The Vexing Unjustness of Unjust Vexation: Unconstitutionality Under the Vagueness Doctrine

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I. INTRODUCTION

The Philippines, consistent with its penchant for maintaining antiquated laws,[1] has penalized *unjust vexation* for over a century now. Yet an examination of the text, history, jurisprudence, and prevailing standards of judicial review for penal laws shows that unjust vexation has outlived its purpose. It is ready to be wiped off from statute books.

Article 287 of the Revised Penal Code penalizes the crime of "other coercions or unjust vexations."[2] This broad use of language did not hinder the courts from applying the provision.[3] The Supreme Court, over time, has made its own definition of what the phrase means and how the crime is proved, which can arguably be considered as bordering on judicial legislation.[4]

At present, when one is considered "annoying," he or she may be charged with unjust vexation.[5] Even posting an "annoying" comment on social media might even be considered "cyber-unjust vexation."[6] However, what is

1. Jovee Marie N. Dela Cruz & Butch Fernandez, *The Broader Look: Amending Antiquated Acts Anticipated to Unshackle Pinoys from Legal Tethers*, BUSINESSMIRROR, Jan. 9, 2020, *available at* https://businessmirror.com.ph/2020/01/09/amending-antiquated-acts-anticipated-to-unshackle-pinoys-from-legal-tethers (last accessed July 31, 2023) [https://perma.cc/P5H2-F2NB].

2. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815, art. 287 (1930) (as amended).

3. *See* People v. Sumingwa, G.R. No. 183619, 603 SCRA 638, 670 (2009).

4. "[Judicial legislation is] the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. ... [It is] forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial." Tañada v. Yulo, G.R. No. L-43575, 61 SCRA 516, 520 (1935).

5. Dean Nilo Divina, *You're Annoying*, DAILY TRIBUNE, July 31, 2020, *available at* https://tribune.net.ph/index.php/2020/07/31/youre-annoying (last accessed July 31, 2023) [https://perma.cc/62NT-4LDE].

6. *See* An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression and the Imposition of Penalties Therefor, and for Other Purposes

annoying to one may not be annoying to another. This lack of objective standard of what constitutes vexatious behavior that merits criminal punishment has made it an easy tool for weaponization.[7] Just for being "annoying," one may end up in court, engage the services of counsel, defend oneself that what he or she did was not a crime, and, if convicted, appeal his or her way up to the Supreme Court, all while the threat of imprisonment hangs like Damocles' sword over one's head.

However, the "void for vagueness" doctrine,[8] which is based on the due process clause of the Constitution,[9] and considered to be an applicable standard of review for penal statutes, clashes head-on with Article 287. Under this doctrine, a penal statute must satisfy both the Sufficient Definiteness Test — the law must provide fair notice to the people of the prohibited act[10] — and the Arbitrary Enforcement Test — the law must not leave law enforcers unbridled discretion in carrying out its provisions.[11] If the law does not pass either or both tests, then it suffers from vagueness and must be declared void.[12]

The purpose of this Article is to discuss the crime of unjust vexation, and to argue that under the void for vagueness doctrine, the crime is, as presently worded and construed, vague and thus void. Chapter II discusses the background of the crime, particularly its text, historical development, and jurisprudence. Chapters III to IV explain the void for vagueness doctrine, its American roots, how it is applied in the Philippines, and expounds on the Sufficient Definiteness and Arbitrary Enforcement Tests. Here, the two tests are applied to Article 287 of the Revised Penal Code, which results in the finding that unjust vexation is indeed vague. Chapter V is a discussion of other

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[Cybercrime Prevention Act], Republic Act No. 10175, § 6 (2012) & Disini v. Secretary of Justice, G.R. No. 203335, Feb. 18, 2014, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56650 (last accessed July 31, 2023).

7. Randy David, *Public Lives: Weaponizing the Law*, PHIL. DAILY INQ., Mar. 31, 2019, *available at* https://opinion.inquirer.net/120466/weaponizing-the-law-2 (last accessed July 31, 2023) [https://perma.cc/9E4Z-USPQ].

8. *See* Romualdez v. Commission on Elections, G.R. No. 167011, 553 SCRA 370, 435 (2008) (J. Carpio, dissenting opinion) ("The void for vagueness doctrine expresses the rule that for an act to constitute a crime, the law must expressly and clearly declare such act a crime.").

9. PHIL. CONST. art. III, § 1.

10. Estrada v. Sandiganbayan, G.R. No. 148560, 369 SCRA 394, 440 (2001).

11. *Id.*

12. *Id.*

reasons that support the invalidation of unjust vexation such as through comparative analysis with similar laws, examination of alternative remedies for vexatious acts, and policy considerations. Lastly, Chapter VI synthesizes the discussion herein and concludes the Article.

II. UNJUST VEXATION

A. Text

Article 287 of the Revised Penal Code, as amended by Republic Act No. 10951,[13] reads —

> Article 287. *Light coercions.* - Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of *arresto mayor* in its minimum period and a fine equivalent to the value of the thing, but in no case less than [f]ifteen thousand pesos (₱15,000).
>
> Any other coercions or unjust vexations shall be punished by *arresto menor* or a fine ranging from [o]ne thousand pesos (₱1,000) to not more than [f]orty thousand pesos (₱40,000) or both.[14]

The provision punishes several crimes. The first paragraph talks of light coercion, an example of which is illustrated in the case of *United States v. Tupular*,[15] where the accused, who acted as an agent of the creditor, took forcible possession of the goods from the store of the victim in order to pay for the debt of the latter.[16]

The second paragraph, which is the subject of this Article, penalizes *unjust vexation*.[17] Evidently, the provision does not, in any way, define what the term means or describe how the crime is committed. This results in various interpretations of what constitutes criminally vexatious conduct.[18]

It is said that a felony is composed of two elements: (1) the *actus reus*, or "any bodily movement tending to produce some effect in the external

13. REV. PENAL CODE, art. 287.

14. *Id.*

15. United States v. Tupular, G.R. No. L-2958, 7 Phil. 8 (1906).

16. *Id.* at 9 & LUIS B. REYES, THE REVISED PENAL CODE 804-05 (20th ed. 2021).

17. REV. PENAL CODE, art. 287, para. 2.

18. *Compare* Andal v. People, G.R. No. L-29814, 27 SCRA 608, 613 (1969) (which suggests that the employment of "force" determines if unjust vexation was committed), *with* People v. Reyes, 98 Phil. 646, 648 (1956) (which did not require the employment of "force" to find that unjust vexation was committed).

world;"[19] and (2) *mens rea*, which is "a guilty mind, a guilty or wrongful purpose[,] or criminal intent."[20]

As compared with other crimes such as homicide, where the *actus* refers to the "killing,"[21] or rape, where it can be done by "carnal knowledge" or "sexual assault,"[22] the *actus* in unjust vexation is not sufficiently clear. How can vexatious behavior amount to a crime, i.e., what specific acts are considered criminally vexatious? How must it be measured, i.e., is the victim's feeling that he or she was vexed sufficient? Unfortunately, the answers to these questions are not found in the text itself.[23] For a crime described only in two words, much is left to be desired from Article 287.

B. History

The Revised Penal Code was only a modified version of the Penal Code of 1870 promulgated during the Spanish colonial period.[24] The Code Committee, created by the Department of Justice in 1927, which was tasked to revise the old Penal Code, "did not undertake the codification of all penal laws nor produce a modern code or one conforming to advanced theories."[25]

Articles 507 to 511 of the old Penal Code, which are included in the Chapter on "*amenazas y coacciones*" or "threats and coercions," did not provide for any crime of unjust vexation.[26] However, there is found in Paragraph 5, Article 604 of the old Code, in the Title concerning "*de las faltas contra las personas*" or "misdemeanors against persons," a crime similar in wording to the

19. People v. Gonzales, G.R. No. 80762, 183 SCRA 309, 324 (1990).

20. People v. Moreno, G.R. No. 126921, 294 SCRA 728, 743 (1998).

21. REV. PENAL CODE, art. 249.

22. *Id.* art. 266-A.

23. *See* Act Amending Article 287 of Act No. 3815, Otherwise Known as the Penal Code, as Amended, and Creating a New Article Defining the Crime of Unjust Vexation and Increasing the Penalty Thereof, S.B. No. 3166, explan. n., 16th Cong., 3d Reg. Sess. (2016).

24. People v. Geronimo, et al., 100 Phil. 90, 105-06 (1956) (J. Montemayor, dissenting opinion).

25. RAMON C. AQUINO & CAROLINA C. GRIÑO-AQUINO, THE REVISED PENAL CODE: ACT NO. 3815 AS AMENDED, UP TO REPUBLIC ACT NO. 9346 PROHIBITING IMPOSITION OF DEATH PENALTY 1-2 (2008).

26. CÓDIGO PENAL, Supplemento Al Num. 243, ch. VI (1870) (superseded in 1930) [hereinafter Old Penal Code].

second paragraph of Article 287 of the Revised Penal Code.[27] Paragraph 5, Article 604 of the old Code reads —

> Art. 604. *Serán castigados con las penas de uno á cinco dias de arresto ó multa de 5 á 50 pesetas*:
>
> ...
>
> *5. [ ] Los que causaren á otro una coaccion ó vejacion injusta no penada en el libro 2 de este Código*.[28]

A renowned commentator of the old Penal Code, Don Joaquin Francisco Pacheco, cited by the Court in early decisions, expounded that Article 604 punishes "*injurias*" or "insults" that may be grave, even though treated by law merely as a misdemeanor.[29] Another known commentator of the old Penal Code, Salvador Viada, commented that coercion as punished in Paragraph 5, Article 604 of the old Penal Code is related to the crime of coercion punished in Article 510 thereof, and it is the court's duty to determine the "extent and effects of the act" in order to classify it as falling as a delict under Article 510, or as a misdemeanor under Article 604.[30]

Taking its cue from Viada, the Code Committee removed Paragraph 5, Article 604 of the old Penal Code, and transferred it alongside light coercion under Article 498, to form what is now Article 287 of the Revised Penal Code, which is included in the Section on threats and coercions.[31] The historical development of unjust vexation thus cannot be removed from coercion. Thus, it was the intent of the Code Committee, and of the Philippine Legislature which enacted the Revised Penal Code, to group unjust vexation with the crime of coercion.

The indications are manifest. First, the crime is included in the Section entitled "*amenazas y coacciónes*" or "threats and coercions." Second, unjust vexation was included in Article 287, which is captioned as "*coacciónes leves*" or "light coercion." Third, the historical development of the crime, from being a misdemeanor under Article 604 of the old Penal Code to a crime

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27. *Id*. art. 604 (5).

28. *Id*.

29. 3 JOAQUIN FRANCISCO PACHECO, EL CÓDIGO PENAL CONCORDADO Y COMENTADO 378 (4th ed. 1870).

30. SALVADOR VIADA Y VILASECA, CÓDIGO PENAL REFORMADO DE 1870 CON LAS VARIACIONES INTRODUCIDAS EN EL MISMO POR LA LEY DE 17 DE JULIO 1876 878 (1885).

31. AQUINO & GRIÑO-AQUINO, *supra* note 25, at 3.

related to coercion as included in Article 287, shows that unjust vexation should be interpreted in relation to coercion.

However, the Court has interpreted unjust vexation as distinct and separate from coercion contrary to its historical development, as will be shown hereafter, as coercion has been removed from its construction. At present, unjust vexation is a standalone crime for which the element of compulsion is not necessary to secure a conviction.[32]

C. Jurisprudence

The first case where the Court had the opportunity of interpreting or applying the law against unjust vexation came in *People v. Reyes*, decided in 1934.[33] Here, the appellants were convicted by the trial court of the crime of *offending religious feelings* under Article 133 of the Revised Penal Code for constructing a barbed wire in front of a chapel where a *pabasa*[34] was conducted in the evening. The Court ruled that the appellants cannot be considered to have committed an act offensive to religious feelings as "normally such an act would be a matter of complete indifference to those not present, no matter how religious a turn of mind they might be."[35] However, the Court found that they were guilty of unjust vexation because they constructed the fence "late at night and in such a way as to vex and annoy the parties who had gathered to celebrate the *pabasa*."[36]

In the above case, the Court did not discuss the character and nature of unjust vexation as a crime. It did, however, rule on one thing — that unjust vexation is necessarily included in the crime of *offending religious feelings*[37]

32. *See* Baleros, Jr. v. People, G.R. No. 138033, Feb. 22, 2006, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/40548 (last accessed July 31, 2023).

33. People v. Reyes, 60 Phil. 369 (1934).

34. *Id.* at 370 ("[T]he term *pabasa* is applied to the act of the people, professing the Roman Catholic faith, of assembling, during Lent, at a certain designated place, for the purpose of reading and chanting the life, passion[,] and death of Jesus Christ.").

35. *Id.* at 371.

36. *Id.* at 372.

37. "[A]n offense may be said to be necessarily included in another when all the ingredients of the former constitute a part of the elements constituting the latter." Melo v. People, 85 Phil. 766, 769 (1950).

(which legal commentators have also argued is unconstitutional).[38] Thus, to differentiate, if the vexatious act is done with an anti-religious *animus*, the act falls under Article 133 of the Revised Penal Code. If there is no such intent, then it is unjust vexation under Article 287.

In a second case of *People v. Reyes*,[39] decided in 1956, the accused was charged with coercion under the first paragraph of Article 287 of the Revised Penal Code for seizing a passenger jeep belonging to another to answer for the latter's debt.[40] The trial court dismissed the information on the ground that violence was not alleged to have been committed by the accused.[41] The Court, however, reversed the trial court's decision, and ruled that the alleged crime falls under *other coercions* under the second paragraph of Article 287.[42] Moreover, the Court was of the view that the alleged crime may also be considered under *unjust vexation*, but it did not elucidate further.[43] Again, the Court applied the law without explaining the nature of the crime.

Then, in *Andal v. People*,[44] the Court affirmed the conviction of the accused for committing unjust vexation. The accused in this case were members of another religious denomination, who forcibly buried the deceased wife of one of the members in a Catholic cemetery, alleging that there was no other cemetery they could have buried her in.[45] It was found that the accused acted not out of necessity in burying the remains of the wife, but with contempt as they threatened the priest, tricked the attendant of the cemetery, and conducted their religious rites therein. For this, the Court found that they "in effect took the law in their own hands by employing force[.]"[46]

In this case, the accused were charged with the crime of *offending religious feelings* but were convicted of *unjust vexation*.[47] Like the first *People v. Reyes*

38. *See, e.g.*, Florin T. Hilbay, *Offending Religious Feelings*, PHIL. DAILY INQ., Jan. 31, 2013, *available at* https://opinion.inquirer.net/45975/offending-religious-feelings (last accessed July 31, 2023) [https://perma.cc/5UFG-GTG7].

39. People v. Reyes, 98 Phil. 646 (1956).

40. *Id.* at 647.

41. *Id.* at 648.

42. *Id.*

43. *Id.*

44. Andal v. People, G.R. No. L-29814, 27 SCRA 608 (1969).

45. *Id.* at 610-11.

46. *Id.* at 613.

47. *Id.*

case, this case showed that the latter crime is necessarily included in the former. However, importantly, the determining factor for why unjust vexation exists is the finding that the accused employed "force" by threatening the priest in charge of the cemetery.[48] This is contrary to the finding of the Court in the second *People v. Reyes* case, where it was ruled that the act complained of, which does not involve the use of "actual force" and its resulting violence, may be considered under unjust vexation.[49] Thus, even with just these three cases, one can already see the incongruity in how the Court interprets what is vexatious conduct and the inconsistency in how the law is applied.

People v. Maravilla[50] presents another instance where unjust vexation is subsumed by another crime. Here, the Court ruled that unjust vexation involves the "molestation of the offended party."[51] However, its difference with *acts of lasciviousness* punished under Article 336 of the Revised Penal Code is the absence of "lewd designs."[52] In any case, the Court ruled that *unjust vexation* is necessarily included in *acts of lasciviousness*, such that prosecution and acquittal of either crime bars the prosecution for the other.[53]

Then, in *People v. Contreras*,[54] the Court did not discuss unjust vexation but made an important holding that its elements do not form part of the crime of rape under Article 335 of the Revised Penal Code.[55] However, this ruling begs the question — what are the elements of unjust vexation? Clearly, as has been discussed, the text of the Code does not provide for it and previous precedents have not enumerated it.

"Annoyance" was again the controlling factor in *Ong Chiu Kwan v. Court of Appeals*,[56] where the accused cut the electric, water, and telephone lines of the complainant's business during its peak hours because the lines crossed his property. The Court here simply said that the accused was guilty of unjust vexation, but it did not provide for any other explanation for such ruling.[57]

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48. *Id.* at 610-11.

49. People v. Reyes, 98 Phil. at 648.

50. People v. Maravilla, G.R. No. L-47646, 165 SCRA 392 (1988).

51. *Id.* at 398.

52. *Id.*

53. *Id.*

54. People v. Contreras, G.R. No. 137123-34, 338 SCRA 622 (2000).

55. *Id.* at 646.

56. Ong Chiu Kwan vs. Court of Appeals, G.R. No. 113006, 345 SCRA 586 (2000).

57. *Id.* at 591.

Perhaps the best elucidation of unjust vexation by the Court came in the case of *Baleros, Jr. v. People*, where it was ruled that

> there is no need to allege malice, restraint[,] or compulsion in an information for unjust vexation. As it were, unjust vexation exists even without the element of restraint or compulsion for the reason that this term is broad enough to include any human conduct which, although not productive of some physical or material harm, would unjustly annoy or irritate an innocent person. The paramount question is whether the offender's act causes annoyance, irritation, torment, distress[,] or disturbance to the mind of the person to whom it is directed.[58]

Interestingly, this ruling affirmed the broadness that has defined unjust vexation thus far in that it includes "any human conduct" for as long as it results in the "annoyance, irritation, torment, distress[,] or disturbance to the mind of the [innocent] person[.]"[59] Aside from the expansive *actus* that characterizes the crime, the Court also clarified that its resulting intendment is measured by how the victim sees the conduct, i.e., that it should result in the latter's "annoyance, irritation, torment, distress, or disturbance [of] the mind."

Then, in *Maderazo v. People*,[60] the Court affirmed the conviction of the accused of *unjust vexation* for padlocking a market stall and thereafter opening and taking inventory of the contents thereof and bringing the same to the police station without authority under the law.[61] Importantly, the Court further refined its own formulation of unjust vexation by adding that "unjust vexation, being a felony by *dolo*, malice is an inherent element of the crime."[62]

In *People v. Sumingwa*,[63] the Court affirmed the conviction of the accused of unjust vexation, among others. Here, the accused's "acts of embracing, dragging[,] and kissing [the victim] in front of her friend annoyed [the victim]."[64] Invoking *Maderazo*, the Court ruled that since the paramount consideration in the crime is the annoyance of the victim, for which the accused was found to have committed, then his conviction was proper.[65]

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58. Baleros Jr. v. People, 518 Phil. 175, 195 (2006).

59. *Id.*

60. Maderazo v. People, G.R. No. 165065, 503 SCRA 234 (2006).

61. *Id.* at 248.

62. *Id.* at 247.

63. People v. Sumingwa, G.R. No. 183619, 603 SCRA 638 (2009).

64. *Id.* at 660.

65. *Id.*

Finally, in *People v. Ladra*,[66] the accused was convicted by the trial court of unjust vexation when he "squeezed" the private part of a child.[67] However, the Court disagreed and found that the accused committed *acts of lasciviousness* under Article 336 of the Revised Penal Code.[68] The Court reasoned that such act by the accused showed "lewd or indecent design."[69] Like *Maravilla*, the Court here found that if the act includes an intention to sexually molest the victim, such that there is "lewd design" on the part of the offender, then the crime is *acts of lasciviousness*; otherwise, if there is no "lewd design," it is unjust vexation.[70]

Case and Year Promulgated	Ruling
People v. Reyes (1934)	Unjust vexation is necessarily included in the crime of *offending the religious feelings*.
People v. Reyes (1956)	Unjust vexation may include non-violent acts.
Andal v. People (1957)	Unjust vexation may include the commission of actual force.
People v. Maravilla (1988)	Unjust vexation does not include lewd design; otherwise, the crime is *acts of lasciviousness*.
People v. Contreras (2000)	Unjust vexation is not necessarily included in the crime of rape.
Ong Chiu Kwan v. Court of Appeals (2000)	Annoyance of victim leads to conviction of unjust vexation.
Baleros, Jr. v. People (2006)	Unjust vexation is any human conduct that would lead to the annoyance, irritation, torment, distress, or disturbance of the mind of the victim.

66. People v. Ladra, G.R. No. 221443, 831 SCRA 252 (2017).

67. *Id.* at 260.

68. *Id.* at 265.

69. *Id.* at 267.

70. *Id.*

Maderazo v. People (2006)	Malice is an inherent element of the crime.
People v. Sumingwa (2009)	Paramount consideration in the crime is the annoyance of the victim.
People v. Ladra (2017)	Lewd design is not included in unjust vexation.

Table 1. Summary of Jurisprudence on Unjust Vexation

These cases show that the Court first grappled on how to define unjust vexation and went to its straight application without explaining why the complained acts fall under such crime. It would only be in *Baleros, Jr.* that the Court would create a formulation of its elements, and then in *Maderazo* where the Court identified the specific *animus* required.[71] For a crime that has existed even prior to the Revised Penal Code, unjust vexation's formulation is relatively new, which is not provided for under the Code itself but only through case law.

III. VOID FOR VAGUENESS DOCTRINE

After discussing unjust vexation as it exists today, it is now proper to expound on the framework upon which it must be measured against — the void for vagueness doctrine or vagueness doctrine.

A. American Experience

The tradition of American courts in invalidating penal laws due to vagueness is based on the common law practice of judicial refusal to apply uncertain laws.[72] However, after the turn of the 20th century, the courts have come to base the practice on the Fourteenth Amendment to the United States (U.S.) Constitution,[73] which guarantees that no "State [shall] deprive any person of life, liberty, or property, without due process of law."[74] Thus was born the void for vagueness doctrine.

By invoking the vagueness doctrine, a law is declared invalid if it violates the constitutional guarantee "by taking away someone's life, liberty, or

71. *Baleros, Jr.*, 518 Phil. at 195 & *Maderazo*, 503 SCRA, at 248-49.

72. Marc L. Swartzbaugh, et al., *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 67 n. 2 (1960).

73. *Id.*

74. U.S. CONST. amend. XIV.

property under a criminal law so vague[.]"[75] When a criminal law is vague, it runs afoul with the due process clause because the law "fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused."[76]

In *Sessions v. Dimaya*,[77] the U.S. Supreme Court explained that the doctrine is likewise founded on the structural principle implied in the Constitution — separation of powers. It held that "the doctrine is a corollary of the separation of powers — requiring that Congress, rather than the executive or judicial branch, defines what conduct is sanctionable and what is not."[78]

The U.S. Supreme Court, in *Grayned v. City of Rockford*,[79] summarized the three reasons why penal statutes are required to be clear and concise in their language to satisfy the due process requirement of the U.S. Constitution, thus —

> First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone' ... than if the boundaries of the forbidden areas were clearly marked.'[80]

As stated, a penal law must be of clear language so that people of "ordinary intelligence" would not be left guessing as to whether the commission of an act is criminal or not.[81] This is what is called, for purposes of this Article, the

75. Johnson v. United States, 135 S. Ct. 2551, 2554 (2015) (U.S.).

76. Musser v. Utah, 68 S. Ct. 397, 96 (1948).

77. Sessions v. Dimaya, 138 S. Ct. 1204 (2018) (U.S.).

78. *Id.* at 1212.

79. Grayned v. City of Rockford, 408 U.S. 104 (1972).

80. *Id.* at 108-09 (citing Baggett v. Bullit, 377 U.S. 360, 372 (1964) & Cramp v. Board of Public Instruction of Orange County, 368 U.S. 278, 287 (1961)).

81. *Id.*

Sufficient Definiteness Test. Likewise, the clear language of the penal law must provide for uniform guidelines in how they are implemented, taking away much discretion on the part of law enforcement. This, on the other hand, is called the *Arbitrary Enforcement Test*.[82]

Thus, under the present formulation, these two Tests must be satisfied by a penal law so as not to be declared void for vagueness. As held by the U.S. Supreme Court in *Skilling v. United States*[83] —

> To satisfy due process, 'a penal statute [must] define the criminal offense (1) with sufficient definiteness that ordinary people can understand what conduct is prohibited and (2) in a manner that does not encourage arbitrary and discriminatory enforcement.' [ ] The void-for-vagueness doctrine embraces these requirements.[84]

The third reason provided in *Grayned*, which involves the abridgment by vague penal laws of First Amendment rights,[85] i.e., religious freedom, freedom of speech, of the press, and of assembly,[86] is closely related to the overbreadth doctrine, which is a separate and distinct principle of law not generally used to invalidate penal statutes.[87] Nevertheless, its relation to the void-for-vagueness doctrine shall be discussed and clarified hereafter.

1. Sufficient Definiteness Test

The requirement for a penal law to have sufficient definiteness in its language is based on the need to provide fair notice to all people of the act or conduct being proscribed. As early as 1891, the U.S. Supreme Court held, in *United States v. Brewer*,[88] that penal laws must be "explicit" so that people may *know* what acts or conduct to avoid.[89] This would be affirmed in *Nash v. United States*,[90] which ruled —

82. *See* Cristina D. Lockwood, *Defining Indefiniteness: Suggested Revisions to the Void for Vagueness Doctrine*, 8 CARDOZO PUB. L. POL'Y & ETHICS J. 255, 273 (2010).

83. Skilling v. United States, 561 U.S. 358 (2010).

84. *Id*. at 402-03 (citing Kolender v. Lawson, 461 U.S. 352, 357 (1983)).

85. U.S. CONST. amend. I.

86. The same rights are enshrined in the Philippine Constitution. *See* PHIL. CONST. art. III, § 4.

87. *See Estrada*, 369 SCRA at 529.

88. United States v. Brewer, 139 U.S. 278 (1891).

89. *Id*. at 288.

90. Nash v. United States, 229 U.S. 373 (1913).

> [T]he law is full of instances where a man's fate depends on his estimating rightly ... some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death. 'An act causing death may be murder, manslaughter, or misadventure, according to the degree of danger attending it' by common experience in the circumstances known to the actor.[91]

Then in 1939, the U.S. Supreme Court ruled in *Lanzetta v. New Jersey*[92] that "[n]o one may be required, at peril of life, liberty[,] or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."[93]

For a penal statute to be of sufficient definiteness, it must not deceive, in the words of the U.S. Supreme Court in *United States v. Reese*,[94] the "common mind" of "[e]very man."[95] The syntax of the Court changed in *United States v. Harris*[96] where "person of ordinary intelligence" was used but the import of the principle remained the same.[97] What this means is that a penal law must be clear in its terms that ordinary people, who generally do not have technical knowledge of the meaning of the words used in the law, are warned of the prohibited act or conduct.

The generalization of what a common person can understand from the language of the law is a creation of the law itself for its convenient implementation. Justice Oliver Wendell Holmes Jr. eruditely described why there is a necessity to describe the subjects of the law in a general sense —

> The standards of the law are standards of general application. The law takes no account of the infinite varieties of temperament, intellect, and education which make the internal character of a given act so different in different men. It does not attempt to see men as God sees them, for more than one sufficient reason. In the first place, the impossibility of nicely measuring a man's powers and limitations is far clearer than that of ascertaining his knowledge of law, which has been thought to account for what is called the presumption that every man knows the law. But a more satisfactory explanation is, that, when men live in society, a certain average of conduct, a sacrifice of individual

91. *Id.* at 377 (citing Commonwealth v. Pierce, 138 Mass. 165, 178 (1884) (U.S.)).

92. Lanzetta v. State of New Jersey, 306 U.S. 451 (1939).

93. *Id.* at 453.

94. United States v. Reese, 92 U.S. 214 (1875).

95. *Id.* at 220.

96. United States v. Harriss, 347 U.S. 612 (1954).

97. *Id.* at 617.

> peculiarities going beyond a certain point, is necessary to the general welfare.[98]

What the average person thinks is the meaning of the words of the law is the standard by which the penal law must be measured against. Aside from convenience of execution, generalization is necessitated by common sense — not all people have the knowledge and skill in understanding the technical meaning of laws. Thus, to better enforce its obligatory character, penal laws must be couched in the language understood by the average person.

Renowned professor H.L.A. Hart has excoriated the concept of law as merely an order backed by threats, but nevertheless acknowledged that such formulation is typical in criminal statutes.[99] The *standard* form of a penal law is "general in two ways; it indicates a general type of conduct and applies to a general class of persons who are expected to see that it applies to them and to comply with it."[100] For the "general class of persons" to be able to comply with the law, it is incumbent for the law to be couched in such terms the "general class of persons" understands.

Thus, the case of *Connally v. General Construction Co.*[101] provides for a succinct description of the notice requirement to its intended audience —

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well[-]recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law[, a]nd a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application[ ] violates the first essential of due process of law.[102]

In summary, the Sufficient Definiteness Test is complied with when: (1) there is notice in the law as provided for in its clear and unambiguous language; and (2) the notice is intended to people of common intelligence, i.e., the public at large.

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98. OLIVER WENDELL HOLMES, JR., THE COMMON LAW 108 (1991).

99. HERBERT LIONEL ADOLPHUS HART, THE CONCEPT OF THE LAW 20-21 (3d ed., 2012).

100. *Id.*

101. Connally v. General Const. Co., 269 U.S. 385 (1926).

102. *Id.* at 391.

2. Arbitrary Enforcement Test

Although void-for-vagueness initially started with the notice requirement anchored on the due process clause of the U.S. Constitution, recent jurisprudence has recognized its other aspect — the resulting intendment of the law not on its subjects but on its implementers.

In *Skilling*, the U.S. Supreme Court stated that vagueness results in "arbitrary and discriminatory enforcement."[103] In *Kolender v. Lawson*,[104] the Court considered this as the more important element of the doctrine, viz. —

> [W]e have recognized recently that the more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine — the requirement that a legislature establish minimal guidelines to govern law enforcement.' [ ] Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.'[105]

It was in the case of *Papachristou v. City of Jacksonville*[106] that the Court initially recognized the effects of vague criminal laws, as it provides for a wide discretion for law enforcers to apply the law against "particular groups deemed to merit their displeasure."[107] Sustaining a vague law "does not provide for [a] government by clearly defined laws, but rather for [a] government by the moment-to-moment opinions of a policeman on his beat."[108]

Thus, the U.S. Supreme Court acknowledged the Congress' duty to provide what it calls "minimal guidelines" on the part of law enforcers to avoid "erratic arrests," for prosecutors to validly determine probable cause, and for juries to either convict or acquit based on discernable guidelines.[109] The philosophy behind requiring the institution of minimal guidelines on how the law is enforced is borne by human experience, especially in societies where

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103. *Skilling*, 561 U.S. at 366.

104. Kolender v. Lawson, 461 U.S. 352 (1983).

105. *Id.* at 358 (citing Smith v. Goguen, 415 U.S. 566, 574-75 (1974)).

106. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

107. *Id.* at 170.

108. Shuttlesworth v. City of Birmingham, 382 U.S. 87, 90 (1965) (citing Cox v. Louisiana, 379 U.S. 536, 579 (1965) (J. Black, concurring and dissenting opinion)).

109. *See Kolender*, 461 U.S. at 358 (citing Smith v. Goguen, 415 U.S. 566, 574-75 (1974)) & *Papachristou*, 405 U.S. at 162.

inequality is very much pronounced and disparities in social status, income, gender, race, etc. are prevalent. It has been said that

> [s]ociety is particularly concerned about arbitrary and discriminatory enforcement by prosecutors, juries, judges, and police officers. Humans are susceptible to biases driven by attitudes and stereotypes that we have about social categories, such as genders and races. Oftentimes, these biases are implicit, in that people are not consciously aware that their decisions are influenced by these biases. Consequently, they can function automatically, including in ways that the person would not endorse as appropriate if he or she did have conscious awareness. Unfortunately, these biases can cause those enforcing the law to act, both intentionally and unintentionally, in arbitrary and discriminatory ways.[110]

What these minimal guidelines should be, the Court did not provide as it may unduly interfere with Congress' powers, yet by providing that there must exist such guidelines, the Court makes an attempt to limit legislative prerogative in accordance with the constitutional principle of due process of law. Absent such guidelines, the penal law becomes "standardless that it authorizes or encourages seriously discriminatory enforcement."[111]

B. Philippine Experience

Even if void-for-vagueness has been introduced in the American legal system since the 19th century when the due process clause was enshrined as an amendment to the U.S. Constitution, it has not found its way to the Philippines that easily, even if the latter had been an eager recipient of America's exports in constitutional law, particularly the due process clause.[112]

Perhaps the invocation of void-for-vagueness that fully encapsulates the doctrine as understood in the U.S. came in 1988 in the case of *People v. Nazario*,[113] where the Court cited the two requisites of vagueness, i.e., the Sufficient Definiteness and Arbitrary Enforcement Tests. Here, the Court stated that

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110. Jessica A. Lowe, *Analyzing the Void-for-Vagueness Doctrine as Applied to Statutory Defenses: Lessons from Iowa's Stand-Your-Ground Law*, 105 IOWA L. REV. 2359, 2369 (2020).

111. United States v. Williams, 553 U.S. 285, 304 (2008).

112. American jurisprudence, although not binding in Philippine courts, is considered "persuasive" authority, especially for laws patterned after the United States. *See* Philippine Health Care Providers Inc. v. Commissioner on Internal Revenue, G.R. No. 167330, 600 SCRA 413, 427 (2009).

113. People v. Nazario, G.R. No. L-44143, 165 SCRA 186 (1988).

> [a]s a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men 'of common intelligence must necessarily guess at its meaning and differ as to its application.' It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties [targeted] by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[114]

In *Nazario*, the penal law in question was a municipal ordinance that compelled fishpond operators to pay a municipal tax.[115] The defendant failed to pay such tax and was charged by the prosecutor.[116] The accused's defense came by way of confession and avoidance, the principal argument being that the ordinance was vague.[117] The trial court convicted the defendant, who then appealed the case to the Court, which found that under the elements of the void for vagueness doctrine, the ordinance was clear enough to cover the defendant.[118]

Then, in *Dans v. People*,[119] the Court did not discuss the void-for-vagueness doctrine, but it was applied in the case. The question was whether Section 3 (g) of the Anti-Graft Law, as amended,[120] is void for being vague. The Court ruled that the provision is not vague, and that to operationalize the doctrine, the question must be asked — what is the violation of the law?[121] If a person of common intelligence can answer the question, then the law is clear.[122] The question of "how" and "why" the law was violated goes into evidence, and not the language of the law.[123]

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114. *Id.* at 195 (citing LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 718 (1978) (citing *Connally*, 269 U.S. at 391)).

115. *Nazario*, 165 SCRA at 194-95.

116. *Id.* at 190.

117. *Id.* at 189.

118. *Id.* at 198.

119. Dans v. People, G.R. No. 127073, 285 SCRA 504 (1998).

120. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 3 (g) (1960) ("[T]he following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: ... (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.").

121. *Dans*, 285 SCRA, at 526-27.

122. *Id.*

123. *Id.*

In *People v. Dela Piedra*,[124] the Court was faced with the question of whether the term "recruitment and placement" under Article 13 (b) of the Labor Code[125] is vague. In ruling that it is not vague, the Court cited the doctrine as enunciated in *Nazario*, and held that the provision, which includes customary and harmless acts such as "labor or employment referral" does not make the law overbroad.[126] The Court noted that the appellant in this case confused void-for-vagueness with the overbreadth doctrine.[127] However, as will be discussed hereafter, it is not only party litigants who are generally confused between the two, but the Court itself too.

In the landmark case of *Estrada v. Sandiganbayan*, the Court affirmed the constitutionality of the Plunder Law.[128] Here, the Court applied the void-for-vagueness doctrine as enunciated in *Nazario*, which utilized both the Sufficient Definiteness and Arbitrary Enforcement Tests.[129] The more striking statement of the Court came in its adoption of the observations of Justice Vicente Mendoza, which held that "[t]he overbreadth and vagueness doctrines ... have special application only to free speech cases. They are inapt for testing the validity of penal statutes."[130]

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124. People v. Dela Piedra, G.R. No. 121777, 350 SCRA 163 (2001).

125. A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 13 (b) (1974) (as amended). Article 13 (b) states —

> 'Recruitment and placement' refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring[,] or procuring workers, and includes referrals, contract services, promising[,] or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement.

Id.

126. *Dela Piedra*, 350 SCRA, at 180.

127. *Id.* at 180-81.

128. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991) (as amended).

129. *Estrada*, 369 SCRA at 439-40.

130. *Id.* at 465 (J. Mendoza, concurring opinion).

As seen thus far, this observation is only half correct. It is true that the overbreadth doctrine is primarily applied to free speech cases.[131] This has been the holding of the Court even prior to the promulgation of *Estrada*.[132] However, no such ruling has ever been made by the Court for the vagueness doctrine. The cases cited by Justice Mendoza, and as adopted by the Court in the *Estrada ponencia*, pertain to the overbreadth principle and not the vagueness doctrine.[133] It is as if the Court did not consider its own jurisprudence recognizing the applicability of the void-for-vagueness doctrine in penal statutes that it decided to confound the two concepts. *Nazario*, which is the jurisprudential anchor for the void-for-vagueness test as applied in penal statutes, was not even mentioned. This confusion by the Court would result in a convoluted reading of the doctrine in succeeding decisions.

The problem with the Court's wholesale adoption of Justice Mendoza's tangled view of the two doctrines stemmed from the Court's desire to limit void-for-vagueness only to "as applied" cases.[134] While it is true that the overbreadth doctrine may be used in facial attacks of governmental actions concerning free speech, the Court, by lumping the vagueness doctrine therein, inadvertently stated that the latter is only applicable to free speech cases as well.

However, there is an easy way to tell that the void-for-vagueness doctrine is generally applicable to "as applied" cases, and this is by invoking jurisprudence prior to *Estrada*. As shown in *Nazario*, *Dans*, and *Dela Piedra*, the void for vagueness doctrine was utilized by the Court only because the

131. Nicolas-Lewis v. Commission on Elections, G.R. No. 223705, 913 SCRA 515, 549 (2019) ("Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms.").

132. *See*, *e.g.*, Adiong v. Commission on Elections, G.R. No. 103956, 207 SCRA 712, (1992); Telecommunications & Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections, G.R. No. 132922, 289 SCRA 337 (1998); & Social Weather Stations, Inc. v. Commission on Elections, G.R. No. 147571, 357 SCRA 496 (2001).

133. *See Estrada*, 369 SCRA at 441-42 (citing Broadrick v. Oklahoma, 413 U.S. 601, 612-13 (1973) & United States v. Salerno, 481 U.S. 739, 745 (1987)).

134. *See* Alex Kreit, *Making Sense of Facial and As-Applied Challenges*, 18 WM. & MARY BILL RTS. J. 657, 657 (2010) (citing Texas Workers' Compensation Com'n v. Garcia, 893 S.W. 2d 504, 518 (Tex. 1995)) ("[The] courts define an as-applied challenge as one 'under which the plaintiff argues that a statute, even though generally constitutional, operates unconstitutionally as to him or her because of the plaintiff's particular circumstances.'").

doctrine was raised as defenses in the criminal cases against the accused. They were, in essence, "as applied" cases because they originated from actual criminal prosecutions, and not as facial attacks on the penal laws in question.[135]

The convoluted view of limiting void-for-vagueness to free speech cases would continue in *Romualdez v. Sandiganbayan*,[136] where Section 5 of the Anti-Graft Law was questioned for allegedly being vague. Here, the Court again cited the opinion of Justice Mendoza that the vagueness doctrine only applies in free speech cases.[137] However, the Court adds another anomalous statement — "While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction."[138] It is as if the Court forgot that it applied the doctrine in *Nazario*, *Dans*, and *Dela Piedra*. However, a point of clarity is offered in the separate opinion of Justice Dante Tinga, who was circumspect in differentiating overbreadth and vagueness as two separate and distinct doctrines.[139] He extolled the Court to reexamine its approval of the convoluted view of limiting the vagueness doctrine to free speech cases.[140]

In *Spouses Romualdez v. Commission on Elections*,[141] the Court ruled that the void-for-vagueness doctrine should be used in "as applied" cases only and not in facial challenges.[142] However, by citing *Romualdez*, the Court reiterated its ruling that the vagueness doctrine only applies to free speech cases.[143] Nonetheless, the Court applied the doctrine and spelled out the "test" to determine whether a penal law is void for vagueness, that is, "whether the language conveys a sufficiently definite warning as to the proscribed conduct

135. *See id.* at 657 (citing Sabri v. United States, 541 U.S. 600, 609 (2004)) ("A facial attack is typically described as one where 'no application of the statute would be constitutional.'").

136. Romualdez v. Sandiganbayan, G.R. No. 152259, 435 SCRA 371 (2004).

137. *Id.* at 382-83 (citing *Estrada*, 369 SCRA at 464-66 (J. Mendoza, concurring opinion)).

138. *Romualdez*, 435 SCRA at 383.

139. *Id.* at 398 (J. Tinga, concurring and dissenting opinion).

140. *Id.* at 395.

141. Spouses Romualdez v. Commission on Elections, G.R. No. 167011, 553 SCRA 370 (2008).

142. *Id.* at 420.

143. *Spouses Romualdez*, 553 SCRA at 419 (citing *Romualdez*, 435 SCRA at 382-83 (citing *Estrada*, 369 SCRA at 464-66 (J. Mendoza, concurring opinion))).

when measured by common understanding and practice."[144] In essence, the Court applied one aspect of the doctrine — the Sufficient Definiteness Test — in determining whether the words of Section 45 (j) of R.A. No. 8189,[145] the criminal statute in question, is void for being vague.

Interestingly, the Court took an apparent U-turn in *People v. Siton*,[146] where it was held that "the Court recognized the application of the void-for-vagueness doctrine to criminal statutes in appropriate cases."[147] For the first time since *Estrada*, the Court acknowledged the applicability of the vagueness doctrine in criminal statutes such as the one questioned in the case i.e., Article 202 (2) of the Revised Penal Code, or the law against vagrancy.[148] The Court ultimately ruled that the questioned law is not void due to vagueness based on a somewhat erroneous interpretation of the Sufficient Definiteness Test.[149] Again, the said Test requires that a penal law must have sufficient definiteness that ordinary people can understand what conduct is prohibited, thereby giving "notice" to the proscribed act.[150] However, the Court took the "notice" requirement quite literally and ruled that all people are presumed to have notice of a law since ignorance of the law excuses no one from compliance therewith.[151] As discussed, the "notice" referred to in the Sufficient Definiteness Test pertains to the capability of the law to communicate what the prohibited act is, and not on the presumed knowledge of the people that such law exists. Notwithstanding the Court's misplaced conception of the "notice" requirement, the Court nevertheless applied the

144. *Id.* at 422-23 (citing *Estrada*, 369 SCRA at 440 (citing State v. Hill, 369 P. 2d 365, 411 (Kan. 1962) (U.S.))).

145. An Act Providing for a General Registration of Voters, Adopting a System of Continuing Registration, Prescribing the Procedures Thereof and Authorizing the Appropriation of Funds Therefor [Voter's Registration Act of 1996], Republic Act No. 8189, § 45 (j) (1996) ("Sec. 45. *Election Offenses*. - The following shall be considered election offenses under this Act: [...] (j) Violation of the provisions of this Act.").

146. People v. Siton, G.R. No. 169364, 600 SCRA 476 (2009).

147. *Id.* at 485 (citing *Spouses Romualdez*, 553 SCRA at 420).

148. The law against vagrancy would later be repealed. An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, Republic Act No. 10158, §§ 1-3 (2012).

149. *Siton*, 600 SCRA at 485-93. *See also* Republic Act No. 10158, §§ 1-3.

150. *Siton*, 600 SCRA at 490.

151. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 3 (1949).

void-for-vagueness doctrine in a penal statute, contrary to its previous holdings in *Estrada* and *Romualdez*.[152]

Then, in the landmark case of *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[153] which ruled on the constitutionality of the Human Security Act,[154] the Court wrote *finis* on this continuing confusion between the void-for-vagueness and overbreadth doctrines. The Court categorically held that "the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane."[155] Here, the Court ruled that the void-for-vagueness doctrine applies in questioning criminal laws but on an as-applied basis, whereas the overbreadth doctrine may be used in facial challenges but only to free speech cases.[156]

The distinction is easy to understand — "By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation[.]"[157] Meanwhile, void-for-vagueness, as a proper review mechanism supported by the due process clause, is limited only to as-applied cases since invalidation of a penal law on its face is "amorphous and speculative" and it would "force the court to consider third parties who are not before it."[158]

Thus, the Court categorically clarified that void-for-vagueness is an existing concept in the Philippine legal system, underpinned by the due process clause of the Constitution, and used to invalidate penal laws found to be vague, albeit such must come from an actual case or controversy before the court, and may not be facially attacked.

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152. *Siton*, 600 SCRA at 490.

153. Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. No. 178552, 632 SCRA 146 (2010).

154. An Act to Secure the State and Protect Our People from Terrorism [Human Security Act], Republic Act No. 9372 (2007).

155. *Southern Hemisphere Engagement Network, Inc.*, 632 SCRA at 185.

156. *Id.* at 187.

157. *Id.*

158. *Id.*

However, in another landmark case, *Disini v. Secretary of Justice*,[159] the Court applied the void for vagueness doctrine in a facial challenge to R.A. No. 10175 or the Cybercrime Prevention Act of 2012. The Court held that "[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable."[160] Here, the two concepts were blended, where the limitation of the vagueness doctrine to as-applied challenges is upheld as the general rule, and the exception to such rule is that a facial challenge is allowed only when the penal law affects freedom of speech.[161]

Perhaps one of the most elucidated discussions of the vagueness doctrine came in the case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, where both the Sufficient Definiteness and Arbitrary Enforcement Tests were applied in evaluating the validity of the curfew ordinances enacted by a local government.[162] Here, the Court affirmed that the void-for-vagueness doctrine is indeed based on the due process clause of the Constitution, and held that for a proper examination of the criminal statute in question under the Sufficient Definiteness Test, the parties contesting the law must point to a specific provision thereof which they see is vague; they must show that "this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited."[163] Thus, it is not enough that the parties allege that the entire statute is vague, but they must identify which parts of the statute are vague.

Moreover, the Court ruled that in determining whether the law provides for minimal standards for enforcement, resort not just to the law's text but also to enforcement guidelines and parameters found in other related laws is allowed.[164] Here, the Court referred to the Juvenile Justice and Welfare Act[165]

159. Disini v. Secretary of Justice, G.R. No. 203335, Feb. 18, 2014, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56650 (last accessed July 31, 2023).

160. *Id.*

161. *Id.*

162. Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, G.R. No. 225442, 835 SCRA 350, 392-94 (2017).

163. *Id.* at 391.

164. *Id.* at 393.

165. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of

as the law which provides for enforcement guidelines to the curfew ordinances by treating apprehended minors as "children at risk" who are covered by the juvenile justice system.[166] Ultimately, the Court ruled that the curfew ordinances were not void for being vague.

Then, in *Lagman v. Medialdea*,[167] the Court reverted to its convoluted conception of the vagueness doctrine vis-à-vis overbreadth doctrine. Here, the Court again held that the vagueness doctrine applies only in free speech cases and is not fit to question the validity of penal statutes, contrary to its prior ruling in *Southern Hemisphere*.[168] However, it must be noted that in this case, what was being questioned was a presidential proclamation which declared martial law and suspended the privilege of the writ of *habeas corpus* in the whole of Mindanao.[169] Thus, the Court's application of the vagueness doctrine in this case was specious since the proclamation is not even a criminal statute, much more its invocation of the now-debunked notion that the doctrine applies to free speech cases only.

Finally, in the recent case of *Calleja v. Executive Secretary*, the Court built on the doctrines laid down in *Southern Hemisphere* and *Disini*, and ruled that "facial challenges on legislative acts are permissible only if they curtail the freedom of speech and its cognate rights based on overbreadth and the void-for-vagueness doctrine."[170] Essentially, the Court amplified the exception that a penal law may be attacked facially if it concerns freedom of speech and other fundamental rights. That is what the Court did as it held that the Anti-Terrorism Act[171] affects fundamental rights and a facial challenge against it may prosper. In applying the vagueness doctrine, the Court used the Sufficient Definiteness and Arbitrary Enforcement Tests and held that the *proviso* in

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Justice, Appropriating Funds Therefor and for Other Purposes [Juvenile Justice and Welfare Act], Republic Act No. 9344 (2006) (as amended).

166. *Samahan ng Mga Progresibong Kabataan (SPARK)*, 835 SCRA at 392-94.

167. Lagman v. Medialdea, G.R. No. 231658, 829 SCRA 1 (2017).

168. *Id.* at 169-71.

169. *Id.* at 141-43.

170. Calleja v. Executive Secretary, G.R. No. 252578, Dec. 7, 2021, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67914 (last accessed July 31, 2023).

171. An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, Otherwise Known as the "Human Security Act of 2007" [Anti-Terrorism Act], Republic Act No. 11479 (2020).

Section 4 of the law was vague.[172] It is perhaps the first ever ruling of the Court that declared a law (or part thereof) vague and therefore invalid.

In summary, the vagueness doctrine started as an outright application of long-standing American jurisprudence that utilized both the Sufficient Definiteness and Arbitrary Enforcement Tests. However, the rollercoaster of rulings led to the Court's convoluted view that the vagueness doctrine, like the overbreadth doctrine, applies only to free speech cases. That conception continued until the Court's clarification in *Southern Hemisphere* that the vagueness doctrine indeed applies to penal statutes, albeit in as-applied cases only. *Disini* provided the exception that a facial challenge under the vagueness doctrine is possible provided that the penal law affects free speech. Thus, under prevailing jurisprudence, the principles of the Philippine version of the vagueness doctrine may be synthesized as follows:

(1) The vagueness doctrine is premised under the due process clause of the Constitution.

(2) A criminal statute may be declared void for being vague only in an as-applied case, *except* when the statute affects free speech or other "cognate rights," a facial challenge may be permitted.

(3) The Sufficient Definiteness and Arbitrary Enforcement Tests are utilized:

    (a) Sufficient Definiteness Test: whether the penal law failed to provide fair notice of the conduct to be avoided. The parties assailing the law must point to a specific provision alleged to be vague; and

    (b) Arbitrary Enforcement Test: whether the penal law leaves to law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. Reference to related laws for the enforcement parameters may be made.

172. *Calleja*, G.R. No. 252578.

IV. THE VAGUENESS OF UNJUST VEXATION

The declaration of whether a law is unconstitutional, an offshoot of judicial review, is vested in the courts as a function of their judicial power,[173] but the final say is with the Court sitting *en banc*.[174] Prior rulings of said Court, especially those which affirmed the convictions of those accused of committing unjust vexation, may be abandoned when there is no legal authority to sustain them,[175] and based only on strong and compelling reasons[176] so as to preserve judicial stability and the value of *stare decisis*.[177]

There are compelling reasons for the examination of the law against unjust vexation. A penal law for which the prescribed punishment is the deprivation of liberty of the convicted party, or the dispossession of his or her property by payment of fine, is a compelling circumstance that calls for the court's exercise of judicial review. Criminal cases on their own are compelling enough for the courts to relax procedural rules,[178] more so when reviewing the underlying legislation that precipitated such cases. Simply put, sending people to jail just for being "annoying" in the Year 2023 is enough reason to examine Article 287.

Even though the due process clause has existed in the Philippine legal system even before the enactment of the Revised Penal Code,[179] such should

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173. Planters Products, Inc. v. Fertiphil Corporation, G.R. No. 166006, 548 SCRA 485, 504-05 (2008) (citing PHIL. CONST. art. VIII, § 5).

174. PHIL. CONST. art. VIII, § 4 (2).

175. *See* Morales v. Court of Appeals (Sixth Division), G.R. Nos. 217126-27, 774 SCRA 431 (2015).

176. *See* Lazatin v. Desierto, G.R. No. 147097, 588 SCRA 285 (2009).

177. United Coconut Planters Bank v. Uy, G.R. No. 204039, 850 SCRA 298, 306 (2018). ("The principle of *stare decisis et non quieta movere* ... enjoins adherence to judicial precedents. It requires courts to follow a rule already established in a final decision of the Supreme Court.").

178. *See* Cariaga v. People, G.R. No. 180010, 626 SCRA 231, 236 (2010) ("Since the appeal involves criminal cases, and the possibility of a person being deprived of liberty due to a procedural lapse militates against the Court's dispensation of justice, the Court grants petitioner's plea for a relaxation of the Rules.").

179. *See* Instructions *from* William McKinley, President of the United States, *to* The Philippine Commission, at 9 (Apr. 7, 1900) (on file with the University of Michigan Library) ("Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules: That no person shall be deprived of life, liberty, or property without due process of law[.]") & Republic v. Sandiganbayan, G.R. No. 104768, 407 SCRA 10, 94 (2003)

not preclude the idea that unjust vexation should be reviewed, considering the recent developments in the formulation of the vagueness doctrine. Moreover, the risk of punishing people for a supposed vague law outweighs the risk of letting "annoying" people in the streets. Even though considered a lesser crime (as it can even be called a misdemeanor),[180] the inconvenience of defending oneself in court for not being "annoying" and the concomitant trauma of incarceration if found guilty of violating the crime merits its evaluation today. The continued existence of unjust vexation contributes to the "over-criminalization" of Philippine society, especially when it involves conduct which is generally "innocent, innocuous, or trivial."[181]

A. Unjust Vexation Fails the Sufficient Definiteness Test

Again, under this Test, the penal law's language must be sufficient to give fair notice to people of common intelligence of the prohibited act. The notice here pertains to the law's order of prohibiting an act as provided for in its text, and not on the *existence* of the law for which all people are presumed to know.[182]

Justice Felix Frankfurter, in his dissenting opinion in *Winters v. New York*,[183] has described indefiniteness of the law "not [as] a quantitative concept. It is not even a technical concept of definite components. It is itself an indefinite concept."[184] There is thus no rigid set of guidelines for which a law is considered vague or indefinite. For the language of a penal law to be declared sufficient, however, it must fall within the spectrum of not too broad (so as not to be declared vague), and not too narrow (so as not to be useless and easy to avoid). The legislature must be able to strike a balance, and "must account for the need to draw statutes in sufficiently general terms to proscribe all the behavior the legislature deems injurious yet be specific enough to

("Scholars have characterized the Instruction[s] as the 'Magna Carta of the Philippines' and as a 'worthy rival of the Laws of the Indies.'").

180. A misdemeanor is "[a] crime that is less serious than a felony and is [usually] punishable by fine, penalty, forfeiture, or confinement ([usually] for a brief term) in a place other than prison (such as a county jail)." *Misdemeanor*, BLACK'S LAW DICTIONARY (11th ed. 2019).

181. Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 229 (2007-2008).

182. CIVIL CODE, art. 3.

183. Winters v. New York, 333 U.S. 507 (1948).

184. *Id.* at 524 (J. Frankfurter, dissenting opinion).

provide notice for citizens and minimal guidance for police, prosecutors, courts, and juries."[185]

This balance is met when the Sufficient Definiteness Test is satisfied. Here: (1) there is fair notice in the law of the prohibited act or conduct couched in clear and unambiguous language; and (2) the notice is understood by people of common intelligence, i.e., the public at large.

As to the first prong, unjust vexation does not provide for a fair notice of the prohibited act. The term *vexation* means "[t]he injury or damage which is suffered in consequence of the tricks of another."[186] In its plain or literal meaning, *to vex* connotes an array of deeds so wide even the most innocent of acts may be considered criminal. This is affirmed by the Court's ruling in *Baleros, Jr.* which interpreted unjust vexation to include "any human conduct." Such coverage in a criminal statute is simply too broad.

Unlike most crimes in the Revised Penal Code where the *actus* is specified, such is not the case for unjust vexation. There is no specific action that is being prohibited in unjust vexation. As a result, the law does not provide notice to the people that they should be cautious in committing a potentially criminal act. Evidently, there is no specific action that is specified in a crime described in two words composed of an adjective and a noun.

Crime and Legal Basis	*Actus*
Murder [Art. 248] or Homicide [Art. 249]	Killing[187]
Physical Injuries [Arts. 263-266]	Wounding, beating, or assaulting another[188]
Rape [Art. 266-A (1)]	Having carnal knowledge with a woman[189]
Rape [Art. 266-A (2)]	Inserting the penis into another person's mouth or anal orifice, or any instrument or

185. Michael J. Zedney Mannheimer, *Vagueness as Impossibility*, 98 TEX. L. REV. 1049, 1060 (2020).

186. *Id.* at 1736.

187. REV. PENAL CODE, arts. 248-249.

188. *Id.* arts. 263-264.

189. A long-known euphemism, carnal knowledge is generally understood to mean sexual intercourse. *See* People v. Bormeo, G.R. No. 91734, 220 SCRA 557, 568 (1993).

	object, into the genital or anal orifice of another person[190]
Kidnapping [Art. 267]	Kidnapping or detaining another, or in any other manner depriving him or her of liberty[191]
Robbery [Art. 293]	Taking of personal property of another by means of violence or intimidation of persons, or force upon things[192]
Theft [Art. 308]	Taking of personal property of another[193]
Estafa [Art. 315]	Defrauding another[194]
Arson [Art. 320]	Burning[195]
Libel [Art. 353]	Public imputation of something defamatory or malicious[196]

Table 2. *Actus* of Common Crimes under the Revised Penal Code

For vexation to be criminal, it must be *unjust*. In legal parlance, *unjust* is defined as "[c]ontrary to justice; not fair or reasonable."[197] However, the problem with this qualifier is its subjectiveness. A certain conduct may unjustly be vexatious to one individual but not to another. Imagine a scenario where person A simultaneously commits an "unjustly vexatious" act to both persons B and C. To person B, the act is vexatious, but it is not to C. Person B files a complaint for unjust vexation, and during trial[,] person C is presented as a witness of the accused to show that the act was not "unjustly vexatious." The court is then confronted with the problem of judging a criminal case based on the *feelings* of person A, taking into consideration the testimony of person B.

190. REV. PENAL CODE, art. 266-A.

191. *Id.* art. 267.

192. *Id.* art. 293.

193. *Id.* art. 308.

194. Legaspi v. People, G.R. No. 225753, 883 SCRA 245, 254 (2018).

195. REV. PENAL CODE, art. 320.

196. Diaz v. People, G.R. No. 159787, 523 SCRA 194, 201 (2007).

197. *Unjust*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Anent the second prong, it has been said that the determination of the "reasonable person" is "a difficult inquiry."[198] However, there are guidelines on how reasonableness may be ascertained.[199] For the common Filipino, who may have difficulty understanding the meaning of the word "vexation," the broadness of the term compounds its ability to be clearly understood by the public. [200] Again, there is no specific act which is being proscribed, and the ordinary person is at a loss on what kind of actions to avoid. The ordinary person is not to be expected to know the technical meaning of the crime; he or she should not be presumed to understand the crime as defined by the Court in *Baleros, Jr.*[201] By simply reading the text of the law, the reasonable person would not be able to give a uniform description of unjust vexation and the acts it purports to prohibit.

B. Unjust Vexation Fails the Arbitrary Enforcement Test

A penal law must not give unbridled discretion to the law enforcer in implementing the law. This means that the penal law must provide for a uniform set of rules that guides the conduct of law enforcers. Using as an example the crime of homicide, it is expected that law enforcers should be able to arrest someone who "has committed, is actually committing, or is attempting to commit"[202] the *killing of another* for the police to be able to arrest the perpetrator.

The mechanics for unjust vexation are not clear. An act may be considered a form of unjust vexation to a victim, but it may not be for the police officer. In such instance, the police officer's determination of probable cause comes into play.[203] However, the reverse is more dangerous. If a police officer finds a person "annoying," he or she can immediately arrest such person. But what is "annoying" to the police officer is not clear. It would all depend on the

198. Emily M. Snoddon, *Clarifying Vagueness: Rethinking the Supreme Court's Vagueness Doctrine*, 86 U. CHI. L. REV. 2301, 2341 (2019).

199. *See* Kevin P. Tobia, *How People Judge What is Reasonable*, 70 ALA. L. REV. 293 (2018).

200. Most Filipinos only have some form of elementary or secondary education. *See* Philippine Statistics Authority, The Educational Attainment of the Household Population (Results From the 2010 Census), *available at* https://psa.gov.ph/content/educational-attainment-household-population-results-2010-census (last accessed July 31, 2023).

201. *Baleros., Jr.*, 518 Phil. 194-95.

202. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5.

203. *See* Manibog v. People, G.R. No. 211214, 897 SCRA 565 (2019).

"probable cause" determined by the police officer that someone is "annoying," without any guidelines on how such annoying behavior has amounted to a crime.

In the case of *Chicago v. Morales*,[204] the U.S. Supreme Court ruled that a city's ordinance prohibiting gang members from loitering in public places was void for being vague because the law did not provide for minimal guidelines to govern law enforcement.[205] The Federal Court ruled that —

> In any public place in the city of Chicago, persons who stand or sit in the company of a gang member may be ordered to disperse unless their purpose is apparent. The mandatory language in the enactment directs the police to issue an order without first making any inquiry about their possible purposes. It matters not whether the reason that a gang member and his father, for example, might loiter near Wrigley Field is to rob an unsuspecting fan or just to get a glimpse of Sammy Sosa leaving the ballpark; in either event, if their purpose is not apparent to a nearby police officer, she may — indeed, she 'shall' — order them to disperse.[206]

In this scenario, the seemingly innocent act of congregating with other people is subject to police dispersal, and for the innocent person who does not know the purpose of the police's order to disperse, such constitutes an abridgment of his or her fundamental right to associate.

The same vagueness is present in unjust vexation. Article 287 of the Revised Penal Code is bereft of any guidelines that would govern law enforcement. A person who commits a seemingly innocent act may be accosted by the police just for being "annoying." Without apparent purpose on why such innocent person is being arrested, a substantial risk exists in the free exercise by the people of their rights. The police's — and by extension, the prosecutor's[207] — standardless determination of probable cause of what is vexatious becomes the barometer for what is criminal, which changes from one police or prosecutor to another.

From a structural point of view, the lack of guidelines for law enforcement has likewise resulted in an unwarranted delegation of legislative power. As the

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204. City of Chicago v. Morales, 527 U.S. 41 (1999).

205. *Id.* at 59-60.

206. *Id.* at 60.

207. Napoles v. De Lima, G.R. No. 213529, 797 SCRA 1, 16 (2016) ("During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint.").

primary repository of police power,[208] the Legislature is authorized to define and punish crimes.[209] When a penal law lacks minimal guidelines for enforcement, the responsibility is passed on to the "relatively unaccountable police, prosecutors[,] and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide."[210]

Vague laws present an opportunity for the courts to fill in the definition of a crime not otherwise provided for sufficiently by said laws. This is what the Court exactly did when it provided for the expansive definition of unjust vexation in *Baleros, Jr.*[211] Such is a feature of the common law system,[212] but not in this country where criminal law has always been and remains to be one based on written statute.[213] As explained by the U.S. Supreme Court, this undue delegation is "dangerous" as it would "substitute the judicial for the legislative department of government."[214]

The absence of minimal guidelines for law enforcement has resulted in the standardless application of Article 287. It has led to weaponization by state agents who are threatened by legitimate challenges to their authority by branding such actions as criminally vexatious.[215] This weaponization has also been used by powerful personalities who feel "annoyed" by others.[216] As such,

208. Review Center Association of the Philippines v. Ermita, G.R. No. 180046, 583 SCRA 428, 452 (2009) ("Police power primarily rests with the legislature although it may be exercised by the President and administrative boards by virtue of a valid delegation.").

209. People v. Santiago, 43 Phil. 120, 124 (1922).

210. United States v. Davis, 139 S. Ct. 2319, 2325 (2019) (U.S.).

211. *Baleros, Jr.*, 518 Phil. 195.

212. *See* Carissa Byrne Hessick, *The Myth of Common Law Crimes*, 105 VA. L. REV. 965 (2019).

213. *See* United States v. Cuna, 12 Phil. 241 (1908).

214. Kolender v. Lawson, 461 U.S. 352, 358 n. 7 (1983) (citing *Reese*, 92 U.S. at 221).

215. *See* Tetch Torres-Tupas, *Court Acquits Rights Lawyer, Wife in Unjust Vexation Case Filed by Local Police Chief*, PHIL. DAILY INQ., May 27, 2021, *available at* https://newsinfo.inquirer.net/1437947/court-acquits-rights-lawyer-wife-in-unjust-vexation-case-filed-by-local-police-chief (last accessed July 31, 2023) [https://perma.cc/RPN8-35AL].

216. *See, e.g.*, Ryan Macasero, *Poll Exec Rowena Guanzon Sues Lawyer for Libel, Unjust Vexation*, RAPPLER, Aug. 10, 2020, *available at* https://www.rappler.com/nation/rowena-guanzon-sues-ferdie-topacio-libel-unjust-vexation-t (last accessed July 31, 2023) [https://perma.cc/QH7Q-HHL7] & John Eric Mendoza, *Guanzon Files Libel, Unjust Vexation Raps vs Cardema*,

the danger of using vague laws to suit certain personal, political, economic, or whatever objective devoid from the general purposes of criminal law aside from retribution,[217] must be minimized by eliminating said vague laws.

V. POLICY AND OTHER CONSIDERATIONS

Aside from evaluating unjust vexation from a void-for-vagueness lens, there are other considerations which necessitate its invalidation.

A. Comparative Analysis under Spanish Law

Comparative law teaches us that the analysis of foreign legal principles — especially in this case where the crime in question originated from a foreign statute — can be "a way of looking at legal problems."[218] Considering that the Revised Penal Code has roots from the Spanish Penal Code, it is proper to examine the development of the latter to provide a holistic examination of whether there has been divergence in how *unjust vexation* is applied in the two jurisdictions.

Previously, there existed in the Spanish Penal Code a misdemeanor similar to unjust vexation found in Article 620 (2) thereof, viz. —

> The following shall be punished with the penalty of a fine from ten to twenty days:
>
> ...
>
> 2. Those who intimidate, coerce, defame[,] or unfairly abuse lightly another except if the act constitutes a felony.[219]

PHIL. DAILY INQ., June 21, 2022, *available at* https://newsinfo.inquirer.net/1613911/guanzon-files-libel-unjust-vexation-raps-vs-cardema (last accessed July 31, 2023) [https://perma.cc/NUC8-L8T9].

217. It has been said that criminal law, aside from the general aim of protecting society, is also aimed at the individual offender by providing: (1) expiation, or the offender atones for his or her crime; (2) deterrence, that he or she may not repeat the offense; (3) retribution, or revenge for the injury suffered by the victim; and (4) rehabilitation, that the offender may be reformed for his or her eventual re-entry into society. *See* Gerald Gardiner, *The Purposes of Criminal Punishment*, 21 MOD. L. REV. 117 (1958).

218. RUDOLF B. SCHLESINGER, COMPARATIVE LAW: CASES, TEXT, MATERIALS 1 (2d ed. 1959).

219. The Criminal Code [CÓDIGO PENAL], Organic Act No. 10, art. 620 (2) (1995) (repealed in 2015) [hereinafter Spanish Penal Code].

With the reform of the Spanish Penal Code in 2015, the abovementioned misdemeanor was replaced by a minor crime embodied in Article 173 (4), which reads as follows —

> 4. Whoever mildly insults or harasses another, where the offended person is one of those referred to in Paragraph 2 of Article 173, shall be punished with permanent traceability for five to ten days, at a different address away from the victim in all cases, or community service of five to thirty days, or a fine of one to four months. The latter shall only be imposed where the circumstances outlined in Paragraph 2 of Article 84 concur. An individual may only be prosecuted for insults if the injured party or his legal representative files a formal complaint.[220]

At present, there exists no crime in the Spanish Penal Code which pertains to unjust vexation as broad as the crime is provided for in the Revised Penal Code. Although Article 173 (4) of the Spanish Penal Code, which penalizes "mild insults and harassment," is the closest to unjust vexation, the former is a very specific crime which is limited to those whose victims are covered under Article 173 (2) thereof, which include:

(1) Spouse of the perpetrator, or any person bound to the latter by a similar emotional relation, even without co-habitation;

(2) Descendants, ascendants, or biological, adopted or fostered siblings, or their spouse or cohabiting partner;

(3) Minors or persons with disabilities requiring special protection who live with the perpetrator or who are subject to the parental rights, guardianship, care, fostership, or safekeeping of the spouse or cohabitating partner; and

(4) A person protected by any other relation by which that person is a member of the core family unit, as well as against persons who, due to their special vulnerability, are subject to custody or safekeeping in public or private centers.[221]

It appears that Article 173 (4) of the Spanish Penal Code is treated like psychological violence under R.A. No. 9262, but its scope is broader as it is also applicable to other classes of victims aside from women and children. At least for Spain, it has updated its Penal Code to remove crimes as vague as unjust vexation or limit its application to specific classes of victims that need special protection. The Revised Penal Code, which has been in effect since

220. *Id.* art. 173 (4).

221. *Id.* art. 173 (2).

1930, has not found a major revision and updating (although efforts have been made but were nevertheless unsuccessful).[222] This endeavor squarely falls under the ambit of Congress, which has shown no appetite, as of the writing of this Article, to introduce major changes to the Revised Penal Code and modern concepts in criminal law.[223]

B. Alternative Remedies

If unjust vexation is declared void, a victim is not without any recourse. One of the alternative remedies aside from criminalizing vexatious conduct is to sue for damages. The cause of action for vexatious acts may be based on tort under Articles 21 and 22 of the Civil Code. As distinguished by the Court —

> Article 20 concerns violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. Willful may refer to the intention to do the act and the desire to achieve the outcome which is considered by the plaintiff in tort action as injurious. Negligence may refer to a situation where the act was consciously done but without intending the result which the plaintiff considers as injurious.
>
> Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.[224]

Aside from claiming actual damages, a victim may sue for moral damages. The Court has described moral damages as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong. They are awarded to the injured party to enable him to obtain means that will ease

222. Department of Justice, Criminal Code Committee, *available at* https://www.doj.gov.ph/criminal-code-committee.html (last accessed July 31, 2023).

223. As of the writing of this Article, no bill has been introduced in the current 19th Congress that introduces major reforms in the Revised Penal Code. *See* House of Representatives, House Bills and Resolutions, *available at* https://www.congress.gov.ph/legisdocs/?v=bills (last accessed July 31, 2023) & Senate of the Philippines, Bills (19th Congress), *available at* http://legacy.senate.gov.ph/lis/leg_sys.aspx?congress=19&type=bill (last accessed July 31, 2023).

224. Arco Pulp and Paper Co., Inc. v. Lim, G.R. No. 206806, 727 SCRA 275, 294-95 (2014).

the suffering he sustained from [the] reprehensible act."[225] Article 2217 of the Civil Code, which provides for instances when moral damages may be awarded, is very much analogous to unjust vexation, viz. —

Unjust Vexation per *Baleros, Jr.*	Grounds for Award of Moral Damages
The paramount question [in unjust vexation] is whether the offender's act causes *annoyance, irritation, torment, distress, or disturbance to the mind* of the person to whom it is directed.[226]	Moral damages include physical suffering, *mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury*.[227]

Table 3. Comparison of Unjust Vexation and Moral Damages

Suing for damages is practically easier than obtaining a criminal conviction, which is advantageous to the victim. Only preponderance of evidence is required to secure an award of moral damages,[228] as compared to proof beyond reasonable doubt in a criminal case.[229] In addition, the rigors of criminal prosecution, with the attendant costs on the part of the government in ascertaining the attendance of the accused during trial, would be minimized or eliminated.

Importantly, suing for tort is a better substitute than criminalizing vexatious conduct. Professor Kenneth Simons provided four normative principles underlying tort law, to wit: (1) corrective justice or vindication of rights; (2) distributive justice; (3) deterrence in order to promote efficiency; and (4) deterrence in order to prevent wrongs or rights violations.[230] Thus,

225. Guy v. Tulfo, G.R. No. 213023, 901 SCRA 159, 179 (2019).

226. *Baleros, Jr.*, 518 Phil. 195.

227. CIVIL CODE, art. 2217.

228. 2019 AMENDMENTS TO THE REVISED RULES ON EVIDENCE, rule 133, § 1 & BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc., G.R. No. 214406, 816 SCRA 634, 656 (2017) ("By preponderance of evidence ... [means] that the evidence as a whole adduced by one side is superior to that of the other.").

229. AMENDMENTS TO THE REVISED RULES ON EVIDENCE, rule 133, § 2 & People v. David y Matwaran, G.R. No. 260990, June 21, 2023, at 7, *available at* https://sc.judiciary.gov.ph/wp-content/uploads/2023/08/260990.pdf (last accessed July 31, 2023).

230. Kenneth W. Simmons, *The Crime/Tort Distinction: Legal Doctrine and Normative Perspectives*, 17 WIDENER L.J. 719, 725-26 (2008).

when one sues for damages due to the defendant's vexatious act, and such has resulted in injury, the criminal law's purposes as stated are likewise achieved when the victim sues under tort.

C. Unburdening Prosecutors and the Courts

One practical advantage of decriminalizing unjust vexation is its effect in decongesting the criminal docket of the prosecution service and the courts. Data from the Philippine Statistics Authority shows that from the years 2008 to 2014, there were a total of 2,030 reported cases of unjust vexation.[231] This means that there will be 2,030 less cases to be handled by prosecutors and tried in courts, thereby giving more focus on and effort to the prosecution of more serious and heinous crimes.[232]

In the previous 2022 General Appropriations Act ("GAA"), the Department of Justice (DOJ)'s Prosecution Sub-Program under its Law Enforcement Program was allotted a total of ₱6.140 billion out of the national budget of ₱5.024 trillion,[233] or 0.12% thereof. Under the current 2023 GAA, its Prosecution Sub-Program was allotted a total of ₱7.039 billion out of the ₱5.268 national budget, or 0.13%.[234] While there has been improvement, the resources of the prosecution services remain meager, and priority should be given to more serious crimes. The prosecution of unjust vexation would only chip away from the DOJ's very limited resources, where civil action is a very much viable remedy for the offended party.

D. Resort to Judicial Legislation

As discussed, one of the underlying principles of the void for vagueness doctrine is, aside from due process, the structuralist view of the Constitution

231. PHILIPPINE STATISTICS AUTHORITY, 2019 PHILIPPINE STATISTICAL YEARBOOK tbls. 17.14 & 17.11 (2019).

232. *See* An Act Establishing a Separate Facility for Persons Deprived of Liberty Convicted of Heinous Crimes and Appropriating Funds Therefor [Separate Facility for Heinous Crimes Act], Republic Act No. 11928, § 4 (a) (2022).

233. An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty One, Two Thousand and Twenty Two [General Appropriations Act of 2022], Republic Act No. 11639, vol. I-A, at 1089 (2021).

234. An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty One, Two Thousand and Twenty Three [General Appropriations Act of 2023], Republic Act No. 11936, vol. I-A, at 1113 (2022).

and its offshoot — the doctrine of separation of powers. When vague laws are allowed to operate, much discretion is given to the executive and judicial branches to fill in the lacuna left by Congress. For the courts, this results in judicial legislation.

Judicial legislation is anathema to our republican system of government because it affords the courts the opportunity to "make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms."[235]

For unjust vexation, the Court has, unfortunately, exercised judicial legislation. Instead of declaring the crime void, the Court has tolerated, over the decades, this crime for it to survive in statute books. Recall the description of unjust vexation in *Baleros. Jr.*, where the Court not only interpreted the crime, but provided for its own formulation of its elements, i.e., that it pertains to any human conduct, and that it should result in annoyance, irritation, torment, distress, or disturbance to the mind of the victim. In *Maderazo*, the Court added the element of intent. Again, these elements are not provided for in the text of the law but were inferred only by the Court in its decisions.

In the 14th and 16th Congresses, then-Senator Miriam Defensor-Santiago filed Senate Bill Nos. 3327 and 3166, which sought to define unjust vexation. In these bills, any person may be convicted for unjust vexation when he or she "commits a course of conduct directed at a specific person that causes substantial emotional distress in such a person and serves no legitimate purpose."[236] However, even this definition is likewise broad. What is the specific course of conduct that is being prohibited, and what constitutes "substantial emotional distress" that would merit criminal punishment? This is also a subjective standard. As Professor Michael Tan puts it, "even the wise senator's proposed qualification of 'substantial emotional distress' to constitute unjust vexation remains vague."[237] These bills have not passed into law, and

235. H. Villarica Pawnshop, Inc. v. Social Security Commission, G.R. No. 228087, 853 SCRA 174, 202 (2018).

236. An Act Establishing a Magna Carta for Philippine Internet Freedom, Cybercrime Prevention and Law Enforcement, Cyberdefense and National Cybersecurity, S.B. No. 3327, § 2, 14th Cong., 3d Reg. Sess. (2009) & S.B. No. 3166, § 2.

237. Michael L. Tan, *Unjust Vexation*, PHIL. DAILY INQ., Dec. 6, 2017, *available at* https://opinion.inquirer.net/109263/unjust-vexation (last accessed July 31, 2023) [https://perma.cc/S5MR-KK93].

that is why unjust vexation, with its current wording and construction under Article 287, exists to this day.

VI. CONCLUSION

It has been said that the law is designed to be vague — it cannot capture the whole gamut of human conduct — but at least it should identify the act it tries to regulate.[238] However, with respect to criminal laws, certain precision is required not only because the Constitution mandates it, but also because any person who violates vague criminal laws is at risk of losing his or her fundamental freedoms. Such an assault to one person's liberty is too big a risk for society.[239]

Unjust vexation is offensive to the Constitution. The two tests of the vagueness doctrine, namely the Sufficient Definiteness and Arbitrary Enforcement Tests, were not met by Article 287. As discussed, there are other practical and policy considerations that support the wiping off of the crime from our statute books.

The *onus* is now with Congress to remove unjust vexation, or at least to modify the crime in such a way that it would satisfy the requirements of due process. However, with Congress' failure to update archaic codes, the opportunity may befall on the courts to declare, once and for all, that unjust vexation, as it exists today, is vague and therefore unconstitutional. It is merely hoped that the discussion in this Article provides for the necessary guideposts in achieving such outcome.

238. *See* Timothy Endicott, *Law is Necessarily Vague*, 7 LEGAL THEORY 379 (2001).

239. Letter *from* Thomas Jefferson, President of the United States, *to* Benjamin Rush, Treasurer of the United States Mint (Apr. 21, 1803) (on file with the National Archives and Records Administration *available at* https://founders.archives.gov/documents/Jefferson/01-40-02-0178-0001) ("[I]t beho[o]ves every man, who values liberty of conscience for himself, to resist invasions of it in the case of others.").