RESEARCH ARTICLE

# The Migration of Human Rights Norms: Understanding the Causes of Transjudicial Conversation in the Philippine Context

James Gregory Alcaraz Villasis[1*], Naparat Kranrattanasuit[2], and Purwo Santoso[3]
[1]University of the Philippines, Diliman, Philippines
[2]Mahidol University, Salaya, Thailand
[3]Universitas Gadjah Mada, Yogyakarta, Indonesia
*javillasis@up.edu.ph

**Abstract:** This paper explores the causes of transjudicial conversation phenomenon on human rights norms in the context of the Philippine Supreme Court. Transjudicial conversation refers to a judicial occurrence where a domestic court cross-cites foreign judicial opinions. Analysis of the decisions delivered by the Philippine High Court from 1987 to 2019 on issues involving free speech, religious freedom, and environmental rights revealed that the court is an interlocutor in the transjudicial conversation phenomenon. The examination of these cases alongside relevant literature showed that the motivations behind this engagement might be attributed to the genealogical linkages between the domestic rights guarantees and their foreign counterparts, the historical-political alliances between the interlocutor courts, the constitutional system of the borrowing courts, and the foreign academic trainings of the judge who pens the decision.

**Keywords:** transjudicial conversation, human rights, judicial globalization, Philippine Supreme Court, migration of human rights norms

In this period of globalization, the world as we know it has become a single mesh of interconnected systems. The scope of globalization is decidedly messy and comprehensive; it encompasses not only economic aspects but also "political, environmental, social, and legal" (Rado, 2015). The widespread reach of this phenomenon is equally felt in the diffusion of human rights norms across the globe (McCrudden, 2000). The lessons of the Second World War brought immense global development in the field of human rights. This progress was marked by the adoption of the Universal Declaration of Human Rights (UDHR) by the majority of members of the United Nations General Assembly, followed by the ratification of the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR). The international community agreed to be bound by numerous international covenants corresponding to specific rights-bearers or thematic issues. Much of these developments were "legal as much as political" (McCrudden, 2000, p.500).In the contemporary era, human rights law projects remain to be the focus of many states in forging their commitments for its protection, enforcement, fulfillment, and promotion.

Although the subsequent developments of human rights take many forms, the consensual observation is that such growth is concentrated in the field of law (McCrudden, 2000). Alongside the conception of human rights in the legal realm is the phenomenon of migration of rights laws from one territory to another. The Constitutions bearing the provisions recognizing the existence of human rights in some States were borrowed either from the UDHR, international human rights treaties, or from the Constitution of another state (Rautenbach, 2013; L'Heureux-Dube, 1998; Law & Chang, 2011).

Due to this globalization of human rights ideas and to the attributable "genealogical links" between the national and international human rights guarantees, courts from all over the globe are now talking to one another in their pursuit of finding reasoned solutions in cases involving rights issues (McCrudden, 2000; L'Heureux-Dube, 1998; Slaughter, 1994).

In this article, we aim to explore the migration of human rights ideas in the context of the Philippine Supreme Court. Specifically, we hope to explain the reasons for its occurrence using the Philippine experience. Although this subject matter has been well documented in various jurisdictions, its manifestations in the country have yet to be studied (Hirschl, 2014)—much more the motivations why the cross-border referencing of foreign judgment is being practiced by the Supreme Court.

## Review of Literature

To better understand the migration of human rights norms across judicial territories, it is imperative to discuss the definition of the phenomenon and how it operates in the context of the Philippine Supreme Court.

### *From Definition to Contestation – Unpacking the Concept of Transjudicial Conversation*

Professor Slaughter (1994) initiated the "judicial globalization" discourse by asserting that "courts are talking to one another all over the world" (p.99). This observation, the first of many, sparked the ensuing collections of a great deal of scholarly work that examine and document the behavior of national judicial tribunals that cite the decisions of their foreign counterparts.

While transjudicial conversation takes many names—such as "creeping monism" (Waters, 2005), "transjudicial monologue" (Law & Chang, 2011), "transnational judicial dialogue" (Lambert, 2009), "transjudicial communication" (Slaughter, 1994), "judicial globalization" (L'Heureux-Dube, 1998), "transnational judicial communication" (Gentili & Mak, 2017)—and are used interchangeably, scholars studying this agree to its core concept.

For Slaughter (1994), a transnational conversation occurs when, for example, the Supreme Court of Zimbabwe cites the decision of the European Court of Human Rights (ECtHR) in cases involving the constitutionality of the death penalty or when the Supreme Court of India cites the decision of the U.S. Supreme Court in religious freedom cases. Although this conceptualization is undisputed by many scholars and researchers, it remains to be the subject of contestation. Some, for example, criticize Slaughter's definition as incomplete—failing to capture the dynamism of the process and the actors involved (Rado, 2018).

In an effort to enrich Slaughter's paradigm, Muller and Kjos (2017) provided a more detailed definition of the concept. They specifically singled out the purpose of a foreign judgment when cross-cited by another domestic judicial tribunal. Though Slaughter generally referred to this as the exchange of ideas between national or supranational courts, Muller and Kjos went further by specifying that such transjudicial exchange refers to the utilization of "external" judgments that have a bearing in the domestic "interpretation and application of the law" by the borrowing court.

This was further expounded by Professor Rado (2018). Although he agreed that the definition by Muller and Kjos is more detailed compared to Slaughter's, he still dismissed it as lacking because it failed to "include other forms of dialogue" (p.27). To better understand transjudicial conversation, he included its typologies (either horizontal, diagonal, or vertical), the subject of the whole process of conversation (not merely generic foreign judicial decisions but specific "substantive, procedural, ethical, and court management ideas and experiences"), and the mechanism by which the phenomenon occurs (either "formal or extrajudicial").

### *A Tale of a Universalist System – Overview of the Philippine Human Rights Regime*

The protection and promotion of human rights are the centerpiece of the Philippine constitutional project. It is where the progression is "legal as much as political" (McCrudden, 2000, p. 500). This formation of a rights regime is self-evident in the constitutional text itself. Albeit phrased in broad terms, the constitution generally affirms that "The State values the dignity of every human person and guarantees full respect for human rights" (Phil. Const. Art. II § 11, amended 1987). This declaration is followed by specific recitals of constitutional guarantees of human rights.

Not only does the constitution recognize great respect for human rights, but it also commands the Philippine Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity" (Phil. Const. Art. XII, §1, amended 1987). Although this indicates that the regime of rights is drafted locally, a reading of other relevant constitutional guarantees proves otherwise.

Professor Diane Desierto (2010), in her study of the present charter, concludes that the Philippine Constitution paves the way for a universalist approach to the rights regime. This transforms the local Philippine rights discourse into a passive participant in the globalization of human rights (Rado, 2015). Desierto (2010) further articulated that the local rights regime is the comingling of both domestic and international laws. There are two entry points for international human rights norms to penetrate the porous barriers of the Philippine system—either by transformation or by direct incorporation.

Transformation is the widely observed mode through which international rights norms may gain entry into the domestic regime (Bernas, 2005). The Constitution provides that "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate" (Phil. Const. Art. VI § 21, amended 1987). Thus, no international human rights convention can be binding in the Philippine territory unless the Philippine government, through the Senate, has ratified it (Bernas, 2013). Through the ratification mechanism, an international human rights covenant may be transformed into national human rights law, which in turn becomes effective and binding in the domestic sphere.

Direct incorporation, meanwhile, is likewise recognized under the Constitution. It declares that the "Philippines (…) adopts the generally accepted principles of international law" (Phil. Const. Art. II § 2, amended 1987). Through this mechanism, the Supreme Court has justified the use of foreign extrinsic human rights ideas not guaranteed in any international convention. Unlike the transformation mechanism, incorporation involves the court's action and appreciation alone. A particular human rights norm that is not part of a rights covenant may be declared by the court to be effective in the domestic sphere of the human rights regime, provided that it establishes its nature as a generally accepted principle of international law (Crawford, 2012). The Supreme Court, though, holds the power to judicialize foreign human rights norms by textualizing them into its promulgated decisions (Hamilton & Buyse, 2018).

## Method

This article employs a qualitative approach in the analysis of Supreme Court decisions. The cases were obtained using the CDAsia™ search engine, a commercial third-party software authorized by the Philippine Supreme Court to catalog its judgments. The selected cases were those that principally cover issues on three significant constitutional human rights: right to free expression (Article III, Section 4); right to religious freedom (Article III, Section 6); and right to environment (Article II, Section 16). These three constitutional guarantees were consciously selected based on their historical ties with foreign Constitutions.

The selected cases were promulgated from 1987 to 2019. This timeline was deliberately chosen because this is the period when the present Philippine Constitution was effective. Using such parameters, a total sample of 82 cases were selected for free speech, 15 for religious freedom, and 26 for environmental rights. The complete list of the cases and the Justices who penned the decision are provided in Appendices A, B, C, and D.

A content analysis (Maxfield & Babbie, 2014) of these decisions was also conducted. The following information were noted and analyzed: whether a foreign decision was cross-cited, the foreign court cited, the identity of the Philippine Supreme Court magistrate who cited the foreign decision, and the

type of human rights norms cited. Published speeches, lectures, and interviews of the concerned justices were also subjected to content analysis in relation to the studied cases.

## Results

### *Unveiling the Factors of Transjudicial Conversation in Human Rights Norms: The Philippine Context*

In the contemporary human rights system, the 1987 Constitution established the Supreme Court as the guardian of the people's fundamental rights (Phil. Const. Art. VIII § 1, amended 1987). This framework took shape under a universalist constitutional blueprint. The Philippine domestic rights regime is accommodating to the entry of international norms through transformation-incorporation mechanisms. The evident permeability of the domestic human rights regime, to some extent, provokes the court to turn beyond its borders in pursuit of a solution (Desierto, 2009).

### *Measuring the Degree and Establishing the Existence of Transjudicial Conversation*

The explicit citation of foreign judgments in human rights adjudication is an indication of transjudicial conversation (Voeten, 2010; Lambert, 2009). It is a reliable measurement of the degree of such engagement (Gentili & Mak, 2017). The Constitution mandates the Philippine Supreme Court to explicitly state the law on which its decision was based (Phil. Const. Art. VIII, §14, amended 1987). Thus, there are grounds to rely on the explicit citation as the basis for measuring the degree of the court's participation in the transjudicial conversation.

A study of the decisions delivered by the court from 1987 to 2019 on issues involving three constitutionally guaranteed human rights (right to free speech, religious freedom, and environment) shows its engagement in the cross-referencing of foreign judgments (Figure 1). Although the court participates in the transjudicial conversation, the engagement is of varying degrees: for free speech cases, the level of engagement is 75.6% (62/82); for religious freedom cases, 80% (12/25); and for environmental rights cases, 7.7% (2/26). These variations in the degree of cross-citation, as shown in Figure 1, may be inferred from the root causes identified by the literature.

To make sense of the gathered information, the sources of foreign judgments are also elaborated (presented in Table 1). Using the same data set, it appears that in free speech cases, the foreign judgments are predominantly from the United States Supreme Court (61 out of 62), while one decision promulgated by the Supreme Court of Canada was referenced. The same pattern was similarly observed in religious freedom cases: out of 12 cases that exhibited cross-citation, 11 were cited from the U.S. Supreme Court, while one was from the judgment issued by Scotland's Inner House of Session (equivalent to Supreme Court).

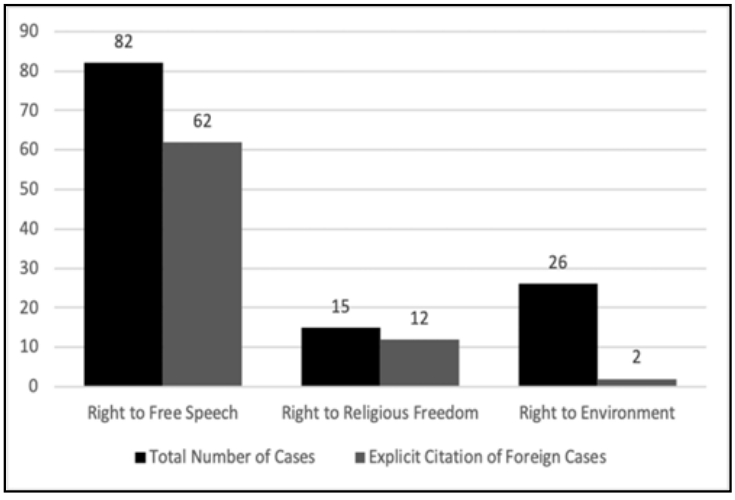


***Figure 1.*** Number of Supreme Court Cases (1987-2019) Bearing Explicit Citations of Foreign Judgment as Compared to the Total Number of Cases on Three Human Rights Issues

Results from the survey of environmental rights cases, however, are interesting. The sources of cited foreign judgments are one from the U.S. Supreme Court and one from the Supreme Court of India.

**Table 1**

*Sources of Foreign Judgments as Cross-Cited by the Philippine Supreme Court in Three Human Rights Issues (1987-2019)*

| Human Rights in Issue | Sources | |
|---|---|---|
| | U.S. | Other |
| Right to Free Speech | 61 | 1 (Canada) |
| Right to Religious Freedom | 11 | 1 (Scotland) |
| Right to Environment | 1 | 1 (India) |

### *Tracing the Genealogical Relationships Between the Philippines and Foreign Sources*

Genealogical relationships between the citing and the cited transborder courts have an impact not only with regard to the propensity of the phenomenon to occur but also on the choice of the country where the source is situated (McCrudden, 2000; Saunders & Stone, 2013). In an empirical study of the cross-citing behavior of the Australian Supreme Court, it was observed that the U.S. high tribunal was the predominant choice for the source of foreign judgment. The conclusion drawn from this result was correlated with the fact that the Australian constitution was replete with references to the case laws of the United States (Saunders & Stone, 2013). Similar observations were observed in the Canadian, South African, and Israeli contexts (L'Heureux-Dube, 1998).

### *Free Speech and Religious Freedom Constitutional Guarantees – Legacies of the American Occupation*

At least in the Philippine experience in free speech and religious freedom cases, the dominant sources are the decisions delivered by the U.S. Supreme Court (Table 1). The linkage between the Philippines and the United States with regard to the constitutional provisions guaranteeing the right to free speech and freedom of religion may be traced back to the 1935 Constitution (Phil. Const. Art. III, §1.7, & §1.8, amended 1935).

A comparison of the texts between the 1987 Constitution and its 1935 predecessor provides glaring similarities between the two clauses (Phil. Const. Art. III, §1.7, & §1.8, amended 1935; Phil. Const. Art. III § 4 & § 5, amended 1987). It is apparent that the framers of the 1987 charter had reproduced the 1935 clauses. An examination of the record of the 1986 Constitutional Commission reveals two things: first, it is evident that the Philippines had consciously followed the American phraseology of the right to free speech. The 1935 Constitution, framed during the American occupation, originally produced this clause, which was carried over to the 1987 charter; and second, because of the linkage between the Philippines and its former colonizer, the Supreme Court has been reliant on the United States' interpretation of the free speech clause (Table 1).

The Supreme Court, speaking through Mr. Justice Maria Victor Leonen in his separate opinion in *Nicolas-Lewis v. Commission on Election* (2019), confirmed the linkage between the Constitutions of the Philippines and the United States. In the case, Justice Leonen recognized that "The roots of our own free speech clause can be traced back to the U.S. First Amendment" and that the "The free speech clause eventually flowed through our jurisprudence" (Nicolas-Lewis v. Commission on Election, 2019, p. 670).

The Philippine free speech clause can claim direct genealogical linkage from its United States counterpart. Because of the strong bond between these cross-border free speech guarantees, the Philippine Supreme Court has turned to the U.S. Court's decisions for almost a century and has not seen the need to explain such behavior to gain legitimacy (Law, 2005).

There is a strong indication that the justices of the Philippine Supreme Court engage in the cross-citation of the decisions of the U.S. Court. For example, in a long line of jurisprudence on obscenity, the Supreme Court habitually referred to the judgments of the U.S. Court. In *Gonzales v. Kalaw-Katigbak* (1985), Chief Justice Fernando surveyed U.S. cases to establish the pattern of the American notions of obscenity. The case of *Pita v. Court of Appeals* (1989) even proclaimed that there is a frustrating trend in the American jurisprudence on obscenity cases. In *Francisco Chavez v. Raul Gonzales* (2008) and *Gonzales v. Commission on Elections* (1969), the court belabored to establish the jurisprudential patterns in the United States.

With respect to religious freedom cases, Figure 1 also shows that the Supreme Court engages in the cross-citation of foreign judgments. Taken with Table 1, we may deduce that the cross-citation is driven by an impulse to look to the judgments promulgated by the United States Supreme Court. The genealogical relationship explanation may likewise be used to rationalize this result. Professor Pangalangan (2008) averred that the present form of freedom of religion provisions in the constitution is a borrowed concept from the Americans. The 1935 and 1987 provisions are mirror copies of each other. Similar to the free speech clause, the religious freedom clause claims its origin from the U.S. First Amendment right (Coquia, 1956).

The records of the 1986 Constitutional Commission establish the connection between the United States and the Philippine religion clauses. When debating about the non-establishment of religion, Commissioner Felicitas Aquino broadly claimed that "In fact, the jurisprudence (…) in the United States (would state) that they have staked the existence of the State on the faith that the separation of Church and State is good both for the State and for the Church" (The Philippine Constitutional Commission, 1986, p.467). On another occasion, Commissioner Rustico delos Reyes, Jr. made a specific reference to United States cases to underscore his argument against the taxing of religious organizations (The Philippine Constitutional Commission, 1986).

The Philippines' entanglement with the United States' notions on religious freedom rights was further acknowledged in Alejandro *Estrada v. Soledad Escritor* (2006), where Supreme Court Justice Reynato Puno recognized the "American origin of our religion clauses" and the value of the U.S. cases in solving Philippine religious freedom controversies (p. 3).

### *Environmental Rights: A Departure From the American Rights Legacies*

Genealogical relationships between the domestic and foreign rights provisions initially explain why courts engage in transjudicial communication (McCrudden, 2000). Philippine Supreme Court cases on free speech and religious freedom provide empirical evidence for this assertion. However, to test the causation of the genealogical relationship, it is imperative to study other constitutional rights where no such linkage exists.

The environmental rights clause has the least linkage with foreign laws. Unlike the free speech and religious freedom clauses, such right cannot claim a direct genealogical link with the U.S. Constitution because there are no resembling provisions between these two documents. The novelty of the environmental rights clause is proved in the deliberations of the Constitutional Commissions. During its presentation for debate, the framers made enormous clarificatory questions. At one point, Commissioner Wilfrido Villacorta interpellated Commissioner Rodolfo Azcuna regarding the correlative duties and rights included in the new provision. Even the phraseology of the clause was greatly contested by the framers. Such instances, taken together, prove that the Commission is treading a path not yet explored in any of the country's constitutional moments (Gatmaytan-Magno, 2007). The uniqueness of the environmental rights provision was even accepted in the landmark case of *Oposa v. Factoran* (1993) when Chief Justice Hilario Davide, Jr. highlighted that it is "the first time in our nation's constitutional history" that the right to environment was "solemnly incorporated in the fundamental law" (p. 801).

### *Lack of Domestic Solutions as Compulsion for Trans-Judicial Conversation*

Some may ask, in reference to Table 1, why the Philippine Supreme Court still cross-cited the decision of the Supreme Court of India and the United States despite the lack of genealogical linkage causation. Another motivation may account for this behavior. Aside from such a relationship, courts may cross-refer foreign decisions to find similar solutions to a "common problem such as (…) environmental" issues (Laffranque, 2008, p.1289).

The case of *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay* (2008) lent a mooring to Laffranque's observation. Here, the issue was whether the judicial writ of continuing mandamus may be properly utilized by the court to command the government to set up long-term programs for the rehabilitation of Manila Bay. In ruling in the affirmative, the Supreme Court turned to Indian jurisprudence for an answer regarding the function of this judicial device. The Court made an explicit reference to the doctrine of "continuing mandamus (that) was used to enforce directives of the court to clean up the length of the Ganges River from industrial

and municipal pollution" in India (*Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 2008, p.679).

The domestic environmental rights discourse is relatively new. As such, the Court does not possess any ready solutions for its enforcement and protection. Looking for judicial answers beyond the Philippine borders is both useful and efficient. In *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes* (2015), the Supreme Court continued to recognize the novelty of environmental rights adjudication. When asked to answer the issue of whether inanimate objects such as living mammals may be represented in the court for the enforcement of environmental laws, the Court resorted to a survey of U.S. jurisprudence in search of answers. Here, the Court underscored that "While relatively new in Philippine jurisdiction, the issue of whether animals have legal standing before courts has been the subject of academic discourse in light of the emergence of animal and environmental rights" (p.547). In disposing of the case, the Court did a detailed examination of the U.S. case of *Sierra Club v. Rogers C.B. Morton* (Hogan, 2007). Such a laborious task supports the idea that transjudicial conversation is provoked by the lack of domestic solutions to a common problem.

There are two primary reasons why Philippine environmental rights issues are useful territories to demonstrate how the absence of domestic answer serves as a motivating factor for transjudicial conversation to prosper: first, the environmental rights clause in the 1987 Constitution has no genealogical link with foreign constitutions; and second, environmental issues are novel but common problems to the contemporary world.

The need to seek solutions abroad, however, is not exclusively confined to environmental cases. A reading of selected decisions in free speech and freedom of religion shows some indications that the Supreme Court may have also been impelled to cross-cite foreign judgments because of such a need to look for solutions.

In *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City* (2017), the Court was tasked to resolve the issue of whether the imposition of a curfew on minor children during Christmas masses violates their religious rights. At the outset, to assess its validity, the Philippine court was faced with a conundrum of whether the ordinance is the least intrusive means of curtailing rights. In so determining, the Court resorted to the U.S. case of *In re: Mossier,* which presented a similar set of facts. *Mossier* thus held that for laws to be least intrusive, they should be narrowly drawn. Applying such U.S. standard, the Philippine Supreme Court ruled that the ordinance preventing minor children from attending night masses is invalid for being intrusive. The government regulation unduly curtails "legitimate activity done pursuant to the minors' right to freely exercise their religion is therefore effectively curtailed" (SPARK v. Quezon City, 2007, p. 1110).

The same pattern may be observed in the Internet free speech case of *Jose Jesus Disini, Jr. v. Secretary of Justice* (2014). Here, the petitioners challenged the validity of the anti-cybercrime law. They mainly argued that the law is void for being vague. The *Disini* case presented a novel issue because the void-for-vagueness cannot be applied to criminal statutes; there should be an actual case before assailing the law. The Court was then impelled to look into U.S. cases for solutions. It then consulted *Reno v. American Civil Liberties Union* (1996) for guidance. In *Reno*, the U.S. Supreme Court declared the applicability of the void-for-vagueness challenge to criminal cases, provided it involves the curtailment of free speech guarantees. This decision was then applied by the Philippine Supreme Court to the *Disini* case because the anti-cybercrime law involves cases penalizing internet libel.

### *Historical-Political Alliances and Its Influence on Cross-Border Judicial Citations*

Some posited that historical-political alliances exert considerable influence on the occurrence of transjudicial conversation. McCrudden (2000) referred to it as a "deliberate common alliance" between the borrowing court and its offshore source. He further claimed that the historical-political alliances may be attributed to two factors: first, common historical experiences during the era of colonialization, and second, the model of political structure. Some scholars believe that a country with a liberal democratic system would tend to cross-cite from another with a similar form of governance (Law & Chang, 2011; Rautenbach, 2013). Although it may explain the choice of country as the source of judicial human rights norms, it does not explain the underpinning of the behavior. Law and Chang (2011) offered a closer understanding of this subject. In their study of Taiwan, Law and Chang (2011) claimed that cross-judicial borrowing

is performed by the Taiwanese Constitutional Court to align its values with countries of the same political structure (Gentili & Mak, 2017).

There are some jurisprudential indications that the Philippine Supreme Court has been guided by the same impulse whenever it resorts to cross-citations of U.S. cases. Freedom of speech and religious beliefs have been treated by the court as the foundation of our democratic and republican society. The United States exported these ideas of governance to Philippine shores (Rose-Ackerman et al., 2011). In his poetic *ponencia*, Associate Justice Gregorio Perfecto claimed that the "Philippines is the cradle of democracy in the East" and further recognizes that "America, the greatest occidental democracy, came to offer us a helping hand as a second mother" (*Raquiza v. Bradford*, 1945, p.76). Because of such entanglements, any controversies involving these rights are decided in consideration of the concept of American virtues. Freedom of speech, for instance, is seen as indispensable for the preservation of republicanism, a system introduced by the United States to the Philippines. Chief Justice Reynato Puno's words in the case of *Francisco Chavez v. Raul Gonzales* (2008) even highlighted the idea that "The cognate rights codified by Article III, Section 4 of the Constitution, copied almost verbatim from the First Amendment of the U.S. Bill of Rights, were considered the necessary consequence of republican institutions and the complement of free speech" (p. 823).

Similar judicial manifestations are likewise observed in *National Press Club v. Commission on Elections* (1992), *Blo Umpar Adiong v. Commission on Elections* (1992), *ABS-CBN Broadcasting Corp. v. Commission on Elections* (2000), *Estrada v. Desierto* (2001), and *The Diocese of Bacolod v. Commission on Elections* (2015). There, the primacy of the freedom of speech in a democratic government is underscored. These cases point to the country's legal-political history as the reason why unbridled speech is an indispensable requirement for the upkeeping of our democratic institutions. It is made clear in these cases that the freedom of speech is tied up with the right to vote, a cornerstone of democracy.

Clearly, the Philippines emulate the American brand of democracy. Foremostly, the Supreme Court is dominated by the idea that our domestic democratic values are of American origin, or in the literary metaphorical portrayal by Justice Perfecto, the Philippines is an "adopted daughter of the American mother of democracy" (*Raquiza v. Bradford*, 1945, p.77). Owing to this, perhaps, the transjudicial borrowing of U.S. cases by our courts has consistently followed the footpath toward that emulation.

### *Foreign Academic Trainings as a Motivation for Transjudicial Conversation*

Various scholars explore the influence of foreign academic trainings of judges in the occurrence of transjudicial conversation. There are two distinct groups of experts who paid attention to this factor. On one hand are Professors Slaughter (1994) and Waters (2005) and Canadian Justice L'Heureux-Dube (1998). Their main theses are encapsulated within the broad concept of judicial globalization, a phenomenon where judges are actually talking to one another at international conferences, resulting in the formation of networks of judges and in the exchange of inspirations. The other group is composed of Law and Chang (2011) and Gentili and Mak (2017). Their studies discount the judge-to-judge thesis through empirical analysis of two constitutional courts—the Taiwanese Constitutional Court and the Supreme Court of Canada. Instead of subscribing to the ideas proposed by the first group, Law and Chang (2011) countered that transjudicial conversation is more motivated by the justices' foreign academic trainings.

In our analysis, although we do not intend to favor one idea with the exclusion of the other, we will focus our discussion more on the academic trainings of these justices in relation to the tendency to participate in transjudicial conversation. As discussed elsewhere, a survey of cases promulgated by the Philippine Supreme Court on rights to free speech and freedom of expression reveals the presence of transjudicial borrowing. To investigate these factors, we further extend the same data set to include the justices who penned the court's decision.

Figure 2 presents the data obtained from the documentary survey. During the time frame, (1987 to 2019), results show that of the 43 justices who wrote the court's decision, three groups are clearly defined based on their cross-citation behaviors: (a) consistent with cross-citing; (b) consistent with not cross-citing; and (c) not consistent. For the first group, it is observed that the following justices consistently cited foreign judgments (at least two decisions): Chief Justice Puno (7 decisions); Justice Kapunan (4); Justice Leonen (4); Justice Chico-Nazario (3); Justice Feliciano (3);

Justice Mendoza (3); Chief Justice Peralta (3); Justice Velasco, Jr. (3); Chief Justice Panganiban (2); Justice Regalado (2); Cortes (2); Justice Tijam (2); Justice Abad (2); Justice Bellosillo and (2); and Justice Carpio-Morales (2).

Meanwhile, Justices Azcuna (2/2), Paras (2/2), and Chief Justice Corona (2/2) may be considered consistent with the pattern of not cross-citing foreign judgments. The third group is composed of justices who do not have a consistent citation behavior: Justice del Castillo (1 with foreign citation/ 1 with no foreign citation); Justice Perlas-Bernabe (1/1); Justice Quisumbing (1/1); Justice Sandoval-Gutierrez (2/1); and Justice J. C. Mendoza (4/1).

Of these three groups, the first group invites a closer examination principally because of their consistent citation behavior of foreign judgments. Following the proposition by Gentili and Mak (2017) and Law and Chang (2011), justices with foreign academic trainings should exhibit a consistent pattern of citing transjudicial decisions. To test this claim, a look into the educational background of the magistrates composing the said group is warranted. Although such is merely circumstantial, the justices' academic backgrounds, taken with their public pronouncements and written judgments, may provide an insight into their openness toward transjudicial conversation (Gentili & Mak, 2017).

At the outset, one may argue that all of the U.S.-educated justices (such as Puno, Leonen, and Mendoza) have consistently engaged in transjudicial conversation, especially in free speech and religious freedom cases. Of these justices, worth noting is the citation pattern of Chief Justice Reynato S. Puno. Not only is he the most prolific opinion writer in this group, but also because he exhibits a consistent pattern of citing the judgments of the U.S. Supreme Court. This transjudicial behavior may be taken preliminarily as motivated by his educational background, among others. Aside from holding a Doctor of Juridical Science degree from the University of Illinois in the United States, he also obtained his Master of Laws and Master in Comparative Laws from the University of California Berkeley and Southern Methodist University Law School, respectively. Both institutions are likewise situated in the United States of America.

The extent of the impact of his American education is arguably telling. During Chief Justice Puno's acceptance speech for the University of California Berkeley's Haas International Award in 2009, he expressed that his Berkeley education has "solidified (his) belief and faith in democracy as the best form of government, and the best way to protect the rights of the people" (Cohen, 2010,para. 12).

In another occasion, Chief Justice Puno was likewise asked to deliver a speech at the Silliman

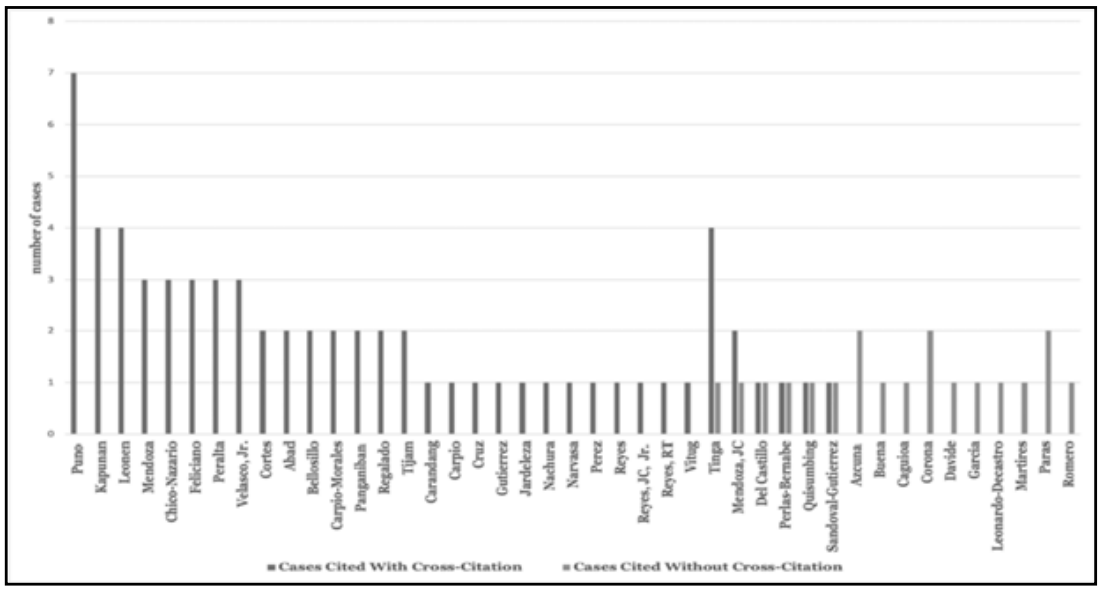


***Figure 2.*** Number of Cases Exhibiting Citation and Non-Citation of Foreign Judgments as Penned by Supreme Court Justices on Free Speech and Religious Freedom Rights (1987-2019)

University, Philippines, in 2007 (Puno, 2007). The subject matter of his remarks revolved around the issue of human rights and the Philippine democracy. During its opening, he expressed that he reads an American book to update himself on the "latest wrinkle in American jurisprudence." He then continued with a dedicated disquisition on how the American human rights system has been exported to the Philippine territory, as well as an occasional discussion of U.S. cases such as *U.S. v. Brown*. In his closing, he quoted Professor Lewis Henkin of Columbia University, to which he replied, "I wholeheartedly agree."

His Silliman University speech is not the only time that the Chief Justice was publicly heard to be referring to U.S. cases (Puno, 2017). At the 2008 International Conference on Impunity and Press Freedom, his keynote speech centered on the domestic state of free speech in light of the rampant killings of journalists (Puno, 2008). He gave a detailed study of free speech rights by constantly annotating judicial opinions of American judges such as Justices Oliver Wendell Holmes and Louis Brandeis.

There are good reasons, therefore, to believe that his consistent reference to U.S. decisions not only on his judicial opinions but also in public speeches corroborates with his educational exposure in the United States. Perhaps the openness of Chief Justice Puno toward transjudicial conversation was solidified in the 2009 forum, where he claimed the need to "shift towards adoption of the best practices of other jurisdictions" (Ramos, n.d., para. 7).

Justice Maria Victor Leonen comes second with respect to his consistency in cross-citing foreign judgments. Among his four judgments, he has cited the U.S. Supreme Court decision in three cases and the Supreme Court of Canada in one. Similar to Chief Justice Puno, Justice Leonen obtained his Master of Laws from the Columbia University School of Law in New York, United States. Identical citation patterns are also observed with the penned decisions of Justice Vicente Mendoza, a graduate of Yale University in the United States.

Meanwhile, Justice Santiago Kapunan penned the same number of decisions as Justice Leonen. All of such decisions heavily cited U.S. judgments. Although he did not have formal training overseas, Justice Kapunan earned numerous study grants in the United States, Canada, and New Zealand. He is also a member of the New York Bar Association. Justice Florenz Regalado, who authored two decisions on these human rights issues, also exhibited the same citation pattern as the rest. All his penned opinions cited U.S. judgments; he holds a Master of Laws degree from the University of Michigan. Similarly, Justice Irene Cortes, who holds a Master of Laws degree from the same university, exhibited the same citation behavior in the total of two cases that she wrote.

The remaining justices who consistently referred to foreign decisions are Justices Josue Bellosillo, Minita Chico-Nazario, Florentino Feliciano, Noel Tijam and Presbitero Velasco, Jr., Chief Justices Artemio Panganiban, and Diosdado Peralta. Although they do not hold foreign law degrees, other factors—personal or otherwise—may nonetheless account for this, such as the professional background, academic training of law clerks, and trainings abroad. Among these justices, Chief Justices Panganiban and Peralta, as well as Justices Chico-Nazario, Feliciano, and Bellosillo, are academicians prior to joining the Supreme Court. Law and Chang (2011) opined that those who teach in law academes are also seen to exhibit transjudicial conversation behavior. Though it is worth noting, this aspect is beyond the scope of our analysis. What has been proved, nonetheless, is that the propensity to engage in the phenomenon of cross-border citation involves multivariate factors that need to be assessed further.

## Conclusion

The occurrence of transjudicial conversation on human rights norms is an aspect least explored in the Philippine setting. This paper hopes to lay the foundational understanding of this phenomenon by tracing the possible motivations that influence its manifestation in the context of the Philippine Supreme Court. A data set using the judgments of the high tribunal in three human rights issues promulgated from 1987 to 2019 indicates that the Philippine Supreme Court assumes a participative role in the phenomenon. The cases studied exhibit a pattern showing that the court explicitly cross-cites the decisions of foreign courts in resolving issues involving free speech, religious freedom, and environmental rights.

A preliminary understanding of the domestic human rights regime reveals the porosity of the Philippine system to foreign human rights judgments.

The universal orientation of the present constitution facilitates the entry of these norms into the domestic sphere. The reformed role of the Supreme Court also shows that it contributed to its institutional propensity to engage in the proliferation of trans-border judicial conversation.

It is similarly observed that in free speech and religious freedom controversies, the Supreme Court almost consistently cites U.S. judgments. This pattern, however, does not appear in the analysis of environmental cases. The genealogical linkage of the Philippine free speech and religious freedom clauses with the U.S. First Amendment provision indicates to be the moving factor for this cross-citing behavior. Such Philippine guarantees are of American origin that was first introduced during the era of colonization and were carried out until the present constitution. No equivalent indication is seen in environmental issues, primarily because this right provided under the constitution is novel. No similar genealogical linkage with foreign laws can be established.

Political alliance is one of the attributable causes of transjudicial conversation. It must be remembered that in the annals of Philippine history, the United States introduced its own brand of political system during its occupation of the whole archipelago. Guided by these transplanted American democratic virtues, the Supreme Court has the innate will to preserve these values whenever it is confronted with issues involving personal liberties. As such, U.S. judgments are oft-cited in free speech and freedom of religion cases. The Supreme Court justifies this judicial action as necessary for the preservation of the country's democratic values.

Domestic environmental rights adjudication exhibits the least attachment to the U.S. human rights norms. Even though the lack of genealogical ties with the United States is a reasonable basis to explain this, the impulse to look for solutions abroad may also be a complementary justification. The right to environment is a new provision introduced in the 1987 Constitution. Consequently, there is a void in the normative interpretation of this clause. Because of this, the Supreme Court turned to overseas cases in search of solutions. The need for answers in this particular rights issue is nonetheless not confined to environmental cases. Even in free speech issues, there are indications that the Supreme Court is impelled by the same reason. Together with the advancement of communication technologies that have intersections with the exercise of the freedom to express, novel questions surfaced. Because of the uniqueness of this question, no domestic solution is readily available for the consumption of the domestic tribunal. Thus, the court deems it necessary to look for solutions by reading and citing U.S. decisions.

Likewise, there are indications that the foreign academic backgrounds of the justices have some influence on their engagement in the transjudicial conversation. The analysis of the cases on freedom of speech and religious beliefs shows that justices who have obtained their academic trainings abroad consistently cross-cited foreign decisions compared to other justices who graduated from local universities. Thus, it is indicative from these data and analyses presented that the phenomenon takes place in the Philippine setting, and the causes discussed initially explain this occurrence. Nonetheless, although the influence of judge-to-judge interaction is a potential source of influence that may motivate justices to participate in the phenomenon, this factor was not considered in this article. This, however, is a fertile ground for future examination of transjudicial conversation in the Philippine context.

Although the article established the existence of the transjudicial conversation phenomenon in the Philippines, the analysis was only limited to three constitutional rights. Future studies may consider expanding this examination to include other constitutional rights and provisions as well as their impact on the setting of Philippine human rights norms.

## Declaration of Ownership

This report is our original work.

## Conflict of Interest

None.

## Ethical Clearance

This study was approved by our institution.

## References


ABS-CBN Broadcasting Corp. v. Commission on Elections, 323 SCRA 811 (2000).

Alejandro Estrada v. Soledad Escritor 492 SCRA 1 (2006).

Bernas, J. (2005). *Constitutional structure and powers of government: Notes and cases.* Rex Bookstore, Inc.

Bernas, J. (2013). *The 1987 Constitution of the Republic of the Philippines: A commentary*. Rex Bookstore, Inc.

Blo Umpar Adiong v. Commisison on Elections, 207 SCRA 712 (1992).

Cohen, A. (2010, June 18). *Reynato Puno '68 receives HAAS international award in Berkeley.* Berkeley Law. https://www.law.berkeley.edu/article/reynato-puno-68-receives-haas-international-award-in-berkeley/

Coquia, J. R. (1956). Religious freedom in the Philippines. *Philippine Studies*, *4*(1), 15–30.

Crawford, J. (2012). *Brownlie's principle of public international law.* Oxford University Press. Desierto, D. (2009). A universalist history of the 1987 Philippine Constitution (I). *Historia Constitucional*, *10*, 383–426.

Desierto, D. (2010). A universalist history of the 1987 Philippine Constitution (II). *Historia Constitucional*, *11* , 427-484.

Estrada v. Desierto, 369 SCRA 394 (2001).

Francisco Chavez v. Raul Gonzales, 205 SCRA 816 (2008).

Gatmaytan-Magno, D. (2007). Artificial judicial environmental activism: Oposa v. Factoran as aberration. *Indiana International and Comparative Law Review*, *17*(1), 1–28. https://doi.org/10.18060/17525.

Gentili, G., & Mak, E. (2017). The Supreme Court of Canada's transnational judicial communication on human rights (1982– 2014): An empirical assessment. In A. Muller & H. K. Kjos (Eds.), *Judicial dialogue and human rights* (pp. 114–152). Cambridge University Press. https://doi.org/10.1017/9781316780237

Gonzales v. Commission on Elections, 27 SCRA 835 (1969).

Gonzales v. Kalaw-Katigbak, 137 SCRA 356 (1985).

Hamilton, M., & Buyse, A. (2018). Human rights courts as norm-brokers. *Human Rights Law Review*, *18*(1), 205–232. https://doi.org/10.1093/hrlr/ngy014.

Hirschl, R. (2014). *Comparative matters: The renaissance of comparative constitutional law*. Oxford University Press.

Hogan, M. (2007). Standing for nonhuman animals: developing a guardianship model from the dissents in Sierra Club v. Morton. *California Law Review, 95*(2), 513-534. https://doi.org/10.15779/Z38Q416

Jose Jesus Disini, Jr., v. Secretary of Justice, 716 SCRA 237 (2014).

L'Heureux-Dube, C. (1998). The importance of dialogue: Globalization and the international impact of the Rehnquist Court. *Tulsa Law Review, 34*(1), 15–26.

Laffranque, J. (2008). Judicial borrowing: International and comparative law as nonbinding tools of domestic legal adjudication with particular reference to Estonia. *International Lawyer*, *42*(4), 1287–1302.

Lambert, H. (2009). Transnational judicial dialogue, harmonization and the common European asylum system. *International and Comparative Law Quarterly, 58*(3), 519–543. https://doi.org/10.1017/S0020589309001249

Law, D. S. (2005). Generic constitutional law. *Minnesota Law Review*, *89*(3), 652–742.

Law, D. S., & Chang, W. C. (2011). The limits of global judicial dialogue. *Washington Law Review*, *86*(3), 523–577.

Maxfield, M. G., & Babbie, E. R. (2014). *Research methods for criminal justice and criminology*. Cengage Learning.

McCrudden, C. (2000). Common law of human rights?: Transnational judicial conversations on constitutional rights. *Oxford Journal of Legal Studies*, *20*(4), 499-532. https://doi.org/10.1093/ojls/20.4.499

Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, 574 SCRA 661 (2008).

Muller, A., & Kjos, H. K. (Eds.). (2017). *Judicial dialogue and human rights*. Cambridge University Press. https://doi.org/10.1017/9781316780237.

National Press Club v. Commission on Elections, 207 SCRA 1 (1992).

Nicolas-Lewis v. Commission on Election, 497 SCRA 649 (2019).

Oposa v. Factoran, 224 SCRA 792 (1993).

Pangalangan, R. C. (2008). Transplanted constitutionalism: The Philippine debate on the secular state and the rule of law. *Philippine Law Journal*, *82*(1), 1–23.

Phil. Const. Art. II § 11 (amended 1987).

Phil. Const. Art. II § 2 (amended 1987).

Phil. Const. Art. III § 4 (amended 1987).

Phil. Const. Art. III § 5 (amended 1987).

Phil. Const. Art. III, §1.7 (amended 1935).

Phil. Const. Art. III, §1.8 (amended 1935).

Phil. Const. Art. VI § 21 (amended 1987).

Phil. Const. Art. VIII, §1 (amended 1987).

Phil. Const. Art. VIII, §14 (amended 1987).

Phil. Const. Art. XII, §1 (amended 1987).

Pita v. Court of Appeals, 178 SCRA 362 (1989).

Puno, R. S. (2007). The influence of the law review on the bench. *Ateneo Law Journal, 56*(1), 17–24.

Puno, R. S. (2008). *Chief Justice Puno: Freedom of the press is a touchstone of democracy.* GMA News Online. https://www.gmanetwork.com/ news/topstories/specialreports/82712/chief-justice- puno-freedom-of-the-press-is-a-touchstone-of-democracy/story/.

Puno, R. S. (2017) *Reynato Puno speech on human rights Silliman University*. Internet Archive. https://archive.org/details/ReynatoPunoSpeechOnHumanRightsSillimanUniversity.

Rado, K. (2015). The relationship between human rights and judicial globalization. *The Transnational Human Rights Review*, *2*(1), 103–133.

Rado, K. (2018). *The transnational judicial dialogue of the supreme court of Canada and its impact* [Doctoral dissertations, York University]. https://digitalcommons.osgoode.yorku.ca/phd/40

Ramos, G. E. (n.d.). *Judicial activism reins in executive power: The Philippine experience.* International Association of Law Schools. https://www.ialsnet.org/meetings/constit/papers/RamosGloria%28Philippines%29.pdf.

Raquiza v. Bradford, 75 Phil. 50 (1945).

Rautenbach, C. (2013). South Africa: Teaching an 'old dog' new tricks? An empirical study of the use of foreign precedents by the South African constitutional court (1995–2010). In T. Groppi & M. -C. Ponthoreau (Eds.), *The use of foreign precedents by constitutional judges* (pp. 185–210). Hart Publishing.

Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes, 756 SCRA 513 (2015).

Rose-Ackerman, S., Desierto, D. A., & Volosin, N. (2011). Hyper-presidentialism: Separation of powers without checks and balances in Argentina and the Philippines. *Berkeley Journal of International Law*, *29*(1), 246–333.

Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, 815 Phil 1067 (2017).

Saunders, C., & Stone, A. (2013). Reference to foreign precedents by the Australian High Court: A matter of method. In: T. Groppi & M. -C. Ponthoreau (Eds.), *The use of foreign precedents by constitutional judges* (pp. 13–38). Hart Publishing.

Slaughter, A.-M. (1994). A typology of transjudicial communication. *University of Richmond Law Review University of Richmond*, *29*(1), 99–137.

The Diocese of Bacolod v. Commission on Elections, 751 Phil 301 (2015).

The Philippine Constitutional Commission. (1986). *Record of the Constitutional Commission: Proceeding and debate.* https://archive.org/details/record-of-the-constitutional-commission-volume-4/page/n5/mode/2up

Voeten, E. (2010). Borrowing and nonborrowing among international courts. *Journal of Legal Studies*, *39*(2), 547–576. https://doi.org/10.1086/652460

Waters, M. A. (2005). Mediating norms and identity: The role of transnational judicial dialogue in creating and enforcing international law. *Georgetown Law Journal*, *93*(2), 487–574.

# Appendix A

## List of Supreme Court Cases on Freedom of Expression (1987-2019)

| Case Name and Number | Year | Ponente |
|---|---|---|
| Ayer Productions Pty. Ltd. v. Capulong, G.R. No. 82380, 82398 | 1988 | Feliciano |
| Bulletin Publishing Corp. v. Noel, G.R. No. 76565 | 1988 | Feliciano |
| Kapunan, Jr. v. De Villa, G.R. No. 83177 (Resolution) | 1988 | Per Curiam |
| Soliven v. Makasiar, G.R. No. 82585, 82827, 83979 (Resolution) | 1988 | Per Curiam |
| Zaldivar v. Sandiganbayan, G.R. Nos. 79690-707, 80578 (Resolution) | 1988 | Per Curiam |
| Valmonte v. Belmonte, Jr., G.R. No. 74930 | 1989 | Cortes |
| Manuel v. Paño, G.R. No. L-46079 | 1989 | Cruz |
| Alcuaz v. Philippine School of Business Administration, G.R. No. 76353 (Resolution) | 1989 | Paras |
| Zaldivar v. Sandiganbayan, G.R. No. 79690-707, 80578 (Resolution) | 1989 | Per Curiam |
| Pita v. Court of Appeals, G.R. No. 80806 | 1989 | Sarmiento |
| Non v. Dames II, G.R. No. 89317 | 1990 | Cortes |
| Presidential Commission on Good Government v. Nepomuceno, G.R. No. 78750 | 1990 | Paras |
| National Press Club v. Commission on Elections, G.R. Nos. 102653, 102925 & 102983 | 1992 | Feliciano |
| Adiong v. Commission on Elections, G.R. No. 103956 | 1992 | Gutierrez |
| Tolentino v. Secretary of Finance, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 & 115931 | 1994 | Mendoza |
| Danguilan-Vitug v. Court of Appeals, G.R. No. 103618 | 1994 | Romero |
| *In re: Jurado, A.M. No. 93-2-037 SC* | 1995 | Narvasa |
| Webb v. De Leon, G.R. Nos. 121234, 121245 & 121297 | 1995 | Puno |
| People v. Godoy, G.R. Nos. 115908 & 115909 | 1995 | Regalado |
| Choa v. Chiongson, A.M. No. MTJ-95-1063 (Resolution) | 1996 | Davide |
| Iglesia ni Cristo v. Court of Appeals, G.R. No. 119673 | 1996 | Puno |
| Osmeña v. Commission on Elections, G.R. No. 132231 | 1998 | Mendoza |
| Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections, G.R. No. 132922 | 1998 | Mendoza |
| Borjal v. Court of Appeals, G.R. No. 126466 | 1999 | Bellosillo |
| Vasquez v. Court of Appeals, G.R. No. 118971 | 1999 | Mendoza |
| Jalandoni v. Drilon, G.R. Nos. 115239-40 | 2000 | Buena |
| Miriam College Foundation, Inc. v. Court of Appeals, G.R. No. 127930 | 2000 | Kapunan |

| Case Name and Number | Year | Ponente |
|---|---|---|
| ABS-CBN Broadcasting Corp. v. Commission on Elections, G.R. No. 133486 | 2000 | Panganiban |
| People v. Dela Piedra, G.R. No. 121777, | 2001 | Kapunan |
| Social Weather Stations, Inc. v. Commission on Elections, G.R. No. 147571 | 2001 | Mendoza |
| Estrada v. Desierto, G.R. Nos. 146710-15 & 146738 | 2001 | Puno |
| Perez v. Estrada, A.M. No. 01-4-03-SC | 2001 | Vitug |
| In re De Vera, A.M. No. 01-12-03-SC | 2002 | Kapunan |
| MVRS Publications v. Islamic Da'wah Council of the Philippines, G.R. No. 135306 | 2003 | Bellosillo |
| Estrada v. Escritor, A.M. No. P-02-1651 (formerly OCA I.P.I. No. 00-1021-P | 2003 | Puno |
| Baguio Midland Courier v. Court of Appeals, G.R. No. 107566 | 2004 | Chico-Nazario |
| Romualdez v. Sandiganbayan (Fifth Division), G.R. No. 152259 | 2004 | Panganiban |
| Bascon v. Court of Appeals, G.R. No. 144899 | 2004 | Quisumbing |
| Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571 | 2004 | Tinga |
| Philippine Journalists Inc. v. Thoenen, G.R. No. 143372 | 2005 | Chico-Nazario |
| Flor v. People, G.R. No. 139987 | 2005 | Chico-Nazario |
| Complaint of Mr. Aurelio Indencia Arrienda, A.M. No. 03-11-30-SC (Resolution) | 2005 | Corona |
| Re: Letter dated 21 February 2005 of Atty. Noel S. Sorreda, A.M. No. 05-3-04-SC (Resolution) | 2005 | Garcia |
| MTRCB v. ABS-CBN. , G.R. No. 155282 | 2005 | Sandoval-Gutierrez |
| Guingguing v. Court of Appeals, G.R. No. 128959 | 2005 | Tinga |
| Bayan v. Ermita, G.R. Nos. 169838, 169848 & 169881 | 2006 | Azcuna |
| David v. Macapagal-Arroyo, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424 | 2006 | Sandoval-Gutierrez |
| Gudani v. Senga, G.R. No. 170165 | 2006 | Tinga |
| Philippine Daily Inquirer v. Alameda, G.R. No. 160604 | 2008 | Azcuna |
| Akbayan Citizens Action Party v. Aquino, G.R. No. 170516 | 2008 | Carpio-Morales |
| Chavez v. Gonzales, G.R. No. 168338 | 2008 | Puno |
| In re Macasaet, A.M. No. 07-09-13-SC | 2008 | Reyes, RT |
| Tulfo v. People, G.R. Nos. 161032 & 161176 | 2008 | Velasco, Jr. |
| Quinto v. Commission on Elections, G.R. No. 189698 | 2009 | Nachura |
| Villanueva v. Philippine Daily Inquirer, G.R. No. 164437 | 2009 | Quisumbing |
| Newsounds Broadcasting Network, Inc. v. Dy, G.R. Nos. 170270 & 179411 | 2009 | Tinga |
| Divinagracia v. Consolidated Broadcasting System, Inc., G.R. No. 162272 | 2009 | Tinga |
| Soriano v. Laguardia, G.R. Nos. 164785 & 165636 | 2009 | Velasco, Jr. |

| Case Name and Number | Year | Ponente |
|---|---|---|
| Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461 | 2010 | Carpio-Morales |
| Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582 | 2010 | Del Castillo |
| Government Service Insurance System v. Villaviza, G.R. No. 180291 | 2010 | Mendoza, JC |
| Soriano v. Laguardia, G.R. Nos. 164785 & 165636 (Resolution) | 2010 | Velasco, Jr. |
| Re: Letter of the UP Law Faculty on Allegations of Plagiarism and Misrepresentation in the Supreme Court, A.M. No. 10-10-4-SC | 2011 | Leonardo-Decastro |
| Disini, Jr. v. Secretary of Justice, G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 203518 (Resolution) | 2014 | Abad |
| Disini, Jr. v. Secretary of Justice, G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 203518 | 2014 | Abad |
| Marantan v. Diokno, G.R. No. 205956 | 2014 | Mendoza, JC |
| Spouses Imbong v. Ochoa, Jr., G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563 | 2014 | Mendoza, JC |
| GMA Network, Inc. v. Commission on Elections, G.R. Nos. 205357, 205374, 205592, 205852 & 206360 | 2014 | Peralta |
| Ejercito v. Commission on Elections, G.R. No. 212398 | 2014 | Peralta |
| The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728 | 2015 | Leonen |
| Social Weather Stations, Inc. v. Commission on Elections, G.R. No. 208062 | 2015 | Leonen |
| Cudia v. Superintendent of the Philippine Military Academy, G.R. No. 211362 | 2015 | Peralta |
| Davao City Water District v. Aranjuez, G.R. No. 194192 (Resolution) | 2015 | Perez |
| 1-United Transport Koalisyon v. Commission on Elections, G.R. No. 206020 | 2015 | Reyes |
| Belo-Henares V. Guevarra, A.C. No. 11394 | 2016 | Perlas-Bernabe |
| Manila Bulletin Publishing Corp. v. Domingo, G.R. No. 170341 | 2017 | Martires |
| Tordesillas v. Puno, G.R. No. 210088 | 2018 | Tijam |
| Nova Communications, Inc. v. Canoy, G.R. No. 193276 | 2019 | Carandang |
| Re: Jomar Canlas, A.M. No. 16-03-10-SC | 2019 | Carpio |
| Madrilejos v. Gatdula, G.R. No. 184389 | 2019 | Jardeleza |
| Falcis III v. Civil Registrar General, G.R. No. 217910 | 2019 | Leonen |
| Nicolas-Lewis v. Commission on Elections, G.R. No. 223705 | 2019 | Reyes, JC, Jr. |

# Appendix B

## List of Supreme Court Cases on Environmental Rights (1987-2019)

| Case Name and Number | Year | Ponente |
|---|---|---|
| Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary, G.R. No. 79538 | 1990 | Cortes |
| Oposa v. Factoran, Jr., G.R. No. 101083 | 1993 | Davide |
| Laguna Lake Development Authority v. Court of Appeals, G.R. No. 110120 | 1994 | Romero |
| Tano v. Socrates, G.R. No. 110249 | 1997 | Davide |
| C & M Timber Corp. v. Alcala, G.R. No. 111088 | 1997 | Mendoza, VV |
| Republic v. City of Davao, G.R. No. 148622, | 2002 | Ynares-Santiago |
| La Bugal-B'laan Tribal Association, Inc. v. Ramos, G.R. No. 127882 (Resolution) | 2004 | Panganiban |
| Province of Rizal v. Executive Secretary, G.R. No. 129546 | 2005 | Chico-Nazario |
| Heirs of Reyes v. Republic, G.R. No. 150862 | 2006 | Corona |
| Henares, Jr. v. Land Transportation Franchising and Regulatory Board, G.R. No. 158290 (Resolution) | 2006 | Quisumbing |
| Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48 | 2008 | Velasco, Jr. |
| Boracay Foundation, Inc. v. Province of Aklan, G.R. No. 196870 | 2012 | Leonardo-De Castro |
| Arigo v. Swift, G.R. No. 206510 | 2014 | Villarama |
| International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.), G.R. Nos. 209271, 209276, 209301 & 209430 | 2015 | Villarama |
| West Tower Condominium Corp. v. First Phil. Industrial Corp., G.R. No. 194239 | 2015 | Velasco, Jr. |
| Paje v. Casiño, G.R. Nos. 207257, 207276, 207282 & 207366 | 2015 | Del Castillo |
| Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes, G.R. Nos. 180771 & 181527 | 2015 | Leonardo-De Castro |
| International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), G.R. Nos. 209271, 209276, 209301 & G.R. No. 209430 (Resolution) | 2016 | Perlas-Bernabe |
| Braga v. Abaya, G.R. No. 223076 | 2016 | Brion |
| LNL Archipelago Minerals, Inc. v. Agham Party List, G.R. No. 209165 | 2016 | Carpio |
| Alecha v. Atienza, Jr., G.R. No. 191537 | 2016 | Brion |
| Segovia v. Climate Change Commission, G.R. No. 211010 | 2017 | Caguioa |
| Osmeña v. Garganera, G.R. No. 231164 | 2018 | Tijam |
| Abogado v. Department of Environment and Natural Resources, G.R. No. 246209 | 2019 | Leonen |
| Zabal v. Duterte, G.R. No. 238467 | 2019 | Del Castillo |
| Cordillera Global Network v. Paje, G.R. No. 215988 | 2019 | Leonen |

# Appendix C.

## List of Supreme Court Cases on Religious Freedom (1987-2019)

| Case Name and Number | Year | Ponente |
|---|---|---|
| Iglesia ni Cristo v. Court of Appeals, G.R. No. 119673 | 1996 | Puno |
| Ebralinag v. Division of Superintendent of Schools of Cebu, G.R. Nos. 95770 & 95887 | 1993 | Grino-Aquino |
| Centeno v. Villalon-Pornillos, G.R. No. 113092 | 1994 | Regalado |
| Ebranilag v. Division Superintendent of Schools of Cebu, G.R. Nos. 95770 & 95887 (Resolution) | 1995 | Kapunan |
| Islamic Da'wah Council of the Philippines v. Office of the Executive Secretary, G.R. No. 153888 | 2003 | Corona |
| Estrada v. Escritor, A.M. No. P-02-1651 (formerly OCA I.P.I. No. 00-1021-P) (Resolution) | 2006 | Puno |
| Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582 | 2010 | Del Castillo |
| Spouses Imbong v. Ochoa, Jr., G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563 | 2014 | Mendoza, JC |
| Advincula v. Advincula, A.C. No. 9226 | 2016 | Bersamin |
| Valmores v. Achacoso, G.R. No. 217453 | 2017 | Caguioa |
| Re: Tony Q. Valenciano, A.M. No. 10-4-19-SC (Resolution) | 2017 | Mendoza, JC |
| Samahan ng mga Progresibong Kabataan v. Quezon City, G.R. No. 225442 | 2017 | Perlas-Bernabe |
| Peralta v. Philippine Postal Corp., G.R. No. 223395 | 2018 | Tijam |
| Celdran y Pamintuan v. People, G.R. No. 220127 | 2018 | |
| The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728 | 2015 | Leonen |

# Appendix D

**List of Supreme Court Justices who penned the decisions and their cross-citation behavior**

| Supreme Court Justice | Cases Cited | |
|---|---|---|
| | With Cross-Citation | Without Cross-Citation |
| Puno | 7 | 0 |
| Kapunan | 4 | 0 |
| Leonen | 4 | 0 |
| Mendoza | 3 | 0 |
| Chico-Nazario | 3 | 0 |
| Feliciano | 3 | 0 |
| Peralta | 3 | 0 |
| Velasco, Jr. | 3 | 0 |
| Cortes | 2 | 0 |
| Abad | 2 | 0 |
| Bellosillo | 2 | 0 |
| Carpio-Morales | 2 | 0 |
| Panganiban | 2 | 0 |
| Regalado | 2 | 0 |
| Tijam | 2 | 0 |
| Carandang | 1 | 0 |
| Carpio | 1 | 0 |
| Cruz | 1 | 0 |
| Gutierrez | 1 | 0 |
| Jardeleza | 1 | 0 |
| Nachura | 1 | 0 |
| Narvasa | 1 | 0 |
| Perez | 1 | 0 |
| Reyes | 1 | 0 |
| Reyes, JC, Jr. | 1 | 0 |
| Reyes, RT | 1 | 0 |

| Supreme Court Justice | Cases Cited | |
|---|---|---|
| | With Cross-Citation | Without Cross-Citation |
| Vitug | 1 | 0 |
| Tinga | 4 | 1 |
| Mendoza, JC | 2 | 1 |
| Del Castillo | 1 | 1 |
| Perlas-Bernabe | 1 | 1 |
| Quisumbing | 1 | 1 |
| Sandoval-Gutierrez | 1 | 1 |
| Azcuna | 0 | 2 |
| Buena | 0 | 1 |
| Caguioa | 0 | 1 |
| Corona | 0 | 2 |
| Davide | 0 | 1 |
| Garcia | 0 | 1 |
| Leonardo-Decastro | 0 | 1 |
| Martires | 0 | 1 |
| Paras | 0 | 2 |
| Romero | 0 | 1 |