

TITLE:	THE COCONUT LEVY FUNDS AS PUBLIC FUNDS: ESTABLISHING GUIDELINES FOR JUDICIAL RECOGNITION OF THE <i>SUI GENERIS</i> NATURE OF ILL- GOTTEN WEALTH SUITS
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DATE:	2013
<p>ABSTRACT:</p> <p><i>In 1987, the Republic of the Philippines (the "Republic") filed a complaint at the Sandiganbayan against Eduardo M. Cojuangco, Jr. ("Cojuangco") and several corporations under his control, in order to recover the so-called Marcos ill-gotten wealth pursuant to Executive Order (EO) Nos. 1, 2, and 14. The complaint, entitled Civil Case No. 0033, sought to recover the controversial coconut levy funds and their proceeds, and was later subdivided into eight separate complaints. One of these subdivided complaints was Civil Case No. 0033F, which sought to recover 51 percent of shares of stocks of San Miguel Corporation (SMC) that were allegedly acquired using coconut levy funds.</i></p> <p><i>Civil Case No. 0033-F branched out into two cases, each involving distinct portions of the disputed SMC shares. In the first case decided on April 12, 2011, the Supreme Court awarded legal ownership of 20 percent of the shares to Cojuangco and his corporations (the "2011 Case"). This decision became final and executory on July 27, 2011. The second case was decided less than a year later on January 24, 2012 (the "2012 Case"). This time, the Court awarded 27 percent of the claimed shares to the Republic.</i></p> <p><i>While both cases originate from the same complaint in Civil Case No. 0033-F and therefore involve the same subject matter, cause of action, and parties, the decisions of the Court in these two cases are diametrically opposed to each other. The question is, why?</i></p> <p><i>In the 2011 Case, the Court determined the sufficiency of the Republic's allegations and evidence against the defendants by applying the definition of ill-gotten wealth. But such definition was merely created by the Court on the claimed belief that there is no existing legal - definition for it. However there is, in fact, an existing definition provided in Section 1(A) of the PCGG Rules, which was promulgated as early as April 11, 1986 and bears the force and effect of law. The Supreme Court even applied this definition in the 2005 case of Republic v. Estate of Hans Menzi, as well as in the 2012 Case. What is more disturbing is that the Court's definition of ill-gotten wealth in the 2011 Case deviated from the one found in the PCGG Rules, thereby creating a new cause of action for the recovery of ill-gotten wealth that could only be called an act of judicial legislation.</i></p>	

The outcome of the 2011 Case represents more than just a financial loss to the Republic, one that is estimated to be approximately PhP56.2 billion as of June 2012. It represents the beginning of a dangerous trend. On June 11, 2012, the Sandiganbayan rendered a decision dismissing another ill-gotten wealth suit that impleaded business tycoon, Lucia Tan, as a defendant. The said decision adopted in Coto the erroneous definition of ill-, gotten wealth in the 2011 Case.

This thesis therefore proposes to rectify the 2011 Case by establishing guidelines to invoke the reconsideration of a final and executory decision of the Supreme Court, on the claim that ill-gotten wealth suits are sui generis. This claim has two aspects.

First, ill-gotten wealth suits are inherently peculiar since they are comprised of hundreds of cases with the same cause of action, and often involving the same subject matter and parties as well. This results in interlocking issues among the cases that can lead courts to decide based on a misappreciation of the facts or theory of the case, because an interlocking issue is still pending at another court or has yet to be presented to the court for resolution.

Second, the ill-gotten wealth suits involve the recovery of public funds and assets. This imbues this class of suits with public interest that demand a treatment distinct from all others. No less than the Supreme Court has recognized the great public interest involved in recovering the Marcos ill-gotten wealth, that it has on more than a few occasions, relaxed the rules of procedure in order not to frustrate the Republic's efforts to recover ill-gotten wealth. The fact that the Supreme Court in the 2012 Case conclusively determined the nature of the coconut levy funds as public funds, makes it all the more imperative to reconsider the 2011 Case. This thesis does not ask for ill-gotten wealth suits to be made as an exception to the rule; it claims that they are, by nature, an exception. To reconsider a final and executory decision of the Supreme Court in order to correct a legally erroneous decision that in the words of former Chief Justice Teehankee, "involves the material and moral survival of the nation," is a far lesser evil than what we stand to lose, which is the rewriting of our history.

TITLE:	SUPPRESSION THROUGH SUBTERFUGE: THE UNCONSTITUTIONAL INHIBITION OF OFFENSIVE ART BASED ON HOSTILE AUDIENCE RESPONSE
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DATE:	2013

ABSTRACT:

Even with the transparent language of the constitutional mandate to advocate culture and art, the government temperament towards artistic creation can be characterized as a posture of suspicion both towards the value of art and the sensibility of defending it. In the aftermath of poleteismo, the rights of the visual artists and the protesters remain indeterminate, but what was illuminated is the ingrained tendency to inhibit offensive art in the presence of hostility.

Philippine art legislation with respect to prior restraint and subsequent punishment are in place, but the institutional interference in the controversy, which took the form of a summary closure, was sanctioned by no existing legal precedent, nor was there law which made it impermissible. This presents an avenue for a crucial inquiry as to a legal gap, which, if not addressed, allows for occasions to censor art through subterfuge. This issue obtains specific importance in the realm of visual and installation art, whose primary methods of dissemination remain to be exhibition and display.

In light of these, the paper examines the viability of adopting the heckler's veto framework as developed by American jurisprudence, and scrutinizes its compatibility with the International Covenant on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights, and further, with the present mechanisms of Philippine free speech jurisprudence. The paper will seek the codification of standards by which to measure the validity of summary closures of visual artistic exhibitions. In essence, the thesis pursues the contention that the freedom of expression forbids for artistic expression to be subordinated to the necessity of struggling with hostile audience response. An argument against defending art is an argument against culture.

TITLE:	<p style="text-align: center;">RE-EXAMINING THE TAKINGS DOCTRINE IN THE CONTEXT OF CULTURAL PRESERVATION AND ASSESSING ITS EFFECT'S ON REPUBLIC ACT NO. 10066</p>
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DATE:	<p style="text-align: center;">2013</p>
<p>ABSTRACT:</p> <p><i>Cultural bankruptcy. Cultural degradation. Cultural destruction. These are the words that spurred the passage of Republic Act No. 10066 or the National Cultural Heritage Act of 2009. With its passage came the sighs of relief of conservationists and heritage watchers everywhere. However, private art collectors and owners raised their eyebrows at some of the novel provisions of the law. Thus, the law once again sparked the debate between property rights and cultural preservation.</i></p> <p><i>One of the most controversial points of the law is Section 5, which provides for a presumption of cultural value for certain types of property. For example, a 50-year-old-and-above building is automatically presumed to be an Important Cultural Property; to overturn such presumption, the owner would have to go through the delisting procedure in the law. After this, there are the declaration and post-declaration stages. This last stage is the most problematic since this is where a property is finally and definitively declared to be culturally significant and is thus, subject to State control. Its primary effect is that any plans of demolition, modification, or alteration involving the property must be approved by the relevant cultural agency. Failure to procure such consent shall subject the owner to penal sanctions.</i></p> <p><i>While the exercise of property rights is not absolute, the exercise of the State of its police power and power of eminent domain must also comply with due process requirements in order to be valid intrusions into property rights. At first glance, the restrictions imposed by the law may seem merely regulatory since possession and legal title remains with the owner; his rights are just restricted. However, the expanded concept of taking, particularly regulatory taking, must be taken into account. When an application for demolition or modification of the cultural property is denied and such denial results into the deprivation of all or substantially all economic use of the property, a taking occurs and payment of just compensation is triggered. To determine such, a factual, case-specific inquiry must be done. A variety of factors shall be relevant: the kind of owner, their primary purposes and expectations, the costs of renovation and upkeep, the state of deterioration of the property, the prior notice rule, the location of the property, and the kind of renovation being applied for. All of these shall aid in analyzing the economic impact of the regulation.</i></p>	

The current legal framework does not recognize the possibility of regulatory taking. There is no provision which provides for the payment of compensation should a taking occur. This is dangerous for both cultural preservation and private property rights on two aspects: one, the private property owner may be deprived of their property without compensation; and two, constant takings claims may impede preservation efforts. Thus, the Proponent recommends a two-step framework to statutorily safeguard both interests. First, upon application for any proposed changes in the property, the owner and agency shall attempt to negotiate an economically feasible plan to retain the structure as it is. If unsuccessful, the application shall be granted on two grounds: either the proposed change will not materially impair the property's cultural integrity or the denial of the permit shall result into unreasonable economic hardship. The latter shall be taken to mean the deprivation of all or substantially all economic use of the property which shall be proved by the owner. This framework assures that the National Cultural Heritage Act can accomplish what it sets out to do and at the same time not trample upon the rights of property owners.

