

The Province and Duty of Courts: Law and Policy

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Judicial functions mean more than adjudicating rights and exercising judicial review. The Author recognizes that, in the process of interpreting statutes and deciding cases, the Supreme Court partakes the mirror roles of Congress and the Chief Executive as a policy-making body. “Instinctive preferences and inarticulate convictions,” as well as policy considerations, continually shape the role of courts in formulating social policy.

The Author explores the province and duty of the courts in law and policy. He samples selected jurisprudence in vital socio-political areas of constitutional rights, economics, and policy initiatives by Congress and the Presidency. Issues of the freedom of the press were explored in how the media can influence election results and how media can impede the judicial machinery and the rights of the accused in a live coverage of the criminal trial of former Pres. Joseph E. Estrada. Corollary to the freedom of the press is the freedom of speech and expression.

The Author also delves into “economic jurisprudence” in three cases where the Court intervened in commercial transactions and may have even substituted its judgment over the Executive and Legislative branches of government.

With regard to the Supreme Court’s relation with the President, the Court has intervened in cases where presidential powers were upheld over barring the return of the former first family; defining the power of supervision over local government units; and upholding the use of military units for peace and order situations in times of peace. The Court’s policy-making role is also explored with Congress in ensuring that laws are faithfully enacted in accordance with Constitution. These are the so-called *legislative journals* or *enrolled bill* cases.

Carving the role of judicial functions in the 21st century requires being more conscious of the factual situations and enforceability of decisions. Ultimately, it must be recognized that judicial functions are tools for social adjustment and policy.