the same through Court decision, either expressly or impliedly, may not be legally and constitutionally feasible.

There are other crimes against property and swindling in the RPC that may also be affected by the proposal, such as those that impose imprisonment and/or Fine as a penalty based on the value of the damage caused, to wit: Article 311 (Theft of the property of the National Library and National Museum), Article 312 (Occupation of real property or usurpation of real rights in property), Article 313 (Altering boundaries or landmarks), Article 316 (Other forms of swindling), Article 317 (Swindling a minor), Article 318 (Other deceits), Article 328 (Special cases of malicious mischief) and Article 331 (Destroying or damaging statues, public monuments or paintings). Other crimes that impose Fine as a penalty will also be affected, such as: Article 213 (Frauds against the public treasury and similar offenses), Article 215 (Prohibited Transactions), Article 216 (Possession of prohibited interest by a public officer), Article 218 (Failure of accountable officer to render accounts), Article 219 (Failure of a responsible public officer to render accounts before leaving the country).

In addition, the proposal will not only affect crimes under the RPC. It will also affect crimes which are punishable by special penal laws, such as Illegal Logging or Violation of Section 68 of Presidential Decree No. 705, as amended.[34] The law treats cutting, gathering, collecting and possessing timber or other forest products without license as an offense as grave as and equivalent to the felony of qualified theft.[35] Under the law, the offender shall be punished with the penalties imposed under Articles 309 and 310[36] of the Revised Penal Code, which means that the penalty imposable for the offense is, again, based on the value of the timber or forest products involved in the offense. Now, if we accept the said proposal in the crime of Theft, will this particular crime of Illegal Logging be amended also in so far as the penalty is concerned because the penalty is dependent on Articles

309 and 310 of the RPC? The answer is in the negative because the soundness of this particular law is not in question.

With the numerous crimes defined and penalized under the Revised Penal Code and Special Laws, and other related provisions of these laws affected by the proposal, a thorough study is needed to determine its effectivity and necessity. There may be some provisions of the law that should be amended; nevertheless, this Court is in no position to conclude as to the intentions of the framers of the Revised Penal Code by merely making a study of the applicability of the penalties imposable in the present times. Such is not within the competence of the Court but of the Legislature which is empowered to conduct public hearings on the matter, consult legal luminaries and who, after due proceedings, can decide whether or not to amend or to revise the questioned law or other laws, or even create a new legislation which will adopt to the times.

Admittedly, Congress is aware that there is an urgent need to amend the Revised Penal Code. During the oral arguments, counsel for the Senate informed the Court that at present, fifty-six (56) bills are now pending in the Senate seeking to amend the Revised Penal Code,[37] each one proposing much needed change and updates to archaic laws that were promulgated decades ago when the political, socio-economic, and cultural settings were far different from today's conditions.

Verily, the primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.[38] The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose. Succinctly put, the Court should shy away from encroaching upon the primary function of a co-equal branch of the Government; otherwise, this would lead to an inexcusable breach of the doctrine of separation of powers by means of judicial legislation.

Moreover, it is to be noted that civil indemnity is, technically, not a penalty or a Fine; hence, it can be increased by the Court when appropriate. Article 2206 of the Civil Code provides:

Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Precisely, it is civil indemnity. Thus, in a crime where a person dies, in addition to the penalty of imprisonment imposed to the offender, the accused is also ordered to pay the victim a sum of money as restitution. Clearly, this award of civil indemnity due to the death of the victim could not be

contemplated as akin to the value of a thing that is unlawfully taken which is the basis in the imposition of the proper penalty in certain crimes. Thus, the reasoning in increasing the value of civil indemnity awarded in some offense cannot be the same reasoning that would sustain the adoption of the suggested ratio. Also, it is apparent from Article 2206 that the law only imposes a minimum amount for awards of civil indemnity, which is P3,000.00. The law did not provide for a ceiling. Thus, although the minimum amount for the award cannot be changed, increasing the amount awarded as civil indemnity can be validly modified and increased when the present circumstance warrants it. Corollarily, moral damages under Article 2220[39] of the Civil Code also does not fix the amount of damages that can be awarded. It is discretionary upon the court, depending on the mental anguish or the suffering of the private offended party. The amount of moral damages can, in relation to civil indemnity, be adjusted so long as it does not exceed the award of civil indemnity.

In addition, some may view the penalty provided by law for the offense committed as tantamount to cruel punishment. However, all penalties are generally harsh, being punitive in nature. Whether or not they are excessive or amount to cruel punishment is a matter that should be left to lawmakers. It is the prerogative of the courts to apply the law, especially when they are clear and not subject to any other interpretation than that which is plainly written.

Similar to the argument of Dean Diokno, one of Justice Antonio Carpio's opinions is that the incremental penalty provision should be declared unconstitutional and that the courts should only impose the penalty corresponding to the amount of P22,000.00, regardless if the actual amount involved exceeds P22,000.00. As suggested, however, from now until the law is properly amended by Congress, all crimes of Estafa will no longer be punished by the appropriate penalty. A conundrum in the regular course of criminal justice would occur when every accused convicted of the crime of estafa will be meted penalties different from the proper penalty that should be imposed. Such drastic twist in the application of the law has no legal basis and directly runs counter to what the law provides.

It should be noted that the death penalty was reintroduced in the dispensation of criminal justice by the Ramos Administration by virtue of Republic Act No. 7659[40] in December 1993. The said law has been questioned before this Court. There is, arguably, no punishment more cruel than that of death. Yet still, from the time the death penalty was re-imposed until its lifting in June 2006 by Republic Act No. 9346,[41] the Court did not impede the imposition of the death penalty on the ground that it is a "cruel punishment" within the purview of Section 19 (1),[42] Article III of the Constitution. Ultimately, it was through an act of Congress suspending the imposition of the death penalty that led to its non-imposition and not via the intervention of the Court.

Even if the imposable penalty amounts to cruel punishment, the Court cannot declare the provision of the law from which the proper penalty emanates unconstitutional in the present action. Not only is it violative of due process, considering that the State and the concerned parties were not given the opportunity to comment on the subject matter, it is settled that the constitutionality of a statute cannot be attacked collaterally because constitutionality issues must be pleaded directly and not collaterally,[43] more so in the present controversy wherein the issues never touched upon the constitutionality of any of the provisions of the Revised Penal Code.

Besides, it has long been held that the prohibition of cruel and unusual punishments is generally aimed at the form or character of the punishment rather than its severity in respect of duration or amount, and applies to punishments which public sentiment has regarded as cruel or obsolete, for instance, those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like. Fine and imprisonment would not thus be within the prohibition.[44]

It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the

Constitution. The fact that the punishment authorized by the statute is severe does not make it cruel and unusual. Expressed in other terms, it has been held that to come under the ban, the punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community." [45]

Cruel as it may be, as discussed above, it is for the Congress to amend the law and adapt it to our modern time.

The solution to the present controversy could not be solved by merely adjusting the questioned monetary values to the present value of money based only on the current inflation rate. There are other factors and variables that need to be taken into consideration, researched, and deliberated upon before the said values could be accurately and properly adjusted. The effects on the society, the injured party, the accused, its socio-economic impact, and the likes must be painstakingly evaluated and weighed upon in order to arrive at a wholistic change that all of us believe should be made to our existing law. Dejectedly, the Court is ill-equipped, has no resources, and lacks sufficient personnel to conduct public hearings and sponsor studies and surveys to validly effect these changes in our Revised Penal Code. This function clearly and appropriately belongs to Congress. Even Professor Tadiar concedes to this conclusion, to wit:

x x x x

JUSTICE PERALTA:

Yeah, Just one question. You are suggesting that in order to determine the value of Peso you have to take into consideration several factors.

PROFESSOR TADIAR:

Yes.

JUSTICE PERALTA:

Per capita income.

PROFESSOR TADIAR:

Per capita income.

JUSTICE PERALTA:

Consumer price index.

PROFESSOR TADIAR:

Yeah.

JUSTICE PERALTA:

Inflation ...

PROFESSOR TADIAR:

Yes.

JUSTICE PERALTA:

... and so on. Is the Supreme Court equipped to determine those factors?

PROFESSOR TADIAR:

There are many ways by which the value of the Philippine Peso can be determined utilizing all of those economic terms.

JUSTICE PERALTA:

Yeah, but ...

PROFESSOR TADIAR:

And I don't think it is within the power of the Supreme Court to pass upon and peg the value to One Hundred (P100.00) Pesos to ...

JUSTICE PERALTA:

Yeah.

PROFESSOR TADIAR:

... One (P1.00.00) Peso in 1930.

JUSTICE PERALTA:

That is legislative in nature.

PROFESSOR TADIAR:

That is my position that the Supreme Court ...

JUSTICE PERALTA:

Yeah, okay.

PROFESSOR TADIAR:

... has no power to utilize the power of judicial review to in order to adjust, to make the adjustment that is a power that belongs to the legislature.

JUSTICE PERALTA:

Thank you, Professor.

PROFESSOR TADIAR:

Thank you.[46]

Finally, the opinion advanced by Chief Justice Maria Lourdes P. A. Sereno echoes the view that the role of the Court is not merely to dispense justice, but also the active duty to prevent injustice. Thus, in order to prevent injustice in the present controversy, the Court should not impose an obsolete penalty pegged eighty three years ago, but consider the proposed ratio of 1:100 as simply compensating for inflation. Furthermore, the Court has in the past taken into consideration "changed conditions" or "significant changes in circumstances" in its decisions.

Similarly, the Chief Justice is of the view that the Court is not delving into the validity of the substance of a statute. The issue is no different from the Court's adjustment of indemnity in crimes against persons, which the Court had previously adjusted in light of current times, like in the case of *People v. Pantoja*.^[47] Besides, Article 10 of the Civil Code mandates a presumption that the lawmaking body intended right and justice to prevail.

With due respect to the opinions and proposals advanced by the Chief Justice and my Colleagues, all the proposals ultimately lead to prohibited judicial legislation. Short of being repetitious and as extensively discussed above, it is truly beyond the powers of the Court to legislate laws, such immense power belongs to Congress and the Court should refrain from crossing this clear-cut divide. With regard to civil indemnity, as elucidated before, this refers to civil liability which is awarded to the offended party as a kind of monetary restitution. It is truly based on the value of money. The same cannot be said on penalties because, as earlier stated, penalties are not only based on the value of money, but on several other factors. Further, since the law is silent as to the maximum amount that can be awarded and only pegged the minimum sum, increasing the amount granted as civil indemnity is not proscribed. Thus, it can be adjusted in light of current conditions.

Now, with regard to the penalty imposed in the present case, the CA modified the ruling of the RTC. The RTC imposed the indeterminate penalty of four (4) years and two (2) months of prision correccional in its medium period, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period, as maximum. However, the CA imposed the indeterminate penalty of four (4) years and two (2) months of prision

correccional, as minimum, to eight (8) years of prision mayor, as maximum, plus one (1) year for each additional P10,000.00, or a total of seven (7) years.

In computing the penalty for this type of estafa, this Court's ruling in *Cosme, Jr. v. People*[48] is highly instructive, thus:

With respect to the imposable penalty, Article 315 of the Revised Penal Code provides:

ART. 315 Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

The penalty prescribed by Article 315 is composed of only two, not three, periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty prescribed, forming one period of each of the three portions. Applying the latter provisions, the maximum, medium and minimum periods of the penalty prescribed are:

Maximum - 6 years, 8 months, 21 days to 8 years

Medium - 5 years, 5 months, 11 days to 6 years, 8 months,
20 days

Minimum - 4 years, 2 months, 1 day to 5 years, 5 months,
10 days[49]

To compute the maximum period of the prescribed penalty, prisión correccional maximum to prisión mayor minimum should be divided into three equal portions of time each of which portion shall be deemed to form one period in accordance with Article 65[50] of the RPC.[51] In the present case, the amount involved is P98,000.00, which exceeds P22,000.00, thus, the maximum penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor. Article 315 also states that a period of one year shall be added to the penalty for every additional P10,000.00 defrauded in excess of P22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years.

Considering that the amount of P98,000.00 is P76,000.00 more than the P22,000.00 ceiling set by law, then, adding one year for each additional P10,000.00, the maximum period of 6 years, 8 months and 21 days to 8 years of prision mayor minimum would be increased by 7 years. Taking the maximum of the prescribed penalty, which is 8 years, plus an additional 7 years, the maximum of the indeterminate penalty is 15 years.

Applying the Indeterminate Sentence Law, since the penalty prescribed by law for the estafa charge against petitioner is prision correccional maximum to prision mayor minimum, the penalty next lower would then be prision correccional in its minimum and medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months.

One final note, the Court should give Congress a chance to perform its primordial duty of lawmaking. The Court should not pre-empt Congress and usurp its inherent powers of making and enacting laws. While it may be the most expeditious approach, a short cut by judicial fiat is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.

WHEREFORE, the Petition for Review on Certiorari dated November 5, 2007 of petitioner Lito Corpuz is hereby

DENIED. Consequently, the Decision dated March 22, 2007 and Resolution dated September 5, 2007 of the Court of Appeals, which affirmed with modification the Decision dated July 30, 2004 of the Regional Trial Court, Branch 46, San Fernando City, finding petitioner guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph (1), sub-paragraph (b) of the Revised Penal Code, are hereby AFFIRMED with MODIFICATION that the penalty imposed is the indeterminate penalty of imprisonment ranging from THREE (3) YEARS, TWO (2) MONTHS and ELEVEN DAYS of prision correccional, as minimum, to FIFTEEN (15) YEARS of reclusion temporal as maximum.

Pursuant to Article 5 of the Revised Penal Code, let a Copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice.

Also, let a copy of this Decision be furnished the President of the Senate and the Speaker of the House of Representatives.

SO ORDERED.

Velasco, Jr., Leonardo-De Castro, Villarama, Jr., Perez, Mendoza, and Reyes, JJ., concur.

Sereno, C.J., see concurring and dissenting opinion.

Carpio, J., see dissenting opinion.

Brion, J., see concurring opinion.

Bersamin, J., I take no part due to prior action in the CA.

Del Castillo, J., I join the dissent of J. Abad.

Abad, J., see dissenting opinion.

Perlas-Bernabe, J., no part.

Leonen, J., I dissent on penalties, see separate opinion.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of the Supreme Court), with Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin (now a member of the Supreme Court), concurring; rollo, pp. 31-41.

[2] Rollo, p. 43.

[3] Id. at 48-52.

[4] *Libuit v. People*, 506 Phil. 591, 599 (2005).

[5] *Blas v. Angeles-Hutalla*, 482 Phil. 485, 501 (2004).

[6] *Quinto v. People*, 365 Phil. 259, 270 (1999).

[7] Rollo, p. 37. (Citations omitted.)

[8] *Diaz v. People*, 585 Phil. 318, 332 (2008), citing *Pangilinan v. Court of Appeals*, 378 Phil. 670, 675 (1999).

[9] TSN, December 17, 1992, pp. 9-10. (Emphasis supplied.)

[10] *Tan v. People*, 542 Phil. 188, 201 (2007).

[11] Id., citing *Lee v. People*, 495 Phil. 239, 250 (2005).

[12] Id.

[13] 555 Phil. 106 (2007).

[14] Id. at 114. (Citations omitted.)

[15] Cosme, Jr. v. People, 538 Phil. 52, 66 (2006), citing People v. Garillo, 446 Phil. 163, 174-175 (2003).

[16] Id., citing Sullon v. People, 500 Phil. 39, 45 (2005) ; People v. Bulan, 498 Phil. 586, 598 (2005).

[17] Id. at 67, citing People v. Gaspar, 376 Phil. 762, 779 (1999).

[18] Emphasis supplied.

[19] Third Edition, 1940.

[20] Id. at 16. (Emphasis supplied)

[21] 1997 Edition.

[22] Id. at 93, citing United States v. Valera Ang Y, 26 Phil. 598 (1914); People v. Salazar y Gabriel, 102 Phil. 1184 (1958); Tiu Ua, 51 O.G. 1863; Limaco, 99 Phil. 35 (1956), and People v. Del Rosario y Natividad, 62 Phil. 824 (1936). (Emphasis supplied.)

[23] Art. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By arresto mayor in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality or anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or of any third person.

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) [By post-dating a check, or issuing a check in payment of an obligation when the offender therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack of insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)]

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house or apartment house after obtaining credit, food, refreshment or accommodation therein without paying for his food, refreshment or accommodation.

3. Through any of the following fraudulent means: (a) By inducing another, by means of deceit, to sign any document.

(b) By resorting to some fraudulent practice to insure success in a gambling game.

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

[24] May be entitled to Probation.

[25] May be entitled to Probation if the maximum penalty imposed is 6 years.

[26] May be entitled to Probation.

[27] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 613 SCRA 385, 414.

[28] *People v. Cayat*, 68 Phil. 12, 18 (1939).

[29] TSN, Oral Arguments, February 25, 2014, pp. 192-195.

[30] 463 U.S. 277 (1983)

[31] Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part,

wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

[32] R.A. No. 3019, Sec. 9.

[33] Art. 26. When afflictive, correctional, or light penalty. — A fine, whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty if it less than 200 pesos.

[34] Revised Forestry Code, as amended by E.O. No. 277, Series of 1987.

[35] *Taopa v. People*, 592 Phil. 341, 345 (2005).

[36] Art. 310. Qualified theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

[37] TSN, Oral Arguments, February 25, 2014, p. 167.

[38] *People v. Quijada*, 328 Phil. 505, 548 (1996).

[39] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[40] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES.

[41] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[42] Section 19.

1. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. x x x.

[43] *Gutierrez v. Department of Budget and Management*, G.R. No. 153266, 159007, 159029, 170084, 172713, 173119, 176477, 177990, A.M. No. 06-4-02-SB, March 18, 2010, 616 SCRA 1, 25.

[44] *People v. De la Cruz*, 92 Phil. 906, 908 (1953); *People v. Tongko*, 353 Phil. 37, 43 (1998).

[45] *People v. Estoista*, 93 Phil. 647, 655 (1953); *People v. Dionisio*, No. L-15513, March 27, 1968, 22 SCRA 1299, 1301-1302.

[46] TSN, Oral Arguments, February 25, 2014, pp. 183-185.

[47] No. L-18793, October 11, 1968, 25 SCRA 468.

[48] *Supra* note 15.

[49] *Id.* at 71-72.

[50] ART. 65. Rule in Cases in Which the Penalty is Not Composed of Three Periods. – In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

[51] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 284.

CONCURRING AND DISSENTING OPINION

SERENO, CJ:

The measure of a just society depends not only on how it apprehends and punishes the guilty. It also lies in the dignity and fairness it collectively accords convicted persons who, irrevocably, are still members of that society. The duty of the Court in this case is not only to dispense justice, but to actively prevent injustice wrought by inaction on the question of the continued justness of the penalties under Article 315 of the Revised Penal Code.

I concur with the ponencia in affirming the conviction of petitioner but vote to apply the penalty for estafa adjusted to the present value of the thing subject of the offense. Considering that the penalty has remained untouched for eighty-three years, the Court cannot adhere to its literal imposition without first revisiting the assigned values on which such penalty was based. The Legislature of 1930 pegged the penalties at the prevailing value of money at the time of the enactment of the Revised Penal Code. Apart from its representation as a basket of goods or as a means of exchange, money has no independent value by itself, and that is how the law has always seen it. Even this outlook must then necessarily affect our views regarding the liberty of persons and how money affects it.

My colleagues have presented differing approaches supported by equally keen arguments. However, were we to take the convenient route of mechanical application, we would be perpetuating an erroneous result from lamentable inaction. Would this Court abdicate its duty at the risk of endangering the right to liberty of the accused? In the past, the Court has never shirked from its role of interpreting the law, always with a careful consideration of its minimum burden: to prevent a result that is manifestly unjust. That the fundamental right to life and liberty is made to depend solely on Congress or the mere passage of time with respect to an omission is a result the Court should not be prepared to accept.

The legislative intent behind provisions of the Revised Penal Code is to create prison terms dependent upon the value of the property subject of the crime. A prison term is virtually monetized, while an individual's life and well-being hang in the balance. It is incumbent upon the Court to preserve the intent of Congress while crucially ensuring that the individual's liberty is not impinged upon any longer than necessary. This is distinct from the situation contemplated under Article 5, par. 2 of the Penal Code,[1] in which the Court would need to delve into the wisdom of the law, i.e. the appropriateness of the penalty taking into account the degree of malice and the injury caused by the offense.

Thus, the crux of the present case is simple judicial application of the doctrines that in cases of doubt: 1) the law must be construed in favor of the accused, 2) it is presumed that the lawmaking body intended right and justice to prevail. This duty of judicial construction is understood to permeate every corner where the Court exercises its adjudicative function, specifically in how it expounds on criminal rules. To assume that the Court would be changing the penalty imprudently leads to a misplaced apprehension that it dabbles in judicial legislation, when it is merely exercising its constitutional role of interpretation.

Adjusting the amounts to the present value of money recognizes that money is simply an assigned representation, similar to the Court's ruling in *People v. Pantoja*.

Ruling in accordance with "felt necessities of the time"[2] or in recognition of considerably changed

circumstances is not a novel judicial approach. In *Central Bank Employees v. BSP*, the Court posed this question: Can a provision of law, initially valid, become subsequently unconstitutional on the ground that its continued operation would violate the equal protection of the law? The Court thus considered the legal effect of the passage of time, stating:

Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of changed conditions. x x x.

In the Philippine setting, this Court declared the continued enforcement of a valid law as unconstitutional as a “consequence of significant changes in circumstances.” In *Rutter v. Esteban*, We upheld the constitutionality of the moratorium law – despite its enactment and operation being a valid exercise by the State of its police power – but also ruled that the continued enforcement of the otherwise valid law would be unreasonable and oppressive. The Court noted the subsequent changes in the country's business, industry and agriculture. Thus, the law was set aside because its continued operation would be grossly discriminatory and lead to the oppression of the creditors.”[3]

It is axiomatic that laws, customs, public policy and practice evolve with the passage of time; so too, does monetary valuation. Money has no value in and of itself except that which we assign, making it susceptible to construction and interpretation. Money is not real in the sense that it is capable of being indexed. Viewed in this way, human lives and liberty cannot be made dependent on a mere index of almost a century ago.

I submit that in the present case, the Court is not even delving into questions of validity of the substance of the statute. This is no different from the Court's adjustment of indemnity in crimes against persons or the determination of valuation in expropriation cases. We have continually checked penalties in criminal cases, adjusted the amounts of damages and indemnities according to the appropriateness thereof in light of current times. We have done so with eyes open, knowing that the adjustments reflect a realization that the value of the peso has changed over time. If the purchasing power of the peso was accepted as a “judicially manageable standard” in those cases, there is no reason for the Court not to apply it in favor of the accused herein, especially because it is mandated to do so.

In *People v. Pantoja*, concerning compensatory damages for death, the Court explained this adjustment in uncomplicated terms:

In 1948, the purchasing power of the Philippine peso was one-third of its pre-war purchasing power. In 1950, when the New Civil Code took effect, the minimum amount of compensatory damages for death caused by a crime or quasi-delict was fixed in Article 2206 of the Code at P3,000. The article repealed by implication Commonwealth Act No. 284. Hence, from the time the New Civil Code took effect, the Courts could properly have awarded P9,000 as compensatory damages for death caused by a crime or quasi- delict. It is common knowledge that from 1948 to the present (1968), due to economic circumstances beyond governmental control, the purchasing power of the Philippine peso has declined further such that the rate of exchange now in the free market is U.S. \$1.00 to almost 4.00 Philippine pesos. This means that the present purchasing power of the Philippine peso is one-fourth of its pre-war purchasing power. We are, therefore, of the considered opinion that the amount of award of compensatory damages for death caused by a crime or quasi-delict should now be P12,000.”[4]

I agree with the view of Justice Roberto A. Abad that while Article 2206 of the Civil Code sets only a minimum amount, the Court since then has regularly increased amounts awarded by the lower courts. Tellingly, these decisions and resolutions are not mere suggestions or guidelines for the trial courts' exercise of discretion, but are actual findings of error.[5]

Pantoja's recognition of inflation as a reality – among other instances when the Court has acknowledged

“changed conditions” – only shows that criminal rules, especially the implementation of penalties, must also evolve. As societies develop, become more enlightened, new truths are disclosed. The Court as an institution cannot ignore these truths to the detriment of basic rights. The reality is that property-related crimes are affected by external economic forces,[6] rendering the penalties vulnerable to these forces.

It is a basic constitutional doctrine that the slightest doubt must be resolved in favor of the accused.

The constitutional mandate is that the Court must construe criminal rules in favor of the accused. In fact, the slightest doubt must be resolved in favour of the accused.[7] This directive is moored on the equally vital doctrine of presumption of innocence.[8] These principles call for the adoption of an interpretation which is more lenient.[9] Time and again, courts harken back to the pro reo rule when observing leniency, explaining: "The scales of justice must hang equal and, in fact should be tipped in favor of the accused because of the constitutional presumption of innocence." [10]

This rule underpins the prospectivity of our penal laws (laws shall have no retroactive application, unless the contrary is provided) and its exception (laws have prospective application, unless they are favorable to the accused).[11] The pro reo rule has been applied in the imposition of penalties, specifically the death penalty[12] and more recently, the proper construction and application of the Indeterminate Sentence Law.

The rationale behind the pro reo rule and other rules that favor the accused is anchored on the rehabilitative philosophy of our penal system. In *People v. Ducosin*, the Court explained that it is “necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order.”[13]

Thus, with the same legislative intent to shorten a defendant’s term of imprisonment embodied in the Indeterminate Sentence Law, I believe the adjustment of penalties considered in the present case forwards the State’s concern “not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends.”[14] This approach would be more in accord with the pro reo rule and the overarching paradigm of our penal system.

In past instances, the Court has not only laid down guidelines but made actual policy determinations for the imposition of penalties.

Section 1 of Batas Pambansa Blg. 22 or the Bouncing Checks Law imposes the penalty of imprisonment of thirty days to one year OR a fine double the amount of the check, or both, at the court’s discretion. In *Vaca v. Court of Appeals*, the Supreme Court deleted the penalty of imprisonment meted out by the trial court and imposed only the penalty of fine, reasoning:

Petitioners are first-time offenders. They are Filipino entrepreneurs who presumably contribute to the national economy. Apparently, they brought this appeal, believing in all good faith, although mistakenly that they had not committed a violation of B.P. Blg. 22. Otherwise, they could simply have accepted the judgment of the

trial court and applied for probation to evade a prison term. It would best serve the ends of criminal justice if in fixing the penalty within the range of discretion allowed by Section 1, par. 1, the same philosophy underlying the Indeterminate Sentence Law is observed, namely, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. In this case, we believe that a fine in an amount equal to double the amount of the check involved is an appropriate penalty to impose on each of the petitioners.[15]

The Court did not expressly make a finding that the trial court erred in exercising its discretion, but stated that correcting the penalty would best serve the ends of criminal justice. This policy was applied in *Lim v. People*,^[16] which imposed only the fine under B.P. Blg. 22. The Court then issued Administrative Circular No. 12-2000, which states:

All courts and judges concerned should henceforth take note of the foregoing policy of the Supreme Court on the matter of the imposition of penalties for violations of B.P. Blg. 22. The Court Administrator shall cause the immediate dissemination of this Administrative Circular to all courts and judges concerned.

This Administrative Circular, referred to and approved by the Supreme Court en banc, shall take effect upon its issuance.[17]

Administrative Circular No. 13-2001 further clarifies that: “The clear tenor and intention of Administrative Circular No. 12-P2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. Blg. 22 xxx such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge.”[18]

Hence, the imposition of a policy on penalties is not far removed from the judicial construction exercised in the present case. Establishing a policy or a rule of preference towards the unnecessary deprivation of personal liberty and economic usefulness has always been within the scope of judicial power.

Article 10 of the Civil Code
mandates a presumption that the
lawmaking body intended right
and justice to prevail.

Article 10 of the Civil Code states: “In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.” The Code Commission found it necessary to include this provision to “strengthen the determination of the Court to avoid an injustice which may apparently be authorized in some way of interpreting the law.”[19]

In *Salvacion v. Central Bank*, the Court warned: “In our predisposition to discover the “original intent” of a statute, courts become the unfeeling pillars of the status quo. Little do we realize that statutes or even constitutions are bundles of compromises thrown our way by their framers. Unless we exercise vigilance, the statute may already be out of tune and irrelevant to our day.” *Salvacion* involved the rape of a minor by a foreign tourist and the execution of the final judgment in the case for damages on the tourist’s dollar deposit accounts. The Court refused to apply Section 113 of Central Bank Circular No. 960 which exempts foreign currency deposits from attachment, garnishment or any other order or process of any court, because “the law failed to anticipate the iniquitous effects producing outright injustice and inequality such as the case before us.”[20] Applying Article 10, the Court held: “In fine, the application of the law depends on the extent of its justice. x x x Simply stated, when

the statute is silent or ambiguous, this is one of those fundamental solutions that would respond to the vehement urge of conscience.”[21]

The majority view states that to embark on this formulation is dangerous, uncertain, or too taxing. Yet even counsel for the House of Representatives admits that inflation can be taken into consideration, and that the values to be used in the conversion are easily available. There is sufficient basis – through the efforts of the authorized statistical organizations[22] and Bangko Sentral ng Pilipinas, who collect data year to year – that viably establish the purchasing power of the peso.

More importantly, fear of clogged dockets and the inconvenience of a perceived distortion are operational concerns that are not sufficient justification to re-tilt the scales to the prejudice of the accused. It does not impact on the fact that by adjusting the questioned amounts to the present value of money, the Court would merely be following the mandate of Article 10 and fulfilling its proper constitutional role.

I therefore vote to affirm the conviction of petitioner, but to impose the penalty adjusted to present value, as proposed by Justice Abad.

[1] “In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.”

[2] From the first of 12 Lowell Lectures delivered by Oliver Wendell Holmes on November 23, 1880.

[3] 487 Phil. 531, 564 (2004).

[4] 134 Phil. 453 (1968).

[5] Decision, p. 12.

[6] Dean Sedfrey M. Candelaria, Comment, 30 September 2013.

[7] *People v. Milan*, 370 Phil. 493, 506 (1999).

[8] 1987 Constitution Sec. 14(2) states, “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.”

[9] *Mediatrice Carungcong as Administratrix v. People of the Philippines, et al.*, G.R. No. 181409, 11 February 2010, 612 SCRA 272.

[10] *People v. Opida*, 226 Phil. 218, 226 (1986).

[11] Boado, Leonor, Notes and Cases on the Revised Penal Code, p. 7, (2008).

[12] For a crime committed in 1987, the Court refused to reimpose the death penalty under Republic Act 7659. (*People v. Bracamonte* 327 Phil. 160, (1996).

[13] 59 Phil. 109 (1933).

[14] *Id.* at 117.

[15] 359 Phil. 187 (1998).

[16] 394 Phil. 844 (2000).

[17] Issued on 21 November 2000.

[18] The issuance of this Administrative Circular was authorized by the Court En Banc in A.M. No. 00-11-01-SC at its session on 13 February 2001.

[19] Report of the Code Commission, p. 78.

[20] 343 Phil. 539 (1997).

[21] *Id.*, citing *Padilla v. Padilla*, 74 Phil. 377 (1943).

[22] Pursuant to Republic Act 10625, the National Statistics Office is (NSO) now incorporated into the Philippine Statistical Authority, along with the National Statistical Coordination Board and other agencies.

DISSENTING OPINION

CARPIO, J.:

I vote to grant the petition in part by declaring unconstitutional that portion of the first paragraph of Article 315 of Act No. 3815, as amended (Code), mandating the imposition of maximum penalty based on the amount of the fraud exceeding P22,000. I do so on the ground that imposing the maximum period of the penalty prescribed in Article 315[1] of the Code in such a manner, unadjusted to inflation, amounts to cruel punishment within the purview of Section 19(1), Article III of the Constitution.[2]

Cruel Punishment Clause Bans

Odious and Disproportionate Punishments

The Cruel Punishment Clause first appeared in the English Bill of Rights of 1689[3] which mandated that “excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The prohibition restrained the King from punishing convicts in ways inconsistent with human dignity.[4] Over a century later, the Americans adopted the Clause as the Eighth Amendment[5] to their Bill of Rights of 1791. When the United States acquired these Islands in 1898 under the Treaty of Paris (following the defeat of Spain in the Spanish-American War), the Eighth Amendment was extended to this jurisdiction, first under President McKinley’s Instructions to the Second Philippine Commission and later under the Organic Acts passed by the US Congress.[6] The Clause was retained as part of the Bill of Rights of succeeding Philippine Constitutions during the Commonwealth and post-independence eras.

Early on, the question arose whether the Clause serves only to limit the legislature’s power to inflict certain forms of punishment (e.g., torture) or whether it also prohibits the legislature from imposing punishments whose extent is excessive or disproportionate to the crime.[7] It did not take long for the US Supreme Court to settle the debate. In reviewing a 1902 ruling of this Court sentencing an accused to 15 years of *cadena temporal* with fine and accessory penalties[8] for falsification of a public document, the US Supreme Court set aside the judgment, holding that the punishment was “cruel in its excess of imprisonment and that which accompanies and follows the imprisonment.”[9] In refusing to give a narrow interpretation to the Clause, that court observed that the “meaning and vitality of the Constitution have developed against narrow and restrictive construction.”[10] Proportionality is now a staple analytical tool in the US jurisdiction to test claims of cruel punishment under penal statutes imposing the death penalty.[11]

Our own jurisprudence subscribe to such construction of the Cruel Punishment Clause. During the US colonial occupation, this Court was expectedly bound by the US Supreme Court’s interpretation of the Eighth Amendment

as “the exact language of the Constitution of the United States [in the Eighth Amendment] is used in the Philippine Bill [of 1902]”[12] and later, in the Autonomy Act of 1916. Hence, in its rulings interpreting the Clause, the Court read the provision as a limitation on the power of the colonial legislature not only on the form but also on the extent of punishments it can enact.[13]

During the Commonwealth period, the text of the Eighth Amendment was substantially adopted as Section 1(19), Article III of the 1935 Constitution.[14] Owing in no small measure to the dearth of discussion on the meaning of the Clause during the deliberations of the 1934 Constitutional Convention, the Court saw no reason to deviate from its colonial-era jurisprudence.[15]

The 1973 Constitution, replacing the 1935 Charter, retained the Clause as part of the Bill of Rights.[16] The Court, however, had no occasion to pass upon any matter calling for the interpretation of the Clause until after the new Constitution, which carried over the Clause as Section 19(1) of Article III, took effect in February 1987. In its post-1987 jurisprudence, the Court continued to rely on its rulings rendered under the 1935 Constitution.[17]

Clearly then, the proposition that the Cruel Punishment Clause limits the legislature’s power to inflict certain forms of punishments only, allowing it to impose penalties disproportionate to the offense committed, runs counter to the grain of decades-old jurisprudence here and abroad. Such interpretation, which rests on a strict originalist reading of the Eighth Amendment of the US Constitution,[18] never gained traction in the United States[19] and it makes no sense to insist that such view applies in this jurisdiction.

In the first place, the US Constitution, unlike our present Constitution, has essentially remained unchanged since its adoption in 1787 (save for the inclusion of the Bill of Rights in 1791 and other later piecemeal amendments). The 1987 Constitution is already the third in the 20th century, following the 1935 Commonwealth Constitution and the 1973 Martial Law Constitution.[20] When the present Constitution was ratified in 1987, nearly two millennia after the US adopted the Eighth Amendment, the Filipino people who voted for its approval could not have intended Section 19(1) of Article III to embody the US originalists’ interpretation of the Eighth Amendment. It is more consistent with reason and common sense to say that the Filipino people understood the Clause to embrace “cruel, degrading and inhuman” punishments in its 20th century, Filipino conception, grounded on their collective experiences and sense of humanity.

Indeed, the Filipino people who ratified the present Constitution could not have intended to limit the reach of the Cruel Punishment Clause to cover torture and other forms of odious punishments only because nearly four decades before the present Constitution took effect, the Philippine government joined the community of nations in approving the Universal Declaration of Human Rights (UDHR) in 1948 which bans “torture or x x x cruel, inhuman or degrading treatment or punishment.”[21] In 1986, shortly before the Constitution took effect, the Philippines ratified the International Covenant for Civil and Political Rights (ICCPR) containing an identically worded prohibition.[22] These international norms formed part of Philippine law as generally accepted principles of international law[23] and binding treaty obligation, respectively.[24]

Standards to Determine Impermissible Disproportionality

This Court has had occasion to devise standards of disproportionality to set the threshold for the breach of the Cruel Punishment Clause. Punishments whose extent “shock public sentiment and violate the judgment of reasonable people”[25] or “[are] flagrantly and plainly oppressive”[26] are considered violative of the Clause.[27] Other than the cursory mention of these standards, however, we have made no attempt to explore their parameters to turn them into workable judicial tools to adjudicate claims of cruel punishment. Even if we did, it would have been well-nigh impossible to draw the line separating “cruel” from legitimate punishments simply because these standards are overly broad and highly subjective.[28] As a result, they ratchet the bar for the breach

of the Clause to unreasonably high levels. Unsurprisingly, no litigant has successfully mounted a challenge against statutes for violation of the Clause.[29]

Impermissible disproportionality is better gauged by testing punishments against the following alternative parameters: (1) whether more serious crimes are equally or less severely punished; or (2) whether the punishment reasonably advances the state interest behind the penalty.[30] These parameters strike the proper balance of providing practical tools of adjudication to weigh claims of cruel punishment while at the same time affording Congress discretionary leeway to craft penal statutes addressing societal evils.

Value-based, Maximum Penalty Calibration Under Article 315

Disproportionate to the Crime of Estafa

More Serious Crimes

Equally Punished as Estafa

Article 315 of the Code calibrates the maximum penalty for estafa on an escalated basis once a threshold amount of fraud is crossed (P22,000). The penalty escalates on a ratio of one year imprisonment for every P10,000 fraud, with 20 years as ceiling.[31] Accordingly, for a fraud of P98,000, the trial court sentenced petitioner to a maximum term of 15 years.

This punishment, however, is within the range of the penalty imposable on petitioner under the Code had he “killed the [private complainant] jeweler in an angry confrontation.”[32] The same penalty would also be within the range prescribed by the Code had petitioner kidnapped the private complainant and kept him detained for three days.[33] By any objective standard of comparison, crimes resulting in the deprivation of life or liberty are unquestionably more serious than crimes resulting in the deprivation of property.[34] By imposing a level of punishment for estafa equal to more serious crimes such as homicide and kidnapping, Article 315’s system of calibrating the maximum penalty based on the amount of fraud is plainly arbitrary and disproportionate to the severity of the crime punished.

Maximum Penalty for Estafa

Unrelated to its Purpose

The felonies defined and penalized under Title 10, Book Two of the Code, as amended, as crimes against property, including estafa under Article 315, are legislative measures safeguarding the right to property of private individuals and the state.[35] The penalties of imprisonment and/or fine attached to each crime are meant to deter and incapacitate criminals from infringing such right. The Cruel Punishment Clause ensures that the state interest is advanced without sacrificing proportionality between the crime and punishment. In short, the Clause acts as constitutional brake whenever Congress enacts punishment whose severity is gratuitous, wholly unconnected to the purpose of the law.

Of the more than two dozen crimes originally defined by Congress in Title 10, Book Two of the Code,[36] only two crimes, estafa and theft, consider the amount of the property involved to calibrate the maximum range of the penalty. All the rest either impose penalties irrespective of the amount of the property involved[37] or provide a threshold amount based on the property involved for the imposition of a straight (as opposed to calibrated) penalty.[38] Crucially, the calibration does not take into account the real value of the peso.

Admittedly, Congress has ample discretion to fix penalties in the Code according to its best light. At the time the Code took effect in 1932, when US\$1.00 was equivalent to P1.00, the system of calibrated penalty under Article 315 based on the amount appropriated arguably stayed clear of the Cruel Punishment Clause. After 82 years, however, when the real value of the peso has depreciated substantially with the current rate of US\$1.00 to P40.00,

an estafa of P142,000 in 1932, meriting a 20-year penalty, should today require P5.6 million to merit a 20-year penalty. Put differently, P142,000 in 1932 is worth only P3,550[39] today, which should merit only a maximum penalty of six months and one day to two years and four months imprisonment.[40] The enormous disparity in the values of fraud between these points in time (exceeding 100%) and the imposition of the same level of maximum punishment in both instances remove any semblance of reasonability in the manner by which the punishment is derived and its connection to the purpose of the law. The arbitrary differential treatment of estafa (and theft) crosses the line separating the exercise of valid legislative discretion and the Cruel Punishment Clause.

This conclusion stands notwithstanding our holding in *People v. Tongko*[41] and *Lim v. People*[42] that the system of calculating the maximum penalty under Article 315 does not offend the Cruel Punishment Clause. Those cases involved paragraph 2(d) of Article 315, as amended by Presidential Decree No. 818 (PD 818),[43] penalizing as estafa the issuance of unfunded or underfunded checks (not paragraph 1(b), the provision violated by petitioner). Our conclusion in those cases was grounded on the fact that criminalizing the issuance of bouncing checks reasonably advances the state interest behind the law, that is, ensuring the stability of commercial and banking transactions.[44] Such state interest is not implicated here. The clause in Article 315 petitioner violated, penalizing the failure to return property delivered in trust for disposition, secures the entirely different government interest of protecting private property. To consider *Tongko* and *Lim* as binding precedents, precluding a different conclusion, is to expand their ratio decidendi beyond the facts presented in those cases.

Penalty Imposable Under Article 315

The breach of the Cruel Punishment Clause by Article 315's system of calculating the maximum penalty for estafa in excess of P22,000 means that only the minimum term of imprisonment provided under Article 315 for such crime can be imposed on petitioner, namely, prision correccional in its maximum period. This level of penalty is covered by the Indeterminate Sentence Law[45] which renders the next lower penalty, namely, prision correccional in its medium period, as the minimum of the sentence.[46] The entirety of the sentence will be anywhere within the range of these maximum and minimum penalties. Hence, petitioner's term of imprisonment should be modified to three (3) years, one (1) month and eleven (11) days of prision correccional, as minimum, to four (4) years, nine (9) months and eleven (11) days of prision correccional, as maximum.

The same range of penalty applies to all other persons found guilty of violating Article 315. Thus, whether an estafa involves money or property worth P22,000 or P1 million, the minimum term of imprisonment under Article 315 – prision correccional in its maximum period – will be imposed on the accused.

The penalty for the felony of syndicated estafa under Presidential Decree No. 1689 (PD 1689) is, however, an altogether different matter. PD 1689 amended Article 315 of the Code by adding a new mode of committing estafa[47] and imposing the penalty of "life imprisonment to death" or "reclusion temporal to reclusion perpetua if the amount of the fraud exceeds P100,000." Unlike Article 315, PD 1689 does not calibrate the duration of the maximum range of imprisonment on a fixed time-to-peso ratio (1 year for every P10,000 in excess of P22,000), but rather provides a straight maximum penalty of death or reclusion perpetua. This places PD 1689 outside of the ambit of the proscription of the Cruel Punishment Clause on the imposition of prison terms calibrated based on the value of the money or property swindled, unadjusted to inflation.

Effect of Ruling on Convicts

Serving Time under Article 315

This opinion relieves petitioner of the harsh effect of the penalty for estafa under Article 315 by lowering the entire range of imprisonment and monetary liability of petitioner or imposing only the minimum range of imprisonment, respectively. It is akin to our 1956 ruling in *People v. Hernandez*[48] decriminalizing rebellion complexed with ordinary crimes to the benefit not only of the accused in that case but also of those already

serving time for rebellion complexed with other crimes.[49] Hernandez and today's ruling amount to laws favoring convicts, which, under Article 22 of the Code, have retroactive effect.[50] Convicts benefitting from such ruling and falling within the terms of Article 22 may invoke it in their favor and, if proper, avail of remedies to secure their release from detention.

Conclusion not Precluded by Article 5 of the Code

Testing Article 315 against the Cruel Punishment Clause under the standards espoused in this opinion does not make a dead letter law of the second paragraph of Article 5 of the Code. Such provision, mandating courts to recommend executive clemency –

when a strict enforcement of the provisions of th[e] Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense. (Emphasis supplied)

operates within the realm of criminal law, requiring fact-based judicial evaluation on the degree of malice of the accused and the injury sustained by the victim or his heirs. The Cruel Punishment Clause, on the other hand, is the constitutional yardstick against which penal statutes are measured using relevant standards unrelated to questions of criminal malice and injury. Far from overlapping, the conclusions yielded by analyses under these two rules are distinct – a penal statute may well avoid the taint of unconstitutionality under the Clause but, applying such statute under peculiar set of facts, may justify a recommendation for the grant of clemency.[51]

Legislative Review of Article 315 and Related Provisions

Overdue

The constitutional infirmity not only of Article 315 but also of related provisions in the Code calls for a comprehensive review by Congress of such 82-year old legislation.[52] Pending such congressional review, this Court should decline to enforce the incremental penalty in Article 315 because such continued enforcement of the incremental penalty violates the Cruel Punishment Clause.

Accordingly, I vote to (1) GRANT the petition in part by modifying the sentence imposed on petitioner Lito Corpuz to three (3) years, one (1) month and eleven (11) days of prision correccional, as minimum, to four (4) years, nine (9) months and eleven (11) days of prision correccional, as maximum; and (2) DECLARE UNCONSTITUTIONAL that portion of the first paragraph of Article 315 of Act No. 3815, as amended, mandating the imposition of maximum penalty based on the amount of the fraud exceeding P22,000, for being violative of Section 19(1), Article III of the 1987 Constitution.

[1] “Swindling (estafa) - Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

Ist. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. x x x.” (Emphasis supplied)

[2] “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. x x x.”

[3] Enacted on 16 December 1689.

[4] Thus, it is thought that “the principle it represents can be traced back to the Magna Carta.” *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

[5] “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

[6] The Philippine Bill of 1902 and the Autonomy Act of 1916.

[7] For an exhaustive historical treatment of the subject, see *Furman v. Georgia*, 408 U.S. 238, 258-269 (1972) (Brennan, J., concurring).

[8] Deprivation of civil rights during service of sentence and post-service perpetual deprivation of political rights.

[9] *Weems v. US*, 217 U.S. 349, 377 (1910).

[10] *Id.* at 373.

[11] In the sense that aggravating circumstances (qualifying a class of criminals for the death penalty) and mitigating circumstances (tempering sentences) must be legislated and carefully weighed. See *Furman v. Georgia*, 408 U.S. 238 (1972) (Douglas, J., concurring) and progeny, e.g., *Gregg v. Georgia*, 428 U.S. 153 (1976) (plurality opinion); *Buchanan v. Angelone*, 522 U.S. 269 (1998).

[12] *US v. Borromeo*, 23 Phil. 279, 286 (1923). In *Weems*, the US Supreme Court was more direct to the point: “[T]he provision of the Philippine bill of rights, prohibiting the infliction of cruel and unusual punishment, was taken from the Constitution of the United States and must have the same meaning.” *Weems v. US*, *supra* note 9 at 367.

[13] *US v. Borromeo*, 23 Phil. 279 (1923); *People v. Constantino*, G.R. No. L-19290, 11 January 1923 (Unrep.); *US v. Pico*, 18 Phil. 386 (1911). *Pico* and *Constantino* dwelt on the question of extent (severity) of the punishment as criterion for breaching the Clause. After reviewing extant relevant authorities we observed in *Borromeo*:

In view of these authorities, and the fact that the legislature invariably endeavors to apportion a penalty commensurate with the offense, and that course, in the exercise of such discretion as is conferred upon them in fixing penalties within minimum and maximum degrees, adhere to the same rule, it seems to us that to assert, when the question assumes the dignity of a constitutional inquiry, that courts should not concern themselves with the relative magnitude of the crime and the penalty, is wrong, both in logic and in fact. A contrary view leads to the astounding result that it is impossible to impose a cruel and unusual punishment so long as none of the old and discarded modes of punishment are used; and that there is no restriction upon the power of the legislative department, for example, to prescribe the death penalty by hanging for misdemeanor, and that the courts would be compelled to impose the penalty. Yet such a punishment for such crime would be considered extremely cruel and unusual by all right-minded people. (*US v. Borromeo*, *supra* at 289 [emphasis supplied]).

[14] “Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted.”

[15] *People v. De la Cruz*, 92 Phil. 906, 908 (1953); *People v. Estoista*, 93 Phil. 647 (1953); *People v. Dionisio*, 131 Phil. 409 (1968). In his commentary on the 1935 Constitution, Dean Sinco considered the Clause as “fobid[ding] punishments greatly disproportionate to the offense.” V. SINCO, PHILIPPINE POLITICAL LAW 674 (1954).

[16] Under Section 21, Article III (“Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.”).

[17] *Baylosis v. Chavez*, 279 Phil. 448 (1991); *People v. Tongko*, 353 Phil. 37 (1998); and *Lim v. People*, 438 Phil. 744 (2002) all citing *People v. Estoista*, 93 Phil. 647 (1953) and *People v. De la Cruz*, 92 Phil. 906, 908 (1953) (for *Lim* and *Tongko*). Although these cases emphasize the “form only” school of thought, all relied on pre-1973 jurisprudence recognizing disproportionality as ground for breaching the Clause.

[18] Adherents of this school of thought insist that the Eighth Amendment forbids only “those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted” in 1791. *Atkins v. Virginia*, 536 U.S. 304, 339 (2002) (Scalia, J., dissenting). See also D. STRAUSS, *THE LIVING CONSTITUTION* (2010).

[19] Consistent with its interpretative approach in *Weems*, the US Supreme Court considers the Eighth Amendment to “draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, supra note 4 at 101.

[20] At the close of the 19th century, the Philippine revolutionary government adopted the Malolos Constitution in 1899 which, however, was short-lived and largely symbolic.

[21] Article 5 of the UDHR, approved by the UN General Assembly on 10 December 1948.

[22] Article 7 of the ICCPR, ratified by the Philippines on 23 October 1986.

[23] Although the UDHR is a non-binding instrument, this Court treated the UDHR as embodying generally accepted principles of international law, hence, forming part of the law of the land under the 1935 Constitution’s Incorporation Clause (Section 3, Article II of the 1935 Constitution, reiterated in Section 3, Article II of the 1973 Constitution). *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951); *Borovsky v. Commissioner of Immigration*, 90 Phil. 107 (1951); *Chirskoff v. Commissioner of Immigration*, 90 Phil. 256 (1951). The provision was retained in the 1987 Constitution (Section 2, Article II).

[24] These norms are buttressed by the Convention Against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment which entered into force on 26 June 1987 and to which the Philippines acceded on 18 June 1986. The Convention binds states parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (Article 2) and “prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture” as defined in the Convention (Article 16).

[25] Supra note 12 at 286. A variation sets the standard at disproportionality which “shock[s] the moral sense of all reasonable men as to what is right and proper under the circumstances.” (*People v. De la Cruz*, 92 Phil. 906, 908 [1953], citing *Am. Jur.* 178) or which “shock[s] the moral sense of the community” (*People v. Estoista*, 93 Phil. 647, 655 [1953] [Res.] citing 24 C.J.S. 1187-1188).

[26] *People v. Estoista*, 93 Phil. 647, 655 (1953) (Res.) citing 24 C.J.S. 1187-1188, cited in *People v. Dionisio*, 131 Phil. 409 (1968); *Baylosis v. Chavez*, 279 Phil. 448 (1991); *People v. Tongko*, 353 Phil. 37 (1998) and *Lim v. People*, 438 Phil. 749 (2002).

[27] The following passage from *Estoista*, relying on the American legal encyclopedia *Corpus Juris Secundum*, has become the template for rejecting claims of cruel punishment using these standards:

It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. “The fact that the punishment authorized by the statute is severe does not make it cruel and unusual.” (24 C.J.S. 1187-1188.) Expressed in other terms, it has been held that to come under the ban, the punishment must be “flagrantly and plainly oppressive,” “wholly disproportionate to the nature of the offense as to shock the moral sense of the community.” (*Idem.*) *Id.*

[28] The standard of public outrage (“shock[ing to the] public sentiment” or “shock[ing to the] moral sense of the community”) is no different from that which “shocks the most fundamental instincts of civilized man.” *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 473 [1947] (Burton, J., dissenting) which “[invites] the danger of

subjective judgment x x x acute[ly],” *Furman v. Georgia*, 408 U.S. 238, 279 (1972), (Brennan, J., concurring).

[29] The following typifies the analysis for rejecting claims of cruel punishment using the standards laid down in *Estoista* and related cases:

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading. *Lim v. People*, 438 Phil. 749, 754 (2002) (internal citation omitted; emphasis supplied).

[30] Save for some modification, these are drawn from the “principles” crafted by Mr. Justice William J. Brennan, Jr. in his concurring opinion in *Furman v. Georgia*, 408 U.S. 238, 274-277, 279-282 (1972), to aid in the interpretation of the Eighth Amendment.

[31] See note 1.

[32] Decision, pp. 12-13. Under Article 249 of the Code, homicide is punishable by reclusion temporal which ranges from twelve (12) years and one (1) day to twenty (20) years, with the medium term ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

[33] Under Article 268 of the Code, Slight Illegal Detention is also punishable by reclusion temporal.

[34] This merely reflects the ordering of rights under our constitutional system with the right to life and liberty occupying a higher tier of protection than the right to property (thus claims of infringement of each right are subjected to different levels of scrutiny). See *Ermita-Malate Hotel & Motel Operations, Ass’n., Inc. v. Hon. City Mayor of Manila*, 127 Phil. 306, 324 (1967).

[35] Save for the crime of estafa by issuing underfunded or unfunded checks which has been recognized as serving to ensure the stability of commercial transactions and the banking system. *People v. Tongko*, 353 Phil. 37, 44 (1998); *Lim v. People*, 438 Phil. 749, 755 (2002).

[36] The provisions relating to the crime of arson were superseded by Presidential Decree (PD) Nos. 1613 and 1744.

[37] E.g. robbery and related crimes (Articles 294, 295, and 297); brigandage (Article 306) and arson and related crimes (Articles 320-323, as amended by PD 1613 and PD 1744).

[38] E.g. occupation of real property (Article 312); swindling of a minor (Article 317); removal, sale, or pledge of mortgaged property (Article 319) and special cases of malicious mischief (Article 328).

[39] $P142,000 \div 40 = P3,550$.

[40] Article 315, paragraph 3.

[41] 353 Phil. 37 (1998).

[42] 438 Phil. 744 (2002).

[43] Increasing the maximum penalty for such estafa to 30 years.

[44] From *Tongko*:

The legislature was not thoughtless in imposing severe penalties for violation of par. 2(d) of Article 315 of the Revised Penal Code. The history of the law will show that the severe penalties were intended to stop the upsurge of swindling by issuance of bouncing checks. It was felt that unless aborted, this kind of estafa “. . . would erode the people’s confidence in the use of negotiable instruments as a medium of commercial transaction and consequently result in the retardation of trade and commerce and the undermining of the banking system of the country.” [Citing the “Whereas” Clauses of PD 818]. *People v. Tongko*, supra note 41 at 44 (emphasis supplied).

From Lim:

Clearly, the increase in the penalty, far from being cruel and degrading, was motivated by a laudable purpose, namely, to effectuate the repression of an evil that undermines the country’s commercial and economic growth, and to serve as a necessary precaution to deter people from issuing bouncing checks. The fact that PD 818 did not increase the amounts corresponding to the new penalties only proves that the amount is immaterial and inconsequential. What the law sought to avert was the proliferation of estafa cases committed by means of bouncing checks. Taking into account the salutary purpose for which said law was decreed, we conclude that PD 818 does not violate Section 19 of Article III of the Constitution. *Lim v. People*, supra note 42 at 755 (emphasis supplied).

[45] Republic Act No. 4103, as amended.

[46] Article 61(2), Code.

[47] “[B]y a syndicate consisting of five or more persons formed with the intention of carrying out” estafa involving “money contributed by stockholders, or members of rural banks, cooperative, ‘samahang nayon(s)’, or farmers association, or of funds solicited by corporations/associations from the general public” (Section 1).

[48] *People v. Hernandez*, 99 Phil. 515 (1956); *People v. Lava*, 138 Phil. 77 (1969).

[49] *Gumabon v. Director of the Bureau of Prisons*, 147 Phil. 362 (1971).

[50] “Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.”

[51] The Court made such recommendation in *People v. Monleon* (165 Phil. 863 [1976]) where the accused, while inebriated, unintentionally killed his wife in the course of disciplining their child. We explained: “[C]onsidering that Monleon had no intent to kill his wife and that her death might have been hastened by lack of appropriate medical attendance or her weak constitution, the penalty of reclusion perpetua appears to be excessive. A strict enforcement of the provisions of the Penal Code means the imposition of a draconian penalty on Monleon.” *Id.* at 870. Under Article 246 of the Code, parricide is punishable by reclusion perpetua to death.

[52] The Code was approved on 8 December 1930 but took effect on 1 January 1932.

CONCURRING OPINION

BRION, J.:

I agree with the ponencia 's conclusion that Lito Corpuz is guilty of the crime of Estafa as the facts and the evidence sufficiently established his guilt beyond reasonable doubt.

I also support the majority's decision not to "judicially interpret" the penalties imposed under Article 217 (Malversation of Public Funds or Property), Articles 299-303 (Robbery), Articles 308-309 (Simple Theft), Article 310 (Qualified Theft), Articles 315-318 (Estafa and other forms of Swindling), Articles 320-325 (Arson), and Articles 327-329 (Mischiefs) of the Revised Penal Code (RPC), by adjusting, for inflation, the value of the money or property (subject of the crime) to its 1930 value.

My reasons for supporting the ponencia are as follows:

First, the Court has no jurisdiction to determine the propriety of imposing the penalties prescribed under the other crimes in the RPC.

Second, modifying the penalties, as several of my esteemed colleagues have proposed, is not judicial interpretation that simply looks at the letter and spirit of the law; it is judicial legislation that unconstitutionally (and thus, illegally) breached the doctrine of separation of powers.

Third, the present day application of the 1930 values will not result in the denial of Corpuz's right to equal protection of the law.

Fourth, the constitutionally and legally permissible solution to the perceived disparity between the prescribed penalty and the crime in light of the present values of money and property is the grant, by the President of the Philippines, of executive clemency through pardon or parole.

Fifth, the minority's position can, in effect, lead to repercussions that could potentially destabilize the application of our penal laws and jurisprudence, as well as further clog the Court's already congested dockets.

Lastly, I cannot agree with the expressed opinion that the incremental penalty imposed on estafa is unconstitutional for being a cruel and unusual punishment; like the rest of the majority, I believe that no such effect occurs under the present law and its application.

I. The Court has no jurisdiction to determine the propriety of imposing the penalties prescribed under other crimes in the RPC.

The dissenting opinion of Justice Abad, as supported by several other justices, sought to adjust for inflation the amounts involved in estafa; by so doing, he also sought to "judicially interpret" the subject matter of the crimes of malversation, theft, qualified theft, arson and mischiefs.

In my view, what they propose to do involves an undue and unwarranted invocation of the Court's judicial power—an act that cannot be done without violating the due process rights of the Republic. Notably, the Republic focused solely and was heard only on the matter of estafa. In fact, the present case is only about estafa, not any other crime. To touch these other crimes in the present case likewise involves acts of policy determination on the substance of the law by the Judiciary - a violation of the highest order of the limits imposed on us by the Constitution.

I am not unaware that an appeal in criminal cases throws the case wide open for review, and allows the reviewing tribunal the power to correct errors or to reverse the trial court's decisions on the grounds other than those raised by the parties as errors. ¹ In reviewing criminal cases, we recognize our duty to correct errors as may be found in the judgment appealed regardless of whether they had been made the subject of assignments of error or not.

This discretion, however, is limited to situations where the Court intends to correct the trial court's errors in applying the law and appreciating the facts. A quick survey of jurisprudence shows that this includes re-evaluating factual questions presented before the trial court,^[2] weighing the credibility of witnesses and other pieces of evidence presented before the trial court,^[3] or applying the proper penalty.^[4]

Thus, at most, the Supreme Court's wide discretion in reviewing criminal cases allows it to motu proprio provide a proper interpretation of the penal law being applied. This discretion, however, does not extend to the power to adjust the penalty defined in the law, based on the monetary value of the property involved in the crime of estafa.

More than this, the Court's discretion does not allow it to similarly adjust the penalties defined in other crimes, similarly based on the monetary values of the property involved in these other crimes, as these other crimes are not involved in the present case. These crimes and their penalties have neither been adjudicated upon by the trial court nor by the CA; neither is the "judicial interpretation" of their penalties necessary to determine whether Corpuz committed the crime of estafa in the present case.

Assuming, for the sake of argument, the validity of Justice Abad's arguments regarding the disproportionality of the penalties defined in these crimes (as the intrinsic value of the money in properties involved have significantly dropped), we still cannot ipso facto apply the adjustments he seeks in the present estafa case, to the other crimes. The proportionality issue in estafa is different from the proportionality issue in these other crimes, as each crime is different from another.

Let me point out that there are considerations in determining whether a penalty is proportional to crimes other than the monetary value of the property involved. The perpetration of fraud, the key element in estafa, is not present in theft or arson, while the abuse of public office is a unique key element in malversation. We cannot make a uniform ruling adjusting the amounts involved in these crimes simply based on inflation and without considering the other factors that Congress considered in imposing the values of the property involved in these crimes. This conundrum again shows that the judicial interpretation espoused by the minority is actually a judicial usurpation of Congress' prerogative to define crimes and to determine their penalties.

II. The enduring constitutional and jurisprudential imperative upholding the separation of powers completely abhors any unwarranted intrusion and impermissible usurpation of the authority and functions of a co-equal branch

A characteristic and cardinal principle that governs our constitutional system is the separation of powers.[5] The Constitution does not expressly provide for the principle of separation of powers. Instead, it divides the governmental powers among the three branches - the legislative, the executive and the judiciary. Under this framework, the Constitution confers on the Legislature the duty to make the law (and/or alter and repeal it), on the Executive the duty to execute the law, and on the Judiciary the duty to construe and apply the law.[6]

Underlying the doctrine of separation of powers is the general proposition that the whole power of one department should not be exercised by the same hands that possess the whole power of the other departments.[7] Within their respective spheres of influence, each department is supreme and the exercise of its powers to the full extent cannot be questioned by another department. Outside of their defined spheres of action, none of the great governmental departments has any power, and nor may any of them validly exercise the powers conferred upon the others.[8]

Section 1, paragraph 1, Article VIII of the Constitution states that "judicial power shall be vested in one Supreme Court and such lower courts as may be established by law." Simply stated, what the Constitution confers on the Court is only "judicial power" and it is this judicial power that serves as the measure of the permissible reach of the Court's action.[9] In short, the Judiciary can neither make the law nor execute it, as its power is strictly confined to the law's interpretation and application, i.e., to what is aptly termed 'judicial' power.

II.A. Judicial power; its scope and limitations

Section 1, paragraph 2, 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," as well as 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."

Traditionally, judicial power has been defined as "the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction." [10] It is "the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights." [11]

In this light, no court can exercise judicial power unless real parties come before it for the settlement of actual controversy and unless the controversy is of the nature that can be settled in a manner that binds the parties through the application of existing laws. [12] This traditional concept of judicial power, as the application of law to actual controversies, reflects the constitutional imperative of upholding the principle of separation of powers, such that the Judiciary has no power to entertain litigations involving the legality, wisdom, or the propriety of the conduct of the Executive; neither has it the power to enlarge, alter or repeal laws or to question the wisdom, propriety, appropriateness, necessity, policy or expediency of the laws. [13]

While the Constitution has now extended the scope of judicial power beyond the mere application of law and the settling of disputes (as it now includes the duty 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), this expanded scope does not still permit any inquiry into the conduct or act of either of the executive or the legislative branch other than to determine whether either branch violated the Constitution or gravely abused its discretion in a manner amounting to lack or excess of jurisdiction.

II.B. The power to define crimes and their penalties lies in the legislature as an imperative of the principle of separation of powers

On the legislature's exclusive domain, through lawmaking, lies the authority to define what constitutes a particular crime in this jurisdiction. It is the legislature, as representative of the sovereign people, that determines which acts or combination of acts is criminal and what the ordained punishments shall be. [14] Judicial interpretation of penal laws should be aligned with the evident legislative intent, as expressed primarily in the language of the law as it defines the crime. [15]

As the Constitution vests the power to enact laws on the legislature, the courts cannot arrogate the power to enlarge the scope of the crime, introduce matters that the legislature clearly did not intend, redefine a crime in a manner that does not hew to the statutory language, [16] or modify the penalty to conform to the courts' notion (out of the innumerable number of notions) of justice and fairness. A becoming regard for the prerogative of Congress in defining crimes/felonies should prevent the Court from making any broad interpretation of penal laws where a "narrow interpretation" is appropriate. [17] "The Court must take heed to language, legislative history and purpose, in order to strictly determine the wrath and breath of the conduct the law forbids." [18]

II.C. "Plain meaning rule" in statutory construction should be applied in reading Article 315 of the RPC

The cardinal canon in statutory construction - the plain meaning rule or *verba legis* - requires that "the meaning of a statute should, in the first instance, be sought in the language in which the act is framed; if the language is plain,

the sole function of the courts is to enforce it according to its terms." [19] In interpreting any statute in the exercise of its judicial power of applying the law, the Court should always turn to this cardinal canon before all others. "Courts should always presume that a legislature says in a statute what it means and means in a statute what it says there," [20] and that the legislature knows "the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute." [21]

Thus, when the law is clear and free from any doubt or ambiguity, [22] and does not yield absurd and unworkable results [23] the duty of interpretation, more so of construction, does not arise; [24] the Court should resort to the canons of statutory construction only when the statute is ambiguous [25]

Interpretation, as understood in the rules of statutory construction, refers to the art of finding out the true sense of any form of words, or the sense which their author intended to convey. [26] Construction, on the other hand, refers to the art of drawing conclusions from matters beyond the direct expressions of text, from elements known from and given in the text, or conclusions that are in spirit, but not within the text, [27] where the intention is rendered doubtful, among others, because the given case is not explicitly provided for in the law [28] or because the words used are obscure or susceptible to numerous interpretations. Both these two terms, however, have no place in the present case as the meaning of the penalties imposed is clear and needs neither construction nor interpretation.

II.D. The "plain meaning rule" and the principle of separation of powers prevent this Court from modifying, by adjusting for inflation, the penalties under Article 315 of the RPC

The language of the penalty clauses of Article 315 of the RPC is plain and clear; no reservation, condition or qualification, particularly on the need for adjustment for inflation, can be read from the law, whether by express provision or by implication. The clear legislative intention to penalize estafa according to the "amount of fraud" as enumerated in the law, therefore, should be deemed complete - Article 315 embodies all that the legislature intended when the law was crafted.

As the words of Article 315 are clear, the Court cannot and should not add to or alter them to accomplish a purpose that does not appear on the face of the law or from legislative history, [29] i.e., to remedy the perceived grossly unfair practice of continuing to impose on persons found guilty of estafa the penalties that the RPC Commission pegged on the value of money and property in 1930.

Notably, in his approach in the present case, Justice Abad labors under the presumption that the RPC Commission intended that the penalties under Article 315 of the RPC should adopt and reflect the values of money and property prevailing at the time of the commission of the crime; hence, his position that the "amount of fraud" should be adjusted for inflation.

I find this approach and the resulting position manifestly flawed; Justice Abad effectively posits that the "amount of fraud" as the basis of the penalty will significantly vary at each instance as this will depend on such factors as the kind or type of the thing or property subject of the crime, and its corresponding monetary value at the time of the commission of the crime. The monetary value, in turn, will depend on several variables affecting the economy. To my mind, these are clearly matters of fact and policy determination that are far beyond the scope of judicial power.

In fact, a review of several amendatory statutes of Article 315 of the RPC reveals a legislative intent contrary to Justice Abad's proposition that the RPC Commission intended that the "amount of fraud" as basis for the penalties

should account for the inflation.

In point are the following: (1) Presidential Decree No. 818 (enacted in October 22, 1975) increased the penalties in cases of estafa resulting from bouncing checks under Article 315(2)(d); and (2) Presidential Decree No. 1689 (enacted on April 6, 1980) increased the penalty for certain forms of estafa under Articles 315 and 316. These statutes increased the penalties for estafa under certain conditions despite the then already declining monetary value on account of inflation.

Arguably, the Court had in the past (as in the cases cited by Justice Abad) resorted to interpretation of monetary values to cope with inflation. These instances, however, concerned awards of civil liability and moral damages for death.[30] These cases involved civil damages awards that are in stark contrast with the penalty issue that faces this Court in the present petition. In fact, the Historical Notes of the RPC Commission[31] shows the law's concern for the heirs of the deceased (victim) as the force that impelled the legislature to increase the civil indemnity by statute;³² the Court simply took judicial notice of this concern in interpreting the monetary values in the cited cases.

Moreover, Justice Abad's presumption patently deviates from the rule of progressive interpretation that "extends by construction the application of a statute to all subjects or conditions within its general purpose or scope that come into existence subsequent to its passage[.]"[33] The rule requires that "a word of general signification employed in a statute should be construed, in the absence of legislative intent to the contrary, to comprehend not only peculiar conditions obtaining at the time of its enactment but those that may normally arise after its approval as well." [34]

Thus, Article 315 of the RPC should be understood as embracing all things and property that may be subject of the crime of estafa regardless of the changes in their monetary value, and that the "amount of fraud" as basis for the penalty (and as enumerated under Article 315) should be applied without reference to these changes.

Then, too, Justice Abad's position departs from the theory of originalism that he used as supporting argument.

Originalism is generally employed in relation with the Constitution and has its roots in the "original" intent of the framers of the Constitution. It is a theory or a framework of principles used in interpreting and understanding the texts of the Constitution. It is premised on the idea that the original meaning of the Constitution is relatively fixed, and the originalist enterprise is fundamentally committed to discerning the fixed meaning the framers gave to the Constitution.[35]

Originalism, as a theory of constitutional interpretation, has so far evolved into numerous versions, the more common of which are original understanding and original intent.[36]

Originalism as original understanding seeks the meaning of the words themselves as understood at the time,[37] or the meaning of the words to the society that adopted it - regardless of what the framers might secretly have intended.[38] In contrast, originalism as original intent seeks the meaning of the words according to what the framers had in mind[39] or the meaning that the framers attached to the words that they employed in the Constitution.[40]

As a theory of constitutional interpretation, I submit that originalism cannot properly be applied to interpret and modify Article 315 of the RPC because this is a statute, not a constitutional provision to which the theory of originalism generally applies.

Granting that originalism can be permissibly adopted to interpret statutes, the theory - whether viewed as original understanding or original intent - commands that Article 315 be read and interpreted according to its fixed and

original meaning. Thus, in the same manner that the rule of progressive interpretation bars reference to the changes in the monetary values of the things and property subject of the crime, under the theory of originalism, the "amount of fraud" as basis for the penalty (as enumerated under Article 315), should likewise be applied without reference to the changes in the monetary values.

Accordingly, I find Justice Abad's proposition in this case to be improper and inappropriate because: (1) the modification of the penalty transgressed the clear intent of the legislature as the adjustment for inflation is not supported by the letter of Article 315 of the RPC nor by its intent; (2) in adjusting for inflation the monetary values to modify the penalties under Article 315, the Court resorted to construction that the law and the circumstances clearly did not require; and (3) in modifying the penalty by construction, the Court manifestly usurped, by judicial legislation, the power that rightfully belongs to the legislature.

III. The application of the penalties prescribed under Article 315 of the RPC, as written, would not violate Corpuz's right to equal protection of the law

Section 1, Article III of the 1987 Constitution pertinently provides: "nor shall any person be denied the equal protection of the laws." The equal protection clause means that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances.⁴¹ It demands that all persons or things similarly situated should be treated alike, both as to the rights conferred and responsibilities imposed.^[42]

The equal protection, however, does not demand absolute equality under all circumstances. The protection recognizes that persons are not born equal and have varying handicaps that society has no power to abolish.^[43] Thus, the equal protection clause permits reasonable classifications provided that the classification: (1) rests on substantial distinctions; (2) is germane to the purpose of the law; (3) is not limited to existing conditions only; and (4) applies equally to all members of the same class.^[44]

The application of the penalties under Article 315 of the RPC, as written, to the present situation does not violate Corpuz's right to the equal protection of the law. The circumstances prevailing when the RPC Commission fixed the penalties for estafa in 1930, vis-a-vis the circumstances presently obtaining, hardly differ, and the considerations that impelled the RPC Commission in fixing the mode and duration of these penalties persist and continue to justify their application to the present conditions.

The key element in estafa is the fraudulent act committed that has caused harm to others. Estafa penalizes the fraudulent act. I submit that there has been no change in the way the RPC defines fraud and, hence, there should be no reason for a change in the way a fraudulent act is penalized.

A fraud committed in the 1930s should be punished in the same manner as a fraud committed in the present day. That the consequences of the fraudulent act constituted the basis for determining the gradation of penalties was a policy decision that Congress had the prerogative to make. This included the value behind each threshold and its corresponding penalty. What was true then is still true today.

Thus, the disparity between the monetary values of things and property in the 1930s and the prevailing monetary values of like things and property do not amount to distinctions so substantial that they would require this Court to treat and classify Corpuz differently from persons who committed estafa in 1930.

In fact, the converse proposition, i.e., to treat Corpuz and others who will, from here on, commit the crime of estafa differently from those who committed the same crime in the 1930s up to and prior to the decision in this case, by modifying the penalty according to what it perceived as the correct inflation rate, will inevitably violate the constitutional right of the latter group of persons to the equal protection of the law.

This modification of the penalty effectively dictates a classification that does not rest on substantial distinctions; is irrelevant to the purpose of the law punishing estafa, i.e., to punish and discourage dishonesty and unfaithfulness in the administration or care of money, goods or other personal property received for the purpose;^[45] and applies only to those who commit the crime subsequent to the decision.

IV. The grant, by the President of the Philippines, of executive clemency through pardon or parole, when warranted, would sufficiently address the perceived disparity, in the context of the present values of money and property, between the prescribed penalty and the crime committed

I further submit that the law, in its wisdom, already provides a constitutionally and legally permissible solution to what Justice Abad perceived as the "grossly unfair practice of continuing to impose on persons found guilty of certain crimes the penalties [that had been] pegged on the value of money and property more than 80 years ago in 1930."

These solutions are the exercise, by the President of the Philippines of his clemency powers under Section 19, Article VIII of the Constitution,⁴⁶ and the exercise by this Court of its recommending power under Article 5, paragraph 2, of the RPC.

Article 5, paragraph 2, of the RPC states that when the strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, considering the degree of malice and the injury caused by the offense, "the [C]ourt shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper[.]"

The factual and legal conditions that some members of this Court feel badly about can be addressed through the exercise of this recommendatory power. This course of action may adequately address whatever perceived disparity there might be, created by inflation, between the crime and the penalty while preserving and upholding, at the same time, the cardinal principle of the separation of powers. The Court is not likewise barred from calling the attention of Congress to the perceived disparity so that any problem there can be addressed through legislation.

In sum, even granting *arguendo* that the penalty the CA imposed on Corpuz is "grossly unfair" from the economic and pragmatic point of view (as Justice Abad has carefully crafted), the solution to this "gross unfairness" is not for this Court, by itself, to provide. Article 315 of the RPC is plain and unambiguous and Corpuz's case falls clearly within its provisions. Hence, under the circumstances and within the context of this case, the Court's duty is simply to apply the law. Resorting to judicial legislation by construction encroaches into the exclusive domain of the legislature a course that clearly violated the constitutional separation of powers principle.

V. The effect of Justice Abad's "judicial interpretation" could have destabilizing repercussions on the application of our penal laws and jurisprudence. It will as well further clog the Court's already congested dockets.

I believe that Justice Abad's proposition, while grounded on noble intentions, could destabilize the application of our penal laws. I submit the following practical considerations against it:

First, Justice Abad's proposal, in effect, postulates that the monetary value of the money and property subject of the crime should be kept at its value at the time the crime was legislated. This prompted his demand to adjust the present day values of the amounts involved in distinguishing the penalties for estafa, qualified theft, malversation, among others, to keep their values at the 1930's level. This argument applies not just to the crimes it has enumerated, but to other crimes which use the value of the property involved in the criminal act as an element of the crime, or as a standard for determining the penalty of the crime.

Examples of these offenses include plunder^[47] (which includes as an element of the crime the acquisition of at least P50 million in ill-gotten wealth) and the failure by a covered institution to report covered transactions as defined in the Anti-Money Laundering Act.^[48]

Should the amounts involved in these crimes be automatically adjusted now, to keep them within their value at the time the crimes were defined and penalized? Both the crimes of plunder and money-laundering, for instance, are of relatively recent enactment. The Act Defining the Crime of Plunder was passed in 1991 and the Anti-Money Laundering Act in 2001.

When do we adjust the value of these amounts so that they would remain in keeping with the intent of Congress at the time of its enactment? Do we adjust these for inflation every year, from the time of enactment, or after ten, or twenty years when the value of the peso has significantly changed?

The lack of any specific answer to these questions reaffirms that the prerogative to value the money or property involved in a crime lies with Congress and is not for the courts to make through "judicial interpretation."

Second, the proposition would open the floodgates for habeas corpus petitions for the adjustment of the penalties imposed on convicts now in prison for estafa. These petitions would be based on equal protection grounds, swamping the courts with pleas for the reduction of sentences. Significantly, in undertaking adjustments, it would be inaccurate to apply the 1:100 adjustment ratio that Justice Abad uses as base because these convicts committed their respective crimes in different years. Effectively, all these petitions would be resolved on a case-to-case basis as proper proportionality would have to be determined based on inflation in these different years.

VI. The penalties in estafa do not violate the constitutional prohibition against cruel, degrading or inhuman punishment

I cannot agree that the disproportionality in terms of the length of imprisonment and the amount involved in the estafa is within the contemplation of the constitutional prohibition against cruel, degrading or inhuman punishments.

First, I submit that the issue of a statute's constitutionality, including those of criminal statutes, should be raised at the earliest possible opportunity. The ponencia's summation of the case's antecedents does not show that the constitutionality of the estafa's penalty had been raised in the trial court, or in the CA, and even in the present petition in the Supreme Court.

As I earlier discussed, we have a wide latitude of discretion in reviewing criminal cases, especially in comparison to our approach in reviewing the civil and labor cases appealed before us. But this wide latitude, to my mind, does not authorize us to disregard the requirements of constitutional litigation.

Even assuming that the Court may, on its own, raise the issue of constitutionality of the penalty of estafa, the principle of stare decisis bars us from relitigating an issue that has already been decided.

The Court has had, on two occasions, upheld the constitutionality of the penalty imposed on estafa. In *Lim v. People*,^[49] the Court en banc reiterated a prior ruling by the Court's Second Division in *People v. Tongko*,^[50] which ruled that the increase in the penalty for estafa, committed through bouncing checks under Presidential Decree (PD) No. 818, does not violate the constitutional prohibition against cruel, degrading or inhuman punishment.

The petitioners in *Lim* argued that PD No. 818 is a cruel, degrading, or inhuman punishment for the following reasons: first, the penalty of reclusion perpetua under PD No. 818 for estafa involving the amount of P365,750.00 is too disproportionate to the crime it punishes; and second, the penalties for estafa through false pretenses or

fraudulent acts (committed through bouncing checks) increased without a corresponding increase in the original amounts for estafa defined in the RPC, when these amounts have become negligible and insignificant compared to the present value of the peso.

The Court in *Lim* held that the increase in penalties provided by PD No. 818 is neither the cruel nor degrading punishment that the Constitution contemplates. Affirming this ruling in *Tongko*, the Court held that "the prohibition of cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of duration or amount[.]"[51]

According to *Lim v. People*,[52] "It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution." The impugned penalty must be "flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community." [53]

The Court also noted that while PD No. 818 makes the penalties for estafa more severe, this severity alone does not make it the cruel or degrading punishment that the Constitution prohibits. The Court observed that the increase of the penalties is not without justification: the increase in penalty was intended to repress the crime of swindling through bouncing checks, as it erodes the people's confidence in using negotiable instruments and results in the "retardation of trade and commerce and the undermining of the banking system of the country." [54]

The present case involves arguments similar to those the *Lim* petitioners presented, and I find that no basis exists for the Court to deviate from its earlier ruling. Notably, the Court en banc arrived at this ruling without any reservations or dissenting opinions.

I submit that the Court should respect and recognize the principle of stare decisis in this case, as *Lim* stands as precedent against the arguments raised in the current case. They both involve the same issues and arguments; the penalty imposed by PD No. 818, which was contested in *Lim* and *Tongko*, was even higher than the penalties contested in the current case (which involves estafa without the qualifying circumstance of having been committed through bouncing checks).

These considerations, to my mind, effectively refute the arguments regarding the severity and disproportionality of the penalties under estafa presented in the current case. If we have twice respected and recognized the legislative's prerogative to increase the penalty of estafa committed through PD No. 818, why should we now deny them this prerogative and assert for ourselves the authority to determine the penalty of estafa itself?

Neither is a perceived disproportionality in the penalties and its comparison with the penalties of other crimes sufficient to establish the questioned penalty as cruel or degrading.

In *Baylosis v. Hon. Chavez, Jr.*, [55] the Court en banc upheld the constitutionality of Section 1 of PD No. 1866, which penalizes with reclusion perpetua "any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm," "in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion." The petitioners in *Baylosis* questioned the constitutionality of the penalty, pointing out, among other arguments, that the crime of possessing a firearm in furtherance of rebellion is even more severe than the crime of rebellion itself.

The Court in *Baylosis* interestingly ruled that the difference in the penalty between PD No. 1866 and the RPC does not necessarily establish that the heavier penalty under PD No. 1866 is excessive, disproportionate, or cruel or unusual. The Court noted that it could be argued the other way around - that the penalty of the crime of rebellion is too light; and that the remedy for this situation is through law, and not judicial interpretation.

Thus, *Baylosis* established that in determining the severity and disproportionality of a penalty, the Court should

look only at the crime and penalty in question and avoid its comparison with other crimes. And in determining whether a penalty is wholly disproportional to the crime it punishes (so that it shocks the community's moral standards), we must examine whether the penalty imposed is justified by the evil sought to be prevented by Congress in penalizing the crime.

In this case, the Solicitor General has adequately provided the reason for the penalties behind the estafa, i.e., to protect and encourage the growth of commerce in the country and to protect the public from fraud. This reason, to my mind, is sufficient to justify the penalties for estafa. That the amount taken from the private injured party has grown negligible through inflation does not ipso facto make the penalty wholly disproportional. In determining whether a penalty is cruel or unusual, we have considered not just the amount taken from the private injured party, but also considered the crime's impact on national policy and order.[56] It cannot be gainsaid that the perpetuation of fraud adversely impacts on the public's confidence in our financial system and hinders as well the growth of commerce.

As a final point, I note that the 1987 Constitution has changed the language of the prohibition against cruel and unusual punishments under the 1935 and 1973 Constitutions to "cruel, degrading or inhuman." This change of wording is not without reason - it was designed to give Congress more leeway in formulating the penalties it deems fit to the crimes that it may decide to penalize in the future.

As explained by Constitutional Commissioner Fr. Joaquin Bernas S.J., who sponsored the draft Bill of Rights, the word unusual was replaced with the words "degrading or inhuman" because Congress, in the future, may create a penalty not yet known or imposed; and the fact of its novelty should not be a ground to question its constitutionality.[57]

I submit that we, as interpreters and enforcers of the Constitution, should not go against the general spirit and intent of the Constitution to recognize the prerogative of Congress to create penalties. Immediately equating disproportionality and severity to a cruel, degrading punishment unduly limits this prerogative, as it would open the floodgates for the review of penalties on the mere contention or belief that the imprisonment imposed is too long or that the fines assessed are too high. These, to me, are policy questions that should be best addressed by the political branches of government, not by the Supreme Court.

In these lights, I fully concur with and join the ponencia of Justice Peralta.

[1] *People of the Philippines v. Salva*, 424 Phil. 63, 75 (2002).

[2] *Obosa v. CA*, 334 Phil. 253, 272 (1997).

[3] *Aradillos v. Court of Appeals*, 464 Phil. 650, 663 (2004).

[4] *Quemuel v. CA, et al.*, 130 Phil. 33, 35-36 (1968).

[5] See I Defensor-Santiago, M., *Constitutional Law, Text and Cases* (2000), p. 163.

[6] *Id.* at 169-170, citing *US. v. Ang Tang Ho*, 43 Phil. 1 (1922).

[7] *Id.* at I64.

[8] *Id.* at 194, citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[9] Bernas, S. J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, (2009), p. 946.

[10] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines*, (2009), p. 946, quoting *Muskra v.*

United States, 219 U.S. 346 (1911).

[11] Id. at 946, quoting *Lopez v. Roxas*, 17 SCRA 756, 761 (1966).

[12] Id. at 946-947.

[13] See I Defensor-Santiago, M., *Constitutional Law, Text and Cases* (2000), pp. 586-587.

[14] See *Valenzuela v. People*, 552 Phil. 381, 414 (2007); and *Laurel v. Judge Abrogar*, 518 Phil. 409, 432-433 (2006).

[15] *Valenzuela v. People*, supra, at 414.

[16] Id. at 414-415.

[17] Id. at 415.

[18] *Laurel v. Judge Abrogar*, supra note 14, at 433, citing *Dowling v. United States*, 473 U.S. 207 (1985); and *Valenzuela v. People*, supra note 14, at 415.

[19] *Caminetti v. United States*, 242 U.S. 470 (1917).

[20] *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, (1992); and *Insular Bank of Asia and America Employees' Union (IBAAEU) v. Hon. Inciong, etc., et al.*, 217 Phil. 629, 642 643 (1984).

[21] *Philippine Amusement and Gaming Corporation (PAGCOR) v. Philippine Gaming Jurisdiction, Incorporated (PEJJ)*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 665.

[22] *Cebu Portland Cement Company v. Municipality of Naga, Cebu, et al.*, 133 Phil. 695,699 (1968).

[23] Dennis B. Funa, *Canons of Statutory Construction* (2011), p. 215, citing CONN. GEN. STAT. Par. 1-2z, 2007.

[24] See *Catiis v. Court of Appeals (17th Division)*, 517 Phil. 294, 303 304 (2006).

[25] Dennis B. Funa, *Canons of Statutory Construction* (2011), pp. 214-215, citing CONN. GEN. STAT. Par. 1-2z, 2007.

[26] Id. at 4-5, citing Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* (1896). See also *Black's Law Dictionary* (Fifth edition), p. 734.

[27] Dennis B. Funa, *Canons of Statutory Construction* (2011), pp. 4-5, citing Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* (1896). See also *Black's Law Dictionary* (Fifth edition), p. 283.

[28] *Caltex (Philippines), Inc. v. Palomar*, No. L-19650, September 29, 1966, 18 SCRA 247, 256.

[29] See *Burden v. Snowden*, 2 Cal. 4th 556 (1992).

[30] Justice Abad cited the following cases to support its position: *People v. Amanses*, 80 Phil. 424, 435 (1948); *M Ruiz Highway Transit, Inc. v. Court of Appeals*, 120 Phil. 102, 106 (1964); *People v. Pantoja*, 134 Phil. 453, 458 (1968); *People v. Dela Fuente*, 211 Phil. 650, 656 (1983); *People v. Anod*, G.R. No. 186420, August 25, 2009, 597 SCRA 205, 213; and *People v. Tubongbanua*, 532 Phil. 434, 454 (2006).

Note that all of these cases involve the award of civil indemnity and moral damages for crimes and quasi-delicts resulting in death. In these cases, what the Court increased, through interpretation of the monetary values, was the civil indemnity awarded to the victim of the crime and not the penalty imposed on the offender.

[31] See Emesto L. Pineda, *Torts and Damages* (2004), p. 139. As quoted:

"Human life has heretofore been very cheap, in law and the practice thereunder. Before the passage of Commonwealth Act No. 284 in June 1938 the practice was to allow P1,000.00 to the heirs of the deceased in case of death caused by crime. Later, by virtue of that special law, a minimum of P2,000.00 was fixed, but the court usually awarded only the minimum, without taking the trouble to inquire into the earning capacity of the victim, and regardless of aggravating circumstances."

[32] Referring to Commonwealth Act No. 284.

[33] *Orceo v. Commission on Elections, Concurring Opinion*, Associate Justice Brion, G.R. No. 190779, March 26, 2010, 616 SCRA 684, 703, citing Ruben E. Agpalo, *Statutory Construction*, 177-178 (2003).

[34] *Ibid.*

[35] See Keith E. Whittington, *Originalism 2.0: The Twenty-Ninth Annual Federalist Society National Student Symposium On Law And Public Policy -- 2010: I. Originalism: A Rationalization For Conservatism Or A Principled Theory Of Interpretation?: Is Originalism Too Conservative?*, Copyright (c) 2011 Harvard Society for Law & Public Policy, Inc., 34 Harv. J.L. & Pub. Pol'y 29. (www.lexisnexis.com)

See also Thomas B. Colby and Peter J. Smith, *Living Originalism*, 2009 *Duke Law Journal*, 59 *Duke L.J.* 239. (www.lexisnexis.com)

[36] See Thomas B. Colby and Peter J. Smith, *Living Originalism*. 2009 *Duke Law Journal*, 59 *Duke L.J.* 239. (www.lexisnexis.com)

[37] See Keith E. Whittington, *Originalism 2.0: The Twenty-Ninth Annual Federalist Society National Student Symposium On Law And Public Policy -- 2010: I. Originalism: A Rationalization For Conservatism Or A Principled Theory Of Interpretation?: Is Originalism Too Conservative?*, Copyright (c) 2011 Harvard Society for Law & Public Policy, Inc., 34 Harv. J.L. & Pub. Pol'y 29. (www.lexisnexis.com)

[38] See Thomas B. Colby and Peter J. Smith, *Living Originalism*, 2009 *Duke Law Journal*, 59 *Duke L.J.* 239. (www.lexisnexis.com)

[39] *Ibid.*

[40] See Thomas B. Colby and Peter J. Smith. *Living Originalism*, 2009 *Duke Law Journal*. 59 *Duke L.J.* 239. (www.lexisnexis.com)

[41] *City of Manila v. Han. Laguio, Jr.*, 495 Phil. 289, 326-327 (2005).

[42] *Ibid.* See also *Regala v. Sandiganbayan*, 330 Phil. 678, 719 (1996), citing *Gumabon v. Director of Prisons*, 37 SCRA 420 (1971).

[43] *People of the Philippines v. Ching Kuan*, 74 Phil. 23, 24 (1942).

[44] *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 560-561 (2004); and *Quinto v. Commission on Elections*, G.R. No. 189698, December 1, 2009, 606 SCRA 258, 291.

[45] Gregorio, *Fundamentals of Criminal Law Review* (2008), p. 953.

[46] Section 19, Article VIII of the Constitution pertinently reads:

Sec. 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

[47] Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[48] Section 3 Definitions - xxx

(b) "Covered transaction" is a single, series, or combination of transactions involving a total amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution and a person who, at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin or economic justification.

It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four million Philippine pesos (Php4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

SEC. 9. Prevention of Money Laundering; Customer Identification Requirements and Record Keeping.

xxx

(c) Reporting of Covered Transactions. - Covered institutions shall report to the AMLC all covered transactions within five (5) working days from occurrence thereof, unless the Supervising Authority concerned prescribes a longer period not exceeding ten {10} working days.

SEC. 4. Money Laundering Offense. Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

xxx

(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

[49] 438 Phil. 749 (2002).

[50] 353 Phil. 37, 43-44 (1998).

[51] Id. at 43.

[52] Supra note 47, at 754.

[53] Ibid.

[54] Supra note 47, at 755.

[55] 279 Phil 448, 455 (1991).

[56] See *Lim v. People*, supra note 47, at 755; *People v. Tongko*, supra note 48, at 44; and *Baylosis v. Han. Chavez, Jr.*, supra, at 458, 465-466.

[57] During the Constitutional Commission's deliberations on the Bill of Rights, Commissioner Maambong noted the change in language of the draft Constitution from "cruel, degrading or inhuman" to "cruel and unusual," thus:

MR. MAAMBONG: I will just ask one more question, Mr. Presiding Officer. On Section 22, the original phrase used in the 1935 Constitution was "cruel and unusual punishment."

FR. BERNAS: Yes.

MR. MAAMBONG: In the configuration of the 1973 Constitution, the phrase became "cruel or unusual punishment."

FR. BERNAS: That is correct.

MR. MAAMBONG: In the United States Constitution as it stands now, it is still "cruel and unusual punishment." But now in the present submission that we are going over, it is "cruel or inhuman."

FR. BERNAS: "Cruel, degrading or inhuman."

MR. MAAMBONG: I just want to find out, Mr. Presiding Officer, why the Committee changed the word "unusual" to "inhuman."

FR. BERNAS: The reason for the change, Mr. Presiding Officer, is this: We avoided the use of the word "unusual" because it tended to give the interpretation that one cannot innovate therefore as far as penology is concerned -that, if a penalty is something that was never used before, then it would be invalid. So, in order to allow for the development of penology we decided that we should not prohibit unusual punishments in the sense that they are new or novel. Record of the I 986 Constitutional Commission, Vol. I, Jul. 17, 1986, R.C.C. No. 32.

DISSENTING OPINION

ABAD, J.:

The Court is apparently not prepared at this time to reexamine and change the existing practice of imposing the penalty for estafa based on the amount of the fraud committed in terms of the 1930 values of money and properties.

The Facts and the Case

On May 2, 1991 Danilo Tangcoy entrusted P98,000 worth of jewelry items to petitioner Lito Corpuz for the latter to sell on commission. If sold, Corpuz was to turn over the proceeds to Tangcoy and, if not, he was to return the items after 60 days. But Corpuz neither remitted the stated proceeds nor returned what he got. Consequently, the Public Prosecutor of Olongapo charged him with estafa before the Regional Trial Court (RTC) of that city.[1]

On July 30, 2004 the RTC found Corpuz guilty as charged and sentenced him to suffer an indeterminate penalty of imprisonment from 4 years and 2 months of prison correccional in its medium period, as minimum, to 14 years and 8 months of reclusion temporal in its minimum period, as maximum.[2]

On appeal, the Court of Appeals (CA) affirmed[3] Corpuz's conviction but modified the penalty to 4 years and 2 months of prison correccional, as minimum, to 8 years of prison mayor, as maximum, plus incremental penalty

of one year for each additional P10,000 for a total maximum of 15 years.[4] Corpuz filed a motion for reconsideration of the appellate court's Decision but the CA denied the same, thus, the present petition for review.

While the Court's Third Division was deliberating on the case, the question of the continued validity of imposing on persons convicted of crimes involving property came up. The legislature apparently pegged these penalties to the value of money and property in 1930 when it enacted the Revised Penal Code.[5] Since the members of the Division reached no unanimity on this question and since the issues are of first impression, they decided to refer the case to the Court En Banc for consideration and resolution.

In view of the far reaching effects of any ruling in the case and the great number of accused who may be affected by it,[6] the Court required the Office of the Solicitor General (OSG) and counsel for Corpuz to file their comments on the issues that the Court raised. Further, it invited a number of amici curiae for their views.

The following amici graciously submitted their papers: a) De La Salle University College of Law Dean and head of the Free Legal Assistance Group, Jose Manuel L. Diokno; b) Ateneo de Manila School of Law Dean, Sedfrey M. Candelaria; c) University of the Philippines Professor Alfredo F. Tadiar; d) the Senate President; and e) the Speaker of the House of Representatives.[7] The Court heard the parties and the amici on oral arguments on February 19, 2014, with Atty. Mario L. Bautista, entering his appearance as counsel de officio for Corpuz, and arguing the case on the latter's behalf.[8]

The Issues Presented

The issues may be summarized as follows:

1. Whether or not, procedurally, the Court may determine the constitutionality of the penalty that the CA imposed on Corpuz even when he did not raise such question in his petition for review;
2. Whether or not the penalty of 4 years and 2 months to 15 years that the CA imposed on Corpuz for a P98,000 fraud based on the penalty that the legislature pegged on the value of money or property in 1930 violates his constitutional right to equal protection of the law;
3. Whether or not that portion of Article 315 of the Revised Penal Code that imposes on Corpuz in addition to the basic penalty of 8 years and 1 day of imprisonment an additional incremental penalty of 1 year for each additional P10,000 of the amount of fraud in excess of P22,000 violates his constitutional right against cruel, unusual, and degrading punishment; and
4. If the answers to the second or third issues are in the affirmative, whether or not, applying the rules of statutory construction, the Court may, rather than declare the relevant statutory penalties unconstitutional, determine the legislative intent with respect to them and, accordingly, adjust the amount of the present fraud to its 1932 equivalent and impose the proper penalty.

Discussion

1. Issues Raised Motu Proprio

The OSG points out that it is not right for the Court to decide the issue of the correctness of the penalty imposed on Corpuz since he did not raise such issue.[9]

But the Court, like the CA, has always regarded it as a duty to the accused in every criminal case that comes before it to review as a matter of course the correctness of the penalty imposed and rectify any error even when no question has been raised regarding the same.[10] That the error may have a constitutional dimension cannot thwart the Court from performing such duty.

Besides, as Dean Sedfrey M. Candelaria, one of the amici, noted in his comment, the Court has in previous cases, when fundamental issues are involved, taken cognizance of the same despite lack of jurisprudential requirements for judicial review.[11] Indeed, the Court said in *People v. Hon. Judge Vera*,[12] that “courts in the exercise of sound discretion, may determine the time when a question affecting the constitutionality of a statute should be presented x x x [t]hus, in criminal cases, although there is a very sharp conflict of authorities, it is said that the question may be raised for the first time at any stage of the proceedings, either in the trial court or on appeal.”[13]

In *Government Service Insurance System, Cebu City Branch v. Montesclaros*,[14] while the respondent manifested loss of interest in pursuing the case, the Court through Justice Antonio T. Carpio, said, that “social justice and public interest demand that [x x x] the constitutionality of the proviso [be resolved]” since “the issue involves not only the claim of [respondent] but also that of other surviving spouses who are similarly situated and whose claims GSIS would also deny based on the proviso.”[15] To the same effect is the Court’s ruling in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*. [16] Here in *Corpuz*, the ruling of the Court will affect thousands of persons who are presently charged or in the future may be charged with crimes the penalties for which are pegged to the value of the money or property involved.

Moreover, the Court has itself raised these issues because of their importance and has heard the parties both on written comments and on oral argument. The due process requirement for hearing and adjudicating the issues now before the Court has been met.

Now to address the substantive issues:

2. Criminal Penalties and Inflation

As a general principle, crimes found in the Revised Penal Code carry with them the same penalties whatever year the accused commits them. For example, one who mutilates a Philippine coin in 1932, when the code took effect, would go to jail for 2 years and 4 months maximum, exactly the same penalty that another who mutilates a coin in 2014 would get. The correspondence between the gravity of the offense and the severity of the penalty does not change with the passage of time.

But, unwittingly, the penalties for crimes involving property under the Revised Penal Code are in breach of that principle. Although these penalties are meant to be proportionate to the harm caused, they are not described in specific and constant terms like the number of days of incapacity for work of the offended party in physical injuries cases.

Rather, the harm done in property crimes are made to depend on the “amount of the fraud” committed,[17] on the “value of the property taken,”[18] on the “value of the thing or property stolen,”[19] or on “the value of the damage caused.”[20] As it happens, money and property values are in a state of constant change, and sways with the wind of economic change, primarily with the rate of inflation from year to year. The objects of commerce like bread and fish do not change but their prices or monetary values change in the course of time.

For instance, in 1932 when the Revised Penal Code took effect, rice was priced at an average of P4.50 per cavan.[21] If one steals a sack of rice in 1932, he would be imprisoned for 4 months maximum corresponding to the value of what he stole. At present, that sack of rice is priced at about P1,800.00 per cavan.[22] If one steals a sack of rice today, he would be imprisoned for 4 years and 2 months maximum. In other words, in a crime involving property the penalty depends on when it is committed.

Since the price of rice in 1932 (P4.50 per cavan) is a mere 0.25% of today’s price (P1,800.00 per cavan), does this mean that the P100 today is the equivalent of only P0.25 in 1932? It is uncertain since the government did not yet conduct a statistical survey of the prices of key commodities in 1932 that would provide empirical support for

such a conclusion.[23] The first of such a statistical survey was made only in 1949, enabling the government after comparison with recent surveys to determine that the purchasing power of P1 in 1949 is the equivalent of about P100 today—P1 is to P100.[24]

For want of reliable 1930 economic data, it will be assumed for the purpose of this discussion that the purchasing power of the peso then did not vary much from that of 1949 which, as already stated, has been officially established. This assumption is based on the Court's own observation in the case of *People v. Pantoja*[25] that the purchasing power of the peso in 1949 was "one-third of its pre-war purchasing power," meaning P1 as against P3. This currency movement is minimal and may, for convenience, be considered absorbed in the massive erosion of the purchasing power of the peso by about 100 times from 1949 to the present. Consequently, this discussion will use this reference rate—the P1 is to P100—in comparing the prices of the past (1930-1949) with the present.

3. Escalation of Penalties and the Equal Protection Clause

The Revised Penal Code of 1930 pegs the penalties for estafa to the amount of fraud committed as follows:

Amount of the Fraud

Penalty

1) P22,001 and above

=

8 yrs. & 1 day plus 1 year for every additional P10,000.00 (but not more than 20 years)

2) P12,001 to P22,000

=

4 yrs., 2 mos. & 1 day to 8 yrs.

3) P6,001 to P12,000

=

6 mos. & 1 day to 4 yrs. & 2 mos.

4) P201 to P6,000

=

4 mos. & 1 day to 2 yrs. & 4 mos.

5) P0.01 to P200

=

4 mos. & 1 day to 6 mos.

Unmindful of the immense erosion of the purchasing power of the peso, courts have persisted in literally applying the above table of penalties in fraud cases. As a result, they in effect mete out heavier penalties from year to year for the commission of exactly the same offense.

For instance, if the accused defrauds another of 79 cavans of rice in 1930-1949, then valued at only P1,422.00

(P18.00 per cavan), she would be imprisoned for 2 years and 4 months maximum. This would cause her pain but tolerable pain. Yet, if another commits exactly the same fraud today when that 79 cavans of rice is now valued at P142,200.00 (P1,800.00 per cavan), she would be committed to prison for 20 years maximum. She would leave prison an old woman, irreversibly deprived of the company of her family for the greater part of her life. This is a gross denial of her right to equal protection since the first offender got off after 2 years and 4 months whereas she got off after 20 years.

Her 20-year prison term is of course enormous because the penalty for fraud amounting to P22,000.00 is already 8 years and 1 day maximum but, since the amount of her fraud (P142,200.00) exceeds that figure, she would suffer additional incremental imprisonment of 1 year for every P10,000.00 in excess of the P22,000.00 for a total of 20 years.

This uneven treatment is true in Corpuz's case. The P98,000.00 jewelry items subject of his offense would have a value of only P980 in 1932. Consequently, had he committed his crime that year, he would have been imprisoned for only 2 years and 4 months maximum. But since he committed it 43 years later in 1991 when the jewelry items are now valued at P98,000.00 due to inflation, he would be imprisoned for 15 years maximum—the same crime, the same law, yet a shockingly higher penalty. This result would undoubtedly deny Corpuz his constitutional right to equal protection of the law.

4. Incremental Penalty and the Cruel, Unusual, and Degrading Punishment Clause

Justice Antonio T. Carpio expressed the view, joined by Dean Diokno,[26] that insofar as Article 315 imposes on Corpuz in addition to the basic penalty of 8 years and 1 day an additional incremental penalty of 1 year for each additional P10,000.00 of the amount of fraud in excess of P22,000.00, such law violates his constitutional right against cruel, unusual, and degrading punishment. Putting a price of P10,000.00, about the cost of five sacks of rice, for each additional year of imprisonment makes the penalty grossly disproportionate to the wrong committed. This view would thus have the incremental penalty voided. Professor Tadiar and Dean Diokno appear to be sympathetic to it.[27]

The incremental penalty is of course grossly disproportionate to the wrong committed. But that penalty would not have been regarded as such if the offense had been committed in 1932 when P10,000.00 was a hefty sum. Indeed, if it were to be adjusted for inflation, that P10,000.00 would be the equivalent of P1,000,000.00 today. An incremental penalty for each P1,000,000.00 would not have been that bad. Anyway, the point is that it is the curse of inflation, not the idea of an incremental penalty, which is the culprit.

If Justice Carpio's view is adopted, the Court would annul the incremental penalty but maintain the validity of the basic penalties for fraud. But those penalties are just as disproportionate to the wrong committed.

For instance, half a gallon of coconut cooking oil would cost about P2.03 in 1930-1949. If Alex gives Ben P2.03 in 1949 to buy for him such half-gallon but Ben instead pockets the P2.03, he would be imprisoned 6 months maximum for estafa. On the other hand, if Carlos gives Dante P203 today to buy for him also a half-gallon of coconut cooking oil but Dante instead pockets the P203, he would be imprisoned for 2 years and 4 months maximum. To be imprisoned and separated from family for 2 years and 4 months for the taking of the price of a half-gallon cooking oil, what it will cost a hungry couple and their child their meal, is just as cruel, unusual, and degrading. It is an outrage to a democratic society even if no incremental penalty is involved.[28]

The harshness of this antiquated 1930 scheme for punishing criminal offenders is doubly magnified in qualified

theft where the offender is a domestic helper or a trusted employee. Qualified theft is a grievous offense since its penalty is automatically raised two degrees higher than that usually imposed on simple theft. Thus, unadjusted for inflation, the domestic helper who steals from his employer would be meted out a maximum of:

- a) 6 years in prison for a toothbrush worth P5;[29]
- b) 12 years in prison for a lipstick worth P39;[30]
- c) 14 years and 8 months in prison for a pair of female slippers worth P150;[31]
- d) 20 years in prison for a wristwatch worth P19,000;[32] or
- e) 30 years in prison for a branded lady's handbag worth P125,000.[33]

Unless checked, courts will impose 12 years maximum on the housemaid who steals a P39 lipstick from her employer. They will also impose on her 30 years maximum for stealing a pricy lady's handbag. This of course is grossly obscene and unjust, even if the handbag is worth P125,000.00 since 30 years in prison is already the penalty for treason, for raping and killing an 8-year-old girl, for kidnapping a grade school student, for robbing a house and killing the entire family, and for a P50-million plunder.

It is not only the incremental penalty that violates the accused's right against cruel, unusual, and degrading punishment. The axe casts its shadow across the board touching all property-related crimes. This injustice and inhumanity will go on as it has gone on for decades unless the Court acts to rein it in.

5. Judicial Construction of Statutes

But annulling Article 315 of the Revised Penal Code or portions of it slaps the hand of the legislature that enacted it in 1930 when the economy of the time warranted the amounts stated in those penalties. Allowing courts to adhere to that law but construe it instead in a way that would attain its purpose, an alternative based on long precedents, presents a more moderate remedy.

It may be assumed that those who enacted the Revised Penal Code in 1930 did not foresee the onslaught of inflation in the second half of the century. They had an agricultural economy and, presumably, the purchasing power of the peso at that time had not changed perceptibly in the years that they had known. It would be imprudent to believe that, if those legislators had an inkling of the shape and value of money and things would take down the years to 2014, they would have still pegged those penalties to their 1930 economy. But they did. Clearly, they were uninformed and, therefore, their intent must have been to match the penalties written in the law to the values of money and property as they understood it at that time.

As it turned out, the passage of time altered what the 1930 legislature intended respecting those penalties. Time made those penalties toxic and this is exemplified in the case of Corpuz. On the one hand, if the Court were to adjust the penalty imposed on him to compensate for inflation, using the government's P1 to P100 equation, Corpuz should be deemed to have defrauded Tangcoy of only P980 rather than P98,000. He would then be meted out a penalty of only 2 years and 4 months maximum. This is about the same penalty imposed for the crimes of offending religious feelings,[34] tumultuous disturbance,[35] and slander,[36] which are correctional penalties.

On the other hand, if the amount of fraud is made to depend on the false assumption that the value of P1 in 1930-1949 is the same as the value of P1 today, Corpuz would be liable for fraud amounting to P98,000 and draw a penalty of 4 years and 2 months to 15 years maximum, an afflictive penalty. These 15 years would be within the range of the penalty for homicide[37] or for intentional abortion thru violence against a pregnant woman,[38] which means meting out to Corpuz a penalty equivalent to the taking of human life.

About seven years ago, a lawyer accused his houseboy, Reynaldo Bayon, of stealing from him watches and jewelry worth P540,000.00.[39] For this, the trial court imposed on Bayon the penalty of imprisonment for 30

years maximum. Ironically, the trial court meted out to Bayon the same penalty that another trial court imposed on Ricardo Solangon and Apolonio Haniel who kidnapped Libertador Vidal and demanded ransom from his tormented family.[40] After lengthy negotiations, they settled for P50,000.00, got the money, and killed their victim. Since the police recovered only his bones, no one knew just how much Libertador suffered before being killed.

Did Reynaldo, the houseboy, deserve the same severe penalty imposed on Ricardo and Apolonio for their brutal crime? Reynaldo did not rape his employer's wife, torture his children, or murder any of them. If the prosecution were to be believed, his employer merely lost some of his collection of watches and jewelry. In the present case, the wealthy jeweler did not lose his life to Corpuz. All that he supposedly lost to him were a few jewelry worth P98,000.00 today, the equivalent of but P980.00 in 1930-1949. Still, the Court would, literally applying the law, sentence Corpuz to a maximum of 15 years in prison like he already killed the jeweler in an angry confrontation.

Again, the key to solving the problem that this case presents lies in ascertaining the will of the legislature that enacted the Revised Penal Code in 1930 and give its language the construction that will honor that will. Some, like the Office of the Solicitor General, the Senate President, and the Speaker of the House of Representatives hold the view that adjusting the penalties to compensate for inflation will amount to judicial legislation.[41]

But the Court need not rewrite the penalties that the law provides. Rather, the clear intent of the law can be given by, to borrow a phrase from Atty. Mario L. Bautista, counsel for Corpuz, "harmonizing" the law or "aligning the numerical figures"[42] to the economic realities of the present. To put it another way, ascertaining the facts of the case in order to faithfully apply to it the law as the legislature intended it is a judicial function. Dean Candelaria of Ateneo shares this position.[43]

This would not have been the first time that the Court would have given a construction to the fixed monetary values set by law to take into account the problems caused by inflation. When the Code Commission drafted the Civil Code in 1949, it fixed the new minimum civil indemnity for death to P3,000.00.[44] Article 2206 of the Code reads:

Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances.[45]

The Civil Code sets the minimum compensation for death at only P3,000.00. Ordinarily, this legislative judgment has to be obeyed no matter if it already becomes harsh or unfair to the victim's heirs as inflation sets in. For the law is the law. Yet, following past precedents, the Court would, construing the law in the light of the inflationary movement of money values, set a new minimum of P6,000 in 1964,[46] P12,000 in 1968,[47] P30,000 in 1983,[48] P50,000 in 1990,[49] and most recently, P75,000 in 2009.[50] It regarded as inequitable on account of inflation the award of a measly P3,000 to the victim's heirs.

Justice Jose C. Vitug observed that the Court increases the minimum civil indemnity "to such amounts as the peso value might actually command at given times and circumstances." [51] This is not judicial legislation but taking judicial notice of the relentless rise in money and property values over the years and construing the law in the light of such circumstances.

The Court emphasized in *People v. Pantoja* [52] that these judicial adjustments are dictated by: "the difference between the value of the present currency and that at the time when the law fixing a minimum indemnity" was passed.[53] Pantoja explained that, at its writing, "due to economic circumstances beyond governmental control, the purchasing power of the Philippine peso has declined further such that the rate of exchange now in the free market is U.S. \$1.00 to P4.00 Philippine pesos." [54]

None of the justices of the Court, which included renowned Chief Justice Roberto Concepcion, Jose B.L. Reyes, Arsenio P. Dizon, Querube C. Makalintal, Fred Ruiz Castro, and Enrique M. Fernando, regarded as amounting to judicial legislation the decision interpreting the P3,000 minimum for death compensation established by law in 1949 as P12,000 in the economy of the late 60s. There is no record of Congress disagreeing with them. It makes no sense for the Court to refuse to use the same reasoning and not employ it to the judicial construction of the penalty provisions in crimes involving property.

It is of course said that Article 2206 of the Civil Code merely sets the minimum civil liability for death at P3,000, implying that courts are free to grant benefits to the victim's heirs upwards of that minimum. This is true but the Court's decisions were not in the nature of mere suggestions regarding how the courts below are to exercise their discretions when awarding such benefit. The Court has actually been raising the minimum civil liability for death. Proof of this is that when the trial court or the CA orders the payment of only P50,000 to the victim's heirs, an amount already well above the minimum of P3,000 set by law, the Court would readily find the order erroneous and raise the award to P75,000.

Some would say that Article 2206 of the Civil Code merely governs civil indemnity whereas Article 315 of the Revised Penal Code on penalties for estafa governs criminal liability, implying that the latter is quite different. But the Civil Code stands on the same footing as the Revised Penal Code in terms of force and effect. One is not superior to the other. The point is that prudent judicial construction works equally on both codes.

In any event, the rule is that in case of doubt the provisions of the Revised Penal Code are to be construed in favor of the accused. What has happened, however, is that the Court has beginning in 1964 construed the minimum amount set in Article 2206 as subject to adjustment to cope with inflation although this worked against the accused in murder and homicide cases. The Court has not come around to give the same construction to the inflation-affected penalty provisions of Article 315 of the Revised Penal Code which would be favorable to him.

Incidentally, it is not the severity of the penalty written in the law that the Court has to adjust in order to compensate for inflation but the amount of the fraud or the damage that was proved at the trial. For instance, if an offender defrauds another of P20,000 worth of jewelry items today and he is found guilty, the trial court could make a finding that he had committed fraud in that amount. During sentencing, however, it would just determine, applying the P1 to P100 equation stated above, that such P20,000 is the equivalent of P200 in the economy of the 1930 table of penalties. The court would then apply the penalty provided by law for such reduced amount: 4 months and 1 day to 6 months. It would have been that simple.

It is pointed out that the Court's remedy in Corpuz's and similar cases lies in Article 5 of the Revised Penal Code, the pertinent portion of which provides:

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of clearly excessive penalty, taking into consideration the degree of malice and injury caused by the offense.[55]

But the above applies to a specific case before the court that tried it where, "taking into consideration the degree of malice and injury caused by the offense,"[56] the penalty to be imposed on the accused appears to be excessive. This is best exemplified in a case where the trial court regarded as excessive the lawful penalty it imposed on a father and his son who stole 10 tender coconut fruits from a plantation solely for the family's consumption.[57]

Here, however, the penalty has become excessive, not because of the unusual circumstances of Corpuz's case but because the penalty has become grossly iniquitous through time, affecting not just Corpuz but all those charged

with crimes the penalties for which depend on the value of money or property involved.

It is said that this decision would cause numerous difficulties one of which is that the Court does not have the means for ascertaining the purchasing power of the peso at any given time.

But it has the means. The Philippine Statistical Authority (PSA), formerly the National Statistics Office is the “highest policy making body on statistical matters.”[58] It regularly gathers from the market place the average prices of a basket of consumer items like rice, sugar, fish, meat, school supplies, and other products.[59] The PSA then determines based on these the purchasing power of the peso in a given year in relation to other years. “[O]nce the data generated by the PSA staff is approved and released by the National Statistician, it is deemed official and controlling statistics of the government.”[60] It is the PSA that provided the official finding that the P1 in 1949 is the equivalent of about P100 in 2013.[61] This information is used by government planners, international rating agencies, economists, researchers, businessmen, academicians, and students. The rules allow the Court to take judicial notice of this fact.[62]

The OSG claims that there are many ways of determining the present value of money, not just through its purchasing power as the PSA determines. This may be true but it is presumed that the legislature intended the term “value” in reference to money based on how money is commonly understood, not on how it might be understood by theoreticians or moralists. Everyone knows that the value of money of any amount depends on what it can buy—its purchasing power. People do not earn and keep money for its own sake.

Another concern is that if the Court adjusts the penalty to cope with inflation, such adjustments may have unintended effects on other crimes where the penalties depend on the value of the damage caused or the property unlawfully taken. Any adjustment of penalty in Corpuz would of course directly affect most of these crimes. That is inevitable if justice is to be served in those other cases as well since the same reasoning applies to them.

For instance, if a poor woman steals four small cans of corned beef from the supermarket worth P280, which would be only P2.80 in 1932, she will be jailed for 4 years and 2 months maximum. If a poor employee pockets P250 in government money entrusted to him, which would be only P2.50 in 1932, he will be jailed for 10 years maximum. If one armed with a knife but commits no violence or intimidation robs a public building by forcibly opening a window and stealing two brooms worth P300, which would be only P3.00 in 1932, he will be jailed for a maximum of 20 years. The absurdity in the literal application of the 1932 penalties equally applies to these crimes.

The uniform adjustment in the base amounts using the PSA formula of P1 to P100 will maintain uniform levels of legislative indignation or outrage over the wrongs committed in these crimes. The harshness of the incremental penalty of one year imprisonment for every P10,000.00 would be obviated since the adjustment would make that one year imprisonment for every P1,000,000.00 illegally taken, which would be quite reasonable already. For this reason, no distortion can ever result in the application of the decision in similar cases.

To repeat, from this dissent’s point of view, it is the amount of money or value of the thing defrauded, taken, malversed, or damaged that undergoes adjustment or correction resulting from a realistic appreciation of the facts of the case. The law is not amended or changed.

Finally, there is concern that if this dissent were to be adopted, the same would result in the lowering of the penalties that courts have these past years been meting out for crimes involving property. It is pointed out that the ruling fails to take into account its effect on the victims.

But the dissent is not advocating the lowering of the penalties for those crimes; it merely seeks the restoration of the correct penalties. The adjustments sought would merely compensate for inflation in order to accomplice what

the legislature intends regarding those crimes. The victims of crimes today are not entitled to retributions that are harsher than what the law provides. They have no right to exact more blood than the victims of yesterday.

For all the above reasons, I vote to AFFIRM Lito Corpuz's conviction with MODIFICATION of the indeterminate penalty to 2 months of arresto mayor, as minimum, to 1 year and 8 months of prision correccional, as maximum, entitling him to probation under the ruling laid down in *Colinares v. People*.^[63]

[1] Docketed as Criminal Case 665-91.

[2] Rollo, p. 52.

[3] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of the Court) and concurred in by Associate Justices Lucas P. Bersamin (now also a member of the Court) and Rodrigo V. Cosico.

[4] Rollo, p. 40.

[5] An Act Revising The Penal Code and Other Penal Laws [REVISED PENAL CODE], Act 3815 (1932).

[6] As of 2014, 6509 people have been convicted of and are serving sentence for estafa, qualified theft, theft, robbery, arson, and malicious mischief. Out of this population, 4480 are slated to spend half a decade or more in prison. (Nora Corazon T. Padiernos, Chief of Planning and Management Division, Bureau of Corrections, Statistics on Crimes Against Property, February 14, 2014) These people are just some of those who would have been affected by this decision. There is an overwhelming number of detainees around the country with similar fates. Manila City Jail alone has 630 men in detention for robbery and 249 for theft. (Manila City Jail, February 2014) To say that they are living in cramped quarters is a great understatement. See Maria Luisa Isabel L. Rosales, *Cruel Detentions: Subhuman Prison Conditions – A Form of Cruel and Unusual Punishment*, 54 *Ateneo L.J.* 568 (2009).

[7] The Court also invited the Dean and some professors of the University of the Philippines School of Economics and the President of the Philippine Judges Association to submit their views but they opted not to.

[8] *Corpuz v. People of the Philippines* (Minute Resolution), G.R. No. 180016, February 25, 2014, p. 382.

[9] Office of the Solicitor General, Oral Arguments, TSN.

[10] See *Gelig v. People*, G.R. No. 173150, July 28, 2010, 626 SCRA 48, 49; *People v. Laguerta*, 398 Phil. 370, 375 (2000), citing *People v. Balacano*, 391 Phil. 509, 525-526 (2000).

[11] Dean Sedfrey M. Candelaria, Comment, p. 3 (September 30, 2013).

[12] 65 Phil. 56 (1937).

[13] *Id.* at 88.

[14] 478 Phil. 573 (2004).

[15] *Id.* at 580.

[16] 487 Phil. 531 (2004).

[17] The term used in the REVISED PENAL CODE, Art. 315.

[18] *Id.*, Arts. 299 and 302.

[19] *Id.*, Arts. 309 and 310.

[20] Id., Art. 328.

[21] 1 cavan is equivalent to 25 gantas (See *Barreto v. Reyes*, 10 Phil. 489, 491 [1908]). A ganta of rice is approximately 2.5 kilos when computed at 3 quarts to a ganta. (See United Nations. Department of Economic and Social Affairs, Statistical Office of the United Nations, *World Weights and Measures, Handbook for Statisticians, Statistical Papers, Series M No. 21 Revision 1* [ST/STAT/SER.M/21/rev.1] New York: United Nations [1966]); Wordnik, Ganta available at <http://www.wordnik.com/words/ganta> (last accessed April 23, 2012).

[22] Updates on Palay, Rice, and Corn Prices, Vol. 4, No. 34 (August 2012), available at http://www.bas.gov.ph/?ids=amsad_prices.

[23] Carmen N. Ericta, OIC National Statistician, Philippine Statistics Authority, SUBJECT: Update on the Value of the Present Day Peso as Compared to its Prevailing Value in 1932 (February 10, 2014).

[24] Id., citing Bangko Sentral ng Pilipinas (formerly known as Central Bank of the Philippines), *Statistical Bulletin*, Vol. IX, No. 4.

[25] 134 Phil. 453 (1968).

[26] Dean Jose Manuel I. Diokno, Comment (September 21, 2013).

[27] “Section 5 of the Revised Penal Code x x x violates the bedrock principle of a democratic and republican government x x x [and] may outrightly be struck down as unconstitutional in the present petition by the power of judicial review. x x x Article 39 x x x must be struck down as unconstitutional for its imposition of a cruel punishment that has long been outdated by currency devaluation. Thus, the condition for the exercise of the power of judicial review is that the questionable statute must be closely intertwined with the principal issue of the case, that is the disproportionateness of the penalty imposed based on a devalued currency. x x x Thus, it is imperative for this Supreme Court to declare through its power of judicial review that these statutory provisions are unconstitutional.” (Professor Alfredo F. Tadiar, *Constitutional Challenge in the Sentencing Process*, pp. 14-16, August 16, 2013).

[28] Prof. Tadiar agreed to this statement.

[29] Angola Toothbrush available at http://www.ebay.ph/itm/ANGOLA-Toothbrush-/221195152522?pt=LH_DefaultDomain_211&hash=item3380422c8a (last accessed March 6, 2014).

[30] Taupe Lipstick available at http://www.ebay.ph/itm/taupe-lipstick-/271167294212?pt=LH_DefaultDomain_211&hash=item3f22d48b04 (last accessed March 6, 2014).

[31] Authentic Brand New Old Navy Slippers available at http://www.ebay.ph/itm/Authentic-Brand-New-OLD-NAVY-Womens-Lippers-Size-7-Color-White-/261178377863?pt=LH_DefaultDomain_211&hash=item3ccf71c687 (last accessed March 6, 2014).

[32] Auth Philip Stein Large Black Calfskin Strap Brandnew available at http://www.ebay.ph/itm/AUTH-Philip-Stein-Large-Black-Calfskin-Strap-Brand-New-/261176803770?pt=LH_DefaultDomain_211&hash=item3ccf59c1ba (last accessed March 6, 2014).

[33] Authentic Louis Vuitton Lumineuse available at http://www.ebay.ph/itm/BNEW-Authentic-Louis-Vuitton-LV-Lumineuse-PM-Aube-140923515015?pt=LH_DefaultDomain_211&hash=item20cfb23087 (last accessed March 6, 2014).

[34] REVISED PENAL CODE, Art. 133.

[35] Id., Art.153.

[36] Id., Art. 174.

[37] Id., Art. 249.

[38] Id., Art. 256.

[39] People v. Bayon, G.R. No. 168627, July 2, 2010, 622 SCRA 702.

[40] People v. Solangon, 563 Phil. 316 (2007).

[41] Office of the Solicitor General, Supplemental Comment (August 22, 2013); Senate President, Memorandum (September 26, 2013); and Speaker of the House of Representatives, Memorandum (October 21, 2013).

[42] Mario L. Bautista, Compliance 2 (March 12, 2014).

[43] “Applied to the present case, while Article 315 of the Revised Penal Code appears on its face as constitutionally valid, the manner by which it is applied by the Court of Appeals to petitioner’s case will result into an unreasonable consequence for the petitioner. Instead of being qualified for probation based on an interpretation that takes into account adjustment for inflation, petitioner would be made to suffer the penalty of from four (4) years and two (2) months as minimum to fifteen (15) years as maximum. This interpretation is plainly discriminatory, unreasonable and oppressive. x x x The mechanism suggested by the undersigned through judicial interpretation is not antithetical to the established rule that this Court in the exercise of the power of judicial review cannot encroach upon the power of the Legislature.” (Dean Sedfrey M. Candelaria, Comment, pp. 4, 11-12 [September 30, 2013]).

“It is well settled that a court may consider the spirit and reason of a statute, and even resort to extrinsic aids, when its literal application would lead to absurdity, contradiction, impossibility, injustice, or would defeat the clear purpose of the law makers. x x x This Court, therefore, can go outside the four corners of the law to give it meaning.” (Dean Jose Manuel I. Diokno, Free Legal Assistance Group, De La Salle University College of Law, Comment, p. 3 [September 21, 2013]).

[44] An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act 386, Art. 2206 (1950).

[45] Id., Art. 2206.

[46] M. Ruiz Highway Transit, Inc. v. Court of Appeals, 120 Phil. 102, 106 (1964).

[47] People v. Pantoja, supra note 25, at 458.

[48] People v. Dela Fuente, 211 Phil. 650, 656 (1983).

[49] Supreme Court of the Philippines, En Banc, Minutes (August 30, 1990).

[50] People v. Anod, G.R. No. 186420, August 25, 2009, 597 SCRA 205, 213; People v. Tubongbanua, 532 Phil. 434, 454 (2006).

[51] Justice Jose C. Vitug, 4 Civil Law, 2nd ed. 2006.

[52] Supra note 25.

[53] Id. at 457-458.

[54] Id. at 458.

[55] REVISED PENAL CODE, Art. 5.

[56] Id.

[57] *People v. Montano and Cabagsang*, 57 Phil. 598 (1932); *People v. Canja*, 86 Phil. 518 (1950), (see Dissenting Opinion of J. Montemayor, pp. 522-523).

[58] Arsenio M. Balisacan, Socioeconomic Planning Secretary and Director-General, National Economic and Development Authority (April 23, 2014).

[59] National Statistics Office, Consumer Price Index Primer available at <http://www.census.gov.ph/old/data/technotes/Primer%20on%20Consumer%20Price%20Index.pdf> (last accessed March 21, 2014); Philippine Statistics Authority, Consumer Price Index for Bottom 30% Income Households, Reference No. 2014-005 (January 30, 2014).

[60] Balisacan, *supra* note 58.

[61] *Erica*, *supra* note 23.

[62] Section 1, Rule 129 of the Rules of Court provides that a court shall take judicial notice, without the introduction of evidence, of the official acts of government. It may also take judicial notice as provided in Section 2 of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Indeed, the Court has in the past consistently taken note of and acted on the inflationary movement of the purchasing power of the peso.

[63] G.R. No. 182748, December 13, 2011, 662 SCRA 266.

CONCURRING AND DISSENTING OPINION

“Since we cannot change reality,
let us change the eyes which see reality.”
Nikos Kazantzakis[1]

LEONEN, J.:

I concur with the ponencia of Justice Diosdado M. Peralta in affirming the conviction of Lito Corpuz. However, I dissent on the penalty imposed by the majority. I do not agree that it is judicial legislation for us to reconsider the range of penalties created by Congress in 1932. The range of penalties for the crime of estafa should be recomputed based on present value.

Our duty is to interpret the law. It is a duty reposed on us by the Constitution. We provide meaning to law's language and make laws written in a different historical context relevant to present reality.[2]

The meanings of the text of the law limited by the facts presented in the cases that come to us are not arbitrarily determined. We arrive at such meanings as a collegial court aware that we should keep faith in the spirit that the laws have been promulgated. Our ideal should be that we can reflect the political consensus contained in the words approved by Congress and the President but always framed by the fundamental principles and values of our Constitution. Political consensus is not independent of reality. It is there to address that reality.

My sense of the law's spirit is that it is always motivated by what is relevant and what is just under the circumstances.

Viewed in this way, I must dissent in the penalty imposed upon the accused. The pecuniary values that provided the basis for the range of penalties for the crime of estafa (swindling) were the values in 1932. It is clear that the gravity of a crime where someone was defrauded of fifty pesos (₱50.00) of property in 1932 is not the same as the gravity of the same offense for property worth fifty pesos (₱50.00) in 2014. The purchasing power of the peso has significantly changed after eight decades, and it is time that we interpret the law the way it should be: to reflect the relative range of values it had when it was promulgated. In doing so, we are not rewriting the law, just construing what it actually means.

Of course, every interpretation we make on any provision of law occasioned by actual cases will have their own share of difficulties when implemented. This is true when we declare law relied upon by many as unconstitutional, or interpret the provisions of a tax code, or even when we clarify the requirements prescribed by the General Accounting and Auditing Manual (GAAM). We have always, however, proceeded with the right interpretation and dealt with the difficulties accordingly.

Definitely, an interpretation of a legal provision more beneficial to an accused or a person who is convicted will have a retroactive effect. This should be because such interpretation is corrective in nature. This should not present extremely debilitating difficulties, and we do not have to have special rules. The convicted prisoner could simply file habeas corpus as a post-conviction remedy whenever he or she would have served more than what would be required based on our new interpretations. It is also possible for the Department of Justice's Bureau of Corrections and Parole and Probation Administration to adopt its own guidelines on the release of prisoners. This difficulty is not insurmountable.

I disagree that it will be difficult to find the correct present value for the amounts involved. In *Heirs of the Spouses Tria v. Land Bank of the Philippines*[3] and *Secretary of the Department of Public Works and Highways v. Spouses Tecson*,[4] we identified the correct formula in our concurring and dissenting opinions. The formula for present value is known and has been relied upon in the business community. Inflation rates may be discovered using the latest statistics extrapolating for the years when there had been no available values. I agree with the approach of Justice Roberto A. Abad in his dissenting opinion in approximating the value already so that we do not need to get unnecessarily entangled in the niceties of the science and art of determining inflation rates.

Even the inflation rate should not present an extraordinarily insurmountable problem even if it should be computed from 1932. Inflation is only the change in price of the same index from one year to the next. Price index is the "measure of the average level of prices,"[5] while inflation is the "rise in the general level of prices." [6] As long as there is a price index, inflation rate can be derived from comparing one year's price index with another year's price index.

The most commonly used price index is the Consumer Price Index. The Philippines began recording the Consumer Price Index in 1948, together with the creation of the Central Bank of the Philippines.[7]

However, even before the creation of the Central Bank, the Philippines had been recording other price indices that could be used to approximate inflation and give a more precise picture of the price level in 1930, the year the Revised Penal Code was approved. A sectoral price index can be used to substitute the consumer price index. A dominant sector in the Philippines, agriculture, has a price index which pre-dates World War I and covers the years 1902 until 1946.[8] Hence, even before the war, for as long as the index compared with one from another is the same index, an inflation rate can be derived.

Law has never been a discipline too autonomous from the other disciplines. The points of view of those that inhabit the world of economics and finance are not strange to lawyers. The eyes through which the law views reality should not be too parochial and too narrow. Our understanding should instead be open enough to allow us

to see more by borrowing from other disciplines. Doing so enhances rather than weakens judicial rigor.

I am not convinced that a ruling that will affect penalties in other crimes where the gravity is measured in pesos will present difficulties too debilitating so as to amount to being unimplementable. I do not see why courts of law cannot simply adopt the universally acceptable formula for present value.

An interpretative methodology for penalties is proposed because of the extraordinary lapse of time from the date of promulgation of the law (1932) to the present. Definitely, we will not be recomputing the penalties for all statutes. I am of the view that the approach for computing the penalties in this case will only be applicable to statutes that have been promulgated and have not been amended for no less than the past eight decades. The world was very different then. A world war intervened. Four different Constitutions with their corresponding amendments were promulgated and took effect. There are now more types of property than could have been imagined at that time.

I hesitate to agree with Justice Carpio's approach to declare the incremental penalties as unconstitutional only because it violates the proscription against cruel and unusual punishments. The approach creatively addresses the unjustness of the present situation but does not have the same elegance of principle that is proposed in the dissent of Justice Abad. Both lead to pragmatic results, and I think that between these two possibilities, we should lean on that which is more consistent with the principle of reflecting the spirit of the law when it was promulgated.

A decision that re-computes penalties to account for present value should not be seen as a judgment of the achievements of Congress. That this was not its priority is a matter that should not concern us. Congress is an entirely separate and autonomous branch of government, and it would be violative of the constitutional fiat of separation of powers for us to imply that updating penal statutes should have been its priority.

Regardless, it is this actual case that confronts us. In my view, adjusting penalties to account for the purchasing power of the peso is entirely within our power. It is not judicial legislation, it is merely interpreting the word "peso" in these range of penalties. It is quintessentially a judicial activity to interpret. We should not default on this duty. We cannot wait another century before a just outcome is to be realized.

ACCORDINGLY, I vote to affirm the conviction of the accused. However, I vote that the penalty imposed be two months of *arresto mayor* as minimum, to one year and eight months of *prision correccional*, as maximum, in accordance with the computation proposed by Justice Roberto Abad in his dissenting opinion.

[1] Greek writer, poet, playwright, and philosopher, known for his novels such as *Zorba the Greek* (1946) and *The Last Temptation of Christ* (1953).

[2] Ours is the duty to "interpret the law and apply it to breathe life to its language and give expression to its spirit in the context of real facts." (Emphasis supplied). *Tecson v. COMELEC*, 468 Phil. 421, 643 (2004) [Per J. Vitug, En Banc], dissenting opinion, J. Carpio Morales.

[3] G.R. No. 170245, July 1, 2013, 700 SCRA 188, separate opinion, J. Leonen.

[4] G.R. No. 179334, July 1, 2013, 700 SCRA 243, separate opinion, J. Leonen.

[5] P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 439 (Eighteenth Edition).

[6] *Id.*

[7] The Central Bank was created by law under Republic Act No. 265 in 1949. Sections 22 to 24 refer to the Department of Economic Research in the Central Bank, mandated, among other responsibilities, to collect

“statistics on the monthly movement of the money supply and of prices and other statistical series and economic studies useful for the formulation and analysis of monetary, banking and exchange policies.” Because of this, the Central Bank started recording national income estimates in the 1948-1950 period. See K. Nozawa, History of the Philippine Statistical System (visited April 29, 2014).

[8] Agricultural statistics are collected to monitor production volume and prices of agricultural products, among others. A statistics division was created for the Bureau of Agriculture as early as 1902. See K. Nozawa, History of the Philippine Statistical System (visited April 29, 2014).

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