

**SONGS, SINGERS AND SHADOWS:
REVISITING *LOCUS STANDI* IN LIGHT OF THE
PEOPLE POWER PROVISIONS OF THE 1987 CONSTITUTION**

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PEOPLE EMPOWERMENT AND *LOCUS STANDI*
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*Each man's death diminishes me,
For I am involved in mankind.
Therefore, send not to know
For whom the bell tolls,
It tolls for thee.¹*

In a civilized world where disputes and other conflicts are supposed to be resolved by resort to the judicial organs instead of seeking results through brawn, fate or chance, the courts assume great importance.² If men and women are not to go back to the ways of the rough and wild days, taking matters into their own hands, then they must be assured that the governmental structure designed to settle their differences could be relied upon to provide the vindication of their rights and the delivery of the justice they seek. This applies both in their personal interrelationship with one another and in their dealings

¹ John Donne

² "In a free society, controversies are heard and settled under the rule of law in the forum of the courts of justice. It is one of the virtues of our system of government that if a person feels that he has been aggrieved, he does not have to take the law into his own hands or resort to the use of force for the vindication of his injury. The courts are there to hear and act on his complaint. The right to litigate is an escape valve to relieve the pressures of personal disagreements that might otherwise explode into physical confrontation. It is necessary not only for upholding one's claim when they are unjustly denied but also for the maintenance of peace if not goodwill among incipient antagonists. Without the right to litigate, conflicting claims cannot be examined and resolved in accordance with one of the primary purposes of government, which is to provide for a just and orderly society." (*Que v. Court of Appeals*, 169 SCRA 137 [1989], at 150)

with the government, specially in a society that prides itself on being a democratic and republican state.³

Republicanism means that the people are the sovereign and the government exists for their sake, not the other way around.⁴ And this should all the more be true in a nation whose constitution added the emphatic word “democratic” to its old formulation of the policy on republicanism.⁵ Living in a republican state signifies that the people have to surrender part of their sovereignty to the government as they could not all rule and manage the State. They do retain the ultimate power, though. And to what extent they keep part of it may vary, depending on the extent to which they may have yielded their authority for the more efficient management of the State.⁶ Generally, that might mean that the people exercise their authority basically only through their right of suffrage where they are given the chance to determine who are to hold the reins of the government in the meantime. Thereafter, they would have to trust those in government to do what they are supposed

³ “The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.” (CONST., Art. II, §1; Unless otherwise specified, all references to the Constitution are to the 1987 Charter.)

⁴ “The prime duty of the Government is to serve and protect the people.” (CONST., Art. II, §4)

⁵ In his dissenting opinion in *Lambino v. Commission on Elections*, G.R. Nos. 174153 and 174299, 25 October 2006, at 46-46, Advance Sheets, Justice (now, Chief) Puno noted that the deliberations of the Commission that drafted the 1987 Constitution added the word “democratic” to emphasize people power.

⁶ “Although by their constitutions the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. They retain in their own hands, so far as they have thought it needful to do so, a power to control the governments they create, and the three departments are responsible to and subject to be ordered, directed, changed or abolished by them. But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the Constitution, or which, consistently with the Constitution, have been prescribed and pointed out for them by statute; and if by any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who, for the time being, represent legitimate government.” (T.M. Cooley, II Constitutional Limitations, 8th ed. [1927], at 1349, cited by Justice Ynares-Santiago in her separate opinion in *Lambino v. Commission on Elections*, G.R. Nos. 174153 and 174299, 25 October 2006, at 18, Advance Sheets)

to have been empowered to do, perform and discharge.⁷ If they disagree or disapprove of what is done or not done by those they put in power, then they would have to wait for the next electoral exercise before they could again make their voices heard or their will manifested. Or, in the meantime, they may also resort to the courts to question the acts of those in power. But access to the courts is not something that the people could just avail of every time they need to question something. There are some constrictions, one of which is the concept of *locus standi*.

The Constitution which the Philippines adopted in 1987 came up with certain provisions empowering the people in various aspects of their relationship with their government. Notwithstanding these provisions, however, the Supreme Court has not seen them as in any way affecting the rules on *standing*. Should the old traditional manner of looking at the issue of *locus standi* remain as they have always been, or should these novel provisions mandate and direct a fresh and revitalized manner of appreciating the issue consistent with the idea that the people, under their 1987 Charter or covenant with the State, have retained more power and have been given a greater amount of oversight and control over the affairs of their government?

Given these considerations, the “people power” provisions, taken together in a holistic manner, should be read to mean that the traditional rules on *locus standi* should now be revisited, reexamined and eventually modified or revised in favor of a new rule consistent with the principle that the government under the 1987 Charter is expected and required to be more open, responsible and accountable to the people – which underlying philosophy translates to a greater access of the people to the courts as a way of protecting their freedoms, vindicating their rights and recognizing their prerogatives.

JUDICIAL POWER AND THE SEPARATION OF POWERS

While resort to the judicial tribunals is generally the rule to resolve certain disputes and other disagreements, not all differences are subject

⁷ “Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.” (CONST., §1, Art. XI)

to the exercise of judicial power.⁸ A person may be injured or hurt but would not necessarily have a judicial remedy.⁹ There must be rights that are enforceable and demandable. Thus, to properly invoke the jurisdiction of the courts to enable them to properly exercise their authority, there is a need for a prior legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof, and, (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal.¹⁰ Likewise, in keeping with the principle of separation of powers, due respect and deference must also be accorded to the acts of the other coordinate and independent – and *representative* – departments of the government, thus precluding a trigger-happy alacrity of the courts to reviewing and examining such acts and declaring their invalidity.¹¹

⁸ “[C]ourts are neither free to decide *all* kinds of cases dumped into their laps nor are they free to open their doors to *all* parties or entities claiming a grievance. The rationale for this constitutional requirement of *locus standi* is by no means trifle. It is intended ‘to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary’s overruling the determination of a coordinate, democratically elected organ of government.’ It thus goes to the very essence of representative democracies.” (Justice [now, Chief Justice] Puno, dissenting in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 [1994], at 169)

⁹ In *Pangilinan v. Maglaya*, 225 SCRA 511 (1993), the Court observed:

“‘The citizen comes to us in quest of law but we must also give him justice. The two are not always the same.’ Indeed they are not, and sadly so for the petitioner. For ironically, the law he invokes for the protection of his right has instead denied him the justice he seeks and deserves. This emphasizes, no less sadly, the *fallacy that for every legal wrong there is a judicial remedy. Untrue, unfortunately. The Court is not a panacea. There are times, regrettably, when justice is shackled by the law, and even this Court cannot break the chains.*” (At 521-522; Emphasis supplied)

¹⁰ *Lopez v. Roxas*, 17 SCRA 756 (1966), at 761.

¹¹ “The doctrine of separation of powers calls for the other departments being left alone to discharge their duties as they see fit.... The legislative and executive branches are not bound to seek [the judiciary’s] advice as to what to do or not to do. Judicial inquiry has to be postponed in the meanwhile. It is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture.” (*Tan v. Macapagal*, 43 SCRA 677 [1972], at 681)

Interestingly, it has been observed: “The idea that a norm of constitutional adjudication could be lightly brushed aside on the mere supposition that an issue before the Court is of paramount public concern does great harm to a democratic system which espouses a delicate balance between three separate but co-equal branches of government. It is equally of paramount public concern, *certainly paramount to the survival of our democracy*, that acts of the other branches of government are accorded due respect by this Court.... Notwith-

The Constitution itself provides:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.¹²

Of significance to these discussions is the exercise by the courts of the so-called power of judicial review whereby they are empowered to declare acts of other departments of the government as unconstitutional or invalid, pursuant to what the United State Supreme Court in *Marbury v. Madison* declared – that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”¹³ In *Angara v. Electoral Commission*, the Philippine Supreme Court elucidated on the power of judicial review and its requisites:

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn

standing Article VIII, Section 1 of the Constitution, since the exercise of the power of judicial review by this Court is inherently anti-democratic, this Court should exercise a becoming modesty in acting as a *revisor* of an act of the executive or legislative branch.” (Justice Kapunan, dissenting in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 190)

¹² Art. VIII, §1, ¶2. The extent of judicial power of the Supreme Court is more extensively set out in Art. VIII, §5.

The pertinent provision in the U.S. Constitution provides:

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States, – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.” (Art. III, §2, Cl. 1)

¹³ 5 US [1 Cranch] 137 (1803), at 73. (“[I]t was in the 1803 leading case of *Marbury v. Madison* that the power of judicial review was first articulated by Chief Justice Marshall, ...” [*Francisco, Jr. v. House of Representatives*, 415 SCRA 44 [2003], at 122])

and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed “judicial supremacy” which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.¹⁴

As to its proper place in the overall design of the governmental structure, it has been said that “judicial review is indeed an integral component of the delicate system of checks and balances which, together with the corollary principle of separation of powers, forms the bedrock of our republican form of government and insures that its vast powers are utilized only for the benefit of the people for which it serves.”¹⁵ It is thus essentially a power to ensure that the other departments of government exercise their own authority within constitutional limits and boundaries. Nevertheless, while judicial review may generally be associated with the judiciary’s function of checking on the other branches of the government, it actually is a double-edged sword – it may also serve to legitimize what has been assailed:

What cannot be too strongly stressed is that the function of judicial review has both a positive and negative aspect. As was so convincingly demonstrated by Professors Black and Murphy, the Supreme Court can check as well as legitimate. In declaring what the law is, it may not only nullify the acts of coordinate branches but may also

¹⁴ 63 Phil. 139 (1936), at 158-159.

¹⁵ *Francisco, Jr. v. House of Representatives*, 415 SCRA 44 (2003), at 123-124.

sustain their validity. In the latter case, there is an affirmation that what was done cannot be stigmatized as constitutionally deficient. The mere dismissal of a suit of this character suffices.¹⁶

As the passage from *Angara* reveals, the proper exercise of judicial review requires that, among others, there be an actual case or controversy and that the parties must have *standing* or *locus standi* to bring up the matter for judicial scrutiny and determination in order to avoid being led “to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation” – or to purely academic discussions and advisory opinions.¹⁷ “The jurisdiction of this Court, even in cases involving constitutional questions is limited by the ‘case and controversy’ requirement of Art. VIII, §5. This requirement lies at the very heart of the judicial function. It is what differentiates decisionmaking in the courts from decisionmaking in the political departments of the government and bars the bringing of suits by just any party.”¹⁸ For the proper exercise of their power of judicial review, the courts require “a fully developed factual record that alone can impart to [their] adjudication the impact of actuality to insure that decision-making is informed and well-grounded.”¹⁹ Hence, the so-called requisites for the exercise of judicial review, *viz*: (1) existence of an actual case and appropriate controversy;²⁰ (2) a personal and substantial interest of the party raising the

¹⁶ *Occena v. Commission on Elections*, 104 SCRA 1 (1981), at 7.

¹⁷ “Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest therein, however intellectually solid the problem may be. This is specially true where the issues ‘reach constitutional dimensions, for then there comes into play regard for the court’s duty to avoid decision of constitutional issues unless avoidance becomes evasion.’ (*Philippine Association of Colleges and Universities (PACU) v. Secretary of Education*, 97 Phil. 806 [1955], at 811)

“It is not the duty of any court to give advice or ‘directive.’ The court only decides actual controversies involving rights legally demandable and enforceable, and to determine whether 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.” (*Trans Middle East [Phils.] Equities, Inc. v. Sandiganbayan*, 499 SCRA 308 [2006], at 318)

¹⁸ *Kilosbayan, Incorporated v. Morato*, 250 SCRA 130 (1995), at 139.

¹⁹ *Tolentino v. Secretary of Finance*, 235 SCRA 630 (1994), at 686.

²⁰ “An actual case or controversy refers to an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory. The controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests.” (*John Hay Peoples Alternative Coalition v. Lim*, 414 SCRA 356 [2003], at 371)

constitutional issue; (3) exercise of the judicial review pleaded at the earliest opportunity;²¹ and, (4) constitutional issue being the *lis mota* of the case.²²

THE ISSUE OF *LOCUS STANDI*

The second requisite, that of *standing* or *locus standi* is of particular pertinence here. Basically, the issue of standing is intended to ensure that the party raising the constitutional issue is the proper one and not just anybody who might be interested in the resolution of an issue that does not directly concern him. It is a corollary to the proper exercise of judicial power. In *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*,²³ the Court explained:

In *Lamb v. Phipps*,²⁴ we ruled that judicial power is the power to hear and decide causes pending between parties who have the right to sue in the courts of law and equity. Corollary to this provision is the principle of *locus standi* of a party litigant. One who

²¹ In regard to raising the constitutional issue at the earliest opportunity, it has been held that “it is not the date of filing of the petition that determines whether the constitutional issue was raised at the earliest opportunity. The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, ‘if it not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal.’” (*Matibag v. Benipayo*, 380 SCRA 49 [2002], at 65)

However, failure to raise the issue before the Ombudsman is not fatal since the requirement refers to bringing it up before a *competent court that can resolve the same*. “Verily, the Ombudsman has no jurisdiction to entertain questions on the constitutionality of a law. Thus, when petitioner raised the issue of constitutionality of Rep. Act No. 6770 before the Court of Appeals, which is the competent court, the constitutional question was raised at the earliest opportune time.” (*Estarija v. Ranada*, 492 SCRA 652 (2006), at 665)

²² “It is a well-settled maxim of adjudication that an issue assailing the constitutionality of a governmental act should be avoided whenever possible. Succinctly put, courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or *crux* of the controversy.” (*Francisco, Jr. v. House of Representatives*, 415 SCRA 44 [2003], at 153)

“This Court must avoid revisiting a ruling involving the constitutionality of a statute if the case before the Court can be resolved on some other grounds. Such avoidance is a logical consequence of the well-settled doctrine that courts will not pass upon the constitutionality of a statute if the case can be resolved on some other grounds.” (*Lambino v. Commission on Elections*, G.R. Nos. 174153 and 174299, 25 October 2006, at 47, Advance Sheets)

²³ 239 SCRA 386 (1994), at 401.

²⁴ 22 Phil. 456 (1912).

is directly affected by and whose interest is immediate and substantial in the controversy has the standing to sue. The rule therefore requires that a party must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant an invocation of the court's jurisdiction and to justify the exercise of the court's remedial powers in his behalf.

“Legal standing’ or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.... The gist of the question of standing is whether a party alleges ‘such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.’”²⁵ Otherwise stated, it “means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the government act that is being challenged. The term ‘interest’ is material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.”²⁶ It is to be contrasted with the generalized interest or grievances that the other members of the community may have, seeking vindication of rights held in common by all citizens²⁷ – “the interest of the party plaintiff must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.”²⁸

The requirement of direct and personal stake itself provides the rule's rationale – to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.²⁹ Further, “[t]he rationale for this constitutional requirement of *locus standi* is by no means trifle.

²⁵ *Holy Spirit Homeowners Association, Inc. v. Defensor*, 497 SCRA 581 (2006), at 591.

²⁶ *Pimentel v. Office of the Executive Secretary*, 462 SCRA 622 (2005), at 630.

²⁷ “*** ‘[T]he presence of one party with standing assures that the controversy before [a] Court is justiciable,’ so long as the party has the ability to raise all the legal claims common to the plaintiffs.” (Laurence H. Tribe, *American Constitutional Law*. Vol. I [3rd ed. (2000)], at 386)

²⁸ *Joya v. Presidential Commission on Good Government*, 225 SCRA 568 (1993), at 576.

²⁹ *Fariñas v. Executive Secretary*, 417 SCRA 503 (2003), at 516.

It is intended 'to assure a vigorous adversary presentation of the case, and, perhaps more importantly to warrant the judiciary's overruling the determination of a coordinate, democratically elected organ of government.' It thus goes to the very essence of representative democracies."³⁰

Otherwise stated, the question is whether the party appearing before the court is sufficiently qualified, by means of the injury that he sustained and the interest that he represents, to invoke the authority of the courts to look into his constitutional complaint because by then the questions will be framed with the necessary specificity, the issues will be contested with the necessary adverseness and the litigation will be pursued with the necessary vigor to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution.³¹ "Standing differs, in theory, from all other elements of justiciability by focusing primarily 'on the *party* seeking to get his complaint before a federal court' and only secondarily 'on the *issues* he wishes to have adjudicated."³² It is more a matter of *looking* at the *singer* than *listening* to the *song*. Accordingly, "[a] citizen acquires standing only if he can establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action."³³

The matter of standing is of particular concern in constitutional law as it goes to the very authority of the courts to look into the acts of other departments of the government with regard to matters that might have been entrusted to them under the doctrine of separation of powers.

³⁰ Justice (now, Chief Justice) Puno, dissenting in *Kilosbayan v. Guingona, Jr.*, at 232 SCRA 110 (1994), at 169.

³¹ *Flast v. Cohen*, 392 U.S. 83 (1968), at 106.

³² Tribe, *op. cit.*, at 385-386.

"The fundamental aspect of standing is that *it focuses on the party* seeking to get his complaint before a federal court and *not on the issues* he wishes to have adjudicated." (*Flast v. Cohen*, 392 U.S., at 99; Emphasis supplied.)

³³ *Gonzales v. Narvasa*, 337 SCRA 733 (2000), at 740.

"To satisfy the "case" or "controversy" requirement of Article III, which is the "irreducible constitutional minimum" of standing, a plaintiff must, generally speaking, demonstrate that he has suffered "injury in fact," that the injury is "fairly traceable" to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." (Tribe, *op. cit.*, at 386, citing *Bennett v. Spear*, 520 U.S. 154 [1997], at 162)

“Standing doctrine defines the framework for ‘judicial control of public officers’ and is therefore of special significance in constitutional law.”³⁴ The requirement of *locus standi* inheres from the definition of judicial power.³⁵

The rule on *locus standi* is “a constitutional requirement derived from section 1, Article VIII of the Constitution which mandates courts of justice to settle only ‘actual controversies involving rights which are legally demandable and enforceable.’ The phrase has been construed since time immemorial to mean that a party in a constitutional litigation must demonstrate a standing to sue.”³⁶ It has likewise been held that “[s]tanding is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest.”³⁷ In this regard, one should never overlook the constitutional dimension since “standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas.”³⁸

In American jurisprudence,³⁹ it has been held that:

The jurisdiction of federal courts is defined and limited by Article III of the Constitution. In terms relevant to the question for decision in this case, the judicial power of federal courts is constitutionally restricted to “cases” and “controversies.” As is so often the situation in constitutional adjudication, those two words have an iceberg

³⁴ Tribe, *American Constitutional Law*. Vol. I (3rd ed. [2000]), at 386.

³⁵ *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, 239 SCRA 386 (1994), at 401.

³⁶ Justice (now Chief Justice) Puno, dissenting in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 177.

³⁷ *Francisco, Jr. v. House of Representatives*, 415 SCRA 44 (2003), at 135, citing *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540 (1995), at 562.

³⁸ *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540 (1995), at 562.

³⁹ “As summarized in *Valley Forge [Christian College v. Americans United for Separation of Church and State, Inc.]*, 454 U. S. 464 (1982), standing may be denied where a litigant: (1) presents “abstract questions of wide public significance” which amount to “generalized grievances,” pervasively shared and most appropriately addressed in the representative branches” or (2) rests his claim “on the legal rights or interests of *third parties*” rather than on his own; or (3) does not present a claim arguably falling ‘within “the *zone of interests* to be protected or regulated by the statute or constitutional guarantee in question.” Additional doctrinal complexities, of both a constitutional and a prudential nature, are introduced when a state or organization asserts legal claims, or when the litigant is a legislator suing in connection with his official duties.” (Tribe, *op. cit.*, at 387)

quality, containing beneath their surface simplicity submerged complexities which go to the very heart of our constitutional form of government. Embodied in the words “cases” and “controversies” are two complementary but somewhat different limitations. In part those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part those words define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government. Justiciability is the term of art employed to give expression to this dual limitation placed upon federal courts by the case-and-controversy doctrine.⁴⁰

It could accordingly be appreciated that the requirement of *locus standi* is also a means by which the courts could check on the exercise of their own power. “Standing doctrine ‘subsumes a blend of constitutional requirements and prudential considerations,’”⁴¹ and, “[l]ike their constitutional counterparts, these ‘judicially self-imposed limits on the exercise of federal jurisdiction,’ ... are ‘founded in concern about the proper – and properly limited – role of the courts in a democratic society.’”⁴² Then Justice (now, Chief Justice) Puno observed: “The hindsight of history ought to tell us that it is not power *per se* that strengthens. Power unused is preferable than power misused. We contribute to constitutionalism both by the use of our power to decide and its non use. As well said, the cases we decide are as significant as the cases we do not decide. Real power belongs to him who has the power over power.”⁴³ Hence, it could be seen that the rule on *locus standi* is also a sort of self-imposed check on the courts’ own powers as they try to ensure the proper exercise of power by other departments within constitutional limits.

⁴⁰ *Flast v. Cohen*, 392 U.S. 83 (1968), at 94-95.

⁴¹ Tribe, *op. cit.*, at 386, citing *Valley Forge Christian College v. Americans United for Separation of Church and State*, 435 U.S. 464 (1982), at 471.

“As part of the injury-in-fact test, a court will often pay heed to a prudential policy against the assertion of generalized grievances more appropriately addressed by the representative branches. This is best analyzed as a prudential concern because it acknowledges that the plaintiff has suffered *some* type of injury, but one indistinguishably incurred by a multitude of others as well. The be sure, the Court has sometimes implied that ‘generalize grievances’ do not confer standing *as a matter of Article III.*” (Tribe, *op. cit.*, at 415)

⁴² *Bennett v. Spear*, 520 U.S. 154 (1997), at 162.

⁴³ Justice (now, Chief Justice) Puno, dissenting in *Kilosbayan v. Guingona, Jr.*, at 232 SCRA 110 (1994), at 179-180.

Where the issue brought before the courts is more about contractual matters than constitutional disputes, the Supreme Court has not been quite consistent on the issue of *locus standi*. In *Gascon v. Arroyo*,⁴⁴ an action to annul and set aside the “Agreement to Arbitrate” between the Government and ABS-CBN Broadcasting Corporation to settle the claims of the latter for the return of certain radio and television stations, including Channel 4, which had been taken over by the government following the declaration of martial law in 1972, the Court said that, as between the parties, the same was contractual in character and since the petitioners had not shown any legal interest in the TV Station Channel 4 and that they would be adversely affected in and when said television station is returned to the private claimant, they had no legal standing to file the petition.

In *Tatad v. Garcia, Jr.*,⁴⁵ it was declared that “[t]he prevailing doctrines in taxpayer’s suits are to allow taxpayers to question contracts entered into by the national government or government-owned or controlled corporations allegedly in contravention of law (*Kilosbayan, Inc. v. Guingona*, 232 SCRA 110 [1994]) and to disallow the same when only municipal contracts are involved (*Bugnay Construction and Development Corporation v. Laron*, 176 SCRA 240 [1989]).” Then, it added: “For as long as the ruling in *Kilosbayan* on *locus standi* is not reversed, we have no choice but to follow it and uphold the legal standing of petitioners as taxpayers to institute the present action.”⁴⁶ Justice Mendoza disagreed with the majority on this aspect in words that adumbrated his opinion for the Court in *Kilosbayan, Incorporated v. Morato*.⁴⁷ In his dissent, he stated:

Today’s holding that a citizen, qua citizen, has standing to question a government contract unduly expands the scope of public actions and sweeps away the case and controversy requirement so carefully embodied in Art. VIII, §5 in defining the jurisdiction of this Court. The result is to convert the Court into an office of ombudsman for the ventilation of generalized grievances. Consistent with the view that this case has no merit I submit with respect that petitioners, as representatives of the public interest, have no standing.⁴⁸

⁴⁴ 178 SCRA 582 (1989), at 586.

⁴⁵ 243 SCRA 436 (1995), at 451.

⁴⁶ *Ibid.*

⁴⁷ 246 SCRA 540 (1995)

⁴⁸ 243 SCRA, at 476.

Thus, when Justice Mendoza wrote for the Court in *Kilosbayan, Incorporated v. Morato*, the aspect about *locus standi* became irrelevant with respect to contractual matters. The Court declared that the petitioners' standing therein was "strictly speaking, not even the issue in this case, since standing is a concept in constitutional law and here no constitutional question is actually involved. The issue in this case is whether petitioners are the 'real parties in interest' within the meaning of Rule 3, §2 of the Rules of Court which requires that 'Every action must be prosecuted and defended in the name of the real party in interest.'"⁴⁹

Further highlighting this aspect, the Court said in *David v. Macapagal-Arroyo*.⁵⁰

Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that **"every action must be prosecuted or defended in the name of the real party in interest."** Accordingly, the "real-party-in interest" is **"the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."** Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

As to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be direct

⁴⁹ 246 SCRA 540 (1995), at 562.

On the need to make a distinction between the issue of *locus standi*, a constitutional concept, and the question of real party in interest, a remedial law concern, the Court in *Francisco, Jr. v. House of Representatives*, 415 SCRA 44 (2003), stated, *inter alia*:

"The difference between the rule on standing and real party in interest has been noted by authorities thus: 'It is important to note ... that standing because of its constitutional and public policy underpinnings, is very different from questions relating to whether a particular plaintiff is the real party in interest or has capacity to sue. Although all three requirements are directed towards ensuring that only certain parties can maintain an action, standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas.

"On the other hand, the question as to 'real party in interest' is whether he is 'the party who would be benefited or injured by the judgment, or the 'party entitled to the avails of the suit.'" (At 135, citing *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540 [1995], at 562-563)

⁵⁰ 489 SCRA 160 (2006), at 216.

and substantial to make it worth the courts' time as well as the effort at inquiry into the constitutionality of the acts of another department of the government. If the asserted injury is more imagined than real, or is merely superficial and insubstantial, then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication. It represents a weighing and balancing of the interests and values involved and the corresponding costs they entail, much like the exercise of certiorari jurisdiction where even if mistakes were committed by the lower tribunal the same would still not justify the appellate court nullifying the assailed judgment or disposition. There must be a showing of *grave*, not mere, abuse of discretion.⁵¹

With regard to the determination of who can have the necessary standing to bring suit, or maintain one, the Court came up with a summation of how that question has been dealt with in cases antedating the 1987 Constitution – and, in what may appear as a meandering and *ad hoc* manner:⁵²

⁵¹ See *Montecillo v. Civil Service Commission*, 360 SCRA 99 (2001), at 104, *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 316 SCRA 502 (1999), at 508, and, *Tañada v. Angara*, 272 SCRA 18 (1997), at 79.

⁵² Tribe has observed with regard to the American experience on the U.S. Supreme Court's own treatment of the standing doctrine:

“[T]he law of standing has for some time been one of the most criticized aspects of constitutional law. Certainly, ‘[s]tanding to litigate often turns on imprecise distinctions and requires difficult line drawing.’ Critics have charged the Supreme Court with habitually manipulating settled standing rules to pursue extraneous, often unacknowledged ends – such as advancing the majority’s view of the merits, resolving problems associated with broad equitable relief, and serving federalism values. The inconsistent and often obtuse nature of the Court’s standing rulings is of special concern because lower courts must apply the doctrine by assuming the truth of a litigant’s allegations and analogizing the claims made to those previously accepted or rejected by the Supreme Court.” (Tribe, *op. cit.*, at 390-391)

Along the same line, the present Philippine Chief Justice referred to Prof. Paul Freund’s description of the concept of *locus standi* as “among the most amorphous in the entire domain of public law” in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 166.

It has also been noted that “[t]he evolution of standing doctrines seems to point to greater freedom of action for plaintiffs. However, the courts still have not articulated how the balance is to be struck between the relevant and often competing interests: the plaintiff’s right to relief and the legislature’s right to carry out its policies without judicial interference. Nor has the judiciary’s competence

The difficulty of determining *locus standi* arises in **public suits**. Here, the plaintiff who asserts a “public right” in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a “stranger,” or in the category of a “citizen,” or “taxpayer.”

In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a “citizen” or “taxpayer.”

Case law in most jurisdictions now allows both “citizen” and “taxpayer” standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*,⁵³ where it was held that the plaintiff in a taxpayer’s suit is in a different category from the plaintiff in a citizen’s suit. **In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern.** As held by the New York Supreme Court in *People ex rel Case v. Collins*:⁵⁴ **“In matter of mere public right, however ... the people are the real parties ... It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied.”** With respect to taxpayer’s suits, *Terr v. Jordan*⁵⁵ held that **“the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.”**

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United State Supreme Court laid down the more stringent **“direct injury” test** in *Ex Parte Levitt*,⁵⁶ later reaffirmed in *Tileston v. Ullman*.⁵⁷ The same Court ruled that for a private individual to invoke the judicial power to determine the

to rule on these interests [been] analyzed systematically or its limits defined. Courts essentially continue to be free to reconcile these competing values on an *ad hoc* basis.” (Jack H. Friedenthal, Mary Kay Kane, and Arthur R. Miller, *Civil Procedure*, 328 [1985], cited by Justice [later, Chief Justice] Davide, Jr., in his dissent in *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540 [1995], at 616)

⁵³ 275 Ky 91, 120 SW2d 765 (1938).

⁵⁴ 19 Wend. 56 (1837).

⁵⁵ 232 NC 48, 59 SE2d 359 (1950).

⁵⁶ 302 U.S. 633 (1937).

⁵⁷ 318 U.S. 44 (1943).

validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.**

This Court adopted the “**direct injury**” test in our jurisdiction. In *People v. Vera*,⁵⁸ it held that the person who impugns the validity of a statute must have “**a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result.**” The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate*,⁵⁹ *Manila Race Horse Trainers’ Association v. De la Fuente*,⁶⁰ *Pascual v. Secretary of Public Works*⁶¹ and *Anti-Chinese League of the Philippines v. Felix*.⁶²

However, being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. This was done in the **1949 Emergency Powers Cases**, *Araneta v. Dinglasan*,⁶³ where the “**transcendental importance**” of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In *Aquino v. Comelec*,⁶⁴ this Court resolved to pass upon the issues raised due to the “**far-reaching implications**” of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.⁶⁵

Then, it added: “Significantly, recent decisions show a certain toughening in the Court’s attitude toward legal standing.”⁶⁶

From the foregoing, it would be readily seen that the decision whether to recognize the standing of a party to sue, or to allow his suit,

⁵⁸ 65 Phil. 56 (1937).

⁵⁹ G.R. No. 117, 7 November 1945 (Unreported).

⁶⁰ G.R. No. 2947, 11 January 1959 (Unreported).

⁶¹ 110 Phil. 331 (1960).

⁶² 77 Phil. 1012 (1947).

⁶³ 84 Phil. 368 (1949).

⁶⁴ 62 SCRA 275 (1975).

⁶⁵ *David v. Macapagal-Arroyo*, 489 SCRA 160 (2006), at 216-218.

⁶⁶ *Id.*, at 221. In *David* itself, the Court, after analyzing the personalities and interests represented in petitions before it, declared: “This Court holds that all the petitioners herein have *locus standi*.” (At 224)

is determined in relation to his personality, and if not, it is made to depend on the nature or character of the substantive question raised for judicial adjudication. In fine, the Court, while it has somehow liberalized the determination of standing, still abides by the “direct injury” criterion or by a rule that determines whether the issues are of paramount or transcendental importance in order to bypass or go around the matter of *locus standi*. This, therefore, represents a lineage of jurisprudence developed and reiterated based on the past without regard whatsoever to the new provisions of the 1987 Constitution which translate into people empowerment. Worse, without considering such novel constitutional provisions, there is the constant possibility that the Court may become more strict and restrictive or more liberal and accommodating, depending possibly on its appreciation of the issues and the suitors appearing before it, or dictated by the values and predispositions of whoever may comprise the Court, or its majority, at any given moment⁶⁷ – something analogous to what the U.S. Supreme Court once said about determining what constitutes obscenity.⁶⁸ There is always the problem of judges having to use their own standards to determine which of the competing values of society would have to prevail at any particular time.⁶⁹

⁶⁷ Justice Feliciano, in his concurring opinion in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 154, made reference to the Supreme Court’s lack of sufficient guidelines in determining standing, based on “paramount considerations of national interest” as coming “too close to saying that *locus standi* exists whenever at least a majority of the Members of this Court participating in a case feel that an appropriate case for judicial intervention has arisen.”

Along the same lines, then Justice (now, Chief Justice) Puno, in urging reexamination of *De Guia v. Commission on Elections*, 208 SCRA 420 (1992), said: “De Guia would also brush aside the rule on *locus standi* ... whenever at least a majority of the Members of the Court ... feel that an appropriate case for judicial intervention has arisen.” (Dissenting opinion, 232 SCRA, at 177)

And if only to highlight the possibility of altered direction of the Court, in *Kilosbayan, Incorporated v. Morato*, 250 SCRA 130 (1995), at 136, we find this line: “Indeed, a change in the composition of the Court could prove the means of undoing an erroneous decision.”

⁶⁸ “The problem is ... that *one cannot say with certainty that material is obscene until at least five members of this Court, applying inevitably obscure standards, have pronounced it so.*” (*Miller v. California*, 413 US 15 (1973), at 29; Emphasis supplied)

⁶⁹ Justice Black, joined by Chief Justice Warren and Justice Douglas, made the following observation in *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961):

“[I]n my view, the majority has reached its decision here against the freedoms of the First Amendment by a fundamental misapplication of its own currently, but I hope only temporarily, prevailing ‘balancing’ test. The interest of the Committee

LOCUS STANDI OF VARIOUS SUITORS

A survey of the cases decided would show that the Supreme Court has recognized, in varying degrees and other differing circumstances, the *locus standi* of the following: (a) citizens; (b) taxpayers; (c) legislators; (d) voters; (e) political parties; (f) associations and organizations; and, (g) local government units.

1) *Citizens*

As the very possessor and source of sovereign power, the citizens as principals certainly have an inherent right to see to it that their will and wishes are reflected in what their representative government does. If their agents go astray, then the citizens should rightfully be entitled to set the matters right. To that extent then should their standing to sue be recognized.

In *Francisco, Jr. v. House of Representatives*,⁷⁰ a consolidation of petitions to enjoin an intended impeachment proceeding against the Chief Justice, and filed by a motley of parties – except the very person directly involved, the Chief Justice himself – the Court said of citizens' suits:

When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of

in satisfying its curiosity with respect to Konigsberg's 'possible' membership in the Communist Party two decades ago has been inflated out of all proportion to its real value – the vast interest of the public in maintaining unabridged the basic freedoms of speech, press and assembly has been paid little if anything more than lip service – and important constitutional rights have once again been 'balanced' away. This, of course, is an ever-present danger of the 'balancing test' for the application of such a test is necessarily tied to the *emphasis particular judges give to competing societal values. Judges, like everyone else, vary tremendously in their choice of values.* This is perfectly natural and, indeed, unavoidable. But it is neither natural nor unavoidable in this country for the fundamental rights of the people to be dependent upon the *different emphasis different judges put upon different values at different times.* For those rights, particularly the First Amendment rights involved here, were unequivocally set out by the Founders in our Bill of Rights in the very plainest of language, and they should not be diluted by 'tests' that obliterate them whenever particular judges think values they most highly cherish outweigh the values most highly cherished by the Founders." (At 74-75; Emphasis supplied.)

⁷⁰ 415 SCRA 44 (2003).

sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.

Otherwise stated, “a citizen will be allowed to raise a constitutional question only when he can show that he has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.”⁷¹

In *Tañada v. Tuvera*, the Court, in recognizing the standing of the petitioners who brought suit to compel the publication of presidential decrees and other issuances which were until then kept confidential or secret, the Court declared:

As early as the 1910 case of *Severino v. Governor General*, this Court held that while the general rule is that “a writ of mandamus would be granted to a private individual only in those cases where he has some private or particular interest to be subserved, or some particular right to be protected, independent of that which he holds with the public at large,” and “it is for the public officers exclusively to apply for the writ when public rights are to be subserved [*Mitchell vs. Boardmen*, 79 M.e., 469],” nevertheless, “when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws [High, Extraordinary Legal Remedies, 3rd ed., sec. 431].

* * * * *

The reasons given by the Court in recognizing *a private citizen's legal personality* in the aforementioned case apply squarely to the present petition. Clearly, the right sought to be enforced by petitioners herein is a *public right* recognized by no less than the

⁷¹ *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 289 SCRA 337 (1998), at 343. See also *Francisco, Jr. v. Bayani*, G.R. No. 166501, 16 November 2006, at 3, Advance Sheets.

fundamental law of the land. *If petitioners were not allowed to institute this proceeding, it would indeed be difficult to conceive of any other person to initiate the same, considering that the Solicitor General, the government officer generally empowered to represent the people, has entered his appearance for respondents in this case.*⁷²

In *Legaspi v. Civil Service Commission*,⁷³ the Court adverted to what it said in *Tañada v. Tuvera* to uphold the standing of a citizen seeking, pursuant to the constitutional right to information, certain data regarding the employment status of some personnel in the government service, declaring that “when a mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general ‘public’ which possesses the right.” Accordingly, “[t]he petitioner, being a citizen who, as such is clothed with personality to seek redress for the alleged obstruction of the exercise of the public right.”⁷⁴

The right to information was also used as a basis for recognizing the standing of the petitioner in *Chavez v. Public Estates Authority*,⁷⁵ a petition for mandamus to compel PEA to disclose the facts on its renegotiations with a private corporation for the reclamation of portions of Manila Bay. The Court said that the petitioner, as a citizen, has the requisite standing considering that it involved the enforcement of constitutional rights – to information and to the equitable diffusion of natural resources – matters of transcendental public importance.

In *Gonzales v. Chavez*, a case involving the right to compel the Solicitor General to perform what was considered as his legal duty to represent the Presidential Commission on Good Government, the Supreme Court held:

[T]here need be no proof adduced that the petitioner has a personal interest in the case, as his petition is anchored on the *right of the people*, through the PCGG and the Republic, to be represented

⁷² 136 SCRA 27 (1985), at 36-37; Emphasis supplied.

⁷³ 150 SCRA 530 (1987), at 536. In *Sabio v. Gordon*, G.R. No. 174340, 17 October 2006, at 16, Advance Sheets, the Court said that “[t]he cases of *Tañada v. Tuvera* and *Legaspi v. Civil Service Commission* have recognized a citizen’s interest and personality to enforce a public duty and to bring an action to compel public officials and employees to perform that duty.”

⁷⁴ *Ibid.*

⁷⁵ 384 SCRA 152 (2002), at 182-183.

in court by the public officer duly authorized by law. *The requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen and hence, part of the public which possesses the right.*⁷⁶

The foregoing was echoed recently in the case of *David v. Macapagal-Arroyo*, where the Court noted the cases which pronounced that “when the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.”⁷⁷

Days before *David*, the Court also sustained the right of citizens whose freedom to assemble peacefully was allegedly impaired by Batas Pambansa Blg. 880 (BP 880, otherwise known as the “The Public Assembly Act of 1985”), and the infamous *Calibrated Preemptive Response (CPR)* policy of the government, holding thus:

Petitioners’ standing cannot be seriously challenged. Their right as citizens to engage in peaceful assembly and exercise the right of petition, as guaranteed by the Constitution, is directly affected by B.P. No. 880 which requires a permit for all who would publicly assemble in the nation’s streets and parks. They have, in fact, purposely engaged in public assemblies without the required permits to press their claim that no such permit can be validly required without violating the Constitutional guarantee. Respondents, on the other hand, have challenged such action as contrary to law and dispersed the public assemblies held without the permit.⁷⁸

Related to citizens’ suit would be class suit. In *Francisco, Jr. v. House of Representatives*, the Court said:

[W]hen dealing with *class suits* filed in behalf of all citizens, persons intervening must be sufficiently numerous to fully protect the interests of all concerned to enable the court to deal properly with all interests involved in the suit, for a judgment in a class suit, whether favorable or unfavorable to the class, is, under the *res judicata* principle, binding on all members of the class whether or not they were before the court.⁷⁹

⁷⁶ 205 SCRA 816 (1992), at 847; Emphasis supplied.

⁷⁷ *David v. Macapagal-Arroyo*, 489 SCRA 160 (2006), at 223, citing *Philconsa v. Enriquez*, 235 SCRA 506 (1994), *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 371 (1988), *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989), *Basco v. Philippine Amusement and Gaming Corporation*, 197 SCRA 52, 60 (1991), and *Tañada v. Tuvera*, 136 SCRA 27 (1985).

⁷⁸ *Bayan v. Ermita*, 488 SCRA 226 (2006), at 248.

⁷⁹ 415 SCRA 44 (2003), at 138.

And, talking of class suits, there is the interesting case of *Oposa v. Factoran*,⁸⁰ where the original petitioners, all minors duly represented and joined by their respective parents, instituted a taxpayers' class suit asserting an "intergenerational responsibility" – "represent[ing] their generation as well as generations yet unborn" – to preserve and conserve the natural resources by seeking specifically to cancel all timber license agreements in the country. The Court noted:

This case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.⁸¹

Of the Court's action relative to recognizing the *locus standi* of the petitioners, Justice Feliciano in his separate opinion noted:

Locus standi is not a function of petitioners' claim that their suit is properly regarded as a *class suit*. I understand *locus standi* to refer to the legal interest which a plaintiff must have in the subject matter of the suit. Because of the very broadness of the concept of

⁸⁰ 224 SCRA 792 (1993). In *Pimentel v. Office of the Executive Secretary*, 462 SCRA 622 (2005), however, the Court refused to accord standing to two petitioners, aged 2 and 1, relative to a petition assailing non-transmittal by the President of the signed text of the Rome Statute to the Senate for the latter's concurrence.

⁸¹ 224 SCRA, at 802-803.

“class” here involved – membership in this “class” appears to embrace *everyone* living in the country whether now or in the future – it appears to me that everyone who may be expected to benefit from the course of action petitioners seek to require public respondents to take, is vested with the necessary *locus standi*. The Court may be seen therefore to be recognizing a *beneficiaries’ right of action* in the field of environmental protection, as against both the public administrative agency directly concerned and the private persons or entities operating in the field or sector of activity involved.⁸²

With regard to the issue as to whether the President may refuse to submit a treaty to the Senate for its concurrence, the Court held in *Pimentel, Jr. v. Office of the Executive Secretary*⁸³ that petitioners who anchor their standing on the fact that they are advocates and defenders of human rights, and as citizens of the country, but who have not shown that they have sustained or will sustain a direct injury from the non-transmittal of the signed text of the Rome Statute to the Senate, do not have the requisite standing. “Their contention that they will be deprived of their remedies for the protection and enforcement of their rights does not persuade. The Rome Statute is intended to complement national criminal laws and courts. Sufficient remedies are available under our national laws to protect our citizens against human rights violations and petitioners can always seek redress for any abuse in our domestic courts.”⁸⁴

Finally, of significance to citizens bringing up such issues in vindication of public interests are the so-called *non-Hohfeldian* plaintiffs. In *Tolentino v. Secretary of Finance*, the Court said: “We accept that this Court does not only adjudicate private cases; that public actions by ‘non-Hohfeldian’ or ideological plaintiffs are now cognizable provided they meet the standing requirement of the Constitution; that under Art. VIII, §1, ¶2 the Court has a ‘special function’ of vindicating constitutional rights.”⁸⁵ The Court explained that “[t]he term is Professor Jaffe’s (JUDICIAL CONTROL OF ADMINISTRATIVE ACTION (1965)) adopted by Justice Harlan in his dissent in *Flast v. Cohen*, 392 U.S. 83, 119-120, 20 L. Ed. 2d 947, 973 (1968) to distinguish between the personal and proprietary

⁸² *Id.*, at 814-815.

⁸³ 462 SCRA 622 (2005).

⁸⁴ *Id.*, at 631.

⁸⁵ 235 SCRA 630 (1994), at 686.

interest of traditional plaintiffs and the public interest of a citizen suing in a public action.”⁸⁶ Justice Harlan himself in his dissent in *Flast v. Cohen*, enunciated on his use of the term:

Surely it is plain that the rights and interests of taxpayers who contest the constitutionality of public expenditures are markedly different from those of “Hohfeldian” plaintiffs, including those taxpayer-plaintiffs who challenge the validity of their own tax liabilities. We must recognize that these non-Hohfeldian plaintiffs complain ... not as taxpayers, but as “private attorneys-general.” The interests they represent, and the rights they espouse, are bereft of any personal or proprietary coloration. They are, as litigants, indistinguishable from any group selected at random from among the general population, taxpayers and nontaxpayers alike. These are and must be, to adopt Professor Jaffe’s useful phrase, “public actions” brought to vindicate public rights.

It does not, however, follow that suits brought by non-Hohfeldian plaintiffs are excluded by the “case or controversy” clause of Article III of the Constitution from the jurisdiction of the federal courts. This and other federal courts have repeatedly held that individual litigants, acting as private attorneys-general, may have standing as “representatives of the public interest.” ... The various lines of authority are by no means free of difficulty, and certain of the cases may be explicable as involving a personal, if remote, economic interest, but I think that it is, nonetheless, clear that non-Hohfeldian plaintiffs as such are not constitutionally excluded from the federal courts. The problem ultimately presented by this case is, in my view, therefore to determine in what circumstances, consonant with the character and proper functioning of the federal courts, such suits should be permitted.⁸⁷

Justice Harlan noted that he “employed the phrases ‘Hohfeldian’ and ‘non-Hohfeldian’ plaintiffs to mark the distinction between the personal and proprietary interests of the traditional plaintiff, and the representative and public interests of the plaintiff in a public action. I am aware that we are confronted here by a spectrum of interests of varying intensities, but the distinction is sufficiently accurate, and convenient, to warrant its use at least for purposes of discussion.”⁸⁸

⁸⁶ *Ibid.*, n. 48.

⁸⁷ 392 U.S. 83 (1968), at 119-120.

⁸⁸ n. 5, 392 U.S., at 119.

Related to the foregoing is *Guazon v. De Villa*,⁸⁹ where the suit was brought by forty-one (41) petitioners to question the alleged “saturation drives” or the police conduct of zonal searches. The petitioners alleged that they were bonafide residents of Metro Manila and taxpayers and leaders in their respective communities. They maintained that they have a common or general interest in the preservation of the rule of law, protection of their human rights and the reign of peace and order in their communities. They also claimed to represent the citizens of Metro Manila who have similar interests and are so numerous that it is impracticable to bring them all before this Court. The Court held, however, that:

The remedy is not an original action for prohibition brought through a taxpayers’ suit. Where not one victim complains and not one violator is properly charged, *the problem is not initially for the Supreme Court. It is basically one for the executive departments and for trial courts. Well meaning citizens with only second hand knowledge of the events cannot keep on indiscriminately tossing problems of the executive, the military, and the police to the Supreme Court as if we are the repository of all remedies for all evils. The rules of constitutional litigation have been evolved for an orderly procedure in the vindication of rights.* They should be followed. If our policy makers sustain the contention of the military and the police that occasional saturation drives are essential to maintain the stability of government and to insure peace and order, clear policy guidelines on the behavior of soldiers and policemen must not only be evolved, they should also be enforced. A method of pinpointing human rights abuses and identifying violators is necessary.⁹⁰

Justice Cruz, in his dissent, remonstrated, arguing: “The ruling that the petitioners are not proper parties is a specious pretext for inaction. We have held that technical objections may be brushed aside where there are constitutional questions that must be met. There are many decisions applying this doctrine.”⁹¹

⁸⁹ 181 SCRA 623 (1990).

⁹⁰ *Id.*, at 638; Boldface supplied.

⁹¹ 181 SCRA 623 (1990), at 640.

2) *Taxpayers*

The citizens, burdened as they are with the obligation to help maintain the government through the payment of taxes, have the right to oversee and determine the legality and regularity of the expenditure of whatever they may have been compelled to shell out for the government. Since most of the activities of the government have to be supported by taxpayer's money, then that gives them the necessary standing to question what they may consider or perceive to be illegal, improper or wasteful expenditure of their money.⁹² As the Court noted in *Pascual v. Secretary of Public Works and Communications*:⁹³

Again, it is well settled that the validity of a statute may be contested only by one who will sustain a direct injury in consequence of its enforcement. Yet, there are many decisions nullifying, at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that "the expenditure of public funds by an officer of the State for the purpose of administering an *unconstitutional* act constitutes a *misapplication* of such funds," which may be enjoined at the request of a taxpayer. Although there are some decisions to the contrary, the prevailing view in the United States is stated in the American Jurisprudence as follows:

"In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute the general rule is that only persons individually affected, but also *taxpayers, have sufficient interest in preventing the illegal expenditure of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys.*" (11 Am. Jur. 761; italics supplied.)

Pascual then proceeded to refer to early Philippine cases where taxpayers were involved in actions questioning the expenditure of public funds:

[I]n the Province of Tayabas *vs.* Perez (56 Phil., 257), involving the expropriation of a land by the Province of Tayabas, two (2) taxpayers

⁹² "Taxpayers, ... have the right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute. The Court has held that they may assail the validity of a law appropriating public funds because expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds." (*Macalintal v. Commission on Elections*, 405 SCRA 614 [2004], at 625)

⁹³ 110 Phil. 331 (1960), at 342-343.

thereof were allowed to intervene for the purpose of contesting the price being paid to the owner thereof, as unduly exorbitant. It is true that in *Custodio vs. President of the Senate* (42 Off. Gaz., 1243), a taxpayer and employee of the Government was not permitted to question the constitutionality of an appropriation for backpay of members of Congress. However, in *Rodriguez vs. Treasurer of the Philippines* and *Barredo vs. Commission on Election* (84 Phil., 368; 45 Off. Gaz., 4411), we entertained the action of taxpayers impugning the validity of certain appropriations of public funds, and invalidated the same. Moreover, the reason that impelled this Court to take such position in said two (2) cases – the importance of the issues therein raised – is present in the case at bar. Again, like the petitioners in the *Rodriguez* and *Barredo* cases, petitioner herein is not merely a taxpayer. The province of Rizal, which he represents officially as its Provincial Governor, is our most populated political subdivision, and, the taxpayers therein bear a substantial portion of the burden of taxation, in the Philippines.⁹⁴

In *Sanidad v. Commission on Elections*,⁹⁵ the Court held:

At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds.... The interest of the aforementioned petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds. Moreover, as regards taxpayer's suits, this Court enjoys that open discretion to entertain the same or not. For the present case, We deem it sound to exercise that discretion affirmatively so that the authority upon which the disputed Decrees are predicated may be inquired into.

*Francisco, Jr. v. House of Representatives*⁹⁶ synthesized the rule on this particular aspect of standing:

In the case of a *taxpayer*, he is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a wastage of public funds through the enforcement of an invalid or unconstitutional law. Before he can invoke the power of judicial review, how-

⁹⁴ *Id.*, at 345.

⁹⁵ 73 SCRA 333 (1976), at 358-359.

⁹⁶ 415 SCRA 44 (2003), at 136-137.

ever, he must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he would sustain a direct injury as a result of the enforcement of the questioned statute or contract. It is not sufficient that he has merely a general interest common to all members of the public.

It follows, therefore, that when there is no expenditure of public funds to speak of there could hardly be any justification to clothe a taxpayer with standing to sue. The Court observed in *Lozada v. Commission on Elections*:⁹⁷

As taxpayers, petitioners may not file the instant petition, for nowhere therein is it alleged that tax money is being illegally spent. The act complained of is the inaction of the COMELEC to call a special election, as is allegedly its ministerial duty under the constitutional provision abovesited, and therefore, involves no expenditure of public funds. It is only when an act complained of, which may include a legislative enactment or statute, involves the illegal expenditure of public money that the so-called taxpayer suit may be allowed. What the case at bar seeks is one that entails expenditure of public funds which may be illegal because it would be spent for a purpose – that of calling a special election – which, as will be shown, has no authority either in the Constitution or a statute.

Nevertheless, in *Albano v. Reyes*,⁹⁸ the Court held that while no expenditure of public funds was involved under an assailed contract for the development, management and operation of the Manila International Container Terminal (MICT), considering such facility's important role in the economic development of the country and the magnitude of the financial consideration involved, public interest was definitely involved and this clothed petitioner with the legal personality under the disclosure provision of the Constitution to question it.

Then turning around, in what looks like a wayward pronouncement in *Gonzales v. Narvasa*, the Court held that "a taxpayer's action is properly brought only when there is an exercise by Congress of its taxing or spending power."⁹⁹ It went on to elucidate as follows:

⁹⁷ 120 SCRA 337 (1983), at 341.

⁹⁸ 175 SCRA 264 (1989), at 273.

⁹⁹ 337 SCRA 733 (2000), at 741.

[I]t is readily apparent that there is no exercise by Congress of its taxing or spending power. The PCCR was created by the President by virtue of E.O. No. 43, as amended by E.O. No. 70. Under section 7 of E.O. No. 43, the amount of 3 million is “appropriated” for its operational expenses “to be sourced from the funds of the Office of the President.... The appropriations for the PCCR were authorized by the President, not by Congress. In fact, there was no appropriation at all. “In a strict sense, *appropriation* has been defined ‘as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury,’ while *appropriation made by law* refers to ‘the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors.’” The funds used for the PCCR were taken from funds intended for the Office of the President, in the exercise of the Chief Executive’s power to transfer funds pursuant to section 25 (5) of article VI of the Constitution.¹⁰⁰

One wonders why public money allocated for the President should be beyond a taxpayer’s inquiry as to its use. “In essence, taxpayers are allowed to sue where there is a claim of illegal disbursement of public funds, or that public money is being deflected to any improper purpose, or where the petitioners seek to restrain the respondent from wasting public funds through the enforcement of an invalid or unconstitutional law.”¹⁰¹ If that be so, and further considering that it is a rule that a party suing as a taxpayer must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation,¹⁰² should not the question be, if ever it is relevant at all, whether the money was raised by taxation instead of determining who is spending? In any event, the mere fact that the money is part of the public treasury would mean that it could only be utilized for admittedly valid and legal or constitutional expenditures, a matter that courts should be obligated to look into upon demand by a taxpayer or even a mere citizen.

In the U.S., there was a time when it was thought that being a federal taxpayer did not necessarily clothe a party with sufficient standing

¹⁰⁰ *Id.*, at 743-744. One might as well ask: Who’s money is it anyway? Has it become less the people’s money because it has already been appropriated for the Office of the President?

¹⁰¹ *Brillantes v. Commission on Elections*, 432 SCRA 269 (2004), at 284.

¹⁰² *Del Mar v. Philippine Amusement and Gaming Corporation*, 346 SCRA 485 (2000), at 501, and *Bayan (Bagong Alyansang Makabayan) v. Zamora*, 342 SCRA 449 (2000), at 478-479.

to raise a constitutional issue because such party's "interest in the moneys of the Treasury ... is comparatively minute and indeterminable" and that "the effect upon future taxation, of any payment out of the [Treasury's] funds, ... [is] remote, fluctuating and uncertain." Therefore, the U.S. Supreme Court ruled that the taxpayer had failed to allege the type of "direct injury" necessary to confer standing.¹⁰³ In *Flast v. Cohen*, the Court held that

a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power. ... Under such circumstances, we feel confident that the questions will be framed with the necessary specificity, that the issues will be contested with the necessary adverseness and that the litigation will be pursued with the necessary vigor to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution. We lack that confidence in cases such as *Frothingham* where a taxpayer seeks to employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System.¹⁰⁴

Commenting on the U.S. rule on federal taxpayer suits *vis-a-vis* the Philippine setting, the Court in *Pascual v. Secretary of Public Works and Communications* explained why the liberal view on the standing of taxpayers was not adopted in *Frothingham* insofar as *federal* laws are concerned. This was based

upon the ground that the relationship of a taxpayer of the U.S. to its Federal Government is different from that of a taxpayer of a municipal corporation to its government. Indeed, under the *composite* system of government existing in the U.S., states of the Union are integral part of the Federation from an *international* viewpoint, but, *each state* enjoys internally a substantial measure of sovereignty, subject

¹⁰³ *Flast v. Cohen*, 392 U.S. 83 (1968), at 92, making reference to the Court's earlier decision in *Frothingham v. Mellon*, 262 U.S. 447 (1923).

Frothingham, which ruled that a federal taxpayer is without standing to challenge the constitutionality of a federal statute, stood for 45 years as an impenetrable barrier to suits against Acts of Congress brought by individuals who can assert only the interest of federal taxpayers. (392 U.S., at 85)

¹⁰⁴ 392 U.S., at 105-106.

to the limitations imposed by the Federal Constitution. In fact, the same was made by representatives of each state of the Union, not of the people of the U.S., except insofar as the former represented the people of the respective States, and the people of each State has, independently of that of the others, ratified said Constitution. In other words, the Federal Constitution and the Federal statutes have become binding upon the people of the U.S. in consequence of an act of, and, in this sense, *through* the respective states of the Union of which they are citizens. The peculiar nature of the relation between said people and the Federal Government of the U.S. is reflected in the election of its President, who is chosen directly, **not** by the people of the U.S., but by electors chosen by *each State*, in such manner as the legislature thereof may direct (Article II, section 2, of the Federal Constitution).

The relation between the people of the Philippines and its taxpayers, on the one hand, and the Republic of the Philippines, on the other, is not identical to that obtaining between the people and taxpayers of the U.S. and its Federal Government. It is closer, from a domestic viewpoint, to that existing between the people and taxpayers of each state and the government thereof, except that the authority of the Republic of the Philippines over the people of the Philippines is *more fully direct* than that of the states of the Union, insofar as the *simple* and *unitary* type of our national government is not subject to limitations analogous to those imposed by the Federal Constitution upon the states of the Union, and those imposed upon the Federal Government in the interest of the states of the Union. For this reason, the rule recognizing the right of taxpayers to assail the constitutionality of a legislation appropriating local or state public funds – which has been upheld by the Federal Supreme Court (*Crampton v. Zabriskie*, 101 U.S. 601) – has greater application in the Philippines than that adopted with respect to acts of Congress of the United States appropriating federal funds.¹⁰⁵

Thus, it may be said that in the Philippines, the rule on taxpayer's suit is more liberal and accommodating compared to what obtains in the U.S. Nevertheless, sight must not be lost of what the Supreme Court said in *Tan v. Macapagal* that "as far as a taxpayer's suit is concerned, this Court is not devoid of discretion as to whether or not it should be entertained."¹⁰⁶

¹⁰⁵ 110 Phil. 331 (1960), at 344-345.

¹⁰⁶ 43 SCRA 677 (1972), at 680.

3) *Legislators*

Members of Congress, as government officials particularly tasked and empowered by the Constitution to be responsible for the enactment of laws that govern and regulate the affairs of the State and of its citizens and inhabitants, may sometimes find that there are some incursions into their turf, or that some other officials – like the President – may be exercising a power or undertaking an act that should properly belong to the legislative branch. In such a case, there is an encroachment into their prerogatives for which reason they would have a valid reason to complain and resist. Hence, their standing to question any impairment of their powers and prerogatives.

To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.¹⁰⁷

Or, the legislative body itself, may be *the* proper party.¹⁰⁸ In *Senate of the Philippines v. Ermita*, the Court declared: “Verily, the Senate, including its individual members, has a substantial and direct interest over the outcome of the controversy and is *the* proper party to assail the constitutionality of E.O. 464.”¹⁰⁹ The heads of the two houses of Congress – the Senate President and the Speaker of the House – have likewise the requisite standing to prevent the usurpation of a constitutional prerogative of Congress, such as the canvassing of the votes for the President and the Vice President.¹¹⁰

¹⁰⁷ *Sanlakas v. Executive Secretary*, 421 SCRA 656 (2004), at 665, citing *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994), at 520. The Court also recognized the standing of legislators in *Guingona, Jr. v. Carague*, 196 SCRA 221 (1991), *Ople v. Torres*, 293 SCRA 141 (1998), *Del Mar v. Philippine Amusement and Gaming Corporation*, 346 SCRA 485 (2000), *David v. Macapagal-Arroyo*, 489 SCRA 160 (2006), *Senate of the Philippines v. Ermita*, 488 SCRA 1 (2006).

¹⁰⁸ See *Gonzales v. Macaraig, Jr.*, 191 SCRA 452 (1990). Here, the legal standing of the Senate, as an institution, was recognized.

¹⁰⁹ 488 SCRA 1 (2006), at 37.

¹¹⁰ *Brillantes, Jr. v. Commission on Elections*, 432 SCRA 269 (2004), at 284-285.

As a corollary, therefore, the standing of members of Congress cannot be upheld in the absence of a clear showing of any direct injury to their person or to the institution to which they belong,¹¹¹ or in the absence of a claim that a contract in question violates the rights of legislators or impermissibly intrudes into the domain of the Legislature.¹¹² There is this *obiter* in *Tan v. Macapagal*,¹¹³ however, stating that “[w]here a constitutional question is raised, a Senator has usually been considered as possessed of the requisite personality to bring a suit.”

Further, merely being a legislator would not justify any assertion of standing where the prerogatives allegedly impaired belong not to Congress itself but to a body which, even if closely intertwined with the legislative branch, is actually independent of it, such as the Commission on Appointments¹¹⁴ and the Electoral Tribunals.¹¹⁵ In *Pimentel, Jr. v.*

¹¹¹ *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994), at 520, and, *Bayan (Bagong Alyansang Makabayan) v. Zamora*, 342 SCRA 449 (2000), at 479-480.

¹¹² *Bagatsing v. Committee on Privatization*, 246 SCRA 334 (1995), at 346.

¹¹³ 43 SCRA 677 (1972), at 680. For authority it referred to *Mabanag v. Lopez Vito*, 78 Phil. 1 (1947).

¹¹⁴ “The Commission on Appointments is a creature of the Constitution. Although its membership is confined to members of Congress, said Commission is independent of Congress. The powers of the Commission do not come from Congress, but emanate directly from the Constitution. Hence, it is not an agent of Congress.” (*Cunanan v. Tan, Jr.*, 5 SCRA 1 [1962], at 3)

“[E]ven if the Commission on Appointments is composed of members of Congress, the exercise of its powers is executive and not legislative. The Commission on Appointments does not legislate when it exercises its power to give or withhold consent to presidential appointments.” (*Pimentel, Jr. v. Ermita*, 472 SCRA 587 [2005], at 594)

¹¹⁵ “The 1935 and 1987 Constitutions, which separate and distinctly apportion the powers of the three branches of government, lodge the power to judge contests relating to the election, returns and qualifications of members of the legislature in an independent, impartial and non-partisan body attached to the legislature and specially created for that singular purpose (i.e., the Electoral Commission and the Electoral Tribunals).” (*Lazatin v. House Electoral Tribunal*, 168 SCRA 391 [1988], at 401)

In *Bondoc v. Pineda*, 201 SCRA 792 (1991), at 807, the Court said:

*** The tribunal was created to function as a *nonpartisan* court although two-thirds of its members are politicians. It is a non-political body in a sea of politicians. What this Court had earlier said about the Electoral Commission applies as well to the electoral tribunals of the Senate and House of Representatives:

The purpose of the constitutional convention creating the Electoral Commission was to provide an *independent and impartial tribunal* for the determination of contests to legislative office, *devoid of partisan consideration*, and to transfer to that tribunal all the powers previously

Ermita, a case questioning the validity of appointment of *acting* Cabinet Secretaries even as Congress was in session, the Supreme Court said: “Considering the independence of the Commission on Appointments from Congress, it is error for petitioners to claim standing in the present case as members of Congress. President Arroyo’s issuance of acting appointments while Congress is in session impairs no power of Congress.”¹¹⁶ Accordingly, only those senators-petitioners who were members of the Commission on Appointments had the requisite *locus standi*. Neither would party-list representatives, by their status as alone, have the standing if they have not alleged that they are entitled to, or that they have been nominated by the party-list groups but have been unlawfully deprived of, seats in the House of Representatives Electoral Tribunal or the Commission on Appointments.¹¹⁷

Related to the foregoing is the standing also of local legislators who might have opposed the position taken by their colleagues. As was stated in *John Hay Peoples Alternative Coalition v. Lim*,¹¹⁸ “[c]ertainly then, petitioners Claravall and Yaranon,¹¹⁹ as city officials who voted against the *sanggunian* Resolution No. 255 (Series of 1994) supporting the issuance of the now challenged Proclamation No. 420, have legal standing to bring the present petition.”

4) Voters

Consistent with the idea of republicanism, the voters are an important element of the State, for an enfranchised citizenry – “as a particle of

exercised by the legislature in matters pertaining to contested elections of its members.

* * * * *

The Electoral Tribunals of the Senate and the House were created by the Constitution as special tribunals to be the sole judge of all contests relating to election returns and qualifications of members of the legislative houses, and, as such, are independent bodies which must be permitted to select their own employees, and to supervise and control them, without any legislative interference. (*Suanes vs. Chief Accountant of the Senate*, 81 Phil. 818.)

¹¹⁶ *Pimentel, Jr. v. Ermita*, 472 SCRA 587 (2005), at 595.

¹¹⁷ *Pimentel, Jr. v. House of Representatives Electoral Tribunal*, 393 SCRA 227 (2002), at 239.

¹¹⁸ 414 SCRA 356 (2003), at 372.

¹¹⁹ Duly elected councilors at the time.

popular sovereignty and as the ultimate source of the established authority,"¹²⁰ must necessarily have the personality to hold those persons he elected to office accountable for what they do or fail to do. "He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justifiable cases, to give it efficacy and not to stifle or frustrate it."¹²¹

Nevertheless, the Court declared in *Lozada v. Commission on Elections*¹²² that voters did not have the requisite interest or personality to qualify them to maintain and prosecute a petition to compel the Commission on Elections to call a special election to fill up a vacancy in the legislature.

The unchallenged rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement. In the case before Us, the alleged inaction of the COMELEC to call a special election to fill-up the existing vacancies in the Batasan Pambansa, standing alone, would adversely affect only the generalized interest of all citizens. Petitioners' standing to sue may not be predicated upon an interest of the kind alleged here, which is held in common by all members of the public because of the necessarily abstract nature of the injury supposedly shared by all citizens. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution. When the asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. As adverted to earlier, petitioners have not demonstrated any permissible personal stake, for, petitioner Lozada's interest as an alleged candidate and as a voter is not sufficient to confer standing. Petitioner Lozada does not only fail to inform the Court of the region he wants to be a candidate but makes indiscriminate demand that special election be called throughout the country. Even his plea as a voter is predicated on an interest held in common by all members of the public and does not demonstrate any injury specially directed to him in particular.¹²³

¹²⁰ *Moya v. Del Fierro*, 69 Phil. 199 (1939), at 204.

¹²¹ *Ibid.*

¹²² 120 SCRA 337 (1983), at 341-342.

¹²³ Some years later, in another case where the issue of standing of the petitioners was again in issue, Justice Cruz, dissenting in *Guazon v. De Villa*, 181 SCRA 623 (1990), at

Further, parties representing the National Citizens Movement for Free Elections (NAMFREL), the citizens' arm authorized to conduct an "unofficial" quick count during elections, have also been accorded standing to question certain acts of the Commission on Elections since such persons have sufficient, direct and personal interest in the manner by which the COMELEC would conduct the elections, including the counting and canvassing of the votes cast therein.¹²⁴

As a general proposition, therefore, a voter is recognized as possessed of a standing to sue when it comes to matters that affect him as an enfranchised member of society. Otherwise, if the case does not concern his right of suffrage, then he will not be entitled to any *locus standi*.¹²⁵

5) *Political Parties*

Individuals may be better able to achieve what they want if they cooperate, collaborate and act in concert with others as similarly minded and motivated as themselves. This is true whether in their personal lives or in regard to what they want the government to do, acting either as direct participants or as powers behind the scenes. Citizens and political parties, for that matter, have an inherent interest, being part of the body politic, to oversee the operations of the government and the acts of those momentarily possessed of governmental power. Moreover, it should not be lost sight of that political parties precisely exist for the purpose of enabling the people to have a part in the art and science of popular governance. Political parties are organized specifically to participate in governance through principles, philosophies and platforms. As the Supreme Court said in *Peralta v. Commission on Elections*:¹²⁶

[P]olitical parties constitute a basic element of the democratic institutional apparatus. Government derives its strength from the support, active or passive, of a coalition of elements of society. In modern

640, called *Lozada's* ruling on the standing issue therein as "an aberration." In *Guazon* itself, Justice Cruz wrote that "[t]he ruling that the petitioners are not proper parties is a specious pretext for inaction." (*Ibid.*)

¹²⁴ *Brillantes, Jr. v. Commission on Elections*, 432 SCRA 269 (2004), at 284.

¹²⁵ *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 289 SCRA 337 (1998), at 343.

¹²⁶ 82 SCRA 30 (1978), at 57. This was reiterated in *Laban ng Demokratikong Pilipino v. Commission on Elections*, 423 SCRA 665 (2004), at 686.

times the political party has become the instrument for the organization of societies. This is predicated on the doctrine that government exists with the consent of the governed. Political parties perform an “essential function in the management of succession to power, as well as in the process of obtaining popular consent to the course of public policy. They amass sufficient support to buttress the authority of governments; or, on the contrary, they attract or organize discontent and dissatisfaction sufficient to oust the government. In either case they perform the function of the articulation of the interests and aspirations of a substantial segment of the citizenry, usually in ways contended to be promotive of the national weal.

With regard to standing of political parties, the Court, in *Senate of the Philippines v. Ermita*, held that *Bayan Muna*, a national political party met the standing requirement since it obtained three seats in the House of Representatives in the 2004 elections and was, therefore, entitled to participate in the legislative process consonant with the declared policy underlying the party list system of affording citizens belonging to marginalized and underrepresented sectors, organizations and parties who lack well-defined political constituencies to contribute to the formulation and enactment of legislation that will benefit the nation.¹²⁷ However, with respect to another political party, PDP-Laban, which asseverated that it was clothed with legal standing in view of the transcendental issues raised in its petition which the Court needed to resolve in order to avert a constitutional crisis, the Court qualified its right to be accorded standing on the ground of transcendental importance by requiring that it must first establish (1) the character of the funds (that it is public) or other assets involved in the case, (2) the presence of a clear case of disregard of a cons-

¹²⁷ Section 2 of The Party-List System Act (Republic Act 7941) reads:

“SEC. 2. *Declaration of Policy.* – The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.”

titutional or statutory prohibition by the public respondent agency or instrumentality of the government, and (3) the lack of any party with a more direct and specific interest in raising the questions being raised. The Court then went on to state that since the first and last determinants were not present, no public funds or assets were involved and there were other petitioners who had direct and specific interests in the resolution of the controversy, PDP-Laban was bereft of standing. "Its allegation that E.O. 464 hampers its legislative agenda is vague and uncertain, and at best is only a 'generalized interest' which it shares with the rest of the political parties. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution. In fine, PDP-Laban's alleged interest as a political party does not suffice to clothe it with legal standing."¹²⁸

On motion for reconsideration, the Court explicated on the reasons for the difference in treatment of the two political parties, one of which is a party-list organization (*Bayan Muna*) and the other a political party (*PDP Laban*). It said that there are fundamental distinctions between the two which called for the Court's contrasting rulings:

While both parties have members in Congress, PDP-Laban, unlike *Bayan Muna*, is not represented therein as a party-list organization. The PDP-Laban members in Congress were elected to represent, **not their party**, but their constituents, i.e., their legislative district in the case of representatives, or the nation at large in the case of senators. The *Bayan Muna* members in Congress, on the other hand, were elected precisely to represent their party. In fact, in light of the party-list system, the representatives from *Bayan Muna* may be said to have been elected only indirectly, since it was *Bayan Muna* itself, as a party, which was voted for in the last elections where it received enough votes to entitle it to three seats in the House of Representatives. This, again, contrasts with the situation of the PDP-Laban members in Congress who were all elected *in their individual capacities*.

Indeed, the rights of the *Bayan Muna* representatives are so intertwined with their party's right to representation in Congress that, in the event they change their party affiliation during their term of office, they would have to forfeit their seat – a rule which clearly does not apply to the PDP-Laban members in Congress.

¹²⁸ 488 SCRA 1 (2006), at 39-40. E.O. 464 barred officials in the Executive Branch from appearing in congressional investigations sans presidential consent.

Bayan Muna is thus entitled to participate in the legislative process in a way that cannot be said of PDP-Laban.¹²⁹

In *Velarde v. Social Justice Society*,¹³⁰ a case brought by a political party assailing the purported practice of some religious leaders of endorsing political candidates, and seeking a declaration by the courts that such practice is violative of the constitutional injunction mandating separation of Church and State,¹³¹ the Court, after stating that parties bringing suits challenging the constitutionality of a law, an act or a statute must show not only that the law or act is invalid, but also that such parties have sustained or are in immediate or imminent danger of sustaining some direct injury as a result of its enforcement, and that they must demonstrate that they have been, or are about to be, denied some right or privilege to which they are lawfully entitled, or that they are about to be subjected to some burdens or penalties by reason of the statute or act complained of, went on to observe that

there was no showing in the Petition for Declaratory Relief that SJS as a political party or its members as registered voters would be adversely affected by the alleged acts of the respondents below, if the question at issue was not resolved. There was no allegation that SJS had suffered or would be deprived of votes due to the acts imputed to the said respondents. Neither did it allege that any of its members would be denied the right of suffrage or the privilege to be voted for a public office they are seeking.

Finally, the allegedly keen interest of its “thousands of members who are citizens-taxpayers-registered voters” is too general and beyond the contemplation of the standards set by our jurisprudence. Not only is the presumed interest impersonal in character; it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing.¹³²

It could thus be seen that in regard to political parties, their direct relation to the issue presented before the courts, as well as the availability of a relief for them have a direct bearing on the question of their standing.

¹²⁹ *Senate of the Philippines v. Ermita*, 495 SCRA 170 (2006), at 180-181.

¹³⁰ 428 SCRA 283 (2004).

¹³¹ “The separation of Church and State shall be inviolable.” (CONST., Art. III, §6)

¹³² 428 SCRA, at 296-297.

6) *Associations and Organizations*

It is part of the rights enshrined in the Constitution for individuals to form and join associations and organizations of their choice.¹³³ It is of course familiar learning that people could be much more effective collectively than individually. As the saying goes, in union there is strength. Again, organizations and associations need not necessarily be organized like political parties if their main concern is not participation in the affairs of the government. They may be more interested in promoting some other interests. But even in this regard, they or their members may still be affected by certain actions, policies and programs of the government, for which they may directly take action to question the same. “The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents”¹³⁴ for it “is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.”¹³⁵

Similarly, the Court also recognized the standing of an association of homeowners in a government reservation who were affected by the government program’s rules and regulations relating to the selection process of beneficiaries and lot allocations. The Court declared:

Thus, petitioner association may assail those provisions in the IRR which it believes to be unfavorable to the rights of its members. Contrary to the OSG’s allegation that the failure of petitioner association and its members to qualify as beneficiaries effectively bars them from questioning the provisions of the IRR, such circumstance precisely operates to confer on them the legal personality to assail the IRR. Certainly, petitioner and its members have sustained direct

¹³³ “The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.” (CONST., Art. III, §8)

The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.” (CONST., Art. II, §23)

¹³⁴ *Executive Secretary v. Court of Appeals*, 429 SCRA 81 (2004), at 96. See also *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, 239 SCRA 386 (1994).

¹³⁵ *Executive Secretary v. Court of Appeals*, 429 SCRA 81 (2004), at 97.

injury arising from the enforcement of the IRR in that they have been disqualified and eliminated from the selection process.¹³⁶

In *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, however, the Court refused to accord standing to an organization of lawyers of radio and television broadcasting companies asserting an interest as such lawyers and as citizens, taxpayers, and registered voters in assailing the constitutionality of a legal provision for the taking of air time from radio and television broadcasting stations without payment of just compensation. The Court declared, insofar as the petitioner organization's members were suing on behalf of others not before the Court:

Nor indeed as a corporate entity does TELEBAP have standing to assert the rights of radio and television broadcasting companies. Standing *jus tertii* will be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the third party cannot assert his constitutional right, or that the right of the third party will be diluted unless the party in court is allowed to espouse the third party's constitutional claim. None of these circumstances is here present. The mere fact that TELEBAP is composed of lawyers in the broadcast industry does not entitle them to bring this suit in their name as representatives of the affected companies.¹³⁷

Nevertheless, the Court opted to decide the case on the merits since the other petitioner, a broadcast company, appeared to have the requisite standing to bring the constitutional challenge.

Prescinding from the foregoing, it is noteworthy that the U.S. Supreme Court has also recognized the standing of certain persons to assail the constitutionality of statutes predicated on their association or relationship with others. In *Griswold v. Connecticut*,¹³⁸ a case involving prosecution of persons who gave professional advice on birth control, the U.S. Supreme Court recognized the standing of physicians to raise the constitutional rights of the married people with whom they had a professional relationship, holding that "[t]he rights of husband and wife,

¹³⁶ *Holy Spirit Homeowners Association, Inc. v. Defensor*, 497 SCRA 581 (2006), at 592.

¹³⁷ 289 SCRA 337 (1998), at 344.

¹³⁸ 381 U.S. 479 (1965), 481.

pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.” Likewise, in *National Association for the Advancement of Colored People v. Alabama*,¹³⁹ a case about the right of an association to resist inquiry into its membership list, the American Supreme Court rejected the argument that the Association lacked standing to assert constitutional rights pertaining to its members, who were not parties to the litigation. It explained:

To limit the breadth of issues which must be dealt with in particular litigation, this Court has generally insisted that parties rely only on constitutional rights which are personal to themselves. *Tileston v. Ullman*, 318 U.S. 44; Robertson and Kirkham, *Jurisdiction of the Supreme Court* (1951 ed.), § 298. This rule is related to the broader doctrine that constitutional adjudication should where possible be avoided. See *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-348 (concurring opinion). The principle is not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court. See *Barrows v. Jackson*, 346 U.S. 249, 255-259; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 183-187 (concurring opinion).

In *Pierce v. Society of Sisters*,¹⁴⁰ private schools were permitted to assert the substantive due process rights of the parents and children as third parties. “The soundest rationale for Court’s decision is that the third parties’ enjoyment of their rights in *Pierce* depended on the litigants’ (the schools’) *freedom from derivative injury* – the injury of having to shut down for want of students.”¹⁴¹

While the Philippine Supreme Court may have recognized the standing of associations and organizations, there were also occasions where it became more restrictive than latitudinarian. In *Integrated Bar of the Philippines v. Zamora*,¹⁴² for instance, the Court held that the mere fact that a national organization of lawyers might be interested in upholding the rule of law was not enough reason to vest standing upon such organization:

¹³⁹ 357 U.S. 449 (1958), at 459.

¹⁴⁰ 381 U.S. 479 (1965), at 481.

¹⁴¹ Tribe, *American Constitutional Law*. Vol. I [3rd ed. (2000)], at 439.

¹⁴² 338 SCRA 81 (2000).

The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines.¹⁴³

Yet, even as the Court refused to accord standing to the IBP, it went on to state: “This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.”¹⁴⁴

Of significance in this regard, too, is the somersault of the Court in two related cases filed by a civic organization, recognizing initially its standing then repudiating it in a subsequent case within a period slightly over a year. In *Kilosbayan, Incorporated v. Guingona*,¹⁴⁵ the Court said of the standing of the petitioners¹⁴⁶ who questioned a joint venture agreement entered into by the Philippine Charity Sweepstakes Office (PCSO) with a private corporation: “The preliminary issue on the *locus standi* of the petitioners should, indeed, be resolved in their favor. A party’s standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of the issues raised.”¹⁴⁷ The following year, after the PCSO entered into a different contract – an Equipment Lease Agreement – as a result of the suit earlier filed, Kilosbayan and its co-petitioners in *Guingona* again went to Court

¹⁴³ *Id.*, at 100.

¹⁴⁴ *Id.*, at 101.

¹⁴⁵ 232 SCRA 110 (1994).

¹⁴⁶ Kilosbayan is a non-stock domestic corporation composed of civic-spirited citizens, pastors, priests, nuns, and lay leaders who are committed to the cause of truth, justice, and national renewal. The other petitioners, except for three members of Congress who were suing in their capacities as such members and as taxpayers and concerned citizens, sued in their capacities as members of the Board of Trustees of Kilosbayan and as taxpayers and concerned citizens.

¹⁴⁷ *Id.*, at 134.

questioning the new arrangement. This time, however, the Court found that they had no standing, the earlier case notwithstanding. The Court rationalized:

Stare decisis is usually the wise policy. But in this case, concern for stability in decisional law does not call for adherence to what has recently been laid down as the rule. The previous ruling sustaining petitioners' intervention may itself be considered a departure from settled rulings on "real parties in interest" because no constitutional issues were actually involved. Just before that ruling this Court had denied standing to a party who, in questioning the validity of another form of lottery, claimed the right to sue in the capacity of taxpayer, citizen and member of the Bar. (*Valmonte v. Philippine Charity Sweepstakes*, G.R. No. 78716, Sept. 22, 1987)...¹⁴⁸

* * * * *

There is an additional reason for a re-examination of the ruling on standing. The voting on petitioners' standing in the previous case was a narrow one, with seven (7) members sustaining petitioners' standing and six (6) denying petitioners' right to bring the suit. The majority was thus a tenuous one that is not likely to be maintained in any subsequent litigation. In addition, there have been changes in the members of the Court, with the retirement of Justices Cruz and Bidin and the appointment of the writer of this opinion and Justice Francisco. Given this fact it is hardly tenable to insist on the maintenance of the ruling as to petitioners' standing.¹⁴⁹

Then it added:

Not only is petitioners' standing a legal issue that may be determined again in this case. It is, strictly speaking, not even the issue in this case, since standing is a concept in constitutional law and here no constitutional question is actually involved. The issue in this case is whether petitioners are the "real parties in interest" within the meaning of Rule 3, §2 of the Rules of Court which requires that "Every action must be prosecuted and defended in the name of the real party in interest."¹⁵⁰

In regard to people's organizations, the Court also made the following pronouncement in *Sanlakas v. Executive Secretary*:¹⁵¹

¹⁴⁸ *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540 (1995), at 558.

¹⁴⁹ *Id.*, at 558-559.

¹⁵⁰ *Id.*, at 562.

¹⁵¹ 421 SCRA 656 (2004), at 667.

Even assuming that petitioners are “people’s organizations,” this status would not vest them with the requisite personality to question the validity of the presidential issuances, as this Court made clear in *Kilosbayan v. Morato*:

The Constitution provides that “the State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means,” that their right to “effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged.” (Art. XIII, §§15-16)

These provisions have not changed the traditional rule that only real parties in interest or those with standing, as the case may be, may invoke the judicial power. The jurisdiction of this Court, even in cases involving constitutional questions, is limited by the “case and controversy” requirement of Art. VIII, §5. This requirement lies at the very heart of the judicial function. It is what differentiates decision-making in the courts from decisionmaking in the political departments of the government and bars the bringing of suits by just any party.

To the extent, therefore, that the interests of certain associations and organizations or those of their members are directly affected by governmental action, the associations may bring up a suit for their or their members’ benefit. This is recognized as a sufficient link between the issue presented and the personality of the suitor before the courts.

7) *Local Government Units*

The Constitution declares as one of its basic policies the guarantee of local autonomy.¹⁵² It is only fitting therefore that they should also have a personality and standing to question national government acts that affect their autonomy and well-being.

¹⁵² “The State shall ensure the autonomy of local governments.” (CONST., Art. II, §25)

“The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries,

In *John Hay Peoples Alternative Coalition v. Lim*,¹⁵³ the Court recognized the personality of a local government unit to question the legality of a presidential issuance, holding that:

The grant by the law on local government units of the right of concurrence on the bases' conversion is equivalent to vesting a legal standing on them, for it is in effect a recognition of the real interests that communities nearby or surrounding a particular base area have in its utilization. Thus, the interest of petitioners, being inhabitants of Baguio, in assailing the legality of Proclamation No. 420, is personal and substantial such that they have sustained or will sustain direct injury as a result of the government act being challenged. Theirs is a material interest, an interest in issue affected by the proclamation and not merely an interest in the question involved or an incidental interest, for what is at stake in the enforcement of Proclamation No. 420 is the very economic and social existence of the people of Baguio City.

In *Province of Batangas v. Romulo*,¹⁵⁴ the Court held that a local government unit seeking relief in order to protect or vindicate an interest of its own, and of the other LGUs, pertaining to their interest in their share in the national taxes or the Internal Revenue Allotment (IRA), has the requisite standing to bring suit.

When one comes to think of it, local government units have their own legal personalities and interests which could be affected or prejudiced as well by the acts, policies and programs of the national government. To the extent that these interests and concerns may be implicated by such governmental actions, to that extent may the local government units claim standing to complain.

The foregoing overview has shown how the Court through the years has accorded standing, or refused to recognize the same, in regard to certain persons and other parties appearing before it. There has been no change in the Court's disposition in connection with this question even after the adoption of the 1987 Constitution. And, as to be shown shortly, the Court's way out of the corner is to recognize an exception founded on the importance of the issue presented before it.

powers and functions and duties of local officials, and all other matters relating to the organization and operation of local units." (Art. X, §3)

¹⁵³ 414 SCRA 356 (2003), at 371-372.

¹⁵⁴ 429 SCRA 736 (2004), at 756.

TRANSCENDENTAL OR PARAMOUNT IMPORTANCE CASES

While the Court may declare that certain suitors before it do not have the requisite personality to maintain an action questioning the constitutionality of a government act, still it has found a way to go around this by invoking exceptions brought about by the nature of the issue elevated to it for adjudication and resolution, *viz.*, that it is one of transcendental or paramount importance or other terms of similar import.¹⁵⁵ The party's standing in such a case then is determined by the substantive merit of his case or a preliminary estimate thereof.¹⁵⁶ In *Lim v. Executive Secretary*, the Court declared:

Given the primordial importance of the issue involved, it will suffice to reiterate our view on this point in a related case:

Notwithstanding, in view of the paramount importance and the constitutional significance of the issues raised in the petitions, this Court, in the exercise of its sound discretion, brushes aside the procedural barrier and takes cognizance of the petitions, as we have done in the early **Emergency Powers Cases**, where we had occasion to rule:

“*** ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were involving only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that ‘**transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.**’ We have since then applied the exception in many other cases.” [citation omitted]

This principle was reiterated in the subsequent cases of **Gonzales vs. COMELEC**, **Daza vs. Singson**, and **Basco vs. Phil. Amusement and Gaming Corporation**, where we emphatically held:

Considering however the importance to the public of the case at bar, and in keeping with the Court's duty, under the 1987 Constitution, to determine whether or not the other

¹⁵⁵ In *Kilusang Mayo Uno v. Director-General, National Economic Development Authority*, 487 SCRA 623 (2006), at 640, the Court used the terms “paramount public concern” and “transcendental significance.” In *Del Mar v. Philippine Amusement and Gaming Corporation*, 346 SCRA 485 (2000), at 502, the term used was “issue of overarching significance.”

¹⁵⁶ *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 289 SCRA 337 (1998), at 343.

branches of the government have kept themselves within the limits of the Constitution and the laws that they have not abused the discretion given to them, the Court has brushed aside technicalities of procedure and has taken cognizance of this petition. * * *

Again, in the more recent case of **Kilosbayan vs. Guingona, Jr.**, this Court ruled that in cases of transcendental importance, **the court may relax the standing requirements and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review.**¹⁵⁷

Further, the Court, in *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*,¹⁵⁸ surveyed the cases where it liberalized the rule on standing based on the issue raised, thus relegating to the background the personality of the petitioner bringing the suit:

Assuming *arguendo* that petitioner is not possessed of the standing to sue, this court is ready to brush aside this barren procedural infirmity and recognize the legal standing of the petitioner in view of the transcendental importance of the issues raised. And this act of liberality is not without judicial precedent. As early as the *Emergency Powers Cases*, this Court had exercised its discretion and waived the requirement of proper party. In the recent case of *Kilosbayan, Inc., et. al. v. Teofisto Guingona, Jr., et. al.*, we ruled in the same lines and enumerated some of the cases where the same policy was adopted, *viz*:

* * * A party's standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of the issues raised. In the landmark *Emergency Powers Cases*, [G.R. No. L-2044 (*Araneta v. Dinglasan*); G.R. No. L-2756 (*Araneta v. Angeles*); G.R. No. L-3054 (*Rodriguez v. Tesorero de Filipinas*); G.R. No. L-3055 (*Guerrero v. Commissioner of Customs*); and G.R. No. L-3056 (*Barredo v. Commission on Elections*), 84 Phil. 368 (1949)], this Court brushed aside this technicality because 'the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure. (*Avelino vs. Cuenco*, G.R. No. L-2621).' Insofar as taxpayers' suits are concerned, this Court had declared that it 'is not devoid

¹⁵⁷ 380 SCRA 739 (2002), at 750-751.

¹⁵⁸ 239 SCRA 386 (1994).

of discretion as to whether or not it should be entertained,' (Tan v. Macapagal, 43 SCRA 677, 680 [1972]) or that it 'enjoys an open discretion to entertain the same or not.' [Sanidad v. COMELEC, 73 SCRA 333 (1976)].

* * * * *

In line with the liberal policy of this Court on *locus standi*, ordinary taxpayers, members of Congress, and even association of planters, and non-profit civic organizations were allowed to initiate and prosecute actions before this court to question the constitutionality or validity of laws, acts, decisions, rulings, or orders of various government agencies or instrumentalities. Among such cases were those assailing the constitutionality of (a) R.A. No. 3836 insofar as it allows retirement gratuity and commutation of vacation and sick leave to Senators and Representatives and to elective officials of both Houses of Congress (Philippine Constitution Association, Inc. v. Gimenez, 15 SCRA 479 [1965]); (b) Executive Order No. 284, issued by President Corazon C. Aquino on 25 July 1987, which allowed members of the cabinet, their undersecretaries, and assistant secretaries to hold other government offices or positions (Civil Liberties Union v. Executive Secretary, 194 SCRA 317 [1991]); (c) the automatic appropriation for debt service in the General Appropriations Act (Guingona v. Carague, 196 SCRA 221 [1991]); (d) R.A. No. 7056 on the holding of desynchronized elections (Osmeña v. Commission on Elections, 199 SCRA 750 [1991]); (e) P.D. No. 1869 (the charter of the Philippine Amusement and Gaming Corporation) on the ground that it is contrary to morals, public policy, and order (Basco v. Philippine Gaming and Amusement Corp., 197 SCRA 52 [1991]); and (f) R.A. No. 6975, establishing the Philippine National Police. (Carpio v. Executive Secretary, 206 SCRA 290 [1992]).

Other cases where we have followed a liberal policy regarding *locus standi* include those attacking the validity or legality of (a) an order allowing the importation of rice in the light of the prohibition imposed by R.A. No. 3452 (Iloilo Palay and Corn Planters Association, Inc. v. Feliciano, 13 SCRA 377 [1965]); (b) P.D. Nos. 991 and 1033 insofar as they proposed amendments to the Constitution and P.D. No. 1031 insofar as it directed the COMELEC to supervise, control, hold, and conduct the referendum-plebiscite on 16 October 1976 (Sanidad v. Commission on Elections, *supra*); (c) the bidding for the sale of the 3,179 square meters of land at Roppongi, Minato-ku, Tokyo, Japan (Laurel v. Garcia, 187 SCRA 797 [1990]); (d) the approval without hearing by the Board of Investments of the amended application of the Bataan Petrochemical Corporation to transfer the site of its plant from Bataan to Batangas and the validity of such transfer and the shift of feedstock from naphtha only to naphtha and/or

liquefied petroleum gas (*Garcia v. Board of Investments*, 177 SCRA 374 [1989]; *Garcia v. Board of Investments*, 191 SCRA 288 [1990]); (e) the decisions, orders, rulings, and resolutions of the Executive Secretary, Secretary of Finance, Commissioner of Internal Revenue, Commissioner of Customs, and the Fiscal Incentives Review Board exempting the National Power Corporation from indirect tax and duties (*Maceda v. Macaraig*, 197 SCRA 771 [1991]); (f) the orders of the Energy Regulatory Board of 5 and 6 December 1990 on the ground that the hearings conducted on the second provisional increase in oil prices did not allow the petitioner substantial cross-examination; (*Maceda v. Energy Regulatory Board*, 199 SCRA 454 [1991]); (g) Executive Order No. 478 which levied a special duty of P0.95 per liter of imported oil products (*Garcia v. Executive Secretary*, 211 SCRA 219 [1992]); (h) resolutions of the Commission on Elections concerning the apportionment, by district, of the number of elective members of Sanggunians (*De Guia vs. Commission on Elections*, 208 SCRA 420 [1992]); and (i) memorandum orders issued by a Mayor affecting the Chief of Police of Pasay City (*Pasay Law and Conscience Union, Inc. v. Cuneta*, 101 SCRA 662 [1980]).

In the 1975 case of *Aquino v. Commission on Elections* (62 SCRA 275 [1975]), this Court, despite its unequivocal ruling that the petitioners therein had no personality to file the petition, resolved nevertheless to pass upon the issues raised because of the far-reaching implications of the petition. We did no less in *De Guia v. COMELEC (Supra)* where, although we declared that De Guia “does not appear to have *locus standi*, a standing in law, a personal or substantial interest,” we brushed aside the procedural infirmity “considering the importance of the issue involved, concerning as it does the political exercise of qualified voters affected by the apportionment, and petitioner alleging abuse of discretion and violation of the Constitution by respondent.”¹⁵⁹

In *Osmeña v. Comelec*,¹⁶⁰ the Court held that where serious constitutional questions are involved, the “transcendental importance” to the public of the cases involved demands that they be settled promptly and definitely, brushing aside technicalities of procedures. On the other hand, in *Velarde v. Social Justice Society*,¹⁶¹ the Court, after noting that in not a few cases the Court has liberalized the *locus standi* requirement said:

¹⁵⁹ 239 SCRA, at 402-404.

¹⁶⁰ 199 SCRA 750 (1991), at 756.

¹⁶¹ 428 SCRA 283 (2004).

Similarly in the instant case, the Court deemed the constitutional issue raised in the SJS Petition to be of paramount interest to the Filipino people. The issue did not simply concern a delineation of the separation between church and state, but ran smack into the governance of our country. The issue was both transcendental in importance and novel in nature, since it had never been decided before.¹⁶²

In the end, though, the Court held that even if it could have exempted the case from “the stringent *locus standi* requirement, such heroic effort would be futile because the transcendental issue cannot be resolved anyway” due to procedural infirmities and shortcomings.¹⁶³

In fine, “in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper *even where there is no direct injury to the party claiming the right of judicial review.*”¹⁶⁴ Thus, in contrast to the basic rule on *locus standi* that it is the personality of the one bringing suit which is examined, what is rather focused on is the degree of importance of the issue presented, pushing to the background the matter about appropriateness of the party before the court. The party takes a backseat or secondary importance – the person is subordinated to, or subsumed by, the issue he presents.

But what constitutes issues of transcendental importance? The Court provided guidelines in *Francisco, Jr. v. House of Representatives* in this wise:

There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised. Applying these determinants, this Court is satisfied that the issues raised herein are indeed of transcendental importance.¹⁶⁵

¹⁶² *Id.*, at 297.

¹⁶³ *Id.*, at 298.

¹⁶⁴ *Coconut Oil Refiners Association, Inc. v. Torres*, 465 SCRA 47 (2005), at 62; Emphasis supplied.

¹⁶⁵ 415 SCRA 44 (2003), at 139; Reiterated in *Senate of the Philippines v. Ermita*, 488 SCRA 1 (2006), at 35.

Just as soon as it had set the guidelines, the Court then proceeded to provide a caveat:

In not a few cases, this Court has in fact adopted a liberal attitude on the *locus standi* of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people, as when the issues raised are of paramount importance to the public. *Such liberality does not, however, mean that the requirement that a party should have an interest in the matter is totally eliminated. A party must, at the very least, still plead the existence of such interest, it not being one of which courts can take judicial notice.*¹⁶⁶

It is to be noted likewise that the Court, in brushing aside the question of standing, has invariably characterized the issue as a procedural technicality or matter which could thus explain the facility with which it may be pushed to the sidelines. But this manner of treating the rule on *locus standi* has brought about a remonstrance from Justice (now, Chief Justice) Puno who observed:

It is my respectful submission, however, that we should re-examine *de Guia*.¹⁶⁷ It treated the rule on *locus standi* as a mere procedural rule. It is not a plain procedural rule but a constitutional requirement derived from section 1, Article VIII of the Constitution which mandates courts of justice to settle *only* "actual controversies involving rights which are legally demandable and enforceable." The phrase has been construed since time immemorial to mean that a party in a constitutional litigation must demonstrate a standing to sue. By downgrading the requirement on *locus standi* as a procedural rule which can be discarded in the name of public interest, we are in effect amending the Constitution by judicial *fiat*.¹⁶⁸

It would thus be seen that treating *locus standi* in a way by which exceptions could be carved out in order to allow certain parties to gain a footing to question certain governmental actions is not as reassuring a rule as one that depends on solid ground upon which to stand. In this

¹⁶⁶ *Id.*, at 139; Emphasis supplied.

¹⁶⁷ *De Guia v. Commission on Elections*, 208 SCRA 420 (1992).

¹⁶⁸ Dissenting opinion in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 177. Earlier in his opinion, he also wrote: "With due respect to the majority opinion, I wish to focus on the interstices of *locus standi*, a concept described by Prof. Paul Freund as 'among the most amorphous in the entire domain of public law.' The requirement of standing to sue inheres from the definition of judicial power. *It is not merely a technical rule of procedure which we are at liberty to disregard.*" (Emphasis supplied)

regard, this is provided for by the novel provisions of the Constitution adopted after the so-called “People Power” Revolution of 1986. That Charter contains enough new provisions that empower the people to have a greater say or oversight on the affairs of their government through legislation, execution, and, adjudication.

THE PEOPLE POWER REVOLUTION OF 1986

In February 1986, the Filipino people staged the so-called EDSA People Power Revolution whereby they succeeded in overthrowing the existing political order in a relatively peaceful manner – they did not have to resort to the usual violence nor the use of arms that normally is associated with revolutions.¹⁶⁹ “The EDSA revolution of 1986 restored the reality that the people’s might is not a myth.”¹⁷⁰

Following this momentous event in the nation’s history was the subsequent adoption of a “People Power Constitution,”¹⁷¹ a new covenant and charter infused with provisions designed to engender greater people empowerment *vis-à-vis* their government.¹⁷² The 1987 Constitution includes people power as an article of faith and Congress was mandated to pass laws for its effective exercise.¹⁷³

Nevertheless, along with the exultation that came with new-found freedom and liberation, however, appears to be the tendency to take things for granted. As the Court observed in *Bayan v. Ermita*, relative to the need for local governments to set up freedom parks in their respective localities pursuant to a law enacted shortly before that momentous event in Philippine history:

¹⁶⁹ “It was through the February 1986 revolution, a relatively peaceful one, and more popularly known as the ‘people power revolution’ that the Filipino people tore themselves away from an existing regime.” (*Letter of Associate Justice Reynato S. Puno*, 210 SCRA 589 [1992], at 597)

¹⁷⁰ *Garcia v. Commission on Elections*, 227 SCRA 100 (1993), at 103.

¹⁷¹ Justice Azcuna, separate opinion in *Lambino v. Commission on Elections*, G.R. Nos. 174153 and 174299, 25 October 2006, at 4, Advance Sheets.

¹⁷² “In February 1986, however, our people more than exercised their right of recall for they resorted to revolution and they booted out of office the highest elective officials of the land. The successful use of people power to remove public officials who have forfeited the trust of the electorate led to its firm institutionalization of the 1987 Constitution. Its Article XIII expressly recognized the Role and Rights of People’s Organizations ...” (*Garcia v. Commission on Elections*, 227 SCRA 100 [1993], at 109)

¹⁷³ *Garcia v. Commission on Elections*, 227 SCRA 100 (1993), at 103.

The Solicitor General stated during the oral arguments that, to his knowledge, only Cebu City has declared a freedom park – Fuente Osmeña. That of Manila, the Sunken Gardens, has since been converted into a golf course, he added.

If this is so, the degree of observance of B.P. No. 880's mandate that every city and municipality set aside a freedom park within six months from its effectivity in 1985, or *20 years ago*, would be pathetic and regrettable. The matter appears to have been taken for granted amidst the swell of freedom that rose from the peaceful revolution of 1986.¹⁷⁴

To the same extent, the effects and ramifications on *locus standi* of the people power provisions of the Charter that was adopted by the nation following the 1986 "People Power Revolution" seem to have been ignored or overlooked altogether.

PEOPLE EMPOWERMENT PROVISIONS OF THE 1987 CONSTITUTION

"The intent of the [1987] Constitution is clear: to give genuine power to the people, not only by giving more law to those who have less in life, but more so by enabling them to become veritable lawmakers themselves."¹⁷⁵ And, as then Justice (now, Chief Justice) Puno wrote in regard to people power and the 1987 Constitution: "In a stream of cases, this Court has rhapsodized people power as expanded in the 1987 Constitution. On October 5, 1993, we observed that people's might is no longer a myth but an article of faith in our Constitution. On September 30, 1994, we postulated that people power can be trusted to check excesses of government and that any effort to trivialize the effectiveness of people's initiatives ought to be rejected.... *The Constitution calls us to encourage people empowerment to blossom in full.*"¹⁷⁶

¹⁷⁴ 488 SCRA 226 (2006), at 263.

¹⁷⁵ *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 359 SCRA 698 (2001), at 719.

¹⁷⁶ Dissenting opinion in *Santiago v. Commission on Elections*, 270 SCRA 106 (1997), at 176-177.

"The 1987 Constitution is borne of the conviction that people power can be trusted to check the excesses of government." (*Garcia v. Commission on Elections*, 237 SCRA 279 [1995], at 282)

A glance at the 1987 Constitution, considered in light of the previous constitutions, would show the inclusion of several new provisions which, on closer analysis and study, could and would support the proposition that they should mandate a liberalized approach to, if not an overhaul of, the traditional manner by which the Court has been dealing with the issue of *locus standi*. Significantly, it has been observed that the present Charter is less trusting of officialdom.

“In February 1986, the people took a direct hand in the determination of their destiny. They toppled down the government of former President Marcos in a historic bloodless revolution. *The Constitution was rewritten to embody the lessons of their sad experience. One of the lessons is the folly of completely surrendering the power to make laws to the legislature.* The result, in the perceptive words of Father Bernas, is that *the new Constitution became “less trusting of public officials than the American Constitution.”*¹⁷⁷

Otherwise stated, the people have chosen to retain more power in themselves – that they may have a greater control over their government and its officials.

These significant novel and people empowering provisions of the 1987 Constitution include those relating to:

1. Initiative and referendum
2. Outlawing of political dynasties
3. Institution of term limits
4. Recognition of the standing of citizens to question the factual bases for the suspension of the privilege of the writ of *habeas corpus* or the declaration of martial law, coupled with the power of the Supreme Court to undertake such review
5. People’s entitlement to information on health of the President
6. Empowerment of individuals to file impeachment complaints
7. Recognition and empowerment of non-governmental organizations
8. Party-list system
9. Policy of transparency, and,
10. Expanded judicial power

¹⁷⁷ *Garcia v. Commission on Elections*, 237 SCRA 279 (1994), at 288, citing Fr. Bernas’ “Sounding Board,” *Today’s* issue of 6 September 1994; Emphasis supplied.

Individually, these separate and disparate provisions may not mean much but when seen together, specially in relation to the spirit of people empowerment that animated their inclusion in the fundamental law, then they would be felt as mandating a liberalized approach to the matter of allowing the people to have a greater say in the affairs of their government, namely, a recognition that they are more active participants and not just passive spectators. It is *their* government and they therefore have a perfect right to check it and redirect its course if they find it to have gone astray, and this they may do through whatever means within their reach – through the legislature, the presidency, or the courts.

1) *Initiative and Referendum*

On the exercise of legislative powers, the Constitution provides:

The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.¹⁷⁸

* * * * *

The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof.¹⁷⁹

More importantly, the fundamental law provides for a people's initiative in regard to the supreme act of law-making proposing amendments to the Constitution.

Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

¹⁷⁸ Art. VI, §1.

¹⁷⁹ Art. VI, § 32. To implement this provision, Congress enacted in 1989 Republic Act No. 6735, otherwise known as "The Initiative and Referendum Act".

The Congress shall provide for the implementation of the exercise of this right.¹⁸⁰

In addition, with regard to local legislation, the power of initiative has also been added to the powers of the citizens:

The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of local units.¹⁸¹

Consistent with the idea of republicanism, the people in their previous constitutions vested the entirety of lawmaking powers in the Legislature. Thus, the 1935 Constitution simply stated: "The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives."¹⁸² The 1973 Constitution vested it in the Batasang Pambansa,¹⁸³ in addition to allowing the President

¹⁸⁰ Art. XVII, §2. In *Santiago v. Commission on Elections*, 270 SCRA 106 (1997), as well as in *People's Initiative for Reform, Modernization and Action (PIRMA) v. Commission on Elections*, G.R. No. 129754, 23 September 1997, the Supreme Court held that R.A. No. 6735 was "incomplete, inadequate or wanting in essential terms and conditions" to implement the initiative clause on proposals to amend the Constitution. In *Lambino v. Commission on Elections*, G.R. Nos. 174153 and G.R. No. 174299, 25 October 2006, where the Court was presented with the opportunity to reexamine *Santiago*, the main opinion held that there was no need to revisit *Santiago* since the petition for people's initiative itself in *Lambino* did not comply with the constitutional requirements. On motion for reconsideration, however, the Court, without expressly and explicitly abandoning *Santiago*, came up with this cryptic pronouncement: "Ten (10) Members of the Court reiterate their position, as shown by the various opinions already given when the Decision herein was promulgated, that Republic Act No. 6735 is sufficient and adequate to amend the Constitution thru a people's initiative." (Resolution dated 21 November 2006, <http://www.supremecourt.gov.ph/lambino.pdf>, last visited on 24 January 2007)

¹⁸¹ Art. X, §3. This is carried out by the Local Government Code of 1991 (R.A. No. 7160), specifically through §§120-127.

¹⁸² 1935 CONST., Art. VI, §1.

¹⁸³ "The Legislative power shall be vested in a Batasang Pambansa." (1973 CONST., Art. VIII, §1)

to exercise it likewise, pursuant to that infamous Amendment 6 introduced in 1976.¹⁸⁴

With the 1987 Constitution, Congress is made to share its legislative power with the people themselves, a form of people empowerment which would otherwise be denied them were such provision not incorporated. The power to legislate is one way by which the people themselves could literally take and make the law in their own hands. Thus, they need not always wait for Congress to enact a law that they want. They could do it themselves if so minded. And for such purpose, initiative¹⁸⁵ is entirely the work of the electorate, a process of lawmaking by the people themselves without the participation or even against the wishes of their elected representatives.¹⁸⁶

It may be said, though, that through initiative, the people are actually retaining or regaining in a sense a power that really belongs to them in the first place. Since they are the sovereign, initiative recognizes in the people their *original* power to legislate.¹⁸⁷

Through the power of referendum,¹⁸⁸ the people are also given another legislative power – the prerogative to approve or reject a law passed by Congress. It consists merely of the electorate approving or

¹⁸⁴ “Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land.”

¹⁸⁵ “Initiative’ is the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose.” (§3(a), R.A. No. 6735)

¹⁸⁶ *Subic Bay Metropolitan Authority v. Commission on Elections*, 262 SCRA 492 (1996), at 511.

¹⁸⁷ The Court, speaking of local initiative in *Garcia v. Commission on Elections*, 237 SCRA 279 (1994), at 298, said:

“ *** This procedural lapse [of lack of due process] is fatal for at stake is not an ordinary right but the sanctity of the sovereignty of the people, their original power to legislate through the process of initiative. Ours is the duty to listen and the obligation to obey the voice of the people. It could well be the only force that could foil the mushrooming abuses in government.”

¹⁸⁸ “Referendum’ is the power of the electorate to approve or reject a legislation through an election called for the purpose.” (§3(c), R.A. No. 6735)

rejecting what has been drawn up or enacted by a legislative body and because of this character the process and the voting in a referendum are understandably less complex than in an initiative.¹⁸⁹

On the local level, the provision for initiative and referendum is in addition to what was already provided for in the 1973 Constitution,¹⁹⁰ namely, recall.¹⁹¹ These three measures operate as means of ensuring responsibility and accountability. If anything, therefore, the inclusion of initiative and referendum could only be seen as a further strengthening of the right of the people to have a better and firmer grasp of the affairs of, and a more secure grip on, their government, specially in light of the avowed policy of ensuring local autonomy.¹⁹² Hence, as the local governments become more independent of the national government they become more accountable and directly responsible to the local residents or their grassroots constituents.

By giving to the people the power of initiative, it could also be seen that this is again another manner of empowering them by handing to them a more direct handle on the affairs of their government.¹⁹³ Of initiative itself, much has been said about its people-empowerment qualities.

¹⁸⁹ *Subic Bay Metropolitan Authority*, 262 SCRA, at 511.

¹⁹⁰ "The Batasang Pambansa shall enact a local government code which may not be thereafter amended except by a majority vote of all its Members, defining a more responsive and accountable local government structure with an effective system of recall, allocating among the different local government units their powers, responsibilities, and resources, and providing for the qualifications, election and removal, term, salaries, powers, functions, and duties of local officials, and all other matters relating to the organization and operation of the local units. However, any change in the existing form of local government shall not take effect until ratified by a majority of the votes cast in a plebiscite called for the purpose." (1973 CONST., Art. XI, §2)

¹⁹¹ "Recall is a mode of removal of a public officer by the people before the end of his term of office. The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all governmental operations. Such power has been held to be indispensable for the proper administration of public affairs. Not undeservedly, it is frequently described as a fundamental right of the people in a representative democracy." (*Garcia v. Commission on Elections*, 227 SCRA 100 [1993], at 108)

¹⁹² "The State shall ensure the autonomy of local governments." (CONST., Art. II, §25)

¹⁹³ "Initiatives promote 'direct democracy' by allowing the people to directly propose amendments to the constitution. In contrast, the traditional mode of changing the constitution is known as 'indirect democracy' because the amendments are referred to the voters by the legislature or the constitutional convention." (n. 14, *Lambino v. Commission on Elections*, G.R. Nos. 174153 and 174299, 25 October 2006, at 13, Advance Sheets)

Initiative, like referendum and recall, is a new and treasured feature of the Filipino constitutional system. All three are institutionalized legacies of the world-admired EDSA people power. Like elections and plebiscites, they are hallowed expressions of popular sovereignty. They are sacred democratic rights of our people to be used as their final weapons against political excesses, opportunism, inaction, oppression and misgovernance; as well as their reserved instruments to exact transparency, accountability and faithfulness from their chosen leaders. *While on the one hand, their misuse and abuse must be resolutely struck down, on the other, their legitimate exercise should be carefully nurtured and zealously protected.*¹⁹⁴

The Court also had occasion to intone that “[l]ike elections, initiative and referendum are powerful and valuable modes of expressing popular sovereignty. And this Court as a matter of policy and doctrine will exert every effort to nurture, protect and promote their legitimate exercise.”¹⁹⁵ Initiative has likewise been valued, along with referendum, as an “ultimate weapon of the people to negate government malfeasance and misfeasance.”¹⁹⁶

2) *Political Dynasties Undesirable*

Consistent with the philosophy that the Philippines is a democratic and republican state, with access to public office open to the people, the 1987 Constitution has declared as one of its policies the outlawing of political dynasties. Thus, it pronounces: “The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.”¹⁹⁷

An eminent constitutionalist and member of the Constitutional Commission that drafted the 1987 Constitution elucidated on this provision:

The thrust of this provision is to impose on the state the obligation of guaranteeing equal access to public office. Although the provision speaks in terms of *service*, it is meant to be a blow in the

¹⁹⁴ Justice (later, Chief Justice) Panganiban, concurring and dissenting opinion in *Santiago v. Commission on Elections*, 270 SCRA 106 (1997), at 189.

¹⁹⁵ *Subic Bay Metropolitan Authority v. Commission on Elections*, 262 SCRA 492 (1996), at 517.

¹⁹⁶ *Garcia v. Commission on Elections*, 237 SCRA 279 (1994), at 289.

¹⁹⁷ Art. II, §26.

direction of democratizing political power. And since power was the subject, it occasioned intense debate. Commissioner Sarmiento explained the rationale of the provision thus:

By including this provision, we widen the opportunities of competent, young and promising poor candidates to occupy important positions in the government. While it is true we have government officials who have ascended to power despite accident of birth, they are exceptions to the general rule. The economic standing of these officials would show that they come from powerful clans with vast economic fortunes.

The establishment of political dynasties is an effective way of monopolizing and perpetuating power. Hence, the state is commanded to prohibit political dynasties.¹⁹⁸

A republic is a representative government where public office is supposed to be within the reach of the sovereign people no matter his or her status in life.¹⁹⁹ Accordingly, it would be an aberration to have a government run by a few men and women belonging to families and clans who might have passed on the reigns of power and public perks from generation to generation like some form of inheritance or family heirloom. If power is hereditary, then one might as well have *a government based on an aristocracy of genes*. The lesser the pool of leaders, the more that the greater bulk of the populace is excluded from participation in the affairs of their government.

Finally, while this constitutional command has practically become a dead letter since Congress, composed of the very people who may have established their own political dynasties, has not done anything

¹⁹⁸ Joaquin G. Bernas, S.J., *The 1987 Constitution of the Philippines: A Commentary* (1996 ed.), at 92.

¹⁹⁹ In *Maquera v. Borra*, 15 SCRA 7 (1965), at 9, the Court said that a requirement pursuant to R.A. No. 4421 that candidates for public office should post a surety bond equivalent to the annual salary for the position one seeks to be elected to was impermissible in a republican State. “[P]roperty qualifications are inconsistent with the nature and essence of the Republican system ordained in our Constitution and the principle of social justice underlying the same, for said political system is premised upon the tenet that sovereignty resides in the people and all government authority emanates from them, and this, in turn, implies necessarily that the right to vote and to be voted for shall not be dependent upon the wealth of the individual concerned, whereas social justice presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall, by reason of poverty, be denied the chance to be elected to public office.”

about it in spite of the lapse of almost 20 years,²⁰⁰ the same should never be ignored for its vivifying democratic spirit, specially in relation to people empowerment.

3) *Term Limits*

Another novel provision in the 1987 Constitution that could be seen as further enhancement of its people-power character is the provision on term limits, though under the 1935 Constitution there was already a term limit, but only for the President – he was not allowed to serve for more than eight consecutive years.²⁰¹ The 1987 Charter limits the President's term of office to a single term only,²⁰² while the Vice President may have two consecutive terms.²⁰³ With regard to Senators, they have also been limited to two consecutive terms²⁰⁴ while their colleagues in the House of Representatives have been given a limit of three consecutive terms.²⁰⁵ This policy applies likewise to local elective officials.²⁰⁶

²⁰⁰ “But since Congress is the principal playground of political dynasties, the realization of the dream of Commissioner Sarmiento, that the provision on political dynasties would widen access to political opportunities, will very probably be exhaustingly long in coming.” (Bernas, *op. cit.*, at 92-93)

²⁰¹ “No person shall serve as President for more than eight consecutive years. The period of such service shall be counted from the date he shall have commenced to act as President. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service of the incumbent for the full term for which he was elected.” (1935 CONST., Art. VII, §5)

²⁰² “The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.” (Art. VII, §4, ¶1)

²⁰³ “No Vice-President shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.” (Art. VII, §4, ¶1)

²⁰⁴ “No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.” (Art. VI, §4, ¶2)

²⁰⁵ “No member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.” (Art. VI, §4, ¶2)

²⁰⁶ “The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.” (Art. X, §8)

Limiting the terms that elective officials may hold on to office is another manner of empowering the people to have a greater participation in the affairs of the government. It is also consistent with the idea of opening up access to government offices to a greater number of people and not just to the members of a few entrenched families, as earlier discussed in regard to political dynasties.²⁰⁷ In any case, allowing those in power to practically self-perpetuate, which could be achieved through unfair means simply because they are already in power, would be contrary to the very ideals of a democratic and republican state. As then Justice (later, Chief Justice) Panganiban wrote: “Such perpetuation [of officials or group of officials in power] is anathema to democracy.”²⁰⁸

4) Proclamation of Martial Law or Suspension of the Privilege of the Writ of Habeas Corpus and Citizen’s Suits

It is interesting to note that the 1987 Constitution has explicitly provided for the recognition of the standing of a citizen to question the constitutionality of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, thus obviating any discussions about *locus standi* as a preliminary matter if ever such a suit is brought. The Constitution specifically provides:

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision within thirty days from its filing.²⁰⁹

²⁰⁷ Of Art. 8, §8 of the 1987 Constitution, it has been noted that:

“The prohibition will help eliminate so-called ‘political warlordism’ in provinces, cities, and municipalities which in the past had been a source of abuse and, therefore, lawlessness, and give young and enlightened leaders who have no formidable political machinery or vested interests to speak of, a chance to be elected.” (Hector S. De Leon, *Philippine Constitutional Law: Principles and Cases* [Vol. 2], 1991 ed., at 507)

²⁰⁸ *People’s Initiative for Reform, Modernization and Action (PIRMA) v. Commission on Elections*, GR No. 129754, 23 September 1997, cited in the separate opinion of Chief Justice Panganiban in *Lambino v. Commission on Elections*, G.R. Nos. 174153 and G.R. No. 174299, 25 October 2006, n. 3, at 12, Advance Sheets)

²⁰⁹ Art. VII, §18, ¶3.

With the language of the Constitution, it is clear that there is no requirement that the party bringing the action should be one directly or substantially injured by the act of the President. Instead, *any* citizen is deemed qualified – and deemed injured or stands to be injured – so as to be vested with the requisite personality to go directly to the Supreme Court for and on behalf of the other citizens because of the presumed injury that may have been, or is likely to be, inflicted on the entire citizenry if the matter is not immediately inquired into by the Court – and rectified – if needed. This is indeed a symbolic, if not a significant, constitutional vesting of standing on citizens. Instead of leaving the parties to argue and the Court to deliberate on the issue of standing in the face of the exercise of the drastic powers of the President to proclaim martial law or suspend the privilege of the writ of *habeas corpus*, the Constitution has directly *knighted any citizen* to go to the *Supreme Court* to raise the question of *factual sufficiency* and not merely *legal or constitutional* basis for such presidential actions.

5) *Presidential Health and People's Right to Information*

It is rather amusing that a Constitution should contain a provision prescribing certain steps and safeguards to be undertaken whenever a serious illness befalls the President. Thus, the Constitution states:

In case of serious illness of the President, the public shall be informed of the state of his health. The Members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.²¹⁰

This might just be one of the reactions to the Marcos years when the people were kept guessing as to the real state of health of the strongman. Fr. Bernas explains, though, that “[t]he purpose of the first sentence is to guarantee the people’s right to know about the state of the President’s health, contrary to secretive practice in totalitarian governments.”²¹¹ Be that as it may, it could be taken as another people-empowering provision of the 1987 Constitution, designed to inform the particles of popular sovereignty from whom all government power emanates about the

²¹⁰ Art. VII, §12.

²¹¹ Bernas, *op. cit.*, at 751.

true condition of whoever is presently at the helm of the governmental machinery – that he or she is still in control and not anybody else.

In any event, this provision should be taken to signify that the people have, again, a greater entitlement to know and to have a word in the affairs of their government, to the extent of being given a right to be informed of the real state of well-being of the President. The people are not to be considered as mere uninterested spectators, officious neighbors or nosy kibitzers looking into private and personal affairs. They are intimately concerned with the ability of their leader to carry on the tasks and to exercise the prerogatives momentarily vested in him. If they find that the President, for instance, is no longer physically, mentally or in any other manner capable of discharging the duties of his office, then the people ought to know for whatever worth such information may have for them. In fine, the President's health is not just such official's or his immediate family's concern. It is the nation's, too.

6) *Impeachment Complaints by Individuals*

The Constitution, as a means of ensuring public accountability for those officials occupying higher positions in the government, has provided for impeachment as a disciplining mechanism. What is noteworthy in the present provision is the fact that it allows a citizen to file a verified complaint. Thus, it says: "A verified complaint may be filed by any Member of the House of Representatives or by *any citizen* upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter."²¹²

The previous constitutions did not have any similar provision. Impeachment was purely a legislative undertaking from start to finish. Under the 1935 Constitution, the House of Representatives, by a vote of two-thirds of all its Members, had the sole power of impeachment,²¹³ while the Senate had the sole power to try all impeachments.²¹⁴ Under the 1973 Charter, which instituted a unicameral Batasang Pambansa, said legislative body had the exclusive power to initiate, try, decide all cases

²¹² Art. XI, §3, ¶2; Emphasis supplied.

²¹³ 1935 CONST., Art. IX, §2.

²¹⁴ 1935 CONST., Art. IX, §3.

of impeachment.²¹⁵ Nothing was said about the filing of complaints by citizens.

The contrast between the 1987 Constitution with its predecessors could only be seen as another indication of the constitutional design to allow for more direct participation by the people in the affairs of their government. If they cannot await their Congressmen to take action to start the impeachment process moving, then they themselves may do it, subject of course to the favorable endorsement of any member of the House of Representatives. That single act might just be the needed nudge that sets everything in motion.

7) *Non-Governmental Organizations*

“The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.”²¹⁶ Thus declares the 1987 Constitution about non-governmental organizations. Providing more teeth and substance to such policy, it goes on to declare with greater specificity:

SECTION 15. The State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People’s organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

SECTION 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.²¹⁷

In this regard, it is noteworthy that the incorporation of a provision on people’s organizations traces its roots to the EDSA People Power Revolution itself. The Court noted in *Garcia v. Commission on Elections* that “[t]he successful use of people power to remove public officials who

²¹⁵ 1973 CONST., Art. XIII, §3.

²¹⁶ Art. II, §23.

²¹⁷ Art. XIII.

have forfeited the trust of the electorate led to its firm institutionalization of the 1987 Constitution. Its Article XIII expressly recognized the Role and Rights of People's Organizations."²¹⁸

Speaking of Section 16, Article XIII referred to above, Justice (now, Chief Justice) Puno said: "This is another novel provision of the 1987 Constitution strengthening the sinews of the sovereignty of our people."²¹⁹ Further, while paying heed to what the Court said in *Sanlakas v. Executive Secretary*²²⁰ that "[t]hese provisions have not changed the traditional rule that only *real parties in interest or those with standing*, as the case may be, may invoke the judicial power;" still they cannot simply be ignored for their people-enabling value, specially when taken in combination with the other provisions which similarly point to the direction of greater empowerment for the citizenry. Words are not inert figures but living organisms animated by the spirit of their essence and the philosophy of their intended design.

8) *Party-List System*

Another innovation brought about by the 1987 Constitution is the introduction of the party-list system. Under this set-up, twenty percent (20%) of the House of Representatives is to come from party-list representatives.

The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list repre-

²¹⁸ 227 SCRA 100 (1993), at 109.

²¹⁹ Dissenting opinion in *Santiago v. Commission on Elections*, 270 SCRA 106 (1997), at 175.

²²⁰ 421 SCRA 656 (2004), at 667.

sentatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.²²¹

It is to be underscored that the party-list system is another manner of broadening the participation of the people in their own governance. It is a means by which the marginalized and underrepresented sectors of society are given a better and fairer fighting chance to be represented in determining the destiny of the nation through law-making. “The intent of the Constitution is clear: to give genuine power to the people, not only by giving more law to those who have less in life, but more so by enabling them to become veritable lawmakers themselves.”²²² These sectors may include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.²²³ “[T]he party-list system seeks to enable certain Filipino citizens – specifically those belonging to marginalized and underrepresented sectors, organizations and parties – to be elected to the House of Representatives.”²²⁴ And this is particularly critical since “[t]raditionally, political power does not necessarily emanate from the size of one’s constituency; indeed, it is likely to arise more directly from the number and amount of one’s bank accounts.”²²⁵ As the Court further explained:

Crucial to the resolution of this case is the fundamental social justice principle that those who have less in life should have more in law. The party-list system is one such tool intended to benefit those who have less in life. It gives the great masses of our people genuine hope and genuine power. It is a message to the destitute and the prejudiced, and even to those in the underground, that change is possible. It is an invitation for them to come out of their limbo and seize the opportunity.²²⁶

²²¹ Art. VI, §5, ¶¶1-2. The mechanics for the party-list system are set out in Republic Act No. 7941 (1995).

²²² *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 359 SCRA 698 (2001), at 719. See also *Veterans Federation Party v. Commission on Elections*, 342 SCRA 244 (2000).

²²³ See §5, R.A. 7941.

²²⁴ *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, *op. cit.*, at 721.

²²⁵ *Id.*, at 722.

²²⁶ *Id.*, at 732.

It could thus be readily realized that the party-list system is just another means of people empowerment, an instrument to broaden the participation of those who might have traditionally been left out of elective offices simply because of their status in life which made it quite difficult to compete in the normal electoral process.

9) *Policy of Transparency*

The Constitution declares: "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."²²⁷ In addition, it is also declared that "[t]he State recognizes the vital role of communication and information in nation-building."²²⁸ This further strengthens and make more robust the guaranteed right of the people to be informed.

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.²²⁹

A necessary corollary to the philosophy that the people are the repository of sovereign power is their entitlement to know and be informed about what is happening in the government, not only in the laws that govern them but also in relation to the acts, transactions and other activities of those to whom governmental power has been entrusted in the meantime. One could not intelligently and intelligibly exercise one's prerogative as ultimate decision-maker if he or she does not really know much, or is clueless. Any judgment rendered would likely be erroneous if not coming from an *informed* position. "History shows that the curse of government is not always venality; secrecy is one of the most

²²⁷ Art. II, §28.

²²⁸ Art. II, §24.

²²⁹ Art. III, §7. While this provision has its counterpart provision in the 1973 Constitution, the other two provisions – Art. II, §§24 and 28 – do not have any counterparts.

In *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987), at 537, the Court noted that the guarantee of the right of the people to be informed "has been further enhanced in the New Constitution with the adoption of a policy of full public disclosure."

tempting coverups to save regimes from criticism.”²³⁰ Accordingly, the need for transparency in government operations so that the people know the real score and could then proceed to make an informed judgment as to those in government and not simply make decisions from a blind-folded position of ignorance.

10) Expanded Judicial Power

Relevant to the idea of people empowerment is another novel feature of the 1987 Charter – the expansion of judicial power. The Constitution has added a new paragraph to the traditional manner²³¹ of allocating judicial power to the Supreme Court and inferior courts by declaring that:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.²³²

Explaining the background for this new provision, Justice Gutierrez stated:

This new provision was enacted to preclude this Court from using the political question doctrine as a means to avoid having to make decisions simply because they are too controversial, displeasing to the President or Congress, inordinately unpopular, or which may be ignored and not enforced.

The framers of the Constitution believed that the free use of the political question doctrine allowed the Court during the Marcos

²³⁰ Justice Douglas, dissenting in *United States v. Richardson*, 418 U.S. 166 (1974), at 198.

²³¹ The 1987 Constitution provides in Art. VIII, §1: “The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.” This is basically a reproduction of the language of the previous constitutions.

Article X, §1 of the 1973 Constitution provided: “The Judicial power shall be vested in one Supreme Court and in such inferior court as may be established by law. The Batasang Pambansa shall have the power to define, prescribe and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section five thereof.”

On the other hand, the Article VIII, §1 of the 1935 Charter stated: “The judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.”

²³² Art. VIII, §1, ¶2.

years to fall back on prudence, institutional difficulties, complexity of issues, momentousness of consequences or a fear that it was extravagantly extending judicial power in the cases where it refused to examine and strike down an exercise of authoritarian power. Parenthetically, at least two of the respondents and their counsel were among the most vigorous critics of Mr. Marcos (the main petitioner) and his use of the political question doctrine. The Constitution was accordingly amended. We are now precluded by its mandate from refusing to invalidate a political use of power through a convenient resort to the political question doctrine. We are compelled to decide what would have been non-justiceable under our decisions interpreting earlier fundamental charters.²³³

In the same vein is the observation of Justice Mendoza:

The statement that the judicial power includes the duty to determine whether there has been a grave abuse of discretion was inserted in Art. VIII, §1 not really to give the judiciary a roving commission to right any wrong it perceives but *to preclude courts from invoking the political question doctrine in order to evade the decision of certain cases* even where violations of civil liberties are alleged.²³⁴

In the sponsorship speech of its proponent, former Chief Justice, then a Constitutional Commissioner, Roberto Concepcion explained:

[T]his is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." **The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but**

²³³ Dissenting opinion in *Marcos v. Manglapus*, 177 SCRA 668 (1991), at 708.

²³⁴ Separate opinion in *Cruz v. Secretary of Environment and Natural Resources*, 347 SCRA 128 (2000), at 314; Emphasis supplied.

it, in effect, encouraged further violations thereof during the martial law regime.²³⁵

Highlighting the significance of this grant of power – or the imposition of a duty upon the Court – then Justice (now, Chief Justice) Puno wrote:

Two lessons were not lost to the members of the Constitutional Commission that drafted the 1987 Constitution. The *first* was the need to grant this Court the express power to review the exercise of the powers a commander-in-chief by the President and *deny it of any discretion to decline its exercise*. The *second* was the need to compel the *Court to be pro-active* by expanding its jurisdiction and, thus, reject its laid back stance against acts constituting grave abuse of discretion on the part of any branch or instrumentality of government.²³⁶

* * * * *

In fine, the express grant simply stresses the mandatory duty of this Court to check the exercise of the commander-in-chief powers of the President. It eliminated the discretion of the Court not to wield its power of review thru the use of the political question doctrine.²³⁷

Expanding the power of the courts necessarily carries implications in areas other than the political question doctrine. “Relaxation of standing requirements is directly related to the expansion of judicial power.”²³⁸ The present Chief Justice himself has stated that “[t]he once stubborn disinclination to decide constitutional issues due to lack of *locus standi* is incompatible with the expansion of judicial power mandated in Section 1 of Article VIII.”²³⁹ Significantly, even before the 1987 Constitution, there had already been reference to a liberalized approach in contrast to a bygone era of restrictive treatment of the issue. Thus, we find this passage from *Aquino v. Commission on Elections*,²⁴⁰ a 1975 case:

²³⁵ *Francisco, Jr. v. House of Representatives*, 415 SCRA 44 (2003), at 125, citing I RECORD OF THE CONSTITUTIONAL COMMISSION.

²³⁶ Separate opinion in *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 (2000), at 132; Emphasis in the original.

²³⁷ *Id.*, at 135.

²³⁸ Justice Powell, concurring in *United States v. Richardson*, 418 U.S. 166 (1974), at 188.

²³⁹ Dissenting opinion in *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 169.

²⁴⁰ 62 SCRA 275 (1975), at 308, cited by Justice Davide, Jr. in his dissent in *Kilosbayan, Incorporated v. Morato*, 246 SCRA 549 (1994), at 618.

Then there is the attack on the standing of the petitioners, as vindicating at most what they consider a public right and not protecting their rights as individuals. This is to conjure the spectre of the public right dogma or an inhibition to parties intent on keeping public officials staying on the path of constitutionalism. As was so well put by Jaffe: "The protection of private rights is an essential constituent of public interest and, conversely, without a well-ordered state there could be no enforcement of private rights. Private and public interests are, both in a substantive and procedural sense, aspects of the totality of the legal order. Moreover, petitioners have convincingly shown that in their capacity as taxpayers, their standing to sue has been amply demonstrated. There would be a retreat from the liberal approach followed in *Pascual v. Secretary of Public Works*, foreshadowed by the very decision of *People v. Vera* where the doctrine was first fully discussed, if we act differently now. I do not think we are prepared to take that step. Respondent, however, would hark back to the American Supreme Court doctrine in *Mellon v. Frothingham*, with their claim that what petitioners possess "is an interest which is shared in common by other people and is comparatively so minute and indeterminate as to afford any basis and assurance that the judicial process can act on it." That is to speak in the language of the bygone era, even in the United States. For as Chief Justice Warren clearly pointed out in the later case of *Flast v. Cohen*, the barrier thus set up if not breached has definitely been lowered. The weakness of these particular defenses is thus quite apparent.

Of significance also is what the Court said about the reversal of the traditional rules about the political question doctrine as a result of this novel provision in the Constitution:

To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine *Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing.* In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket.²⁴¹

²⁴¹ *Estrada v. Desierto*, 353 SCRA 452 (2001), at 491.

Ironically, while the expanded judicial power may have imposed a duty and an obligation that the courts may not refuse to discharge relative to the so-called political questions, *locus standi* may also be seized upon as a means to avoid resolving issues that the courts may be reluctant to touch – some sort of a substitute or surrogate to the political question doctrine.²⁴² But this should not be the case. On the contrary, the expansion of judicial power should instead be an additional reason why the rule on standing be relaxed and liberalized. In this regard, too, the use of the “capable of repetition yet evading review”²⁴³ exception to moot questions may further buttress the argument for liberalized approach to the standing doctrine.

²⁴² In the case of the American experience, Tribe, has made the following observation:

“It remains the case, however, that using the various concepts of standing as verbal proxies for conclusions about the most important questions of federal judicial power has on occasion meant overburdening standing doctrine with concerns that bear little relation to whether a particular litigant is properly before a court. In so using concepts of standing, the Court has supplanted well-recognized doctrines that seem better suited to the issues at stake – including both (a) doctrines barring collusive, unripe, or moot lawsuits and excluding political questions from Article III adjudications; and (b) principles of judicial discretion flowing from legislative grants of jurisdiction and common law traditions.” (*American Constitutional Law*. Vol. I [3rd ed. (2000)], at 392)

²⁴³ In *Sanlakas v. Executive Secretary*, 421 SCRA 656 (2004), at 664-665, the Court came up with this pronouncement:

“The Court agrees with the Solicitor General that the issuance of Proclamation No. 435, declaring that the state of rebellion has ceased to exist, has rendered the case moot. As a rule, courts do not adjudicate moot cases, judicial power being limited to the determination of ‘actual controversies.’ Nevertheless, courts will decide a question, otherwise moot, if it is ‘capable of repetition yet evading review.’ The case at bar is one such case.

“Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, “an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons” assaulted and attempted to break into Malacañang.’ Petitions were filed before this Court assailing the validity of the President’s declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases precluded this Court from addressing the constitutionality of the declaration.

“To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the declaration of a state of rebellion in the exercise of the President’s calling out power, the mootness of the petitions notwithstanding.”

If the grant of power – which was also an imposition of a duty at the same time – was intended to preclude the courts from shunning involvement in asserted political questions, then to the same extent must the same be seen as a mandate of the courts to afford the citizens greater access to the judicial machinery as a way of resolving constitutional issues they raise, either merely as such citizens or as taxpayers. The expanded judicial power should be seen as just one of the people-empowering mechanisms instituted in the 1987 Charter. To the extent that the courts have a greater oversight into the affairs of those in the political departments, to that extent does it also signify the people’s right to avail of the judicial machinery as a tool to check their government and its officials.

11) Other Considerations

In addition to the constitutional provisions that directly empower the people, mention could also be made of the fact that the powers of the Ombudsman under the 1987 Charter have been expanded, fortified and more extensively set out. So, too, is the constitutional policy of affording to local government units more autonomy.

Instead of simply leaving certain details to Congress like what the 1973 Constitution did,²⁴⁴ the present Constitution – after characterizing the Ombudsman and his Deputies²⁴⁵ as “protectors of the people”²⁴⁶ –

In *David v. Macapagal-Arroyo*, 489 SCRA 160 (2006), at 214-215, the Court also held:

“The ‘moot and academic’ principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.”

²⁴⁴ “The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.” (Art. XIII, §6)

²⁴⁵ “There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.” (Art. XI, §5)

²⁴⁶ “The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the

took pains to set out the more important ones.²⁴⁷ And, in this regard one must not lose sight of the constitutional design which directs the Ombudsman and his Deputies to “act promptly on *complaints filed in any form or manner*” and its relation to people empowerment, specifically in allowing for anonymous letters as basis for the start of an investigation.

[I]t is apparent that in permitting the filing of complaints “in any form and in [any] manner,” the framers of the Constitution took into account the well-known reticence of the people which keep them from complaining against official wrongdoings. As this Court had occasion to point out, the Office of the Ombudsman is different from the other investigatory and prosecutory agencies of the government because those subject to its jurisdiction are public officials who, through official pressure and influence, can quash, delay or dismiss investigations held against them. On the other hand complainants

Government, or any agency, subdivision or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the actions taken and the result thereof.” (Art. XI, §12)

²⁴⁷ “The Office of the Ombudsman shall have the following powers, functions, and duties:

“(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

“(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

“(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

“(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts and transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules and procedure and exercise such other powers or perform such functions or duties as may be provided by law.

are more often than not poor and simple folk who cannot afford to hire lawyers.²⁴⁸

Thus, with such a simplified procedure not governed by technicalities the people are not unnecessarily hampered or constricted in bringing up and ventilating their grievances and other concerns through an office they should and could rely on.

Speaking of the present kind of Ombudsman that obtains in the Philippines compared to what it is in the place of its origin, the Court said in *Uy v. Sandiganbayan*:²⁴⁹

Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions. Recognizing the importance of this power, the Court cannot derogate the same by limiting it only to cases cognizable by the Sandiganbayan. It is apparent from the history and the language of the present law that the legislature intended such power to apply not only to cases within the jurisdiction of the Sandiganbayan but also those within the jurisdiction of regular courts.

The constitutional provisions on an enhanced Ombudsman, taken in light of the way Congress has given them more life and vibrancy and as further liberally expounded by the Supreme Court, could only be understood as further giving the people greater oversight and supervision over government officials and employees.

On the other hand, the provisions on local autonomy have also been further buttressed by the 1987 Constitution. While local autonomy may have already been a concern of the 1973 Constitution,²⁵⁰ the 1987

²⁴⁸ *Almonte v. Vasquez*, 244 SCRA 286 (1995), at 304. See also *Garcia v. Miro*, 397 SCRA 41 (2003), at 49-50.

²⁴⁹ 354 SCRA 651 (2001), at 666.

²⁵⁰ The *Declaration of Principles and State Policies* of the 1973 Constitution provided: "The State shall guarantee and promote the autonomy of local government units, especially the barrio, to ensure their fullest development as self-reliant communities." (Art. II, §10) Article XI was devoted to local governments.

Charter showed greater solicitude for the welfare and advancement of local communities.²⁵¹

In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, section 5 of the 1987 Constitution, *viz*:

Section 5. Each Local Government unit shall have the power to create its own sources of revenue, to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments.

This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders." The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, section 3 of Article X of the 1987 Constitution mandates Congress to enact a local government code that will, consistent with the basic policy of local autonomy, set the guidelines and limitations to this grant of taxing powers, ...²⁵²

²⁵¹ While the *Declaration of Principles and State Policies* states "[t]he State shall ensure the autonomy of local governments" (Art. II, §25), the Constitution devotes Article X to "guaranteeing and promoting the autonomy" of local government units. (*Province of Batangas v. Romulo*, 429 SCRA 736 (2004), at 758. One way of doing this is guaranteeing these government units a *just share in the national taxes* which shall be *automatically released* to them. (Art. X, §6) In this regard, it is to be remembered that "[a] basic feature of local fiscal autonomy is the automatic release of the shares of LGUs in the national internal revenue." (*Pimentel, Jr. v. Aguirre*, 336 SCRA 201 [2000], at 220)

²⁵² *National Power Corporation v. City of Cabanatuan*, 401 SCRA 259 (2003), at 270-271.

Thus, to the extent that the people in the local government units have been given the ability and the power to have a greater and more direct control of their own destiny, to that extent have they also been empowered.

These considerations would then again, taken together with those features of the 1987 Constitution identified and discussed earlier, sum up as people-empowering provisions. The other provisions of the Constitution, even those which are already a mere reiteration and carry-over of past constitutions and experience should accordingly be seen in that new light and not simply considered in accordance with old, traditional and habitual way of dealing with things. Changes and modifications mean some thing. They could not simply be ignored as if nothing happened. In the same way that body movements have their own nuances and meanings, constitutional language departing from those of past charters could only be understood as conveying a different message.

PEOPLE EMPOWERMENT AND *LOCUS STANDI*

All the foregoing novel provisions introduced by the 1987 Constitution point to the direction of people empowerment, a thrust that must be given recognition and reality not only in regard to the specific and particular aspects to which they directly relate but to be taken in a holistic and systematic manner to affect, alter and modify the manner in which certain traditional rules are to be considered. One such rule is that on *locus standi*.

The rule on standing through the years, and well even after the adoption of the 1987 Constitution, has been to treat it in the same way that it has been seen in light of the American constitutional law and Philippine case law. But then, the same has sorely failed to take into account the changed and altered legal and political landscape brought about by the 1986 People Power Revolution and the fundamental law born out of it. As shown above, the 1987 Constitution introduced several provisions which directly indicate its intention to enable the people to have a greater say in the running, and a firmer grip on the affairs, of their government. Thus, they are now given a piece of the law-making authority, not only in regard to ordinary laws but even in relation to proposing amendments to the Constitution. In addition, they have also been given a right to have a greater say in the affairs and concerns of

the presidency. They now have the right to know about the real state of health of the Chief Executive. Further, they are accorded the personality to directly assail before the Supreme Court the exercise of the Commander-in-Chief's prerogative to proclaim martial law or to suspend the privilege of the writ of *habeas corpus*. Further, a citizen himself or herself can file a complaint for impeachment. Then, all of these have to be considered also in relation to the grant of an expanded judicial power to the courts, to enable them to entertain and adjudicate suits which may have been thrown out in the past on the excuse or pretext of their being covered by the political question doctrine.

And, if the foregoing features and characteristics of the 1987 Charter are not enough, one also has to consider the other provisions all designed to broaden the people's participation in their government, such as the imposition of term limits, the mandate for Congress to provide for the outlawing of political dynasties, the provision for the party-list system to empower the marginalized and underrepresented sectors of society to have a voice in Congress, as well as the recognition of non-government organizations.

While all of these translate to a greater empowerment of the people not only in legislation and in the affairs of the executive branch, they should also be seen as affecting likewise the way by which the courts deal with citizens' actions, specifically in relation to the matter of *locus standi*. If the people have been given so much more in relation to the running of their government, should they not also be deemed to have been given a greater personality when it comes to bringing of suits before the courts in order to vindicate their rights, liberties, freedoms and prerogatives? If they could legislate, if they have the right to know the state of health of the President, could they not also have a greater voice in seeking the assistance of the courts in matters that were traditionally within such judicial tribunals' competence and authority to inquire into and thereafter make authoritative pronouncements on matters of law and constitutionalism?

The Court, even before the present Constitution was in the horizons declared:

It being manifest that there are powers which the Convention may not and cannot validly assert, much less exercise, in the light of the existing Constitution, *the simple question arises, should an act of the Convention be assailed by a citizen as being among those*

not granted to or inherent in it, according to the existing Constitution, who can decide whether such a contention is correct or not? It is of the very essence of the rule of law that somehow somewhere the power and duty to resolve such a grave constitutional question must be lodged on some authority, or we would have to confess that the integrated system of government established by our founding fathers contains a wide vacuum no intelligent man could ignore, which is naturally unworthy of their learning, experience and craftsmanship in constitution-making.²⁵³

The courts are there to provide solutions and guidance when it comes to legal and constitutional problems of the people. Should they turn away the suitor on the mere excuse of lack of standing as seen from the vantage point of past constitutions, entirely forgetting that the present Charter has provided for a different perspective?

LOCUS STANDI: REVISIT, REVIEW, AND REFORMULATION

Taken individually and isolated from the rest, each provision of the Constitution on people empowerment may not mean as much. But taken together to show the design, the philosophy and the grand picture, it could not be denied that they mean much more than meets the eye. They have repercussions and ramifications greater than their immediately apparent effect. This, indeed is one occasion where the whole is greater than the sum of all its parts. There is therefore a need to revisit the traditional rules on standing, and review them in light of the new provisions in the 1987 Charter and thereafter come up with a substantially different reformulation of the rules and standards of the game.

The new provisions could not just be pushed to the side and ignored or belittled and the courts continue on with the usual routine and habit of doing things. One could not just keep on relying on past precedents like nothing has changed. In this regard, what Justice Regalado said relative to clinging on to old traditional ways of following precedents appears apropos:

[A]s ultimate arbiters of the law, we cannot and we should not continue to cleave with obstinate tenacity or persist in citing with rote-like consistency clearly inapposite or inapplicable doctrines catalogued in works notable not for logical analysis but by their

²⁵³ *Tolentino v. Commission on Elections*, 41 SCRA 702 (1971), at 716.

reliance on the numerical weight of cases decided on the bases of disparate factual situations, or by reason of a slavish obsession for footnotes. Perpetuating a misconception spawned by the inertia of cavalier reliance on supposed precedents is a disservice to the doctrine of *stare decisis*.²⁵⁴

Also, if the Court was able to quote favorably what Fr. Bernas said about cutting American umbilical cords²⁵⁵ when it comes to foreign jurisprudence relative to impeachment, should not the same principle apply with greater force when it comes to *locus standi* specially when seen in light of several unmistakable home-grown provisions which have no counterparts in the U.S. Constitution? As the Court said in *Francisco, Jr. v. House of Representatives*:

Respondents' and intervenors' reliance upon American jurisprudence, the American Constitution and American authorities **cannot** be credited to support the proposition that the Senate's "sole power to try and decide impeachment cases," as provided for under Art. XI, Sec. 3(6) of the Constitution, is a textually demonstrable constitutional commitment of all issues pertaining to impeachment to the legislature, to the total exclusion of the power of judicial review to check and restrain any grave abuse of the impeachment process. Nor can it reasonably support the interpretation that it necessarily confers upon the Senate the inherently judicial power to determine constitutional questions incident to impeachment proceedings.

Said American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned. As held in the case of *Garcia vs. COMELEC*, "[i]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs." Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, "[w]e have cut the umbilical cord."

²⁵⁴ Justice Regalado, separate opinion in *People v. Pineda*, 219 SCRA 1 (1993), at 27-28.

²⁵⁵ "Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, '[w]e have cut the umbilical cord.'" (*Francisco, Jr. v. House of Representatives*, 415 SCRA 44 [2003], at 130)

The major difference between the judicial power of the Philippine Supreme Court and that of the U.S. Supreme Court is that while the power of judicial review is only *impliedly* granted to the U.S. Supreme Court and is discretionary in nature, that granted to the Philippine Supreme Court and lower courts, as *expressly provided for in the Constitution*, is not just a power but also a **duty**, and it was **given an expanded definition** to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality.²⁵⁶

Related to this aspect is what the Court said almost a hundred years ago while the country was setting up its own home-grown legal concepts and principles:

So much for the authorities. For the nonce we would prefer to forget them entirely, and here in the Philippines, being in the agreeable state of breaking new ground, would rather desire our decision to rest on a strong foundation of reason and justice than on a weak one of blind adherence to tradition and precedent. Moreover, we believe that an unbiased consideration of the history of the constitutional provision will disclose that our conclusion is in exact accord with the causes which led to its adoption.²⁵⁷

The Court then went on to state that the provision then under consideration – the privilege against self-incrimination – “should here be approached in no blindly worshipful spirit, but with a judicious and a judicial appreciation of both its benefits and its abuses.”²⁵⁸

It is never too late to revisit and reexamine closely held views, even if steeped in tradition and encrusted in inertia of habit if it is shown that indeed there have been significant changes which cast a different light on a changed landscape. In the U.S. itself, it was noted that “the law of standing has for some time been one of the most criticized aspects of constitutional law. Certainly, ‘[s]tanding to litigate often turns on imprecise distinctions and requires difficult line drawing.’”²⁵⁹ If such be the case in the American milieu, should it not all the more be a strong reason for a review and revision in the Philippines specially

²⁵⁶ 415 SCRA 44 (2003), at 130-131.

²⁵⁷ *Villaflores v. Summers*, 41 Phil 62 (1920), at 68.

²⁵⁸ *Ibid.*

²⁵⁹ Tribe, *American Constitutional Law*. Vol. I [3rd ed. (2000)], at 390.

as it has an entirely new Constitution with novel people-empowering provisions while the U.S. Constitution has basically been the same for more than 200 years?

Further, what was said by the Court in *Tan v. Commission on Elections*²⁶⁰ might as well apply here, *mutatis mutandis*:

Opportunity to re-examine the views formerly held in said cases is now afforded the present Court. The reasons in the mentioned cases invoked by respondents herein were formerly considered acceptable because of the views then taken that local autonomy would be better promoted. However, even this consideration no longer retains persuasive value.

In regard to breaking with tradition, it has been observed that “New music always sounds loud to old ears. Beethoven seemed to make more noise than Mozart; Liszt was noisier than Beethoven; Schoenberg and Stravinsky, noisier than any of their predecessors.”²⁶¹ Yes, at first it may indeed sound that new and strange music would arrive as unwelcome or even detestable noise but after some time, after we would have shed off our prejudice borne out of habit and tradition, we may find a more open ear to allow for reception and appreciation of a melody wafting in the air, conveyed by a different tune, a different beat, and a different vessel. Living in a different political clime must necessarily call for adjustments in the manner of looking at law to take into account the altered conditions.

Along with the political question doctrine which is deemed to have been substantially altered by the addition of the second paragraph of Section 1, Article VIII of the Constitution, the same should also be said about the rule on *locus standi*. They should go hand in hand, and not as if the latter has become the substitute for the former for the purpose of enabling the courts to excuse themselves from pronouncing judgment on politically sensitive matters. The 1987 Charter provisions on people empowerment should be seen in light of a design and a philosophy under which the people are deemed to have retained and reserved to themselves more of the sovereign power that inheres in them instead of

²⁶⁰ 142 SCRA 727 (1986), 745.

²⁶¹ N. Slonimsky, *Lexicon of Musical Invective: Critical Assaults on Composers Since Beethoven's Time* 18 (1953), cited by Justice Marshall in his dissenting opinion in *Ward v. Rock Against Racism*, 491 U.S. 781 [1989], n. 7, at 810.

having delegated them to their agents, who, as their experience has shown, have betrayed them in the past. In the same manner that *residual power* – in addition to those expressly conferred by the Constitution – has been recognized as possessed by the President,²⁶² the people should also be accorded that presumption and prerogative. In this connection,

²⁶² See *Marcos v. Manglapus*, 177 SCRA 668 (1989) and *Sanlakas v. Executive Secretary*, 421 SCRA 656 (2004).

“[W]e hold the view that although the 1987 Constitution imposes limitations on the exercise of specific powers of the President, it maintains intact what is traditionally considered as within the scope of ‘executive power.’ Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.” (*Marcos v. Manglapus*, 177 SCRA 668 [1989], at 691-692)

Further on, the Court declared: “To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain individuals. The power involved is the President’s residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people. To paraphrase Theodore Roosevelt, it is not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand [See Corwin, *supra*, at 153]. It is a power borne by the President’s duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President’s duty to take care that the laws are faithfully executed [see Hyman, *The American President*, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President].

* * * * *

“What we are saying in effect is that the request or demand of the Marcoses to be allowed to return to the Philippines cannot be considered in the light solely of the constitutional provisions guaranteeing liberty of abode and the right to travel, subject to certain exceptions, or of case law which clearly never contemplated situations even remotely similar to the present one. It must be treated as a matter that is appropriately addressed to those residual unstated powers of the President which are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare. In that context, such request or demand should submit to the exercise of a broader discretion on the part of the President to determine whether it must be granted or denied.” (*Id.*, at 694-695)

On motion for reconsideration, the Court further declared: “[I]t cannot be denied that the President, upon whom executive power is vested, has unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos, for the result was a *limitation of specific powers* of the President, particularly those relating to the commander-in-chief clause, but *not a diminution of the general grant of executive power.*” (178 SCRA 760 [1989], at 763-764)

the Supreme Court itself has also spoken of its own residual power,²⁶³ as well as the residual power and jurisdiction of lower courts.²⁶⁴ So if almost everybody else has such residual powers – those unstated-but-felt powers – should not the very source of sovereign power be similarly considered to have one of its own – unstated but clearly discernible from the language and spirit of their covenant with the Government?²⁶⁵ In fine, the Constitution must be read and understood to have recognized

²⁶³ See *Firestone Ceramics, Inc. v. Court of Appeals*, 334 SCRA 465 (2000). This involves two consolidated cases which the Court En Banc accepted for its consideration in spite of the fact that the Division to which they were originally raffled earlier refused, by majority vote, to refer to the *En Banc*. Said the Court *En Banc*:

“On March 8, 2000, the Third Division voted 4-1 to deny petitioners’ motion to transfer these cases to the Banc. Thus, on March 14, 2000, the Court deliberated on the consulta and thereafter, voted 9-5 to accept the cases for the Banc to pass upon in view of the finding that the cases above entitled are of sufficient importance to merit its attention. Evidently, the action of the Court under the premises is a legitimate and valid exercise of its RESIDUAL POWER within the contemplation of paragraph 9 of the Resolution En Banc of November 18, 1993, which reads: ‘*All other cases as the court en banc by a majority of its actual membership may deem of sufficient importance to merit its attention.*’ (underscoring supplied)” (At 473)

²⁶⁴ See *Fernandez v. Court of Appeals*, 458 SCRA 454 (2005), at 465.

“The residual jurisdiction of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. Considering that no appeal was perfected in this case and the records of the case have not yet been transmitted to the Court of Appeals, the case has not as yet attained the residual jurisdiction stage so as to say that the trial court already lost the jurisdiction it first acquired and that it is left with only its residual powers.”

²⁶⁵ “[T]he Constitution is a covenant that grants and guarantees *both* the political and *economic rights of the people.*” (*Tatad v. Secretary of the Department of Energy*, 281 SCRA 330 [1997], at 370)

“The Constitution is a **sacred social compact**, forged between the government and the people, between each individual and the rest of the citizenry. Through it, the people have solemnly expressed their will that all of them shall be governed by laws, and their rights limited by agreed-upon covenants to promote the common good. If we are to uphold the Rule of Law and reject the rule of the mob, **we must faithfully abide by the processes the Constitution has ordained** in order to bring about a **peaceful, just and humane society**. Assuming arguendo that six million people *allegedly* gave their assent to the proposed changes in the Constitution, they are nevertheless **still bound by the social covenant** – the present Constitution – which was ratified by a far greater majority almost twenty years ago. I do not denigrate the majesty of the sovereign will; rather, I elevate our society to the loftiest perch, because **our government must remain as one of laws and not of men.**” (Separate concurring opinion of Chief Justice Panganiban in *Lambino v. Commission on Elections*, G.R. Nos. 174153 and 174299, 25 October 2006, at 25-26)

the *residual power* that the people retained and which resides in them, and which power they may invoke every now and then. This *residual power* accords them *standing* to raise and question the validity or constitutionality of certain laws, acts or other matters that affect them even if under traditional rules they might not have met the requisite amount of exacting interest that would warrant their participation. As the principal, the people have the right to an accounting by their agents or whoever else are entrusted with the direct exercise of governmental power. In fine, the body politic is entitled to have the courts give life and meaning to the words in the Constitution which, if not animated, would remain to be but inert expressions of worthless longings and musings.

It would indeed be rather strange for the Court to see the words but refuse to hear them for what they say and mean, or, worse, for the Court to insist and continue mouthing what it has been saying before the advent of the new language, much like what the Court said in *People v. Ting Lan Uy*. In seeking to justify its adherence to a less latitudinarian approach to the provisions of the 1987 Constitution on the rights of suspects, it rationalized:

[W]hile indeed *Galman* taken together with the 1986 deliberations on what was later to become Section 12 (1) of the 1987 Constitution may lead to the conclusion that the rights are available when the person is already in custody as a suspect, or if the person is a suspect even if he is not yet deprived in any significant way of his liberty, Fr. Bernas qualified this statement by saying that “[J]urisprudence under the 1987 Constitution, however, has *consistently held, following Escobedo, the stricter view, that the rights begin to be available only when the person is already in custody.*²⁶⁶

This is quite odd. While the Court conceded that indeed the intent of those who drafted the Fundamental Law was towards a more expansive coverage of the guarantee yet it relied on what Fr. Bernas observed as sort of a justification to continue with its constricted view of the provision. What the noted constitutionalist did, however, was merely to tell the Court what it had been doing all along in spite of the language and background behind the adoption of the first paragraph of Article III, Section 12.²⁶⁷

²⁶⁶ 475 SCRA 248 (2005), at 264-265.

²⁶⁷ “Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent

On the effect of a relaxation of the rule on standing, it may indeed happen that liberalizing the concept of *locus standi* may bring about certain hardships on the courts, but then that is not enough reason for them not to give meaning and life to the spirit embodied in the Constitution. "Courts are bound to suppose that any inconveniences involved in the application of constitutional provisions according to their plain terms and import have been considered in advance and accepted as less intolerable than those avoided, or as compensated by countervailing advantages."²⁶⁸ Moreover, applying by analogy what the Court has said in relation to expediency and speed, the same may also be adopted for the matter on *locus standi*. "[T]he Constitution recognizes higher values than administrative economy, efficiency and efficacy. The Bill of Rights, in general, and the Due Process Clause in particular, were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials."²⁶⁹ The convenience of the courts should take a backseat to the constitutional intent to accord the citizenry greater access to the judicial arm of the State.

Related to the foregoing is what Justice Douglas of the American Supreme Court said in response to concerns about liberalizing the rule on standing: "There need be no inundation of the federal courts if taxpayers' suits are allowed. There is a wise judicial discretion that usually can distinguish between the frivolous question and the substantial question, between cases ripe for decision and cases that need prior administrative processing, and the like."²⁷⁰ In the same way that the Court has brushed aside questions of impropriety in having to decide a case involving its own Chief Justice – "[t]he exercise of judicial restraint over justiciable issues is not an option before this Court" and that "[e]ven in cases where it is an interested party, the Court under our system of government cannot inhibit itself and must rule upon the challenge because no other

counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

²⁶⁸ Justice Vitug, separate (dissenting) opinion in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 359 SCRA 698 (2001), at 740.

²⁶⁹ *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Board*, 499 SCRA 103 (2006), at 125.

²⁷⁰ Concurring Opinion in *Flast v. Cohen*, 392 U.S. 83 (1968), at 112.

office has the authority to do so”²⁷¹ – to that extent must be the reassurance and confidence that the Court will be able to discharge its additional and expanded responsibility within the context of a constitutional duty that it cannot and must not shirk from.

And, to the extent that a liberalized approach to *locus standi* may impose an additional duty on the part of the courts, again, this would hardly present any valid argument against its crystallization in practice. The expanded judicial power already did that, and adding this aspect on standing would just be part of the whole constitutional design and fabric. It is just one of the features and impositions of the solemn and sacred task entrusted to the courts. As the Court said in *Pimentel, Jr. v. Aguirre*, “when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.”²⁷² Then, this would also have to be considered along the pronouncement of the Court that “even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.”²⁷³ If that really be the case, then the least the courts could do – when a supplicant approaches bearing a constitutional plaint for it to redress or simply to look into – is to find a way to give him relief, which in effect is actually giving him that which he asks for himself and the others that he represents. Equally relevant is what the Court said elsewhere that where a citizen’s petition is anchored on the right of the people to be represented in court by the public officer duly authorized by law, “there need be no proof adduced that the petitioner has a personal interest in the case. xxx The requirement of personal interest is satisfied by the

²⁷¹ *Francisco v. House of Representatives*, 415 SCRA 44 (2003), at 158.

²⁷² *Pimentel, Jr. v. Aguirre*, 336 SCRA 201 (2000), at 223.

²⁷³ *John Hay Peoples Alternative Coalition v. Lim*, 414 SCRA 356 (2003), at 372.

In *Pimentel, Jr. v. Aguirre*, 336 SCRA 201 (2000), at 222, the Court said: “[W]hen an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.”

And, in *Guingona, Jr. v. Gonzales*, 219 SCRA 326 (1993), at 337, we find this line: “Once a controversy as to the application or interpretation of a constitutional provision is raised before this Court, it becomes a legal issue which the Court is bound by Constitutional mandate to decide.”

mere fact that the petitioner is a citizen and hence, part of the public which possesses the right.”²⁷⁴

With regard to concerns about the possible effect that a liberalized approach to *locus standi* may bring to the traditional concepts of separation of powers, tilting somewhat the scales in favor of an unelected judiciary,²⁷⁵ this should be deemed as part of the necessary experimentation that the Philippines chose to undertake given its experience with the old style of balancing the different branches. That experience taught the people that it did not work or live up to their expectations. If they opted to adjust the scales somehow, there is the possibility that it might work better. If not, they could always recalibrate their standards.

Moreover, giving to the people greater access to the courts would also be in keeping with the liberal spirit borne out of the liberating revolution through direct action of the people themselves. Coming out from what they saw as a repressive regime, what better way to institutionalize their reawakened vigilance and love for freedom and liberty than by giving them a more latitudinarian access to the courts? Was it not the same Court which came up with this pronouncement? “[W]hen the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.”²⁷⁶ Justice Douglas of the U.S. Supreme Court said of what may be minimal interest of individuals in an issue but one with great constitutional dimensions: “Taxpayers can be vigilant private attorneys general. Their stake in the outcome of litigation may be *de minimis* by financial standards, yet very great when measured by a particular constitutional mandate.”²⁷⁷ The same might as well remind one of the very first words spoken on the moon – “That’s one small step for a man, a giant leap for mankind.”²⁷⁸

²⁷⁴ *Gonzales v. Chavez*, 205 SCRA 816 (1992), at 847.

²⁷⁵ “It seems to me inescapable that allowing unrestricted taxpayer or citizen standing would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government.... We should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch.” (Justice Powell, concurring in *United States v. Richardson*, 418 U.S. 166 [1974], at 188)

²⁷⁶ *Francisco, Jr. v. House of Representatives*, 415 SCRA 44 (2003), at 136, and reiterated in *Senate of the Philippines v. Ermita*, 488 SCRA 1 (2006), at 39.

²⁷⁷ Separate opinion in *Flast v. Cohen*, 392 U.S. 83 (1968), at 109.

²⁷⁸ Statement of Neil Armstrong upon stepping on the moon on 20 July 1969. (See <http://edition.cnn.com/2001/TECH/space/07/20/moonwalk.anniversary/index.html>,

In any event, it must also be underscored that constitutionalism is a constant experimentation with what may best advance the public weal, promote the general welfare and serve the best interests of the citizens. In the same manner that the best interests of society may be better served by allowing free play and competition in the marketplace of ideas, allowing for greater availability of the courts to the people for the ventilation of their public complaints may better serve the public needs.

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.²⁷⁹

This matter of expanding access of the citizens to the courts is also consistent with the court's educative role in a society governed under a Rule of Law, namely, a symbolic function of formulating authoritative guidelines and binding precepts for the proper advisement of everyone, most specially those temporarily vested with – or *possessed by* – power.²⁸⁰

<http://www.phrases.org.uk/meanings/324100.html>, and <http://www.time.com/time/magazine/article/0,9171,901102,00.html?internalid=AE>, all visited on 20 December 2006)

²⁷⁹ Justice Holmes, dissenting in *Abrams v. United States*, 250 U.S. 616 (1919), at 630.

²⁸⁰ “The setting aside or declaring void, in proper cases, of intrusions of State authority into areas reserved by the Bill of Rights for the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will is not the totality of the Court's functions.

“The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating the bench and bar on the extent of protection given by constitutional guarantees.” (*Salonga v. Paño*, 134 SCRA 438 [1985], at 463)

“[T]he Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar,

Indeed, the Court has acknowledged that by virtue of the second paragraph of Section 1, Article VIII of the Constitution the Court has a “special function” of vindicating constitutional rights.²⁸¹ Moreover, the Supreme Court has claimed that it, “as the third great department of government vested with the judicial power and as the guardian of the Constitution, cannot be deprived of its certiorari jurisdiction to pass upon and determine alleged violations of the citizens’ constitutional and legal rights under the Rule of Law.”²⁸²

On the importance of the courts in the proper functioning of the government under a system of laws and not of men, the present Chief Justice observed:

Every officer under a constitutional government must act according to law and subject to the controlling power of the people, acting through the courts, as well as through the executive and legislative. One department is just as representative of the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action. This **historic role of the Court** is the foundation stone of a government of laws and not of men.²⁸³

If this really be true, then the courts must live up to the high esteem the people have in such institutions’ ability to pronounce authoritatively the limits which the law places upon all official action.

Along the lines of the people-empowering spirit that suffuses the 1987 Charter, it could also be said that it is one that is more solicitous about the welfare of the people, not only in their political interests but also in their more mundane, day-to-day concerns.

Lest it is missed, the Constitution is a covenant that grants and guarantees **both** the political and **economic rights of the people**. The Constitution mandates this Court to be the guardian not only of the people’s political rights but their economic rights as well. The protection of the economic rights of the poor and the powerless

and in the present petitions, **the military and the police**, on the extent of the protection given by constitutional guarantees.” (*David v. Macapagal-Arroyo*, 489 SCRA 160 [2006], at 215)

²⁸¹ *Tolentino v. Secretary of Finance*, 235 SCRA 630 (1994), at 686.

²⁸² *Presidential Commission on Good Government v. Peña*, 159 SCRA 556 (1988), at 566.

²⁸³ Separate opinion in *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 (2000), at 136.

is of greater importance to them for they are concerned more with the exoterics of living and less with the esoterics of liberty. Hence, for as long as the Constitution reigns supreme so long will this Court be vigilant in upholding the economic rights of our people especially from the onslaught of the powerful. Our defense of the people's economic rights may appear heartless because it cannot be half-hearted.²⁸⁴

The foregoing reminds one of what the U.S. Supreme Court said about economic concerns of the people which provided additional justification to extending the protective mantle of freedom of speech to commercial speech – “the particular consumer's interest in the free flow of commercial information ... may be as keen, if not keener by far, than his interest in the day's most urgent political debate.”²⁸⁵

And, talking about “exoterics of living” *vis-a-vis* “esoterics of liberty,” the courts may as well remember to be guided by what the Supreme Court said in *Frialdo v. Commission on Elections*. While it was about elections, it should apply, *mutatis mutandis*, with greater force when one speaks of the people's exercise of their inherent and retained sovereign rights:

At balance, the question really boils down to a choice of philosophy and perception of how to interpret and apply laws relating to elections: literal or liberal; the letter or the spirit; the naked provision or its ultimate purpose; legal syllogism or substantial justice; in isolation or in the context of social conditions; harshly against or gently in favor of the voters' obvious choice. In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms. Indeed, to inflict a thrice rejected candidate upon the electorate of Sorsogon would constitute unmitigated judicial tyranny and an unacceptable assault upon this Court's conscience.²⁸⁶

The Court further added that “the real essence of justice does not emanate from quibblings over patchwork legal technicality. It proceeds from the

²⁸⁴ *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330 (1997), at 370.

²⁸⁵ *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976), at 763.

²⁸⁶ 257 SCRA 727 (1996), at 769. This passage was also cited in subsequent cases, like *Pangandaman v. Commission on Elections*, 319 SCRA 283 (1999), at 303; *Maruhom v. Commission on Elections*, 331 SCRA 473 (2000), at 494-495; and, *Malabaguio v. Commission on Elections*, 346 SCRA 699 (2000), at 712-713.

spirit's gut consciousness of the dynamic role of law as a brick in the ultimate development of the social edifice."²⁸⁷

Under a new approach to the issue of *locus standi*, it might be time for a reversal of the rule – from requiring the petitioner to prove his standing to requiring the respondent to show why the petitioner does not have the requisite standing. And in this regard, the following passage is quite relevant, even as it may deal with some other novel feature of the 1987 Charter:

To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine *Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing.* In sync and symmetry with this intent are other provisions of the 1987 Constitution trimming the so called political thicket.²⁸⁸

In the same way that the expanded judicial power may have reversed the rules on what the courts cannot to what it can and must do, to that extent must the rule be reversed also in regard to the rule on *locus standi*.

The Constitution was born out of a revolution that manifested the people's rejection of the traditional way by which they may have been treated, ignored or simply taken for granted. It was a Charter that was forged in a spirit of greater people empowerment and diminished trust reposed upon those in power. It was a covenant with a people desirous and intent on retaining more of the powers inherent in them even as they still left most of the affairs of government within its traditional structural framework – including the availment of the court processes as a manner of redressing grievances.

Further, the Court's frequent invocation of the "paramount or transcendental importance" exception, seen in relation to a liberalized approach to *locus standi*, may also mean that such question of appropriateness of party should take a backseat. Instead, the proper focus should now be on

²⁸⁷ *Id.*, at 772.

²⁸⁸ *Estrada v. Desierto*, 353 SCRA 452 (2001), at 491.

the issue – the *song* – and not petitioner, or the *singer*. It is the *message* that should matter, not the *messenger*.

Moreover, one drawback to using an exception based on the paramount importance or transcendental significance of the issue presented is that the same is quite relative – it depends on the courts' appreciation at the particular moment. This is best illustrated by the two *Kilosbayan* cases – about gambling – which were decided in a span of barely more than a year yet the Court had radically different view about giving *locus standi* to the same set of petitioners. In *Kilosbayan, Incorporated v. Guingona*, decided on 5 May 1994, the Court said:

We find the instant petition to be of transcendental importance to the public. The issues it raised are of paramount public interest and of a category even higher than those involved in many of the afore-cited cases. The ramifications of such issues immeasurably affect the social, economic, and moral well-being of the people.... The legal standing then of the petitioners deserves recognition and, in the exercise of its sound discretion, this Court hereby brushes aside the procedural barrier which the respondents tried to take advantage of.²⁸⁹

On 17 July 1995, the Court came up with the sequel – *Kilosbayan, Incorporated v. Morato*. This time, the standing that was seen a year before altogether vanished, the Court explaining it away thus:

The question whether the petitioners have standing to question the Equipment Lease Agreement or ELA is a legal question. As will presently be shown, the ELA, which the petitioners seek to declare invalid in this proceeding, is essentially different from the 1993 Contract of lease entered into by the PCSO with the PGMC. Hence the determination in the prior case (G.R. No. 113375) that the petitioner had standing to challenge the validity of the 1993 Contract of Lease of the parties does not preclude determination of their standing in the present suit.

Not only is petitioners' standing a legal issue that may be determined again in this case. It is, strictly speaking, not even the issue in this case, since standing is a concept in constitutional law and here no constitutional question is actually involved. The issue in this case is whether petitioners are the "real parties in interest" within the meaning of Rule 3, §2 of the Rules of Court²⁹⁰

²⁸⁹ 232 SCRA 110 (1994), at 139.

²⁹⁰ 246 SCRA 540 (1995), at 562.

And, in regard to the relativity of values and of the nuances of appreciation, we find this noteworthy observation of Justice Feliciano in his concurring opinion in *Kilosbayan, Incorporated v. Guingona, Jr.*,

[I]t is not enough for the Court simply to invoke “public interest” or even “paramount considerations of national interest,” and to say that the specific requirements of such public interest can only be ascertained on a “case to case” basis. For one thing, such an approach is not intellectually satisfying. For another, such an answer appears to come too close to saying that *locus standi* exists whenever at least a majority of the Members of this Court participating in a case feel that an appropriate case for judicial intervention has arisen.²⁹¹

In this regard, certain issues may not merit the attention and the degree of importance for the moment but then would have far-ranging repercussions in the future if not nipped at the bud, so to speak. As Justice Bradley, writing for the Court, in *Boyd v. United States* admonished more than a hundred years ago:

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.²⁹²

In the words of another American Supreme Court Justice, “it nearly is always by insidious approaches that the citadels of liberty are most successfully attacked.”²⁹³ Along this line is what the Philippine Supreme Court itself said in *Ynot v. Intermediate Appellate Court*:

The strength of democracy lies not in the rights it guarantees but in the courage of the people to invoke them whenever they are ignored or violated. Rights are but weapons on the wall if, like expensive

²⁹¹ 232 SCRA 110 (1994), at 154.

²⁹² 116 U.S. 616 (1886), at 635.

²⁹³ Justice Black, dissenting in *Board of Education v. Allen*, 392 U.S. 236 (1968), at 251-252.

tapestry, all they do is embellish and impress. Rights, as weapons, must be a promise of protection. They become truly meaningful, and fulfill the role assigned to them in the free society, if they are kept bright and sharp with use by those who are not afraid to assert them.²⁹⁴

In *Allado v. Diokno*, the Court also spoke of vigilance in protecting rights, which could never be too early:

Perhaps, this case would not have reached this Court if petitioners were ordinary people submissive to the dictates of government. They would have been illegally arrested and detained without bail. Then we would not have the opportunity to rectify the injustice. Fortunately, the victims of injustice are lawyers who are vigilant of their rights, who fight for their liberty and freedom not otherwise available to those who cower in fear and subjection.²⁹⁵

There is thus the constant possibility that, depending on the courts' appreciation of issues and the timing, a case may be considered important enough or not depending on the manner²⁹⁶ and the forcefulness or cogency of the presentation of such issue,²⁹⁷ or the same being affected by the personality or the standing and status of the party in society – factors which may attract the attention of the courts to consider the matter as worth their time. But then this may only lead to further problems in the future which could have been obviated by a timely judicial scrutiny.

Under a relaxed and liberalized approach to standing, whenever a case is filed one may no longer encounter at the initial turn the issue of *locus standi*. As the present Chief Justice observed in *Ople v. Torres*, “[a]s is usual in constitutional litigation, respondents raise the threshold issues relating to the standing to sue of the petitioner and the justiciability

²⁹⁴ 148 SCRA 659 (1987), at 675.

²⁹⁵ 232 SCRA 192 (1994), at 210.

²⁹⁶ In his dissenting opinion in *Gitlow v. New York*, 268 U.S. 652 (1923), at 673, Justice Holmes said: “Eloquence may set fire to reason.”

²⁹⁷ In *Gumabon v. Director of Prisons*, 37 SCRA 420 (1971), at 422, the Court after noting the concern that a prior case it had decided involving the same issue may stand in the way of resolving it differently, said: “The fear that the Pomeroy ruling stands as an obstacle to their release on a habeas corpus proceeding prompted petitioners, as had been mentioned, to ask that it be appraised anew and, if necessary, discarded. We can resolve the present petition without doing so. The plea there made was unconvincing, there being a failure to invoke the contentions now pressed vigorously by their counsel, Attorney Jose W. Diokno, ...”

of the case at bar. More specifically, respondents aver that petitioner has no legal interest to uphold and that the implementing rules of A.O. No. 308 have yet to be promulgated.”²⁹⁸ Instead, we may have more of what the Court said in *Tañada v. Angara*.²⁹⁹

During its deliberations on the case, the Court noted that the respondents did not question the *locus standi* of petitioners. Hence, they are also deemed to have waived the benefit of such issue. They probably realized that grave constitutional issues, expenditures of public funds and serious international commitments of the nation are involved here, and that transcendental public interest requires that the substantive issues be met head on and decided on the merits, rather than skirted or deflected by procedural matters.

Accordingly, *locus standi* should not be a matter of judicial discretion, liberality or tolerance but one of constitutional command. It is about time that we proceeded from a premise that there is now a new framework, a new paradigm and philosophical matrix relative to certain issues of public concern and the parties who may be authorized to bring them up for judicial scrutiny.

Further in this regard, members of the Court have also spoken in the past of a liberalized approach to the rule on *locus standi*. Then Justice (later, Chief Justice) Davide, Jr., referred to an “abandoned restrictive application of *locus standi*”³⁰⁰ while the present Chief Justice once wrote that the complexion of the rule on *locus standi* has been undergoing a change, citing the observation that there is a continuing relaxation of the rule on standing, after which he said: “I am perfectly at peace with the drift of our decisions liberalizing the rule on *locus standi*.”³⁰¹

In relation to that aspect about the proscription against the bringing up by citizens of *generalized* grievances, the same should now likewise be liberalized for the Constitution itself, by giving the people a greater handle on the affairs of their government, should be deemed to have relaxed the rule in that regard. Each citizen, under the new constitutional scheme, is deemed as concerned about his or her brothers and sisters,

²⁹⁸ 293 SCRA 141 (1998), at 147.

²⁹⁹ 272 SCRA 18 (1997), at 46.

³⁰⁰ *Kilosbayan, Incorporated v. Morato*, 246 SCRA 540 (1995), at 617.

³⁰¹ *Kilosbayan, Incorporated v. Guingona, Jr.*, 232 SCRA 110 (1994), at 169.

neighbors and fellow citizens. What the latter cannot bring to court by themselves for appropriate relief should not be lost simply because they themselves do not do it. For as long as the former can adequately articulate before the courts their fellow citizens' concern then that should suffice. The courts, under the new Charter, might as well be deemed to have been mandated to take a more proactive role in the affairs of the State and not simply take the traditional laid-back position, hesitant to get involved in political questions and other matters of policy even as these may already be affecting the whole citizenry. This is in keeping with what the Court said long ago that "[i]n the last and ultimate analysis, then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers."³⁰²

The rule on *locus standi* could be likened to a door which if not opened wide enough would hardly enable anyone to enter.³⁰³ But then it is their government so why should the people have a difficult time entering and looking inside?

Moreover, in the same way that a *facial challenge*³⁰⁴ may be allowed in free speech cases in view of the importance of that freedom in society, then by reason of the greater recognition of the people's right to parti-

³⁰² *Angara v. Electoral Commission*, 63 Phil. 139 (1936), at 159.

³⁰³ It has been observed in relation to the constrictive use of locus standi in another jurisdiction:

"The Irish judiciary and legislature act as the doorkeepers to the law by controlling the entry and indeed the fate of the citizen from the remedies and protection of the courts. The Irish judiciary swear an oath to uphold the Constitution '...without fear or favour, affection or ill will towards any man...' The courts also agree to the best of their skill and capacity '...to vindicate the rights of all citizens' and '...to hold all citizens equal before the law.' Yet for many, access to the courts is rendered a difficult option to contemplate. The first major barrier, which any allegedly aggrieved party encounters, is that of locus standi." (Barry Sullivan, "A Liberal Approach to the Issue of *Locus Standi* and the Contrasting Interpretation of Entitlements to Civil Legal Aid," <http://www.nuigalway.ie/law/GSLR/2003/Locus%20Standi.pdf>, visited 24 December 2006)

³⁰⁴ "A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech. The theory is that '[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack

cipate in the affairs of their government granted by the Constitution, their access to the courts should also be relaxed and liberalized. Like in a *facial challenge*, the people bringing up the suit which concerns everyone need not be the one directly injured. Society may not be able to wait for that person to personally bring up the matter. If a particular issue is everyone's concern, as it may affect him or her sooner or later, then anyone who is not yet personally or directly injured should already be recognized as with the requisite standing to raise it up. An ounce of prevention might really be worth much more than a pound of cure later on.

Finally, if under American case law "Congress may by statute eliminate prudential standing concerns, leaving only constitutional standing requirements to satisfy,"³⁰⁵ then with more reason that the standing requirements in the Philippines should be deemed substantially, if not radically, affected by the design and philosophy underlying the people power provisions of the 1987 Charter.³⁰⁶ After all that has been written in the Constitution, could it be reasonably assumed that the words did not really mean much³⁰⁷ – that they are actually empty or vacuous

demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.' *The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.*" (*Estrada v. Sandiganbayan*, 369 SCRA 394 [2001], at 441, adopting Justice Mendoza's observations in his concurring opinion, 369 SCRA, at 464-465; Emphasis supplied.)

³⁰⁵ Tribe, *American Constitutional Law*. Vol. I (3rd ed. [2000]), at 387.

³⁰⁶ "Other legal systems have dramatically different approaches to standing. For example, under §39 of the South African Constitution, standing is extended to "(c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest." Chapter 2, §38(c)-(d)." (Tribe, *op. cit.*, n. 6, 386)

"Equality, as an underlying theme of the South African constitution, has led to the inclusion of specific provisions as to whom may take an action when an infringement of, or threat to, fundamental rights occurs. In South Africa, relief may be sought by:

- 1) A person acting in his or her own interest
- 2) An association acting in the interest of its members
- 3) A person acting on behalf of another person who is not in a position to seek such relief in his or her own name
- 4) A person acting as a member of or in the interest of a group or class of persons, or
- 5) A person acting in the public interest." (Barry Sullivan, *op. cit.*)

³⁰⁷ In *Demafles v. Commission on Elections*, 21 SCRA 1462 (1967), at 1465, there is a line from a children's book which offers much relief when words are devoid of meaning: "If there is no meaning in it," said the King in *Alice in Wonderland*, "that saves a world of

gestures, like a munificent bequest in a pauper's will?³⁰⁸ If in instances where the words might have remained the same the courts found a different way of looking at their meaning, such as in coming up with the *Miranda* rights for suspects³⁰⁹ (from the guarantee of privilege against self-incrimination and right to counsel), then extending it to mean that no waiver of such rights may be had unless with the assistance of a lawyer,³¹⁰ in including commercial speech within the ambit of the guarantee of freedom of speech,³¹¹ and in adjusting the guarantee against unreasonable searches and seizures from physical to *constructive* searches where no actual physical entry is made,³¹² then how much more should a new reading not be had when the language has clearly changed?

SHADOWS PAST AND PRESENT LIGHTS

Now, more than ever, is there need to show recognition and realization of the libertarian and people-empowering provisions of the Constitution, not by mechanically singing paeans to its hymn but by actually hearing its melody flowing through everyday cases, not by erecting monuments to its letter but by vivifying the essence of its being, not in paying lip service to its sound but in according reality to its spirit.

The people are expected to resort to the courts to settle and resolve, in a civilized manner, problems and issues they may have with the government. Should they be turned away by the traditional notions of

trouble, you know, as we needn't try to find any." But, of course, the Constitution is a world away from being a children's fairy tale literature.

³⁰⁸ In *De la Camara v. Enage*, 41 SCRA 1 (1971), at 9-10, the Court said, in reference to granting the right to bail but practically negating it by imposing an excessive one: "It does call to mind these words of Justice Jackson, 'a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.'" (The reference is to Justice Jackson's concurring opinion in *Edwards v. California*, 314 U.S. 160 [1941], at 186, where he wrote: "Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.")

³⁰⁹ 384 U.S. 436 (1966).

³¹⁰ *Morales v. Enrile*, 121 SCRA 538 (1983) and *People v. Galit*, 135 SCRA 465 (1985).

³¹¹ *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976). See also *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978).

³¹² See *Katz v. United States*, 389 US 347 (1967), and *Kyllo v. United States*, 533 U.S. 27 (2001).

standing in spite of the clearly changed legal and political landscape? Turning them away would only lead to their taking their complaints into their own way of resolving disputes. Where the Rule of Law denies the people the justice they seek, that could open the floodgates to their making their own law.

Under the new constitutional scheme, citizens should be *deemed directly injured* or substantially affected and involved in matters that affect them as citizens. It is a Charter that is supposed to afford greater sensitivity to citizen's complaints. And each one is deemed a keeper of his brother. As the song goes, "his welfare is my concern... He ain't heavy, he's my brother."³¹³

In the final analysis, as what Justice Kapunan said: "In a sense, all citizen's and taxpayer's suits are efforts to air generalized grievances about the conduct of government and the allocation of power."³¹⁴ Moreover, if "even a singular violation of the Constitution and/or the law is enough to awaken judicial duty,"³¹⁵ why should it matter that much that the issue was brought to the attention of the courts by one who was not directly injured but who is just as desirous of preventing more injury to himself, or his fellow citizens, from same such violation?³¹⁶ If, through

³¹³ "He Ain't Heavy, He's My Brother," by Robert Scott and Sidney Russell

The song also has the following stanza:

*If I'm laden at all
I'm laden with sadness
That everyone's heart
Isn't filled with the gladness
Of love for one another.*

³¹⁴ Separate opinion in *Cruz v. Secretary of Environment and Natural Resources*, 347 SCRA 128 (2000), at 257.

³¹⁵ *Guingona, Jr. v. Gonzales*, 219 SCRA 326 (1993), at 337.

³¹⁶ In *Stonehill v. Diokno*, 20 SCRA 383 (1967), where the Court, speaking through Chief Justice Concepcion, adopted the *exclusionary rule*, Justice Castro dissented from the Court's act of refraining from *expressly* applying said rule to papers and documents which were not found in the residences of the petitioners, leaving "the matter open for determination in appropriate cases in the future." This was predicated on the petitioners' alleged lack of standing to invoke said exclusionary rule. Justice Castro argued:

"I do not share [the Chief Justice's] reluctance or unwillingness to expressly declare, at this time, the nullity of the search warrants served at places other than the three residences, and the illegality of the searches and seizures conducted under the authority thereof. In my view even the exacerbating passions and pre-

the so-called concept of intergenerational responsibility³¹⁷ children could have standing to represent those who are yet to see the light of day in the distant future, why should the adults be deprived of the right to bring an action that presently concerns them and their fellow living beings?

The Court should develop a cohesive rule or doctrine on *locus standi* along the spirit of the people-empowerment provisions of the 1987 Constitution instead of coming up with a patchwork of exceptions which may achieve what Justice Harlan of the U.S. Supreme Court said about the changing rules on *locus standi* – reducing “constitutional standing to a word game played by secret rules.”³¹⁸

judices inordinately generated by the environmental political and moral developments of this case should not deter this Court from forthrightly laying down the law – not only for this case but as well for future cases and future generations. *All* the search warrants, without exception, in this case are admittedly general, blanket and roving warrants and are therefore admittedly and indisputably outlawed by the Constitution; and the searches and seizures made were therefore unlawful. **That the petitioners, let us assume *in gratia argumenti*, have no legal standing to ask for the suppression of the papers, things and effects seized from places other than their residences, to my mind, cannot in any manner affect, alter or otherwise modify the intrinsic illegality of the search warrants and the intrinsic illegality of the searches and seizures made thereunder. Whether or not the petitioners possess legal standing, the said warrants are void and remain void, and the searches and seizures were illegal and remain illegal. No inference can be drawn from the words of the Constitution that ‘legal standing’ or the lack of it is a determinant of the nullity or validity of a search warrant or of the lawfulness or illegality of a search or seizure.**

“On the question of legal standing, I am of the conviction that, upon the pleadings submitted to this Court, the petitioners have the requisite legal standing to move for the suppression and return of the documents, papers and effects that were seized from places other than their family residences.

* * * * *

“The U.S. doctrines and pertinent cases on standing to move for the suppression or return of documents, papers and effects which are the fruits of an unlawful search and seizure, may be summarized as follows: (a) ownership of documents, papers and effects gives ‘standing’; (b) ownership and/or control or possession – actual or constructive – of premises searched gives ‘standing’; and (c) the ‘aggrieved person’ doctrine where the search warrant and the sworn application for search warrant are ‘primarily’ directed solely and exclusively against the ‘aggrieved person,’ gives ‘standing.’” (At 399-400; Boldface supplied)

³¹⁷ *Oposa v. Factoran*, 224 SCRA 792 (1993)

³¹⁸ Dissenting opinion in *Flast v. Cohen*, 392 U.S. 83 (1968), at 129.

Under a constitutional system that seeks greater accountability, transparency and responsibility of those in public office, according the rule on *locus standi* a more expansive consideration would only be in the right direction. This new view on standing could be seen as another aspect, another form, another expression of people enfranchisement. Relevant to this is what was said about the American standing doctrine:

[T]he proposition that standing law embodies separation-of-power principles need not produce a particularly *restrictive* set of standing rules. To the contrary, under a “public law” view of the judicial system – Article III judges might be able to fulfill their responsibility under the separation of powers only by construing standing law *expansively* to remedy violations of a wide range of constitutionally and statutorily guaranteed rights.³¹⁹

If such could be said under the American constitutional system, how much more should that be true in a legal regime born out of a liberating people power revolution, giving birth to a constitution less trusting of officialdom? It has also been noted that “[t]he current trend of the common law world has moved from strict traditional approach to a less restrictive set of rules of standing. This is to allow greater public participation.... [A]n effective legal system should allow the public access to the court to have their cases heard. *A standing to sue is the fundamental to the access of justice.*”³²⁰

In fine, it is the Constitution itself that has vested the citizenry with *locus standi*. The least that the courts can do is to pay heed to that investiture. In any case, these new provisions should refocus the courts on listening to the *song* instead of preoccupying themselves with the *singer*, with reading the *message* rather than denigrating or belittling the *messenger*. The adjustments and experiment with *locus standi* has to be seen not through the lens of American political experience where it might have worked for people of a different temperament and background but in the milieu of how the traditional rules failed to meet the people’s expectations in the Philippines.

³¹⁹ Tribe, *op. cit.*, at 391.

³²⁰ <http://www.foi.law.utas.edu.au/active/abstracts/abstracts/1997Tas26AAL.html>, visited 24 December 2006.

In the final analysis, litigation is a safety valve. The people take their complaints and grievances to the courts for redress and appropriate relief, especially if they find themselves forgotten or betrayed by their elected representatives.³²¹ In case they find no meaningful avenue for that assistance,³²² they may altogether bypass the courts and the government and decide to reclaim the reins of power in the only means that may still be available to them – by waging a revolution.³²³ It was a revolution that brought about the 1987 Constitution. That Charter could remain true to its lineage by giving rise to what may appear as a radical manner of according a new gloss and substance to the rules on *locus standi*. But if the courts will not do it, choosing to rest on the comfort and the deceptive reassurance of past tradition and habit, then it may take another revolution to bring about the desired changes – and jolt everyone out of his or her complacency.

The people have spoken through their Constitution. It is up to the courts to listen and hear the words and feel the spirit and the context in which they were solemnly embodied and infused in the fundamental law.

³²¹ “Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts.... And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.” (*National Association for the Advancement of Colored People (NAACP) v. Button*, 371 US 415 [1963], at 429-430)

³²² “The courts’ role in administering justice is rendered meaningless if those adversely affected by state behaviour are without recourse. The courts would lack purpose if interested parties could not challenge purported fundamental breaches of the law.” (Sullivan, *op. cit.*)

³²³ “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, – That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.” (*American Declaration of Independence*)

Would the courts rather have the message delivered through the ranting and grating noise of an agitated crowd or conveyed through a melodious vocalization by a single singer or the harmonious voices of an orchestrated choir?

It is time to stop living in the shadows of the past. It is time to come out into the light of a new day, a time to move on. It is about time the Court stopped merely singing paeans to people power and started really listening to the people singing.