

## Constitutional Kritarchy Under the *Grave Abuse Clause*

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SUBJECT(S): CONSTITUTIONAL LAW

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This Note discusses the grave abuse clause of the Constitution which is the power of the Court “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.” This clause is recognized to be what is known as the Doctrine of Judicial Supremacy. It Note argues that there is no provision in the Constitution that defines the instances when an act is in grave abuse of discretion.

The Note initially discusses the nature of political rule and the doctrine of separation of powers. It then touches upon the power of judicial review. It is argued that the Supreme Court has the sole authority to determine whether it has jurisdiction under the grave abuse clause on any given issue. There is discussion on the two theories of grave abuse powers, namely the classical theory and the modern theory.

The classical theory holds that the Supreme Court should liberally grant the governmental body whose acts are in question the benefit of discretion and that the Court must exercise caution in striking down acts. The modern theory, on the other hand, views grave abuse as such act of a body that amounts to a “lack of power.” It recognizes the duty of the Supreme Court to watch over the whole government.

The Note also provides a background on the historical-institutional analysis of the Philippine legal system. Analyzed are the institutional structure, fiscal autonomy, individual security of tenure, and other powers of the Supreme Court. A small discussion on the political question doctrine is also found. The Note asserts a shift towards the judicialization of political issues. It provides for the possible advantages and disadvantages of the so-called Constitutional Kritarchy of the legal system, where a possible rule of judges may be established.