The Independence and Activism of the Philippine Supreme Court: the Case of *La Bugal v. Ramos*[1]

ALEJANDRO N. CIENCIA, JR.
University of the Philippines Baguio

ABSTRACT

The paper assesses the Philippine Supreme Court's ruling reversal in *La Bugal versus Ramos* (or the Mining Act case) in terms of what it tells us about the independence and activism of the post-Marcos Supreme Court. "Judicial activism" is used in the paper to refer to "active intervention in policy making" by courts or judges. The text of the 1987 Philippine Constitution provides for the legal moorings of judicial activism in the post-Marcos era. Constitutional provisions, alongside favorable political conditions, have contributed to the emergence of a generally independent post-Marcos Court. Focusing on judicial activism in the form of judicial invalidation of legislation and/or actions of executive officials, the *La Bugal* reversal tells us that justices of the Philippine Supreme Court indeed have the resources and incentives to be activists. Two plausible accounts of the reversal have been identified: an attitudinalist issue change account and a strategic defection account. Despite their differences, both accounts indicate a condition of considerable, but not overwhelming, independence in January 2004 when the Court issued its first *La Bugal* ruling. As to the December 2004 ruling which reversed the original *La Bugal* decision, an attitudinalist issue change account provides the plausible explanation that the reversal was brought about by a change in case stimuli. Judicial activism, however, does not necessarily result in "pro-poor, pro-people, pro-Filipino" rulings. The Court can employ its activism to pursue more "conservative" policy goals.

Keywords: judicial activism, judicial independence, issue change, strategic defection, judicial veto

Introduction

On January 27, 2004, in *La Bugal B'laan Tribal Association v. Ramos,* the Philippine Supreme Court nullified provisions of the Philippine Mining Act of 1995 which allowed foreign mining firms to operate

in the country. On December 1 of the same year, the Court reversed its January ruling to the dismay of environmentalists, advocates of indigenous peoples' rights, and proponents of economic protectionism. What accounts for the reversal? What explains the apparent shift from veto player to "team player" specifically on the issue of foreign mining? This paper assesses the *La Bugal* reversal in terms of what it tells us about the independence and activism of the post-Marcos Supreme Court.

On choosing the *La Bugal* reversal as starting point of the study

This paper treats *La Bugal* as instructive of Philippine Supreme Court decision-making and activism in the post-Marcos, post-authoritarian era. There are compelling reasons for choosing *La Bugal* for this kind of inquiry: As the subject of study, the *La Bugal* case provides a rare opportunity to test dominant models of judicial decision-making. As an instance of a ruling reversal where the Court overturns its very own ruling, it raises questions about the core assertion of the traditional legal model of judicial decision-making, i.e., that justices decide cases on the basis of precedent or previous decisions (Spaeth 1979, 52; Segal and Spaeth 2002, 86). Raising doubts on the correctness of the legal model paves the way for the consideration of alternative accounts of judicial decision-making, e.g., the attitudinalist and strategic explanations. As in any type of inquiry which involves ascertaining the factors that account for a phenomenon, reducing the effects of extraneous variables is highly desired. In studying judicial behavior, finding highly comparable cases (with minimal extraneous variables) which produce divergent outcomes is difficult, but such cases provide ideal subjects for analysis. Ruling reversals offer the most comparable cases available. *La Bugal*, as an instance of a ruling reversal, provides two highly comparable (a) sets of case facts, (b) sets of litigants, (c) sets of justices, and other comparable background conditions, e.g., the same Philippine president (Gloria Macapagal-Arroyo), the same Senate President (Franklin Drilon), and the same Speaker of the House of Representatives (Jose de Venecia). The January and December 2004 *La Bugal* rulings thus possess a high level of comparability.

Meanwhile, as the focal point of a study on judicial activism, *La Bugal* allows us to examine factors that bear on the Court's ability and willingness to veto a law enacted by a national legislature, signed into law by a past executive (Fidel Ramos), and endorsed at the time by the incumbent executive (Macapagal-Arroyo). Quite interestingly, the nullification of the Mining Act—or more accurately, the Western Mining Corporation (WMC) Financial and Technical Assistance Agreement (FTAA) now associated with it—came at about the same time that three other high profile contracts involving government, namely, the PEA-Amari land reclamation deal (*Chavez v. PEA-Amari,* November 11, 2003), the Mega Pacific-Comelec poll automation contract (*Information Technology v. Comelec,* January 13, 2004), and the PIATCO-NAIA 3 contract (*Agan v. PIATCO,* January 21, 2004), were invalidated. The clustering of these "vetoed" contracts suggests that the Mining Act nullification may not be an isolated phenomenon, that there are structural factors that encourage judicial vetoes, or that prevailing conditions at the time fostered judicial vetoes. Moreover, since *La Bugal* was brought about by a petition of an indigenous community, the La Bugal B'laan tribe of Mindanao, it also allows us to study an apparent shift from an activist, societal representative role—i.e., as protector of the welfare of marginalized sectors in society—to, perhaps, a restrained, seemingly impartial referee role in legal disputes.

From the perspective of policy-making, *La Bugal* also appears to be instructive of the major policy issues that confront developing states. The issue of mining touches on questions relating to development, economic protectionism and liberalization, economic goals and priorities, environmental protection, protection of indigenous peoples' rights, etc. With its decision to uphold the constitutionality of the Mining Act in December 2004, the Court seemed to have adopted a more restrained attitude towards cases involving economic policy. This deferential attitude was again manifested in late 2005 when the Court declared as "not unconstitutional" a highly contentious taxation scheme endorsed by Pres. Arroyo and adopted by the Philippine Congress, the Expanded Value Added Tax (E-Vat) Law (*Abakada v. Ermita,* September 1 and October 18, 2005). In the less known *Spouses Constantino v. Cuisia* (October 13, 2005), the Court also acceded to the policy preferences of elected bodies and upheld the validity of debt relief contracts entered into by the Philippine government with foreign entities. This prompts us to ask: Have we just witnessed a shift from judicial activism to judicial restraint especially in economic cases? If so, what accounts for the shift from judicial activism to judicial restraint and deference, from a veto player to a team player role?

The creation of an activist Supreme Court

I use the term "judicial activism" to refer to "active intervention in policy making" (Baum 2007, 131) by courts or judges. Legislators and officials of the executive branch are widely seen as policy makers, i.e., they have the power to choose "among alternative courses of

action, where the chosen action affects the behavior and well-being of others who are subject of (their) authority" (Spaeth 1979, 1). Unlike legislators and executive officials, members of the judiciary are generally not regarded as having the authority to make policy. Often recognized as guardians of the law, judicial officials are seen more as arbiters whose decisions ought to be the "result of proper legal reasoning and interpretation, and unrelated to preferences, biases, and of course politics" (Haynie 1998, 462). The public sees judges as not having the right, often enjoyed by elected legislators and executive officials, to exercise discretion and to pursue their personal policy preferences when performing their duties.

I see judicial activism as occurring when judges veto policies made by legislators and/or executive officials; when judges preempt policy making by legislators and/or executive officials; and when judges' policy preferences supplant those of legislators and/or executive officials. These often are overlapping occurrences. The veto or the striking down of legislation is the most noticeable and most controversial form of judicial activism (Baum 2007, 132). Elected legislators understandably do not look kindly on the exercise of judicial veto by unelected judges, particularly when judges prevent legislators from doing what they are supposed to do in the first place , which is to make laws. Meanwhile, an example of courts preempting policy making by legislators and/or executive officials is when courts opt to settle "political" questions, i.e., "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government" (Bernas 1988, 280-281). When courts entertain political questions, they are seen as arrogating to themselves a function which properly belongs to "political" and not judicial bodies. The 9th edition of *Black's Law Dictionary* defines judicial activism in a manner that equates it with the supplanting of the policy preferences of legislators and/or executive officials. It occurs when judges "allow their personal views about public policy, among other factors, to guide their decisions" (Garner 2009, 922). Judicial activism normally draws a lot of attention when courts make decisions that conflict with those of the other branches. In most instances, judicial intervention in policy making often results from the court's exercise of "judicial review," i.e., the "power to overturn acts of the other policymakers on the ground that they violate the Constitution" (Baum 2007, 163).

The opposite of judicial activism is judicial restraint or judicial deference. "Restrained" or "deferential" courts and judges exhibit great respect for the policy making powers of legislators and executive officials. In presidential systems, restrained or deferential courts and judges tend to put in high regard the principle of separation of

powers which posits that the judicial branch is merely one branch in the tripartite system of government. It is in this regard that I use the term "team player" to signify a judicial branch which greatly respects the policy making powers of the other two branches.

Legal and judicial politics scholars have certainly announced the arrival of an activist Philippine Supreme Court in the post-Marcos era. Two years after the 1987 Philippine Constitution came into effect, Agabin (1996, 194) declared that its adoption had paved the way for a strengthened Supreme Court which was designed to serve as "a check on the executive and legislative powers." The new constitution contained provisions that increased the likelihood of the Court vetoing decisions and actions of the Philippine president or Congress. These included the change in the voting requirement for nullifying a treaty, international or executive agreement or law from two-thirds of the entire membership to a mere concurrence of a majority of those who actually take part in deliberations (Philippine Constitution, Sec. 4 [2], Art. VIII; Agabin 1996, 193).

The new constitution also broadened the scope of judicial review. Agabin (1997, 190) writes:

> [T]he more significant innovation in the present constitution is the definition of judicial power which expands the scope of judicial review and gives access to ordinary taxpayers to the Court to raise even political questions… The definition of "judicial power" includes "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" (Art VIII, sec. 1). We should not miss here the significance of stating the definition of judicial power in terms of "duty," and that such duty is imposed by the constitution. In short, the Court has the duty to render justice under this definition of judicial power.

Apart from stipulating that it is the "duty" of courts to exercise judicial review, the 1987 Philippine Constitution's economic and social justice provisions, according to Agabin, also fostered judicial intrusion especially in matters of economic policy. He elaborates:

> Our constitution is replete with provisions for the regulation of the economy and of the state's positive obligation to promote social justice. As its framers like to put it, our present constitution is "pro-people, pro-poor, and pro-Filipino." This means that the Philippine Supreme Court, unlike the United States Supreme Court, cannot promote the development of capitalist institutions at the expense of the people. It cannot assume the function of protecting the market from various regulatory incursions if these conflicts with

2004 reversal; and (3) the February 1, 2005 final ruling which affirmed the reversal. It bears stressing at this point that the categorizations of judicial roles, while conceptually separable, do not appear to be mutually exclusive especially when applied to actual cases. With this in mind, the paper will pay greater attention to the veto player and societal representative roles of the Philippine Supreme Court in the *La Bugal* case.

While inquiry into the roles played by the Philippine Supreme Court in the *La Bugal* case may be instructive of factors that influence the decision-making in the Philippine Supreme Court, the findings of the study, being based on a single case, cannot be asserted as representative of all Court decisions. Still, consideration of the *La Bugal* reversal can provide a rich and contextualized account of Philippine judicial activism, and the findings of the analysis can be the starting point for a more comprehensive study.

Backgrounder on *La Bugal v. Ramos*

Aimed at resuscitating the once-booming Philippine mining industry, Republic Act 7942 or the Mining Act of 1995, was signed into law on March 3, 1995 by then President Fidel Ramos. The Mining Act grants three types of mining rights: (1) exploration permits, (2) mineral agreements, and (3) financial or technical assistance agreements (FTAA). An exploration permit gives the permitee the right to conduct mineral exploration in specified areas. A mineral agreement grants the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area. A financial or technical assistance agreement meanwhile is a contract involving large-scale exploration, development, and utilization of mineral resources (Tujan and Guzman 2002, 80-81).

March 3, 1995	Mining Act signed into law
March 30, 1995	Government forges FTAA with foreign–owned WMC
August 15, 1995	DENR issues Mining Act's IRR
December 20, 1996	DENR issues new IRR
January 10, 1997	Validity of Mining Act, IRR, and WMC FTAA questioned
January 27, 2004	Court nullifies certain provisions of Mining Act
December 1, 2004	Court upholds Mining Act

Table 1. Chronology of events leading to the Mining Act ruling reversal.

On March 30 (see Table 1), Pres. Ramos entered into an FTAA with foreign-owned Western Mining Corporation (WMC). The FTAA covered 99,387 hectares of land in South Cotabato, Sultan Kudarat, North Cotabato and Davao del Sur in Mindanao (Southern Philippines). On August 15, 1995, then Department of Environment and Natural Resources (DENR) Secretary Victor Ramos issued DENR Administrative Order (DAO) No. 95-23, s. 1995, otherwise known as the Implementing Rules and Regulations (IRR) of the Mining Act. On December 20, 1996, DAO No. 95-23 was repealed and a new set of IRR (DAO No. 96-40, s. 1996) was adopted.

In 1997, the La Bugal B'laan Tribal Association, Inc., an indigenous people's cooperative, led other non-governmental organizations and environmental groups in questioning the constitutionality of the Mining Act, its IRR, and the government FTAA with WMC. This came to be known as *La Bugal-B'laan Tribal Association, et al. v. Secretary Victor O. Ramos, et al.* (G.R. No. 127882, 27 Jan 2004). Stirred by the Marcopper disaster of March 1996 which saw the spillage of mine tailings into the Boac and Makulapnit Rivers in Marinduque, anti-Mining groups in the Philippines sought a Supreme Court ruling to curb further exploitation of the country's mineral resources, especially by foreign-owned corporations

The petitioners focused their challenge on the FTAA provisions of the Mining Act. They acknowledged that the Mining Act's provisions on exploration permits and mineral agreements had basis in Article XII (National Economy and Patrimony) of the 1987 Philippine Constitution. Petitioners, however, felt that a literal reading of the Constitution and a review of the drafters' intent would challenge the validity of the Mining Act's provisions on FTAAs (Tujan and Guzman 2002, 81). The petitioners contended that the Mining Act and its implementing rules were unconstitutional as they allowed fully foreign owned-corporations to explore, develop, utilize, and exploit natural resources in a manner contrary to Section 2, paragraph 4, Article XII of the Philippine Constitution. They argued that the FTAA between the President of the Philippines and WMC was illegal and unconstitutional *(La Bugal v. Ramos*, 27 January 2004).

Section 2, Article XII of the Philippine Constitution specifies the options that the Philippine government can take in relation to its natural resources. The State may either: (1) directly undertake full supervision and control; (2) enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or entities at least 60% of whose capital is owned by such citizens; (3) allow small-scale utilization of natural resources by Filipino citizens; or (4) enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other

mineral oils, etc. As can be gleaned from this, the Philippine Constitution provides that foreigners can take part in mining activities in the Philippines only through FTAAs.

The petitioners argued that the proper interpretation of Section 2, Article XII of the Philippine Constitution should take into consideration a similar provision in the 1973 Philippine Constitution. The 1973 Charter speaks of **"service contracts for financial, technical, management, or other forms of assistance."** The 1987 Constitution meanwhile only speaks of **"agreements… involving either financial or technical assistance."** Omitted were the phrases **"service contracts"** and **"management of other forms of assistance."** For the petitioners, this meant that the Philippine Constitution barred foreigners from managing mining operations in the country. It also meant that an FTAA that allowed foreign management was, in fact, a service contract—an option disallowed by its mere omission in the provision. Invoking *casus omisus pro omisso habendus est.*, "i.e., a person, object or thing omitted from an enumeration must be held to have been omitted intentionally," the petitioners held that the Mining Act of 1995 must be declared invalid. On January 27, 2004, the Philippine Supreme Court took the side of the petitioners. In a 95-page decision, the Court by a vote of 8-5 with one abstention[3] declared unconstitutional certain provisions of the Mining Act, its IRR, and the entire FTAA forged by WMC and the Philippine government. The Court ruled that FTAAs are service contracts and, as such, are prohibited by the 1987 Constitution *(La Bugal v. Ramos*, 27 January 2004).

Subsequently, public and private respondents filed separate motions for reconsideration, and the Chamber of Mines of the Philippines, Inc. (CMP) filed a Motion for Intervention which the Office of the Solicitor General (OSG) adopted. On December 1, 2004, the Philippine Supreme Court reversed its January decision. By a vote of 10-4 with one abstention, the Court upheld the constitutionality of the Mining Act of 1995. Of those who joined the majority in the original decision, five changed their vote: Chief Justice Davide, Justices Puno, Quisumbing, Corona, and Tinga. Justice Panganiban, the *ponente* of the decision, justified the reversal by declaring "the Constitution should be read in broad life-giving strokes; it should not be used to strangulate economic growth or to serve narrow, parochial interest" *(La Bugal v. Ramos*, December 1, 2004).

The Court ruling: From veto player and societal representative to team player

The first Mining Act ruling was hailed as a victory for indigenous peoples' rights (LRC, 2004) mainly because the Court ruled in favor

of the petitioners, an indigenous peoples group. The ruling appeared consistent with the Court's December 2000 ruling in *Cruz v. Secretary of Environment and Natural Resources* which upheld the constitutionality of the Indigenous Peoples' Rights Act (IPRA). The second Mining Act decision, however, suggests the Court's re-evaluation of the privileged position it previously bestowed on indigenous peoples' rights. The December majority opinion—written by then Justice Panganiban, who in 2000 voted against the IPRA law—indicates the demotion of indigenous peoples' rights in the Court's ranking of priorities.

Panganiban's *ponencia* states:

> The Constitution of the Philippines is the supreme law of the land. It is the repository of all the aspirations and hopes of all the people. We fully sympathize with the plight of Petitioner *La Bugal B'laan* and other tribal groups, and commend their efforts to uplift their communities. However, we cannot justify the invalidation of an otherwise constitutional statute along with its implementing rules, or the nullification of an otherwise legal and binding FTAA contract.
>
> We must never forget that it is not only our less privileged brethren in tribal and cultural communities who deserve the attention of this Court; rather, all parties concerned—including the State itself, the contractor (whether Filipino or foreign), and the vast majority of our citizens—equally deserve the protection of the law and of this Court. To stress, the benefits to be derived by the State from mining activities must ultimately serve the great majority of our fellow citizens. They have as much right and interest in the proper and well-ordered development and utilization of the country's mineral resources as the petitioners *(La Bugal v. Ramos*, December 1, 2004).

Arguably, the *La Bugal* reversal points to a shift from a societal representative role. The reversal also appears to signify a change from an activist veto player to a deferential team player role especially in economic cases. As mentioned previously, from late 2003 to early 2004, the Philippine Supreme Court invalidated a number of multi-billion dollar contracts/agreements entered into by the government. Meanwhile, from December 2004 up to 2005, the Court revealed a tendency to assent to the exercise of executive and legislative discretion.

Has the Court imbibed a more restrained attitude in economic disputes? A more thorough analysis of Court decisions in economic cases is required to arrive at a more definitive answer. What we know thus far is that in arguing for a reversal in the *La Bugal* case, Justice

Panganiban called for judicial restraint and deference to the elected bodies in matters of policy, especially economic. He writes:

> Verily, under the doctrine of separation of powers and due respect for co-equal and coordinate branches of government, this Court must restrain itself from intruding into policy matters and must allow the President and Congress maximum discretion in using the resources of our country and in securing the assistance of foreign groups to eradicate the grinding poverty of our people and answer their cry for viable employment opportunities in the country.
>
> "The judiciary is loath to interfere with the due exercise by coequal branches of government of their official functions." As aptly spelled out seven decades ago by Justice George Malcolm, "Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act." Let the development of the mining industry be the responsibility of the political branches of government. And let not this Court interfere inordinately and unnecessarily. *(La Bugal v. Ramos*, December 1, 2004)

As mentioned earlier, in *Abakada v. Ermita* (2005), the Court also upheld a product of legislative and executive discretion—the E-vat Law. It must be stressed that in the *Abakada* and the December *La Bugal* rulings the Court took judicial notice of the government-acknowledged fiscal crisis of 2004. The suggestion then is that the shift to a team player role, or a more deferential and restrained attitude in matters of economic policy, had been prompted by the need to avert a fiscal crisis. In *Spouses Constantino v. Cuisia* (2005), the Court also defended debt relief contracts entered into by the government with foreign entities. It thus appears that the Court has begun to adopt what others would describe as a "neoliberal" view of the fiscal crisis and of economic policy-making in general. Seen in this light, the apparent shift to judicial restraint actually reflects a move from economic protectionism to economic liberalization. It appears that the Court's activism in economic cases has not really been halted. It has merely been redirected to promote more "liberalized"/less "protectionist" economic policies.

A legalist explanation

Filipino legal luminary Fr. Joaquin Bernas offers a legalistic account of the *La Bugal* reversal. In an article titled "The Mining Act redeemed" which appeared in the December 4-5, 2004 issue of *Today,*

Bernas says the reversal can be attributed to the adoption of a different set of modalities of constitutional interpretation. He writes: "The original decision followed a textual approach supported by historical argument. [T]he new majority subjected the textual and historical approach of the previous majority to what may be called a structural and prudential critique."

The adoption of a different set of approaches to constitutional interpretation, however, partly explains the court reversal. The change in the choice of interpretative approach still begs the question: What factors occasioned the adoption of a different set of approaches to constitutional interpretation and hence the reversal?

The judicial decision-making models and ruling reversals

The political science literature on Supreme Court decision-making identifies at least two schools of thought. The attitudinal model basically argues that Supreme Court justices decide cases on the basis of their "sincere" policy preferences (Epstein, Knight, and Martin 2004, 173). The strategic model, on the other hand, essentially posits that the Court and its justices are "strategic" actors who pursue their policy preferences within the context of interactions and institutions, and the constant possibility of vetoes and overrides (Iaryczower, Spiller, and Tommasi 2002, 701). In advancing their policy preferences or goals, the Court and its justices necessarily take into consideration the policy preferences or goals of other political actors and normally make decisions that would increase the likelihood of attaining policy goals and reduce the prospect of failure. Despite their differences, the two schools of thought were premised on the notion that the personal preferences of justices play a very significant part in determining case outcomes. They also challenge the traditional idea that cases are solely decided on the basis of legal considerations.

The judicial decision-making literature offers three (3) possible explanations for ruling reversals which seem to be consistent with the attitudinalist model. Baum (1988; 1992) speaks of (1) composition or membership change, (2) issue change, and (3) policy position change. Composition change takes place when a significant number of new appointees to the Court vote against the position of those they replaced. When reversals cannot be attributed to composition change, the explanation must be either issue change or policy position change. Both locate the explanation in the voting behavior of continuing members of the Court. In policy position change, a significant number of justices experience a conversion to an opposite policy position (i.e., from liberal to conservative or from conservative to liberal) resulting in a voting change. In issue change, the personal policy preferences

or attitudes of justices remain stable but the "facts of the case"/"case stimuli" change. Given its premise that judicial attitudes or personal policy preferences are basically stable or enduring, the attitudinal model would explain reversals by a Court with minor changes to its composition as mostly the result of issue change (Spaeth 19879; Baum 1988; Baum 1992).

The strategic model meanwhile offers at least two explanations for ruling reversals. The conventional strategic explanation, i.e., the "strategic withdrawal" (Pritchett 1961, 12; Epstein, Knight, and Martin 2004, 170), depicts reversals as the calculated response of a formerly politically "strong" Court to the increase in the political strength and sanctioning capabilities of another branch of government. The second, less conventional, explanation speaks of "strategic defection." Introduced by Helmke (2002), strategic defection, as a crucial factor in the occurrence of reversals, may be observed when a Court that is previously perceived to be aligned with an incumbent but weakening and/or outgoing administration sees the need to distance itself from that administration in an effort to "curry favor with" the incoming government[4] (Helmke 2002, 292). Conceivably, in general, Court effort to distance itself from the incumbent administration may be seen in the issuance of either the original ruling or the subsequent ruling which reverses the first decision.

In the first scenario, the Court issues an original ruling in a politically salient case which runs against the policy preferences of a weakening and/or outgoing administration with the strategic intention of distancing itself in the eyes of the public and other political actors from that administration. The Court subsequently reverses its original ruling in the case for a variety of reasons, including the desire to issue a decision that reflects the "sincere"—not strategic—policy preferences of justices.

In the second scenario, the Court issues an original ruling that reflects its sincere preferences but one that also happens to be congruent with the incumbent administration's preferred position in the case. The Court later on reverses this original ruling, mainly on the basis of strategic considerations, to indicate its "defection" from said incumbent administration and seek favor with a different, incoming administration.

Note here that in both instances, the strategic distancing from an incumbent administration—as a conscious effort on the part of the Court—involved a ruling reversal. Note too that the first scenario mentioned above seems applicable to the mining act case considering the incongruent positions of the Court and the executive in the first *La Bugal* ruling.

Judicial decision-making models and judicial independence

The attitudinal model posits the preponderant role of the justices' personal policy preferences in Supreme Court decision-making. The strategic model meanwhile argues that Supreme Court decisions are also shaped by the policy preferences of other institutional actors, i.e., the executive and legislative in a separation of powers system. Unlike the attitudinal model which tends to view Supreme Court decision-making as taking place in a vacuum (Epstein, Knight, and Martin 2004, 173), the strategic model depicts Supreme Court decisions as products of institutional interaction (Iaryczower, Spiller, and Tommasi 2002, 701).

In employing the attitudinalist approach in studying the United States Supreme Court, Spaeth, however, insists that it is not the case that the Court operates in a vacuum but that existing institutional arrangements allow its justices to decide cases on the basis of their personal policy preferences with little regard for those of other institutional actors. Spaeth (1979, 113-118) identifies three conditions that allow the predominance of personal policy preferences in decision-making:[5] (a) electoral unaccountability; (b) the lack of ambition for higher office; and (c) the Court being the court of last resort. Unlike the attitudinalist depiction of judicial decision-making, the strategic model tends to portray the Court and its justices as constrained actors who have to contend with the sanctioning capabilities, both formal and *de facto*, of other institutional actors (Barnum 1993, 202; Helmke 2002, 292). Despite their apparent differences, both models agree that institutional arrangements bear on judicial independence. The formal and *de facto* distribution of powers and sanctioning capabilities in a tripartite system of government provides the context for the decision-making of the Supreme Court and its justices.

Judicial decision-making models and the *La Bugal* reversal

I will not discuss in full the results of the tests for the plausibility of the attitudinal and strategic models as explanations for the *La Bugal* reversal. Since its primary focus is on judicial activism and independence, this paper only offers a cursory assessment of the *La Bugal* reversal vis-à-vis the mainstream political science models of judicial decision-making.

The *La Bugal* reversal tells us the following:

1. An attitudinalist Baum-inspired composition change explanation clearly fails to account for the reversal. Hence, the change in aggregate voting behavior, from an attitudinalist standpoint, can

only be explained by issue change and/or policy position change. A comparison of voting summaries (see Table 2) would show that among those who voted in the 1st Mining Act ruling, only one, Justice Vitug, who voted to uphold the Mining Act, left the Court before the December ruling. Two justices, Chico-Nazario and Garcia, were appointed to the Court by Pres. Arroyo after the January nullification. Like retiring Justice Vitug, they voted to uphold the constitutionality of the Mining Act. While the new justices favored Pres. Arroyo's position in the Mining Act case, it is clear that their appointments were not as crucial as the move of five (5) continuing members (e.g., Chief Justice Davide, Justices Puno, Quisumbing, Corona, and Tinga) to change their previous position and tilt the voting in favor of the constitutionality of the Mining Act. Davide, Puno, Quisumbing, Corona, and Tinga were the pivotal justices which secured the reversal in the *La Bugal* case.

2. An attitudinalist Baum-inspired issue change explanation is plausible. If issue change is understood as change in the legal issues that were raised in the litigants' pleadings and in the justices' opinions, one can say that no issue change occurred. A matrix comparing the legal issues raised by the litigants and the justices for the first and the second *La Bugal* rulings shows that between rulings the legal issues have remained unchanged. However, if issue change is understood as change in case stimuli,[7] at least two (2) changes may be noted: (a) the intervention of the Chamber of Mines of the Philippines (CMP) resulting in the participation of its counsels, former Supreme Court Justice Feliciano and former University of the Philippines College of Law dean Pacifico Agabin;[8] and (b) the Court's acknowledgment of "new circumstances," notably that the country was in the midst of a fiscal crisis, which led to a reframing[9] of issues from a mere constitutional matter to a question of national survival.

3. Quantitative and qualitative tests to determine the plausibility of policy position change as an explanation for the *La Bugal* reversal were conducted but due to the paucity of data the tests focused on only three of the five pivotal justices identified above. The plausibility of policy position change was studied in relation to justices Davide, Puno, and Tinga. The tests produced the finding that on the whole the policy positions of continuing members of the Court in 2004 remained stable and unchanged, lending support to the earlier finding that issue change is plausible explanation for the *La Bugal* reversal.

Name of Justice	January Vote (8-5-1)	December Vote (10-4-1)	Appointing President
Chief Justice Davide	Unconstitutional	Constitutional	Aquino
Puno	Unconstitutional	Constitutional	Ramos
Quisumbing	Unconstitutional	Constitutional	Ramos
Corona	Unconstitutional	Constitutional	Arroyo
Tinga	Unconstitutional	Constitutional	Arroyo
Carpio-Morales	Unconstitutional	Unconstitutional	Arroyo
Carpio	Unconstitutional	Unconstitutional	Arroyo
Callejo	Unconstitutional	Unconstitutional	Arroyo
Vitug	Constitutional	(retired on 15 July 2004)	Ramos
Panganiban	Constitutional	Constitutional	Ramos
Ynares-Santiago	Constitutional	Unconstitutional	Estrada
Sandoval-Gutierrez	Constitutional	Constitutional	Estrada
Austria-Martinez	Constitutional	Constitutional	Arroyo
Azcuna[6]	Abstain	Abstain	Arroyo
Chico-Nazario	(assumed position on 14 July 2004)	Constitutional	Arroyo
Garcia	(appointed on 6 October 2004)	Constitutional	Arroyo

Table 2. How the justices voted on the Mining Act rulings. Sources: *La Bugal v. Ramos* 1 [G.R. No. 127882. January 27, 2004], http://sc.judiciary.gov.ph/jurisprudence/2004/jan2004/127882.htm; and *La Bugal v. Ramos* 2. [G.R. No. 127882. December 1, 2004], http://sc.judiciary.gov.ph/jurisprudence/2004/dec2004/127882.htm.

A qualitative examination of the pivotal pronouncements of justice Davide prior to joining the Supreme Court and his December 2004 *La Bugal* vote suggests two incompatible sets of policy positions. As member of the 1986 Constitutional Commission, he espoused a deep-seated preference for protectionist economic policies. Bernas (2005, 339), also a member of the 1986 ConCom, recalls: "Commissioner Davide argued for the 100% nationalization of corporations involved in the exploration of natural resources. He contended that full Filipino ownership would be the only arrangement consistent with the desire

of the approved Preamble 'to preserve and develop the national patrimony for the sovereign Filipino people and for the generations to come.' " Davide's pre-December 2004 positions in judicial cases, especially his opinion in *Oposa v. Factoran* (1993), also express an unquestionable pro-environment policy preference. Davide's *ponencia* in that case reads: "every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology" (*Oposa v. Factoran* 1993).

Davide's turnaround in *La Bugal* thus surprised many court observers. Bernas (2005, 340) makes a passing reference to the chief justice's "inconsistency" although he would nonetheless simply dismiss the turnaround as the result of different modalities of interpretation. Former Senator Jovito Salonga was reportedly more direct in his assessment of Davide's turnaround. In the March 14, 2004 *Newsbreak* article "A Goliath win for mining," Aris Rufo writes: "Salonga… concedes that he found it 'a little unusual' for the chief justice to make a turnaround when he is known to be careful and thorough. 'A chief justice does not reverse on a constitutional issue.'"

The qualitative test for policy position change particularly revealed that Davide's December 2004 *La Bugal* vote appeared more like a "constrained" vote, an exception to his known general policy preferences as gathered from his pre-Supreme Court pronouncements. His vote in *La Bugal* 1 seemed more consistent with the policy preferences he has long espoused. Justice Puno seemed more comfortable with his vote in *La Bugal* 1 although his turnaround in *La Bugal* 2 still appeared compatible with my assessment of him as a moderate, especially in economic cases. As for Justice Tinga, his *La Bugal* 2 vote looked more consistent with his "sincere" pro-business/pro-economic upper dog policy preferences. In fact, *La Bugal* 1 vote looked like an aberration. In any case, there is no indication of conversion to another policy position among the three justices. To reiterate, Davide and Puno's change in vote appears to have been prompted by the introduction of new case stimuli. The quantitative and qualitative tests for policy position change support the general finding of the test for issue change.

4. A strategic withdrawal account appears to be inadequate as an explanation for the *La Bugal* reversal because at no time was the Philippine executive overwhelmingly powerful to pressure the Court to reverse its original ruling. For a strategic withdrawal account of the *La Bugal* reversal to be plausible, the following requisites must obtain:

a. the Court and the president[10] had incompatible views or preferences with respect to mining policy;
b. the reversal was preceded by a significant change in the political capabilities or "political capital" (Johnson 2003) of the president relative to the Court's whereby presidential political capital increased between initial and subsequent rulings; and
c. the reversal was also preceded by presidential efforts to pressure the Court to overturn its original decision.

If we consider the Court's January *La Bugal* ruling as an expression of its "sincere" policy preference, it becomes apparent that the Court and Pres. Arroyo had incompatible views on foreign mining, especially when we take into account the fact that on January 16, 2004, a few days before the rendering of the 1st *La Bugal* ruling, she issued Executive Order 270 which expressed her explicit support for the revitalization of Philippine mining.

Testing the strategic withdrawal account unavoidably requires measures of political capital. Following the lead of Johnson (2003) and Iaryczower, Spiller and Tommasi (2002), but with some minor modifications, the following variables will be employed to measure the president's political capital: (1) public satisfaction ratings vis-à-vis the Court's; (2) level of support in Congress; and (3) the time remaining for the president to be replaced.

A quick look at the trend in Pres. Arroyo's public satisfaction ratings (see Table 3) would show that from March 2003 up to May 2005, the Supreme Court received higher net public satisfaction scores compared to her with the notable exception of March and June 2004, i.e., immediately before and after the May presidential elections.

	Mar 03	Jun	Sep	Nov	Jan 04	Feb	Mar	Jun	Aug	Oct	Dec	Mar 05	May
GMA	-14	14	2	-3	8	15	30	26	12	-6	-5	-12	-33
SC	26	21	16	8			23	20	17			5	-1
Senate	23	25	20	7			25	19	17			1	
House	19	18	11	3			17	11	13			-4	

Table 3. Measuring political capital: Public satisfaction ratings. Source: Social Weather Stations.

As to the support of the bicameral congress for Pres. Arroyo, Table 4 shows that from July 2002 to June 2005 Congress failed to enact more than half of the priority bills identified by Pres. Arroyo in her annual State of the Nation Address (SONA), indicating very little support for her legislative agenda for at least three years.[11]

Meanwhile, Table 5 provides periodic estimates of Pres. Arroyo's length of stay in office. Again, as previously indicated by the data on public satisfaction, it was only in March when Pres. Arroyo looked

capable of winning the 2004 presidential elections and of staying in office beyond May 2004.

Speaking of length of stay in office, it must be recalled that an impeachment complaint was filed in June 2003 against Davide and seven (7) other justices. The complaint was quickly dismissed. In November of the same year, Davide again faced an impeachment complaint and was, in fact, impeached by the lower house of Congress. While the articles of impeachment failed to reach the Senate, Davide's impeachment gave the Court the opportunity to clarify the rules on impeachment. Quite significantly, in *Francisco v. House of Representatives* (November 10, 2003), the Court ruled against the filing of an impeachment complaint against a government official more than once in one calendar year. This rule, in effect, shielded Davide from other impeachment moves for at least one year.

The aforementioned measures of Pres. Arroyo's political capital show that (a) she was weak at the time that the Court rendered its first Mining Act ruling; (b) she gained considerable capital shortly before the May presidential elections; and (c) she quickly lost considerable political capital only a few months after the elections as can be gleaned from her falling/negative public satisfaction ratings from October 2004 up to May 2005. Moreover, Pres. Arroyo's electoral victory in May 2004 did not actually result in the enactment of a higher percentage of her priority bills although it certainly extended her stay in office.

As to pressure being exerted on the Court to reverse, the judicial decision-making literature tells us that pressure mostly comes in the form of a sanction or its threat. The literature on strategic judicial decision-making identifies a number of sanctions that can be imposed on a non-compliant Court. These include:

a. refusal to enforce the Court's decisions; or enforcing the Court's original ruling "less faithfully"
b. using the power of appointment and confirmation to select certain types of justices;
c. enacting constitutional amendments to reverse decisions or change Court structure or procedure;
d. impeachment;
e. withdrawing Court jurisdiction over certain subjects;
f. altering the selection and removal process;
g. requiring extraordinary majorities for declarations of unconstitutionality;
h. allowing appeal from the Supreme Court to a more 'representative' tribunal;
i. removing the power of judicial review;

Priority Bills		**July 2002-June 2003**	**July 2003-June 2004**	**July 2004-June 2005**
2002 SONA	anti-terrorism bill	not acted upon	not acted upon	not acted upon
	farm land as collateral	not acted upon	not acted upon	not acted upon
	special purpose vehicle act	RA 9182 (13 Dec 2002)	already enacted	already enacted
	absentee voting bill	RA 9189 (14 Feb 2003)	already enacted	already enacted
	transco franchise bill	not acted upon	not acted upon	not acted upon
2003 SONA	Senate ratification of UN conventions	not yet identified	6 ratified (Oct 2003)	already acted upon
	excise tax on cars	not yet identified	RA 9224 (Aug 2003)	already enacted
	elimination of documentary stamp tax	not yet identified	RA 9243 (Feb 2004)	already enacted
	creation of national revenue authority	not yet identified	not acted upon	not acted upon
	indexation of sin taxes	not yet identified	not acted upon	RA 9334 (Dec 2004)
2004 SONA	shift to gross tax system	not yet identified	not yet identified	not acted upon
	increase VAT	not yet identified	not yet identified	RA 9337 (May 2005)
	telecomm franchise tax	not yet identified	not yet identified	not acted upon
	excise tax on oil products	not yet identified	not yet identified	not acted upon
	rationalization of fiscal incentives	not yet identified	not yet identified	not acted upon
	tax amnesty	not yet identified	not yet identified	not acted upon
	attrition system	not yet identified	not yet identified	RA 9335 (Jan 2005)
	extra year of studies	not yet identified	not yet identified	not acted upon
	strengthen office of ombudsman	not yet identified	not yet identified	not acted upon
	government reengineering	not yet identified	not yet identified	not acted upon
	consider charter change	not yet identified	not yet identified	not acted upon
Percentage of identified priority bills passed/measures acted upon during the presidential year[1]		**2/5 = 40%**	**3/8 = 37.5%**	**3/16 = 18.75%**

Table 4. Measuring political capital: Percentage of priority bills enacted by Congress.

[1] Under Article 7, Section 4 of the 1987 Constitution, the term of the President "shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter." For the purposes of the present study, a presidential year is taken to begin on July 1 and ends on June 30 a year after.

j. slashing the Court's budget;
k. altering the size of the Court; and
l. publicly criticizing the Court

(Johnson 2003, 431-432; Epstein, Knight, and Martin 2004,177; and Barnum 1993, 197-215.)

Month	Estimated most likely endpoint of President's stay in office	Information/Reason
December 2002	May 2004	GMA announces decision not to run in May 2004
June 2003	May 2004	SWS Media release (June 27, 2003): On the question of choice for President if the election were held today, de Castro obtains 22% in the SWS survey, followed by Roco 19%, Fernando Poe Jr. 16%, Gloria Macapagal-Arroyo 15%, Panfilo Lacson 12%, Ramon Magsaysay Jr. 4%, Legarda-Leviste 3%, Aquilino Pimentel 2%, and Teofisto Guingona 1%, with 5% undecided or not answering
July		Oakwood mutiny
August		'Jose Pidal' Controversy, August 18
September	May 2004 or earlier	August 30-September 14, 2003 SWS Survey: the possibility of more coup attempts from rebel soldiers: +38
October	May 2004	SWS Media release (October 3, 2003): On the question of choice for President if elections were held today, the survey leader is de Castro with 28%, followed by Raul Roco 20%, Gloria Macapagal-Arroyo 17%, Fernando Poe Jr. 14%, Panfilo Lacson 10%, Gregorio Honasan 6%, and Teofisto Guingona 2%, with 4% either undecided or not answering GMA opts to run in May 2004 Elections (4 October 2003)
November		Davide impeachment
December	May 2004	SWS Media release (December 3, 2003): On the question of choice for President if elections were held today, the joint survey leaders are FPJ with 25% and de Castro with 24%. Next are Roco at 18% and GMA at 17%, followed by Lacson at 10%, with 6% undecided
January 2004		First Mining Act Ruling
February	May 2004	SWS Media release (February 2, 2004): Fernando Poe Jr. is nine points ahead of Gloria Macapagal Arroyo. The January 2004 figures on intended votes for President are: FPJ 36%, GMA 27%, Raul Roco 19%, Panfilo Lacson 11%, Eduardo Villanueva 1%, Eddie Gil 0.1%, and undecided 5% in the race for the presidency, according to the SWS national pre-election survey of January 16-22, 2004. SWS Media release (February 26, 2004): SWS January 28-February 6 Survey: FPJ 37.5%, GMA 28.7%, Roco 17.4%, Lacson 8.4%, Villanueva 1.7%, Gil 0.2%
March	Possibly beyond May 2004	SWS Media release (March 3, 2004): The national scores in the presidential race are: GMA 31.8%, FPJ 30.5%, Raul Roco 17.9%, Panfilo Lacson 11.4%, Eddie Villanueva 1.8%, Eddie Gil 0.0%, and 6.6% with no first choice. The 1.3% difference between GMA and FPJ is statistically insignificant
April	Possibly beyond May 2004	SWS Media release (April 5, 2004): The new national scores in the presidential race are: Fernando Poe Jr. 32.0%, Gloria Macapagal-Arroyo 31.4%, Raul Roco 15.0%, Panfilo Lacson 11.2%, Eddie Villanueva 2.8%, and 7.6% undecided.
May	Likely beyond May 2004	SWS Media release (May 8, 2004): The latest national scores in the presidential race are: Gloria Macapagal-Arroyo 37%, Fernando Poe Jr. 30%, Panfilo Lacson 11%, Raul Roco 6%, Eddie Villanueva 4%, Eddie Gil 0.3%, and 12% undecided, according to the SWS final pre-election survey of May 1-4, 2004
June	2010	GMA sworn into office, June 30, 2004. GMA's stay in office was relatively stable until the Hello Garci scandal broke out in mid-2005
October		GMA's public satisfaction ratings become negative, dropping to her second lowest rating since March 2003 when she decided to send Filipinos to join the U.S. coalition of forces in Iraq. SWS says 'the continued negative rating of GMA is due to a general drop in public satisfaction with the national administration on several matters between August and December of 2004, and to a decline in perceptions of the loyalty of the Armed Forces of the Philippines to the President' (17 December 2004 SWS media release). In addition to the loyalty of the military, among these matters are (a) the suspected cheating in the May elections (August 25, 2004 media release); (b) mediocre government performance in protecting women's welfare (November 23, 2004 release), in improving the conditions for peace, governance and development (December 17, 2004); and failure of government to address the problem of hunger (October 4, 2004). Meanwhile, PulseAsia reports that 'A majority (63%) of Filipinos fail to see effective government programs that respond to the fiscal crisis' (Pulse Asia October-November 2004 Ulat ng Bayan National Survey on Filipinos' Views on the Fiscal Crisis)
December		Mining Act ruling reversal

Table 5. Measuring political capital: Likelihood of Pres. Arroyo staying in office.

In addition to these rather "legal" means to obtain judicial compliance, Helmke (2002, 292) speaks of *de facto* sanctions, e.g., "indictment, physical violence, and even death."

Of the formal sanctions enumerated above, it appears that only the following readily apply to the Philippine Supreme Court: (a) refusal to enforce the Court's decisions; (b) the power of appointment; (d) impeachment; (j) slashing the budget, and (l) publicly criticizing the Court. In view of explicit constitutional provisions that safeguard the Court's independence, most of the other sanctions do not seem applicable. Since its independence and powers are essentially constitutionally-derived, it appears that nothing less than the adoption of a new constitution can weaken the Court. Constitutional amendments seem inadequate for the task of "disciplining" or "restraining" the Court since such attempts, like impeachment proceedings, would quite unavoidably have to go through judicial review by the Court itself. As noted in the literature, in constitutional matters (e.g., constitutional amendments, constitutionality of impeachment complaints, etc.), the Court has the ascendant position (Epstein, Knight, and Martin 2004, 176).

With regard to the formal sanctions (or threat thereof) and/or checking mechanisms that apply to the Philippine Supreme Court, and that could have pressured or constrained the Court to overturn its original *La Bugal* ruling, the following can be said:

1. *On refusal to enforce Court rulings*

Despite the Court's nullification of the Mining Act's FTAA provisions in January 2004, the DENR and the MGB, both under the control of the Philippine president, opted not to suspend their implementation of the Act's provisions but this was primarily because the ruling was not yet final especially after the respondents filed separate Motions for Reconsideration and the Court set the case for Oral Argument. There certainly are reports of agencies of the executive branch refusing to enforce or implementing half-heartedly relatively recent decisions of the Court.[12] What is not known, however, is whether the Court sees such refusals or reluctance as serious threats to its credibility and legitimacy; and whether the likelihood of refusal or reluctance is likely to compel the Court to submit to the preferences of the concerned agency and to render instead a more agreeable decision. This certainly can be the subject of further research.[13]

2. *On presidential power of appointment*

The Philippine Constitution provided for the creation of a Judicial and Bar Council (JBC)[14] whose principal function is to recommend

appointees to the judiciary. The power to appoint members of the Supreme Court resides solely in the Philippine president and such appointments do not require confirmation. As to whether the president's power to appoint justices played a crucial role in effecting the *La Bugal* reversal, there are probably a number of ways of looking at the matter:

a. **Appointment of new justices.** As discussed earlier, the votes of new Arroyo appointees to the Court in 2004 were not as significant as the change in vote of the five (5) pivotal justices—Davide, Puno, Quisumbing, Corona, and Tinga—only two of whom incidentally were Arroyo appointees.

b. **Total number of Arroyo appointees.** A second look at the voting summaries would show that of the fifteen (15) Supreme Court justices in December 2004, nine (9) were appointees of Pres. Arroyo. Five (5) of them voted to uphold the Act, one abstained from the voting, while three (3) justices (Carpio-Morales, Carpio, and Callejo) voted consistently against it. This tells us that the power to appoint does not guarantee compliance. Seen in this light, the president's power of appointment appears to have played a minimal role.

c. **Justices seeking higher office and the power of appointment.** Spaeth (1979, 113) argues that the following features of the U.S. Supreme Court have allowed its justices to vote compatibly with their personal policy preferences: (a) the justices are not electorally accountable; (b) the lack of ambition for higher office; and (c) the Supreme Court is the court of last resort. Spaeth, in effect, suggests that these are the factors that foster what others would describe as "judicial independence." When we examine the Philippine Supreme Court in the light of Spaeth's views, we unavoidably have to deal with the question of whether Filipino justices are as "free" to pursue their personal policy preferences as their American counterparts.

   What clearly deserves attention is Spaeth's remark concerning the justices' lack of ambition for higher office. There certainly were reports of senior associate justices aspiring for the seat of the Chief Justice after Davide's retirement. Given that the president also possesses the power to appoint the Chief Justice, does this practice encourage justices to vote strategically in major cases? Of the four (4) justices who joined Davide in changing their

vote on the Mining Act case, two (Puno and Quisumbing) were among the three prime candidates for the position of Chief Justice when Davide retired. The third prime candidate was Panganiban who incidentally wrote the December majority opinion upholding the Mining Act. The ensuing question can surely be the subject of further study: Are prime candidates for Chief Justice more likely to behave strategically and to accommodate the preferences of an appointing justice in major cases?

To reiterate, as to whether the president's power of appointment contributed significantly to the *La Bugal* reversal, we can only speculate at this point. What we know, however, is that for the purposes of this paper, the constitutional provisions aimed at establishing a "non-political" process of selection and appointment (De Leon 2002, 259) has not erased the possibility of a willful president using her power of appointment to influence the decision-making of a member of the Court especially one aspiring to be Chief Justice or one seeking an appointive position in government upon retirement.

3. *On impeachment*

No impeachment of justices took place in 2004 but it bears recalling that in 2003 there were two attempts at the House of Representatives to use impeachment against members of the Supreme Court. In June 2003, eight (8) members of the Supreme Court, including Chief Justice Davide, were the targets of a failed impeachment complaint. The complaint was dismissed at the committee level in the Lower House.

But in November 2003, Chief Justice Davide, the sole subject of a subsequent impeachment complaint, was actually impeached by members of the Lower House. House Speaker Jose de Venecia, however, refused to transmit to the upper chamber of Congress the articles of impeachment, fearing that doing so might lead to a constitutional crisis. Note that prior to de Venecia's refusal, the Supreme Court had issued a ruling rejecting as unconstitutional the attempt to impeach Davide in November 2003. As mentioned earlier, in *Francisco v. House of Representatives* (2003), the Supreme Court ruled against the filing of impeachment complaints against an official of government more than once in a single calendar year. The high court ruling gave Davide and the other seven (7) associate justices who were subjects of the June 2003 impeachment complaint a year-long immunity from impeachment. The failed impeachment attempts against Supreme Court justices in 2003 actually enhanced the court's powers in the latter part of 2003 up to the middle of 2004.

It appears that the June 2003 impeachment try against the eight justices was prompted by the Supreme Court's role in the ouster of former President Joseph Estrada in early 2001. Still, the June 2003 impeachment complaint cited the Court's invalidation in early 2003 of the PEA-Amari and PIATCO contracts as a justification given by some members of the Lower House for endorsing the impeachment effort. They alleged that the PEA-Amari and PIATCO rulings have "scared off investors" (Vanzi 2003). With regard to the November 2003 attempt against Chief Justice Davide, there were rumors that the impeachment move was initiated by pro-Eduardo Cojuanco allies in the House of Representatives in retaliation for Supreme Court rulings against the business interests of the reputed former Marcos crony (Coloma, "Vector," *BusinessWorld*, November 21, 2003).

In any case, judicial intervention or activism was alleged in the 2003 impeachment complaints against Supreme Court. One can see that the January *La Bugal* ruling could have also prompted an impeachment complaint and one could have been initiated in the latter half of 2004. But no such *La Bugal*-related impeachment attempt was reported. It seems unlikely, however, that President Arroyo and congressmen opposed to the Supreme Court's January *La Bugal* ruling seriously entertained the thought of impeaching justices for invalidating portions of the Mining Act in early 2004. The political climate in January 2004, with the fast approaching May elections, militated against strong commitment to the very divisive political issue of mining. At the time, the primary concern of most politicians, including Pres. Arroyo, was winning in the mid-year elections.

Now, as to whether the December 2004 *La Bugal* reversal was preceded by threats of impeachment in the event that the justices upheld January 2004 decision, available data do not indicate such. But from a strategic perspective, it appears that the impeachment of justices to obtain a reversal in the *La Bugal* case is not a very cost-effective option for pro-Mining Act advocates. There is no guarantee that unseating justices would in fact guarantee the pro-Mining Act groups' preferred outcome in the *La Bugal* case. The better option, one which the pro-Mining Act advocates took, was to prepare for another legal battle.

4. *On slashing the Court's budget*

The Philippine Constitution, as already mentioned, formally provides for the fiscal autonomy of the judiciary. In 2005, however, Chief Justice Davide acknowledged that the Court's fiscal autonomy was more imagined than real. He said:

> The judiciary's share in the national budget has continued to decline over the years. From a share of 1.04% in 2000, the Judiciary's budget accounted for only 0.88% of the total budget this year. And now, with the Philippine government's austerity measures, the chance of obtaining a bigger share in the national budget becomes slimmer. This despite the clear wording of Article VIII, Section 3 of the 1987 Constitution, which states: "The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released." (Davide 2005)

Chief Justice Davide was insinuating that the Department of Budget and Management (DBM), a department of the executive branch, actually controls the release of the Court's budget.

In addition to *de facto* executive control of judicial release, there undeniably have also been legislative encroachments on the fiscal autonomy of the Court. In fact, the central issue in the impeachment proceeding against Davide in 2003 was the alleged misuse of the Judicial Development Fund (JDF). I cannot ascertain whether the Court's budget was reduced by the DBM after the January ruling; or whether the December reversal was preceded by a threat of an even smaller budget, or was rewarded by the prompt release of a bigger budget. What has been revealed, however, is that the Court has to deal with budgetary constraints. On account of its financial predicament, the Court has become vulnerable to allegations of irregularities or of compromising its integrity by accepting donations from wealthy individuals with pending court cases.

5. *On publicly criticizing the Court*

The Court's intrusion in economic policy making[15] has certainly been the subject of criticism especially during the presidency of Fidel Ramos (Cruz and Datu 2000, 251-252). In 2004, however, most of the criticisms seem to come from businessmen or newspaper columnists. Unlike Ramos, Pres. Arroyo was not very vocal about her disagreements with the Court in 2004. In fact, her administration pursued a different tack in its attempt to communicate to the public its preference for the liberalization of Philippine mining. Instead of publicly attacking the Court for ruling against the Mining Act in January 2004, Arroyo's cabinet members spoke of the benefits of encouraging foreign mining investments especially in light of the fiscal crisis. Arroyo's subordinates have employed subtle means to persuade the Court, as opposed to compelling it, to reverse its original ban on foreign mining.

At this point it must be noted that we are aware of reports that certain political figures, notably Speaker of House Jose de Venecia, have admitted to lobbying with members of the Court for a reversal (see Cullen 2006). As to whether de Venecia's lobbying efforts involved threats of sanctions, we cannot say. But it appears that Speaker de Venecia's efforts were the product of personal conviction and not institutionally-sanctioned. There are also the usual intimations and rumors of "deals," of "expectations of rewards" involving the president or money from big corporations and private interests, but these cannot be verified at the moment.[16] As to *de facto* sanctions, thus far we have not received reports of Supreme Court justices being indicted, suffering physical violence or even death on account of their decision-making in 2004.[17]

The preceding discussion reveals certain vulnerabilities of the Court. For one, the Court's lack of fiscal autonomy has been exposed. The findings offer useful insights when we assess judicial independence in the Philippines.

To summarize this section, the data indicate that despite "winning" the May 2004 presidential elections and a 6-year term as president, Gloria Macapagal Arroyo failed to build upon the political capital she amassed on account of her electoral victory. Her scores from August 2004 up to March 2005 suggest that the *La Bugal* reversal certainly did not occur at a time when public and congressional support for her was high or at the very least positive.

Scrutiny of the sanctions that apply to the Philippine Supreme Court produced the finding that the number of formal and legal means by which the Court can be influenced appears very limited. The executive branch, in fact, can most likely attempt to employ only four (4) types of (relatively) "lawful" pressure on a non-compliant Court, namely (a) refusal to enforce the ruling of the Court; (b) use of the power of appointment; (c) impeachment; (d) slashing the Court's budget; and (e) criticizing the Court publicly. In view of the employed measures of Pres. Arroyo's political capital and the sanctions available to other political institutions, we are led to conclude that a strategic withdrawal account of the *La Bugal* reversal does not look plausible.

6. *On strategic defection*

Compared to "strategic withdrawal" depiction, a strategic defection account has greater plausibility as an explanation for the *La Bugal* reversal. For a Helmke-inspired strategic defection account to be plausible, the following must obtain:

1. the Court has previously identified itself as a close ally of the incumbent government;

2. the incumbent government has weakened significantly and is reasonably perceived as not staying in power much longer;
3. the Court has invalidated a number of executive decisions and/or ruled against the executive in a number of judicial cases as indications of its desire to distance itself from its erstwhile ally and to curry favor with the incoming executive.

A recounting of events (see Table 6) alongside the previously identified measures of political capital can help us determine whether facts support a strategic defection account.

The Philippine Supreme Court's role in the ouster of former Pres. Joseph Estrada and in the ascension of Gloria Macapagal-Arroyo to the presidency is undeniable. By presiding over the oath-taking of Arroyo as new president in 2001, Chief Justice Davide, who was acting with the support of the other justices, formally ended Estrada's presidency in favor of Arroyo. By dismissing Estrada's petition which questioned the legitimacy of Arroyo's assumption of the presidency (*Estrada v. Desierto*, March 2, 2001), the Court's identification with the Arroyo administration was reinforced.

As discussed in the previous section, Pres. Arroyo experienced considerable weakening months before the Court's 1st *La Bugal* ruling. Her low—and at times, negative—public satisfaction ratings relative to the Court and other institutions, weak congressional support for her legislative agenda, threats of military rebellion, initial surveys on the chances of presidential candidates, and the decision of immensely popular actor, Fernando Poe Jr., to run in the May 2004 presidential elections, etc. indeed point to the likelihood of an Arroyo loss in the May 2004 elections and, as a result, a short-lived Arroyo presidency.

As to Court nullifications of contracts and agreements entered into or supported by the Arroyo administration, the Court, as already mentioned, has invalidated the WMC FTAA of the Mining Act case, the PEA-Amari contract in November 2003, and the Comelec-Mega Pacific poll automation and the PIATCO NAIA-3 contracts in January 2004. Quite significantly, the Court also dismissed a petition questioning the qualifications of presidential candidate, Fernando Poe Jr. (*Tecson v. Comelec*, March 3, 2004).

Considering the aforementioned, the plausibility of a strategic defection account appears to have basis. In sum, events from 2003 to 2005 show (a) the Court's close identification with Arroyo presidency, (b) the Arroyo presidency weakening at the time that the Court issued its 1st *La Bugal* ruling; and (c) the Court invalidating a number of government actions in efforts which may be construed as acts of distancing itself from the weakening Arroyo government.[18]

2000	Davide presides over the Estrada impeachment trial
January 20, 2001	Davide administers the oath of office to Gloria Macapagal-Arroyo
May 1, 2001	About 40,000 pro-Estrada protesters storm Malacanang in an attempt to expel Arroyo from the presidential palace
May 14, 2001	Legislative and local elections result in victory for candidates allied with Pres. Arroyo
December 2002	Arroyo announces she will not run in the May 2004 elections
March 2003	GMA ratings drop due to highly unpopular decision to join the U.S. coalition of forces in Iraq
June 2003	Deposed Pres. Estrada's political allies ask Congress to impeach eight Supreme Court justices, including Chief Justice Davide
July 26, 2003	Arroyo faces a rebellion by renegade junior officers (Oakwood Mutiny)
August 18, 2003	Senator Panfilo Lacson accuses the president's husband of siphoning campaign funds into a bank account under the fictitious name "Jose Pidal"
October 2003	GMA announces her intention to run in the 2004 presidential elections
October 20, 2003	The first impeachment complaint against Chief Justice Davide and seven justices is defeated in the House Committee
October 23, 2003	A second impeachment complaint is filed against Chief Justice Davide
November 11, 2003	Court denies 2nd motion for reconsideration filed by the Public Estates Authority and the Amari Coastal Bay Development Corporation (Chavez v. PEA-Amari)
November 14, 2003	The Supreme Court declares Davide's impeachment as unconstitutional
January 13, 2004	Court voids Comelec contract with MegaPacific Consortium (Information Technology v. Comelec)
January 21, 2004	Court denies motion for reconsideration filed by PIATCO and members of the House of Representatives re: NAIA 3 (Agan v. Piatco)
January 27, 2004	Mining Act nullified
March 3, 2004	Court dismisses petition against FPJ candidacy (Tecson v. Comelec)
May 14, 2004	Presidential and congressional elections
June 30, 2004	Arroyo sworn in as president, faces a 6-year term

July 20, 2004	Pres. Arroyo orders that the small Philippine contingent in Iraq be withdrawn immediately after Angelo de la Cruz was taken hostage
August 2004	Pres. Arroyo declares the country 'in the midst of a fiscal crisis'
December 1, 2004	Mining Act upheld
Middle of 2005	Garci tapes exposed, public protests call for GMA resignation
July 2005	10 cabinet officials file their resignation and ask the president to do the same. Several members of the Liberal Party and former president Aquino join calls for her resignation
September 2005	158 members of the House of Representatives vote to junk the impeachment case against Arroyo
Late 2005	E-Vat Law declared 'not unconstitutional'

Table 6. The strategic context of the reversal.

To summarize this section, initial data and tests point to a Baum-inspired issue change account and a "strategic defection" account a la Helmke as the more plausible explanations for the *La Bugal* reversal. The plausibility of an issue change explanation for most reversals is, in fact, advanced by most attitudinalists given their insistence on the stability of justices' attitudes or personal policy preferences. Still, existing data point to changes in case stimuli especially in terms of the entry of a new party, and new circumstances. The plausibility, on the other hand, of a "strategic defection" account is supported by events showing (a) the Court's prior identification with the Arroyo government; (b) the waning popularity of Pres. Arroyo during the latter half of 2003 and early 2004 and the likelihood that she will not be president after the May 2004 elections; and (c) a significant number of contracts invalidated by the Court in late 2003 and early 2004. In addition, there is also the existence of a possible incentive for the Court to distance itself from the Arroyo administration, which is retaliation for past actions/inactions perceived as detrimental to the Court and its justices.

La Bugal, Supreme Court decision-making and judicial independence

At this point, considering that the main aim of this paper is to discuss the independence and activism of the Philippine Supreme Court, it is perhaps best to defer the making of a judgment as to which of the two accounts—the attitudinalist-issue change or the strategic defection account—is the better explanation. It must be noted that both accounts speak of a considerably independent Court especially at the time of the first ruling which invalidated the Mining Act.

A number of factors that contributed to its independence and activism at the time may be cited. In as much as most of these points have already been discussed I will address here only the new points:

1. There are constitutional provisions that safeguard the Court's formal independence and foster judicial activism.
2. There is greater public support for the Court relative to the executive and legislative branches that re-inforces its activist and policy-making inclinations.
3. The preoccupation of incumbent executives and legislators with political survival (as a consequence of constitutional provisions on term limits) has engendered a Court that is inclined to give greater attention to the formulation of sound policies. Constitutional provisions establishing term limits for executives and legislators have instilled in the mindset of most elected officials a preoccupation with political survival. Presidents since Ramos have entertained thoughts of amending the constitution if only to extend their stay in office. The Philippine President has a 6-year term but is ineligible for re-election (Sec. 4, Art. VII). Members of the House of Representatives meanwhile are entitled to three consecutive terms but each term is no longer than three years (Sec. 7, Art. VI). Compared to them, the members of the Court, as long as they maintain "good behavior" and are "capable of discharging the duties of their office," can occupy their position until the mandatory retiring age of 70 (sec. 11, Art. VIII). Enjoying security of tenure, Supreme Court justices, unlike their insecure executive and legislative counterparts, have greater incentive to engage in the formulation of good policy. It should be noted that the Court's nullification of the Mining Act in January 2004 received very little media attention.[19] The media at the time was already bent on covering news related to the May elections. With public attention directed at the possible outcome of the elections, the Court went about its business with little pressure or disruption from the public.
4. The Court is a court of last resort. The Philippine Supreme Court has truly become the most authoritative decision-making body in the Philippines today. Even intra-party conflicts (e.g., Liberal Party disputes involving the Atienza and Drilon factions) are brought to the Court for resolution.

As a court of last resort, no court can veto decisions of the Supreme Court. From the standpoint of strategic judicial decision-making, the unlikelihood of being overruled reinforces judicial policy-making.

5. The Court has ascendant position in constitutional matters including issues relating to impeachment and the ability of Court to "set" the rules in the middle of a political game.

In November 2003, the Court in *Franciso, Jr. v. House of Representatives* (2003) clarified the rule on impeachment. Quite interestingly, it was Chief Justice Davide who was the target of the impeachment attempt. The Court reiterated that the constitutional provision declaring that "no impeachment proceedings shall be initiated against the same official more than once within a period of one year" (Sec. 5, Art. XI) establishes a one-year bar on the filing of impeachment complaints after a first one has already been filed. On account of the fact that the Court can clarify the rules of the political/constitutional game while playing indicates that it is unlike ordinary players/institutional actors; the odds are stacked in the Court's favor in matters involving questions of constitutionality.

As to whether the *La Bugal* reversal is an indication that the Court's independence was compromised in the latter half of 2004, again we cannot say for certain at this point. Still, the factors that raise questions about the Court's independence can certainly be enumerated:

1. The Court's lack of enforcement capabilities can limit its effectiveness and credibility as a policy-maker;
2. A willful executive can use her power of appointment to influence the decision-making of members of the Court who aspire to be Chief Justice or want to be appointed to a government post after retirement;
3. The Court's fiscal autonomy is more imagined than real. Despite constitutional provisions safeguarding fiscal autonomy, a department of the executive branch actually controls the release of the Court's budget;
4. The Court is not immune to public criticism. This, of course, is not necessarily bad especially in a democracy; and
5. The financial and coercive resources available to the president makes it possible for a willful president to mobilize legislators, local government officials, and the public to engage in and support anti-Court actions, e.g., impeachment proceedings against justices, moves to change the constitution, etc.

La Bugal, Supreme Court decision-making and judicial activism

So, what again does the *La Bugal* reversal say about judicial activism?

The *La Bugal* reversal provides a nuanced insight on the concept of judicial restraint. On the one hand, the majority opinion in December 2004 which upheld the Mining Act called for a more restrained Court approach when dealing with the validity of executive and legislative actions especially "in the absence of a clear unambiguous violation of law" *(La Bugal v. Ramos*, December 1, 2004). This, for Bernas (2004), is the crux of the structural approach to constitutional interpretation. On the other hand, however, the majority in December 2004 invoked the principle of "paramount public interest" to review the Court's original Mining Act ruling, i.e., to take an activist position and bring about a reversal. In effect, the Court in December employed the same tool utilized in earlier decisions by "protectionist" Courts and/or justices. The *La Bugal* reversal tells us that justices of the Philippine Supreme Court have the resources and incentives to be activists regardless of their policy preferences, and that an activist Court does not necessarily mean a "pro-people, pro-poor, and pro-Filipino" Court.

Judicial independence and the rule of law

If the *La Bugal* reversal points to the relative independence of Philippine Supreme Court justices, does it also indicate the unfettered reign of judicial personal policy preferences at the expense of the rule of law? The concept of rule of law is certainly tenuous if (a) the law is what the Court says it is; (b) its members, as described by attitudinalists, are motivated primarily by their personal policy preferences; and (c) legal arguments are nothing but rationalizations for judicial personal policy preferences.

In the absence of a purely objective standard, a simple criterion can be proposed: rule of law obtains when the legal community concurs with a Supreme Court decision. As to whether the *La Bugal* reversal indicates the rule of law, it is perhaps worth noting that at least two Filipino legal luminaries, both identified with outstanding law schools in the Philippines, praised the Court's decision to reverse. Raul Pangalanan of the UP College of Law, in his December 3, 2004 *Philippine Daily Inquirer* article titled "The Virtue of Judicious Review," described the decision as "judicious," while Bernas (2004) of the Ateneo School of Law, by describing the reversal as "not surprising," dispelled the notion that the decision was capricious, frivolous, or whimsical. *La Bugal* suggests that with or without pressure on the Court, there appears to be an overriding need among justices to arrive

at legally sound decisions. The constitutional provision (Sec. 13, Art VIII) which requires justices to provide an explanation for dissenting opinions and abstentions helps avoid indiscriminate voting and capricious decision-making.

Conclusion

The paper presents some of the findings of a study on the *La Bugal* reversal. The aim of the paper, however, is to extract from the analysis of the *La Bugal* reversal important insights relating to the independence and activism of the Philippine Supreme Court. Two plausible accounts of the reversal have been identified: an attitudinalist issue change account and a strategic defection account. Despite their differences, both accounts indicate a condition of considerable, but not overwhelming, independence at the time that the Court issued its first *La Bugal* ruling.

As to the ruling which reversed the original *La Bugal* decision, an attitudinalist issue change account provides the plausible explanation that the reversal was brought about by a change in case stimuli: (1) the intervention of a new party; and (2) a change in the circumstances that surround the controversy. A strategic defection account, meanwhile, offers a new plausible interpretation of the Court's January ruling, i.e., the Court wanted to distance itself from the Arroyo government. But measures of Pres. Arroyo's political capital at the end of 2004, alongside the limited number of formal or "lawful" means that may be employed to pressure a non-compliant, constitutionally-empowered Court, do not support the thesis that the Court could have been compelled to reverse by threats of sanctions.

Still, lack of fiscal autonomy, low enforcement capabilities, lack of immunity from public criticism, and most importantly the potentially effective power of appointment of the Philippine president, point to available mechanisms that may be employed to influence the decision-making of the Court and its individual members. It is also worth stressing that less lawful mechanisms cannot be ruled out, e.g., threats of assassination, bribery, blackmail, and harassment.

But excluding the unlawful mechanisms, the analysis suggests that, at best, the five (5) pivotal justices that effected the reversal could have been persuaded to change their original vote by subtle methods of persuasion. The fact that the Court's December ruling was praised by prominent legal academics indicates that more coercive means were unnecessary since the reversal could be obtained through sound legal argumentation. It must also be noted that the Mining Act, while endorsed strongly by Pres. Arroyo, does not appear to be crucial to her own—nor Speaker de Venecia's—political survival. The inference then is that interested political actors would have employed less coercive methods of persuasion if they felt that legal arguments needed extra-legal support.

The *La Bugal* reversal suggests the relative independence of the Philippine Supreme Court—a condition supported by prevailing constitutional arrangements and political conditions in 2004. Arguably, judicial independence is also shaped and reinforced by public perception that the Court is indeed an impartial arbiter that merely applies the law in settling cases. A Court deemed by the public to be independent and objective tends to obtain the latter's respect for its decisions and, as a consequence, enjoys some measure of independence from political and public pressure. Quite ironically, the same factors that breed independence also tend to foster the Court's activism. Public respect for the judiciary can actually embolden the Court to "interfere" in the policy-making functions of the overtly political branches of government. Judicial activism and independence can be expected to flourish and continue in an environment where the Court is respected vis-à-vis other political actors and institutions. The reversal also shows that judicial activism does not necessarily result in "pro-poor, pro-people, pro-Filipino" rulings. The Court can employ its activism to pursue more "conservative" policy goals.

The *La Bugal* reversal also indicates a shift from a veto player/ societal representative role to a deferential, team player role especially in matters involving economic policy-making. It appears that the shift is attributable to reports of the Philippines' deteriorating fiscal situation in 2004 and the Court's openness to neoliberal views. Whether it opts to be a veto player in economic cases or to defer to the policy-making of the majoritarian bodies in such matters, it is undeniable that the Court is a policy-maker whose members are given sufficient freedom to pursue their own conceptions of what constitutes the national interest.

NOTES

1. A paper originally prepared for the "Judiciaries and Policy Making: Experiences from Southeast Asia" Workshop organized by the Lee Kuan Yew School of Public Policy, National University of Singapore (NUS), Singapore, February 28-29, 2008. Assistance from the Philippine Commission on Higher Education (CHED), Philippine Social Science Council (PSSC), and University of the Philippines Baguio (UPB) made the research for this paper possible.
2. For Tate (1994, 190), judicialization of politics occurs when "the Court [assumes jurisdiction over] a wide variety of policy processes that would

otherwise be the responsibility of the executive and legislature, that is, the majoritarian institutions."

3. The 1987 Philippine Constitution established a 15-member Supreme Court. Justice Josue Bellosillo, however, retired in November 2003, leaving a vacant seat. Justice Minita Chico-Nazario was appointed to the position in February 2004 but took her oath as the 15th member only in July of the same year after President Gloria Macapagal-Arroyo deferred her appointment to allow Justice Chico-Nazario to "finish her job" at the Sandiganbayan (A. Nocum, "Estrada judge promoted to Supreme Court," *Philippine Daily Inquirer*, July 14, 2004). But the day after Justice Chico-Nazario assumed her post as justice, Justice Vitug officially retired, leaving once more one seat vacant. Justice Cancio C. Garcia would be appointed to the tribunal on October 6, 2004.
4. Vejerano (1991) alludes to "strategic defection" at the height of protests for Marcos' ouster as a consequence of the assassination of Benigno Aquino.
5. In a sense, this is the meaning of "judicial independence" for attitudinalists, i.e., being able to decide cases on the basis of personal policy preferences without interference from other actors.
6. Associate Justice Azcuna abstained from voting in both the January and December 2004 rulings because he used to be counsel for one of the parties.
7. For attitudinalists, "case stimuli" are those that activate attitudes. They are often "objects" or "situations" (Spaeth 1979, 120).
8. Agabin's participation was particularly unfavorable for the petitioners' position. The January majority opinion cited Agabin's position paper, "Service Contracts: Old Wine in New Bottles?"—which was highly critical of service contracts—as basis for arguing that the 1987 Constitution prohibited such arrangements. As counsel, however, for the Philippine Chamber of Mines, Agabin argued that not all forms of service contracts are banned by the 1987 Charter.
9. Justice Carpio-Morales commented that the December majority opinion "made much of the fiscal crisis," suggesting that the fiscal crisis changed the context of the Mining Act controversy in favor of the pro-mining position. The "prudential" argument, as described by Bernas, seems to have been prompted by reports on the fiscal crisis.
10. Since *La Bugal* revolves around a constitutional issue, the major institutional players are the Court and the president. In disputes concerning the validity of statutes, the major institutional actors are the Court and Congress. Congress can veto the Court's policy preferences in statutory cases by merely enacting a new law. In constitutional cases, however, Congress is mostly powerless vis-à-vis the Supreme Court (Epstein, Knight, and Martin 2004).
11. It must be noted, however, that despite inadequate support for her legislative agenda, Pres. Arroyo is able to muster support especially from members of the House of Representatives in matters directly related to her political survival (e.g., impeachment proceedings against her, moves to amend the constitution and extend her stay in office, etc.).

12. Bello, et.al. (2004, 229) report that then-DENR Secretary Antonio Cerilles, in disagreement with the Supreme Court's upholding of the IPRA in 2000, "cut funding to the IPRA's main implementor, thereby effectively paralyzing the agency."
13. In relation to the *La Bugal* reversal, however, documents show that public respondents asked the Court to take into account mining projects—already approved by the concerned agencies—that would be affected by an affirmation of its original decision as opposed to telling the Court to pay attention to whether or not the concerned agencies would enforce its rulings (Rollo at 2561-2562, 2667-2668).
14. The JBC is composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Member, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector, (Philippine Constitution, Sec. 8 [1], Art. VIII).
15. Carmona (2003) strongly criticizes Supreme Court intervention in economic matters.
16. The fact, however, that people entertain these rumors suggests that they believe that the Court is not immune from such temptations.
17. There are reports however of judges being assassinated. Regional Trial Court Judge Henrick Gingoyon, who penned the decision ordering government to compensate PIATCO for expenses incurred in building NAIA-3, suffered fatal gunshot wounds on December 31, 2005. The Supreme Court upheld his ruling in *RP v. Gingoyon* (G.R. No. 166429) on December 19, 2005.
18. The series of nullifications can also be interpreted as judicial retaliation against the Philippine executive and legislative, if not a show of force, in the light of attempts by legislators to impeach Supreme Court justices including the Chief Justice in 2003. A perception among some observers of the impeachment was that the proceedings could not have prospered without the president's knowledge.
19. In fact, it was reported late by the newspapers: The *Philippine Daily Inquirer* reported it on January 30; it appeared in the *Manila Times* on February 2.

REFERENCES

Agabin, Pacifico A. 1997. "Judicial Review of Economic Policy under the 1987 Constitution." *Philippine Law Journal* 72: 176-194.

_____. 1996. "The Politics of Judicial Review over Executive Action: The Supreme Court and Social Change." In U*nconstitutional Essays*, 167-198. Quezon City: University of the Philippines Press.

Bakker, Jan Willem. 1997. *The Philippine Justice System: The Independence and Impartiality of the Judiciary and Human Rights from 1986 till 1997*. Geneva: Centre for the Independence of Judges and Lawyers.

Barnum, David G. 1993. *The Supreme Court and American Democracy.* New York: St. Martin's Press.

Baum, Lawrence. 2007. *The Supreme Court*. 9th ed. Washington, DC: CQ Press.

_____. 2006. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton: Princeton University Press.

_____. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47 (3): 749-68.

_____. 1992. "Membership Change and Collective Voting Change in the United States Supreme Court." *Journal of Politics* 54 (1): 3-24.

_____. 1989. "Comparing the Policy Positions of Supreme Court Justices from Different Periods." *Western Political Quarterly* 42 (4): 501-21.

_____. 1988. "Measuring Policy Change in the U.S. Supreme Court." *American Political Science Review* 82 (3): 905-912.

Bello, Walden, Herbert Docena, Marissa de Guzman, and Mary Lou Malig. 2004. *The Anti-Development State: The Political Economy of Permanent Crisis in the Philippines*. Quezon City: Department of Sociology, College of Social Sciences, University of the Philippines Diliman and Focus on the Global South.

Bernas, Joaquin G. 2005. "Justice Davide's Contribution to the Formulation of the 1987 Constitution." *Ateneo Law Journal* 50: 317-347.

_____. 1988. *The Constitution of the Republic of the Philippines: A Commentary,* vol. 2. Manila: Rex Book Store.

Carmona, Cheselden George V. 2003. "Judicial Review of Economic Policies: Implications on Policymaking and Implementation." PhD diss., University of the Philippines Diliman.

Ciencia, Alejandro N. 2010. "The Philippine Supreme Court and the Mining Act Reversal." PhD diss., University of the Philippines Diliman.

Cruz, Isagani A. and Cynthia C. Datu. 2000. *Res Gestae: A Brief History of the Supreme Court (from Arellano to Narvasa)*. Quezon City: Rex Printing.

Cullen, Shay. 2006. "The Rights of the Indigenous People to Their Ancestral Lands is Sacred." October 18. Accessed October 7, 2010. http://www.minesandcommunities.org/ article.php?a=3603&l=1

Davide, Hilario G. 2005. "Philippine Judicial Reform in Focus: A Meeting with the Academe." Paper presented at the Forum: Academe Meets Government on Judicial Reforms, University of the Philippines Diliman, January 20.

De Leon, Hector S. 2002. *Textbook on the Philippine Constitution.* Manila: Rex Printing.

Epstein, Lee, Jack Knight, and Andrew Martin. 2004. "Constitutional Interpretation from a Strategic Perspective." In *Making Policy, Making Law: An Interbranch Perspective*, edited by Mark C. Miller and Jeb Barnes, 170-188. Washington, DC: Georgetown University Press.

Garner, Bryan A., ed. 2009. *Black's Law Dictionary*. 9th ed. St. Paul, MN: West.

Haynie, Stacia. 1998. "Paradise Lost: Politicisation of the Philippine Supreme Court in the Post Marcos Era." *Asian Studies Review* 22 (4): 459-473.

Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy." *American Political Science Review* 96 (2): 291-303.

Iaryczower, Matias, Pablo Spiller, and Mariano Tommasi. 2002. "Judicial Independence in Unstable Environments, Argentina 1935-1998." *American Journal of Political Science* 46 (4): 699-716.

Johnson, Timothy R. 2003. "The Supreme Court, the Solicitor General, and the Separation of Powers." *American Politics Research* 31 (4): 426-451.

Legal Rights and Natural Resources Center. 2004. "Drilling through the Mantle of Large-Scale Mining: The Supreme Court Ruling in *La Bugal* Case." *Tan-awan*, July-September, 25-26.

Pritchett, C. Herman. 1961. *Congress versus the Supreme Court, 1957-1960*. Minneapolis: University of Minnesota Press.

Segal, Jeffrey Allan, and Harold J. Spaet. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.

Spaeth, Harold J. 1979. *Supreme Court Policy Making: Explanation and Prediction*. San Francisco: W.H. Freeman and Company.

Tate, C. Neal. 1994. "The Judicialization of Politics in the Philippines and Southeast Asia." *International Political Science Review* 15 (2):187-197.

Tujan, Antonio A., and R. Bella Guzman. 2002. *Globalizing Philippine Mining*. Rev. ed. Manila: IBON Foundation.

Vanzi, Sol Jose. 2003. "Solons Move to Impeach Davide, SC Justices." *Philippine Headline News Online*, May 23. Accessed October 4, 2010. http://www.newsflash.org/2003/ 05/hl/hl018021.htm .

Vejerano, A.L. 1991. "A Sociology of the Philippine Supreme Court Decisions, 1946-1985." MA thesis, University of the Philippines Diliman.

Republic Acts and Court Rulings

The Philippine Constitution

Republic of the Philippines, Republic Act 7942, *An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation*, March 3, 1995.

Supreme Court of the Philippines, G.R. No. 127882 *(La Bugal-B'laan Tribal Association, Inc., et al. Vs. Victor O. Ramos, et al.)* Decision, January 27, 2004. http://sc.judiciary.gov.ph/jurisprudence/2004/jan2004/127882.htm.

Supreme Court of the Philippines, G.R. No. 127882 *(La Bugal-B'laan Tribal Association, Inc., et al. Vs. Victor O. Ramos, et al.)* Decision, December 1, 2004. http://sc.judiciary.gov.ph/jurisprudence/2004/dec2004/127882.htm.

Supreme Court of the Philippines, G.R. No. 127882 *(La Bugal-B'laan Tribal Association, Inc., et al. Vs. Victor O. Ramos, et al.)* Final Ruling, February 1, 2005.