FOREWORD

The theme of this issue was originally "Law and Religion". But due to the paucity of articles, we decided to broaden the theme to "Constitutionalism". In this way, we could accommodate more articles while retaining the ones relating to Law and Religion. This scarcity is quite telling: it is not that most people here in the Philippines are just uninterested in the subject matter; they simply do not see any problem or controversy in it. And this is very curious because of the power that religion wields in a legal system—spanning through space and time. It is only too incredible to say that the present order of things is utopian enough not to be an object of controversy; or more plausibly, that this curious phenomenon is symptomatic of the kind of lens by which we view the legal universe. Thomas Kuhn, in *The Structure of Scientific Revolutions*, talks about how paradigms condition and delimit scientific worldviews. The same can be said of legal paradigms: they determine which facts or phenomena are significant—thus creating the line that divides the legally visible and invisible. And there is the stuff of legal technicians: the need to match the facts with the predominant legal theory and the continuous articulation of the theory—more pejoratively labeled as "doctrinal regurgitation" or "re-citation". The technical aspect sustains the life of a paradigm as much as its epistemological aspect (i.e. the determination of significant facts) and it takes an anomaly outside of such paradigm—an "anomaly" because its value is so compelling and yet so fundamentally incompatible with the latter—that breaks this cycle of sustainability and opens the door for a new and more adaptable paradigm. There is, in other words, a legal revolution.

This issue can therefore be seen as a way of consciousness-raising of what may very well be outside our predominant legal paradigm. The first three Law and Religion articles, for instance, problematize the religious context by which we use the American-imported religion clauses in our Constitution. The title of Dean Raul Pangalangan's article, *Transplanted Constitutionalism: The Philippine Debate on the Secular State and the Rule of Law*, is already quite revealing: he uses history and contemporary events to demonstrate the failure of the separation doctrine—borne out of the mismatch between American religious pluralism and Philippine Roman Catholic hegemony. He says that the Free Exercise clause must prevail over the Establishment clause because in a non-pluralistic and non-libertarian milieu, absolute state neutrality will only effectively entrench the majority religion through a facially neutral operation of

the law, the market and the democratic process. Florin Hilbay's *The Non-Establishment Clause: An Anti-Establishment View* shows how our constitution can be a constitution of contradictions, as he undertakes a textual analysis of how the Establishment clause stands in relation to the other constitutional provisions relating to religion. He then contextualizes this in light of our colonial history and how it has come to be that the Philippine terrain—which includes its legal system—presupposes Christian values and a monotheistic god. The last of the Law and Religion articles is Maximo Sison III's *Legal Reason and Illegal Fictions*—which is a discussion of the general characteristics of reason and how it can only be the best criterion in regulation—a proposition which is widely accepted. In matters of religion, however, Philippine constitutional law becomes schizophrenic because "sincere faith" becomes the standard over and above rationality—a value obviously coming from religion itself. He then calls for a greater freedom of speech to criticize the irrationalities of religion which have real consequences in the world.

It goes without saying that the legal treatment of religion is only part of a larger complex epistemic system that comprises our constitutional paradigm. And precisely because paradigms are systemic, their constitutive elements symbiotically reinforce each other in a way that creates an emergent web of relations that is greater than the sum of its parts. Thus, the way privacy is conceived, for instance, may have something to do with how religion is constitutionally recognized. Notice, moreover, that the theme of this issue is "Constitutionalism" and not "Constitutional Law"—the "-ism" implying the contestable theoretical underpinnings of constitutionalizing, rather than the doctrinal and classroom connotations of "Constitutional Law".

With this widened field of discursive constitutionalism, Ryan Balisacan's *Claiming Personal Space in a Globalized World: Contextual and Paradigm Shifts in the Delimitation of the Right to Privacy* is fitting because it explains how traditional privacy rights become largely divergent with contemporary privacy rights in the context of globalization. The right to privacy, he says, underwent a paradigm shift but furthermore, there should be a so-called mechanism shift because balancing two competing claims is no longer viable: with the multiplication of social actors, conflicting values must be weighed by their respective merits and the ones to be sacrificed in favor of the others are those that the decision-maker deems comparatively more dispensable. The next article, *Sheathing the Sword: Re-examining the Breadth and Boundaries of the Military Powers of the President* by Diana Triviño and Dionne Pulma—is a historical and comparative study of the military powers of the President. It concludes that the Philippines under the Presidency of Gloria Macapagal-Arroyo currently operates under a form of crisis government but says that generally, the limitations that we have on military and emergency powers are insufficient. It

offers some suggestions to address this problem and calls for continued vigilance among the citizenry. Oscar Tan's *The Party-List Sytem Revisited: Uncovering Hidden Pitfalls in the Present Reform Proposals* is an update of Tan's previous article in the PHILIPPINE LAW JOURNAL and is part of an on-going debate (notably, with math professor Dr. Felix Muga of Ateneo de Manila University) regarding the allocation formula of party-list representatives in Congress. He proposes that instead of using the mathematically absurd 2% threshold of the *Veterans* formula, the number of votes of each party-list organization should instead be divided by a certain integer, until the integer values of the quotients add up to the total number of seats for party-list representatives. The next concerns a relatively undertheorized field of constitutional law: education and academic freedom. *Sketching the Law on Education: Locating the Teachers in Relation to the State, the School and the Students and their Implications to Academic Freedom* by Juan Arturo De Castro examines the legal relations among the three major players in the educational system: the teacher, the students and the State. He then suggests some remedies as to how rights may be enforced in the educational system. Notably, this article argues that students should enjoy proprietary rights over their grades and thus are entitled to constitutional due process. Finally, we end with Justice Vicente Mendoza's *The Decriminalization of Libel is not the Way*—which is his response amidst calls to abolish the libel law—allegedly being used by powerful politicians to silence journalists who have been critical of them. Instead of decriminalizing libel, Justice Mendoza argues that we should incorporate the free speech jurisprudence in American law to our libel statutes to protect freedom of expression.

A paradigm is selfish in the sense that it always seeks to perpetuate itself. Not that it has a will like humans, but the nature of a paradigm itself—in other words, that it determines which facts are significant and its legion of practitioners who match these facts with theory and who continuously articulate the theory—creates a self-sustaining, self-entrenching and ever expanding system much like the evolutionary propensity of genes to propagate. So much so that any finding inconsistent with the paradigm will most likely be met with stubborn resistance—if it is significant enough—or in most cases, just plain apathy. Ultimately, it takes a radically disconcerting idea—too consequential enough to be simply ignored—to expose the limitations of a paradigm (especially its inability to explain a significantly new phenomenon) and thus pave the way for a more robust paradigm. The task of journals—as a mode of utterance in a knowledge community—is to be at the forefront of this change.

- *The Issue Editors, Vol. 82 No. 3*