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RULE-MAKING POWERS OF ADMINISTRATIVE AGENCIES IN THE PHILIPPINES: A DOCTRINAL REASSESSMENT IN THE CONTEMPORARY REGULATORY STATE

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I. ABSTRACT

Administrative agencies occupy a central position in contemporary governance, exercising extensive rule-making authority that significantly shapes rights, obligations, and regulatory outcomes. In the Philippines, this authority derives from legislative delegation and is constitutionally constrained by the principle that legislative power is vested in Congress. This Article undertakes a comprehensive doctrinal reassessment of the quasi-legislative, or rulemaking, powers of administrative agencies in the Philippine legal system. Anchored on the 1987 Constitution, the Administrative Code of 1987, and authoritative Supreme Court jurisprudence, the Article examines the constitutional foundations, evolution, scope, and limits of delegated administrative rulemaking. Particular emphasis is placed on the non-delegation doctrine and its judicial articulation through the completeness and sufficient-standard tests as mechanisms for preserving legislative supremacy while accommodating the functional necessities of administrative governance. The Article further analyzes substantive and procedural constraints on administrative regulations, including the ultra vires doctrine, the categorical prohibition against administrative penal legislation, publication requirements grounded in due process, and the standards governing judicial review of administrative rules. It highlights the Supreme Court's calibrated approach to administrative deference, which accords respect to technical expertise while applying heightened scrutiny where regulations impose penal consequences or implicate fundamental rights. Situating Philippine doctrine within a comparative administrative law

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framework, the Article draws descriptive insights from the United States and the United Kingdom as mature regulatory systems confronting similar tensions between delegation and accountability. It argues that while Philippine administrative law reflects a coherent constitutional framework, it remains under-theorized in light of the expanding regulatory state. Greater doctrinal synthesis and clearer judicial articulation are therefore necessary to sustain the constitutional legitimacy of administrative rulemaking in the Philippines.

II. KEYWORDS

Administrative Rulemaking; Quasi-Legislative Powers; Non-Delegation Doctrine; Ultra Vires Doctrine; Judicial Review; Philippine Administrative Law Doctrine.

III. INTRODUCTION AND RESEARCH PROBLEM

Administrative agencies have become indispensable actors in the governance of modern constitutional states. In the Philippines, legislative enactments increasingly take the form of framework statutes that articulate general policy objectives while delegating to administrative agencies the authority to formulate detailed rules, standards, and procedures necessary for implementation. This regulatory technique reflects practical necessity. Contemporary governance involves complex, technical, and rapidly evolving subject matters ranging from taxation and financial regulation to environmental protection, labor standards, and telecommunications that legislatures are institutionally ill-equipped to regulate exhaustively through primary legislation alone.⁴

Yet the rise of administrative rulemaking raises persistent constitutional concerns. Article VI, section 1 of the 1987 Constitution vests legislative power in Congress, embodying a foundational commitment to democratic legitimacy and political accountability.

This constitutional tension has acquired renewed significance in recent years. In the post-pandemic regulatory environment, administrative agencies have exercised expanded rule-making authority in areas such as public health governance, digital regulation, labor protection, and economic recovery measures. These developments have tested the

⁴ Joaquin G Bernas SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (Rex Book Store 2009) 659–662.

practical limits of legislative delegation and underscored the central role of administrative regulations in shaping rights and obligations.

As the Philippine regulatory state continues to expand in scope and complexity, particularly in response to emergent social and economic challenges, a reassessment of the doctrinal foundations and constitutional limits of administrative rulemaking is both timely and necessary. Without sustained doctrinal clarification, the balance between administrative necessity and legislative supremacy risks becoming increasingly opaque.⁵ Legislative power, understood in its classical sense, includes the authority to formulate binding norms of general application that affect private rights and public obligations. When administrative agencies issue regulations with the force and effect of law, they exercise a form of norm-making authority that closely resembles, and sometimes rivals, legislative action.

The constitutional problem, therefore, is not whether administrative rulemaking exists its existence is an entrenched feature of modern governance but whether and how it can be reconciled with the constitutional allocation of legislative power. Unchecked delegation risks eroding the safeguards of bicameralism, deliberation, and political responsibility that attend legislative enactment. At the same time, overly rigid adherence to non-delegation principles threatens to paralyze regulatory governance and undermine the state's capacity to respond effectively to social and economic realities.

Philippine constitutional law has long grappled with this tension. Rather than adopting an absolutist prohibition on delegation, the Supreme Court has developed a pragmatic doctrinal framework that permits administrative rule-making subject to judicially crafted limits. Central to this framework are the non-delegation doctrine, the completeness and sufficient-standard tests, the ultra vires principle, and the availability of judicial review as a mechanism of constitutional control. These doctrines aim to preserve legislative supremacy while allowing administrative agencies to operationalize statutory policy.

⁵ Constitution of the Republic of the Philippines (1987) art VI, § 1.

Despite this body of jurisprudence, Philippine administrative law remains largely incremental and under-theorized. Doctrinal standards have emerged case by case, often in response to specific controversies, without sustained synthesis or systematic articulation. As administrative regulations increasingly shape everyday legal relations, the need for doctrinal clarity becomes more urgent. Courts require coherent standards for adjudicating challenges to administrative rules; agencies require guidance to structure lawful rulemaking; and scholars require an integrated account to assess the constitutional legitimacy of the regulatory state.

This Article addresses that need. The core research problem it investigates is whether the existing doctrinal framework governing administrative rulemaking in the Philippines remains coherent, adequate, and constitutionally sound in light of the expanding regulatory state. In reassessing the scope and limits of delegated administrative rulemaking, the Article seeks to clarify the constitutional boundaries of administrative power and to contribute to a more systematic understanding of Philippine administrative law.

A. Research Objectives

This Article seeks to undertake a systematic doctrinal reassessment of the rule-making powers of administrative agencies in the Philippines. In particular, it aims to achieve the following objectives:

1. It seeks to examine the constitutional foundations of administrative rulemaking under the 1987 Constitution, with particular attention to the vesting of legislative power in Congress and the constitutional permissibility of delegation to administrative agencies. This includes an analysis of the separation of powers framework and the constitutional rationale underlying the non-delegation doctrine.
2. The Article aims to analyze the scope and limits of delegated quasi-legislative power as articulated in Supreme Court jurisprudence. It examines how the Court has defined the boundaries between permissible administrative

implementation and impermissible legislative substitution, particularly through the development and application of the completeness and sufficient-standard tests.

3. The Article seeks to evaluate the substantive and procedural constraints imposed on administrative rule-making. These constraints include the ultra vires doctrine, the prohibition against administrative penal legislation, publication requirements grounded in due process, and the standards governing judicial review of administrative regulations.⁶
4. The Article aims to situate Philippine administrative law within a comparative context by examining how other constitutional systems, particularly the United States and the United Kingdom, address similar tensions between delegation, accountability, and regulatory effectiveness. The comparative discussion is intended to be descriptive rather than prescriptive, illuminating alternative doctrinal strategies without advocating institutional transplantation.⁷

Finally, the Article seeks to contribute to doctrinal synthesis by clarifying and systematizing existing jurisprudence. Rather than proposing wholesale reform, it aims to articulate a coherent framework that can guide courts, administrative agencies, and scholars in navigating the constitutional limits of administrative rule-making in an expanding regulatory state.

B. Research Questions

Guided by the foregoing objectives, this Article addresses the following research questions:

1. What constitutional principles govern the delegation of rule-making power to administrative agencies in the Philippines?

⁶ Bernas (n 1) 663–666.

⁷ Vicente V Mendoza, 'The Non-Delegation of Legislative Power' (1978) 53 *Philippine Law Journal* 1, 5–9.

2. How have Philippine courts defined and applied the completeness and sufficient-standard tests in assessing the validity of delegated rule-making authority?
3. What substantive and procedural constraints constrain administrative rulemaking in the Philippine legal system?
4. What standards govern judicial review of administrative regulations, and how does the Court calibrate deference to administrative expertise?
5. How does Philippine doctrine compare with approaches adopted in other jurisdictions confronting similar delegation concerns?

C. Research Hypotheses

This Article proceeds from the following hypotheses, which are examined and evaluated through doctrinal analysis:

1. Administrative rulemaking in the Philippines is constitutionally permissible but strictly derivative of legislative authority. Administrative agencies do not possess an independent law-making mandate; their authority to issue binding regulations depends entirely on statutory delegation that complies with constitutional limits.⁸
2. The completeness and sufficient-standard tests function as flexible doctrinal controls rather than rigid formulas. Their application reflects judicial pragmatism, allowing delegation where Congress has articulated fundamental policy choices while preventing abdication of legislative responsibility.⁹
3. Philippine jurisprudence employs a calibrated model of judicial review that balances deference to administrative expertise with constitutional restraint. Courts accord respect to technical determinations but apply heightened

⁸ Mark Elliott and Robert Thomas, *Public Law* (4th edn, OUP 2021) 593–600.

⁹ *ibid* 600–610.

scrutiny where regulations impose penal sanctions or affect fundamental rights.¹⁰

4. While Philippine administrative law exhibits doctrinal coherence in its core principles, it remains under-theorized as a unified constitutional framework. Greater doctrinal synthesis is necessary to ensure predictability, accountability, and constitutional fidelity in the face of an expanding regulatory state.

D. Research Methodology

This Article employs a doctrinal legal research methodology, which is appropriate for examining constitutional principles, statutory frameworks, and judicial decisions governing administrative rulemaking. The methodology is primarily analytical and interpretive, focusing on the systematic examination of legal texts and jurisprudence.

The primary sources analyzed include the 1987 Constitution, the Administrative Code of 1987, and relevant Supreme Court decisions addressing delegation, administrative discretion, and judicial review. These sources provide the normative and doctrinal foundation for assessing the scope and limits of administrative rulemaking.¹¹

Secondary sources include constitutional commentaries, Philippine law journal articles, and comparative administrative law scholarship. These materials are used to contextualize judicial doctrine, clarify conceptual foundations, and situate Philippine administrative law within broader theoretical and comparative frameworks.¹²

Comparative materials from the United States and the United Kingdom are examined descriptively to illuminate alternative mechanisms for controlling delegated legislation, such as proceduralization, parliamentary oversight, and proportionality review. The Article does not advocate the wholesale adoption of foreign models but rather uses comparative insights to enrich doctrinal understanding.

¹⁰ ABAKADA Guro Party List v Ermita, G.R. No. 168056 (1 September 2005).

¹¹ Constitution of the Republic of the Philippines 1987; Executive Order No 292, Administrative Code of 1987.

¹² Jerry L Mashaw, *Reasoned Administration* (Yale University Press 1985) 23–45.

The study does not rely on empirical data or policy evaluation. Its contribution is doctrinal: to clarify existing law, synthesize jurisprudence, and articulate constitutional principles governing administrative rulemaking in the Philippines.

E. Literature Review

The doctrinal foundations of administrative rule-making in the Philippines have been shaped by a combination of constitutional text, judicial exposition, and academic commentary. Unlike jurisdictions with comprehensive administrative procedure statutes, Philippine administrative law has developed primarily through jurisprudence, supplemented by constitutional commentaries and selective statutory provisions. As a result, scholarly engagement has focused largely on explicating judicial doctrine rather than constructing an autonomous theory of the administrative state.

1. Philippine Constitutional and Administrative Law Scholarship

Philippine constitutional scholarship has consistently emphasized the centrality of legislative supremacy and the non-delegation doctrine within the constitutional structure. Joaquin G. Bernas, S.J., whose commentary remains the most authoritative exposition of the 1987 Constitution, underscores that the vesting of legislative power in Congress reflects a deliberate constitutional choice to locate law-making authority in politically accountable institutions.¹³ Bernas recognizes, however, that absolute non-delegation is neither intended nor practicable, and that administrative delegation is constitutionally tolerated when accompanied by adequate statutory standards.

Similarly, Vicente V. Mendoza's seminal article on the non-delegation of legislative power provides a foundational doctrinal analysis of Philippine jurisprudence. Mendoza traces the evolution of delegation doctrine from early American influences to its localized articulation in Philippine case law. He argues that the completeness and sufficient-standard tests serve as functional safeguards that allow delegation without constitutional

¹³ Joaquin G Bernas SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (Rex Book Store 2009) 659–670.

abdication.¹⁴ Mendoza's analysis highlights the pragmatic orientation of Philippine courts, which have avoided rigid formalism in favor of contextual assessment.

Other Philippine scholars have noted that administrative agencies play an increasingly normative role in governance, often shaping regulatory policy in ways that significantly affect private rights and economic activity. This observation has prompted concerns about democratic accountability and the risk of administrative overreach. Yet, the prevailing scholarly view remains that these concerns are best addressed through doctrinal controls and judicial review rather than through an outright rejection of delegation.

2. Jurisprudential Literature and Doctrinal Commentary

Judicial decisions themselves constitute a significant body of "literature" in Philippine administrative law. The Supreme Court has repeatedly articulated the doctrinal boundaries of administrative rulemaking, often in the absence of comprehensive statutory guidance. Commentaries and case annotations typically focus on landmark decisions such as *People v Vera*, *Ang Tibay v Court of Industrial Relations*, *People v Maceren*, and *ABAKADA Guro Party List v Ermita*, treating these cases as doctrinal anchors.

Scholarly analyses of these decisions emphasize the Court's insistence that fundamental policy choices remain with Congress, while allowing administrative agencies to supply details necessary for implementation.¹⁵ In this sense, Philippine jurisprudence reflects what has been described as a "functional" approach to non-delegation, one that tolerates delegation so long as legislative intent and policy are discernible.

At the same time, commentators have observed that the Court's articulation of delegation standards is sometimes uneven, with decisions emphasizing different doctrinal formulations depending on context. This has led to calls for greater doctrinal synthesis

¹⁴ Vicente V Mendoza, 'The Non-Delegation of Legislative Power' (1978) 53 *Philippine Law Journal* 1, 10-18.

¹⁵ ABAKADA Guro Party List v Ermita, G.R. No. 168056 (1 September 2005).

and clarity, particularly as administrative regulations increasingly implicate fundamental rights and impose significant compliance burdens.

3. Comparative Administrative Law Scholarship

Comparative administrative law literature provides valuable context for understanding Philippine doctrine. In the United States, scholarship has long acknowledged the decline of strict non-delegation enforcement. Cass R. Sunstein famously argued that non-delegation concerns are often addressed through “non-delegation canons” of statutory interpretation and procedural safeguards rather than through outright invalidation of delegations.¹⁶ Jerry L. Mashaw’s work on reasoned administration further emphasizes the role of procedural rationality and explanation in legitimizing administrative action.¹⁷ These scholarly perspectives illuminate the U.S. approach, where the Administrative Procedure Act compensates for broad delegations by requiring notice-and-comment rule-making and reasoned decision-making subject to judicial review. Philippine scholars have occasionally drawn parallels to this model, while recognizing that Philippine administrative law lacks an equivalent procedural code.

In the United Kingdom, administrative law scholarship focuses on parliamentary control of delegated legislation and judicial review grounded in legality and proportionality. Paul Craig’s analysis of ultra vires doctrine and the evolving role of proportionality under the Human Rights Act underscores the importance of legality as a constraint on administrative power.¹⁸ These themes resonate with Philippine doctrine, particularly the emphasis on statutory fidelity and judicial review.

4. Gaps in the Existing Literature

Despite a substantial body of commentary, several gaps remain. First, Philippine scholarship has tended to analyze delegation doctrine in a fragmented manner, often focusing on individual cases rather than offering a systematic synthesis. Second, there

¹⁶ Cass R Sunstein, ‘Nondelegation Canons’ (2000) 67 *University of Chicago Law Review* 315.

¹⁷ Jerry L Mashaw, *Reasoned Administration* (Yale University Press 1985) 23–67.

¹⁸ Paul Craig, *Administrative Law* (9th edn, Sweet & Maxwell 2021) chs 2–4.

has been limited engagement with the normative implications of the expanding regulatory state for constitutional structure. Third, comparative materials are often cited illustratively but not integrated into a coherent doctrinal analysis.

This Article seeks to address these gaps by providing a comprehensive doctrinal reassessment of administrative rule-making in the Philippines. By synthesizing constitutional text, jurisprudence, and scholarly commentary, and situating Philippine doctrine within a comparative framework, it aims to contribute to a more coherent understanding of the constitutional limits and legitimacy of administrative governance.

F. Research and Analysis

1. Constitutional Architecture: Separation of Powers and Legislative Supremacy

The Philippine constitutional system is firmly anchored on the principle of separation of powers among the legislative, executive, and judicial departments. Articles VI, VII, and VIII of the 1987 Constitution vest legislative power in Congress, executive power in the President, and judicial power in the courts, respectively.¹⁹ This structural allocation reflects a normative commitment to preventing the concentration of power and to preserving democratic accountability through institutional checks.

Legislative power occupies a particularly central position within this framework. As traditionally understood, it encompasses the authority to determine public policy and to prescribe binding rules of conduct of general application.²⁰ The vesting of this power in Congress signifies that fundamental policy choices must be made by a body directly accountable to the electorate through regular elections, deliberative procedures, and bicameral concurrence.

¹⁹ Constitution of the Republic of the Philippines 1987, arts VI–VIII.

²⁰ Joaquin G Bernas SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (Rex Book Store 2009) 661–663.

Legislative supremacy in this sense does not imply legislative absolutism. Rather, it signifies constitutional primacy in the formulation of binding norms. The Constitution does not contemplate that Congress will execute the laws it enacts, nor does it require that all regulatory detail be embodied in statutes. Instead, the separation of powers presupposes a degree of functional interdependence. Administrative agencies, situated within the executive branch, play an essential role in implementing legislative policy. The constitutional challenge lies in maintaining the distinction between policy formulation, which belongs to Congress, and policy implementation, which may be entrusted to administrative agencies. The non-delegation doctrine emerges as the principal constitutional mechanism for policing this boundary.

2. The Non-Delegation Doctrine in Philippine Constitutional Law

The non-delegation doctrine rests on the premise that powers vested by the Constitution in a particular branch of government may not be transferred to another branch. In the legislative context, the doctrine holds that Congress may not abdicate or surrender its essential law-making functions.²¹ The doctrine is rooted not only in textual allocation of powers but also in broader concerns about democratic legitimacy and accountability.

Philippine jurisprudence has consistently recognized the non-delegation doctrine as a constitutional limitation, but it has never treated it as an absolute prohibition. From early cases onward, the Supreme Court has acknowledged that modern governance necessitates some degree of delegation, particularly in technical and specialized fields.²² As a result, the doctrine has been applied in a pragmatic manner, allowing delegation subject to judicially enforceable limits.

The Court has repeatedly emphasized that what the Constitution forbids is not delegation *per se*, but delegation without standards or delegation that involves the transfer of fundamental legislative choices.²³ Thus, the central inquiry in delegation cases is whether Congress has retained control over the essential aspects of law-making.

²¹ Vicente V Mendoza, 'The Non-Delegation of Legislative Power' (1978) 53 *Philippine Law Journal* 1, 3-4.

²² *ibid* 6-8.

²³ ABAKADA Guro Party List v Ermita, G.R. No. 168056 (1 September 2005).

3. Judicially Crafted Limits: The Completeness Test

One of the principal doctrinal tools developed by the Supreme Court to assess permissible delegation is the completeness test. Under this test, a statute must be complete in all its essential terms when it leaves the legislature. It must clearly declare the policy to be pursued and the objectives to be achieved, such that nothing is left to the delegate except the task of carrying the law into effect.²⁴

The completeness test reflects a constitutional insistence that Congress itself determine the fundamental content of the law. Administrative agencies may fill in details, but they may not supply missing policy choices. In applying this test, the Court has recognized that “essential terms” do not require exhaustive specification of every regulatory detail. Rather, they require sufficient articulation of legislative intent to guide administrative action.

The seminal case of *People v Vera* illustrates the operation of the completeness test. In that case, the Court invalidated a provision of the Probation Law that authorized provincial boards to decide whether the law would take effect in their respective jurisdictions.²⁵ The statute did not prescribe any standard or policy to guide this determination. As a result, the Court held that Congress had effectively delegated the power to determine the operation of the law itself, a function that lies at the core of legislative power.

Vera established two enduring principles. First, a law is incomplete when it leaves to another body the determination of whether it shall take effect. Second, delegation becomes unconstitutional when it involves a transfer of the authority to make fundamental policy decisions rather than merely to implement them.

4. The Sufficient-Standard Test

²⁴ *People v Vera*, G.R. No. 45685 (16 November 1937).

²⁵ *ibid.*

Complementing the completeness test is the sufficient-standard test, which focuses on whether Congress has provided adequate guidelines to direct and limit administrative discretion. Even where a statute is complete in its essential terms, delegation may still be unconstitutional if the standards guiding administrative action are so vague or broad as to permit unbridled discretion.⁸

The Supreme Court has adopted a flexible approach in assessing what constitutes a “sufficient” standard. It has repeatedly held that standards need not be minutely detailed. Broad formulations such as “public interest,” “public welfare,” or “national security” have been upheld, provided that they are contextualized within a discernible legislative policy.⁹ The Court has justified this flexibility on the ground that excessive specificity may defeat the very purpose of delegation by rendering statutes inflexible and unresponsive to changing conditions.

In *Eastern Shipping Lines, Inc v POEA*, the Court upheld the delegation of authority to the Philippine Overseas Employment Administration to fix minimum employment standards for overseas Filipino workers.²⁶ The statute articulated a clear policy of protecting labor and promoting overseas employment, and the delegated authority was circumscribed by that policy framework. The Court held that the statutory standards were sufficient to guide administrative discretion.

Taken together, the completeness and sufficient-standard tests function as doctrinal safeguards that preserve legislative supremacy while accommodating administrative necessity. They embody a constitutional compromise: Congress may delegate, but it must do so responsibly, retaining control over fundamental policy choices and providing intelligible guidance to administrative agencies.

5. Ultra Vires Doctrine and Statutory Fidelity

A central substantive constraint on administrative rule-making in Philippine constitutional law is the ultra vires doctrine. Administrative agencies, as creatures of statute, possess only those powers that are expressly conferred upon them by law or are

²⁶ *Eastern Shipping Lines, Inc v POEA*, G.R. No. 76633 (18 October 1988).

necessarily implied from such grants. Any exercise of power beyond the scope of statutory authority is *ultra vires* and void.²⁷

The *ultra vires* doctrine functions as a direct corollary of legislative supremacy. While Congress may delegate authority to administrative agencies, it does not relinquish control over the content and limits of the law. Administrative regulations must therefore conform strictly to the statute they purport to implement. They may not amend, supplant, or contradict legislative provisions, nor may they introduce substantive requirements that lack statutory basis.

Philippine jurisprudence has consistently enforced this principle. The Supreme Court has invalidated administrative issuances that, although arguably grounded in expertise or administrative convenience, exceeded the bounds of legislative authorization. In *Commissioner of Internal Revenue v Fortune Tobacco Corporation*, the Court emphasized that administrative regulations must be consistent with the law and may not “expand, alter, or restrict” statutory provisions.²⁸ The Court rejected a revenue regulation that effectively modified the tax base established by statute, underscoring that policy choices embedded in tax legislation must remain the exclusive province of Congress.

This insistence on statutory fidelity reflects a constitutional understanding of administrative agencies as instruments of implementation rather than autonomous norm-creators. Administrative discretion exists, but it is bounded by legislative command. The *ultra vires* doctrine thus serves as a critical safeguard against administrative overreach and an essential component of the constitutional architecture of delegation.

6. Prohibition Against Administrative Penal Legislation

Among the most firmly established substantive limits on administrative rule-making is the categorical prohibition against administrative creation of crimes and penalties absent clear statutory authorization. Penal legislation occupies a privileged constitutional

²⁷ Vicente V Mendoza, ‘The Non-Delegation of Legislative Power’ (1978) 53 *Philippine Law Journal* 1, 12-15.

²⁸ *Commissioner of Internal Revenue v Fortune Tobacco Corporation*, G.R. No. 167274 (15 July 2008).

position because it involves the exercise of the State's coercive power, including the potential deprivation of liberty and the imposition of stigma.

In *People v Maceren*, the Supreme Court invalidated an administrative regulation that penalized electro-fishing, even though the enabling statute did not criminalize the conduct.²⁹ The Court held that while administrative agencies may issue rules to implement penal statutes, they may not define crimes or prescribe penalties on their own initiative. Such authority lies at the core of legislative power and requires explicit congressional enactment.

The Court's reasoning in *Maceren* is doctrinally significant. It reflects a heightened concern for legality and due process in the penal context. Penal sanctions demand clear, unequivocal legislative authorization so that individuals have fair notice of prohibited conduct and corresponding penalties. Allowing administrative agencies to create criminal liability through regulation would undermine these constitutional safeguards. Subsequent jurisprudence has reaffirmed this principle. Even where statutes authorize agencies to impose administrative fines or sanctions, courts have carefully distinguished between administrative penalties, which may be permissible, and criminal penalties, which require statutory definition.³⁰ This distinction preserves legislative accountability in the most coercive domains of state power.

7. Fundamental Rights and Heightened Scrutiny

Administrative regulations may also implicate fundamental rights, including liberty, property, and privacy. When such rights are affected, Philippine courts have applied heightened judicial scrutiny to ensure that administrative action is not only authorized by statute but also reasonable and proportionate to legitimate governmental objectives.

²⁹ *People v Maceren*, G.R. No. L-32166 (18 October 1977).

³⁰ Joaquin G Bernas SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (Rex Book Store 2009) 668-670.

In *White Light Corporation v City of Manila*, although the case involved a local ordinance rather than a purely administrative regulation, the Supreme Court articulated principles relevant to administrative governance.³¹ The Court emphasized that governmental measures affecting personal liberty and autonomy must satisfy the requirements of reasonableness and proportionality. These principles apply with equal force to administrative rules that substantially burden fundamental rights.

Similarly, in *Social Justice Society v Atienza*, the Court scrutinized executive and administrative action affecting property rights and public welfare, underscoring that regulatory objectives cannot justify arbitrary or excessive interference.³² These cases demonstrate that administrative expertise does not immunize regulations from constitutional review, particularly where rights are at stake.

The application of heightened scrutiny in rights-affecting cases reinforces the understanding that administrative rule-making operates within a constitutional framework that prioritizes individual rights alongside regulatory objectives. Expertise and efficiency, while important, do not displace constitutional guarantees.

8. Administrative Discretion and the Limits of Policy-Making

Although administrative agencies inevitably exercise discretion in implementing statutes, Philippine constitutional doctrine draws a critical distinction between discretionary implementation and policy-making discretion. The former is permissible; the latter, when it involves fundamental legislative choices, is not.

Courts have recognized that discretion is inherent in administration, particularly in technical and specialized fields. However, such discretion must operate within the boundaries set by statute and must be guided by intelligible standards. Where administrative action effectively determines policy questions that Congress has failed to resolve, delegation becomes constitutionally suspect.

³¹ *White Light Corporation v City of Manila*, G.R. No. 122846 (20 January 2009).

³² *Social Justice Society v Atienza*, G.R. No. 156052 (13 February 2008).

This doctrinal stance underscores the derivative nature of administrative authority. Agencies may interpret and apply the law, but they may not redefine its fundamental contours. The substantive limits discussed in this section ultra vires constraints, prohibition of penal rule-making, and heightened scrutiny for rights-affecting regulations collectively ensure that administrative discretion remains constitutionally bounded.

9. Procedural Limits and Due Process in Administrative Rule-Making

While substantive limits constrain the scope of administrative authority, procedural safeguards operate as an equally important constitutional check on administrative rule-making. Procedural requirements ensure transparency, notice, and accountability, thereby reinforcing the legitimacy of administrative regulations that carry the force and effect of law.

In the Philippine legal system, procedural regulation of administrative rule-making is comparatively modest. Unlike jurisdictions with comprehensive administrative procedure statutes, Philippine administrative law relies on a combination of constitutional due process principles, statutory provisions, and judicial interpretation to regulate the manner by which administrative rules are promulgated.³³

10. Publication as a Condition for Effectivity

The most firmly entrenched procedural requirement governing administrative rule-making is publication. The Supreme Court has repeatedly held that laws and administrative regulations of general application must be published before they can bind the public. This requirement is grounded in the constitutional guarantee of due process

³³ Jerry L Mashaw, *Reasoned Administration* (Yale University Press 1985) 23–30.

and the fundamental principle that the law must be knowable before it can impose obligations or penalties.³⁴

The landmark case of *Tañada v Tuvera* definitively articulated this rule. The Court held that presidential decrees, executive orders, and administrative issuances that have general applicability and legal effect must be published in the Official Gazette or in a newspaper of general circulation before they become effective.³⁵ The Court emphasized that publication is not a mere technicality but a substantive requirement rooted in fairness and legality.

Although *Tañada* arose in the context of presidential issuances, its rationale extends to administrative regulations issued pursuant to delegated legislative authority. Administrative rules that implement statutes and affect the public at large must likewise be published to satisfy due process requirements.

The Administrative Code of 1987 codifies this principle. Book VII, section 3 requires that rules and regulations be published to be effective, unless otherwise provided by law.³⁶ This statutory mandate reinforces the constitutional character of publication as a procedural safeguard against secret law-making.

11. Notice, Participation, and the Absence of General Notice-and-Comment Procedures

Unlike the United States, Philippine administrative law does not impose a general requirement of notice-and-comment rule-making for all administrative regulations. The Administrative Code does not mandate participatory procedures akin to those required under the U.S. Administrative Procedure Act. Instead, public participation is typically required only when expressly mandated by statute or when regulations affect constitutionally protected interests in a manner that triggers due process concerns.

³⁴ Joaquin G Bernas SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (Rex Book Store 2009) 670–672.

³⁵ *Tañada v Tuvera*, G.R. No. L-63915 (24 April 1985).

³⁶ Executive Order No 292, Administrative Code of 1987, bk VII s 3.

This absence of a comprehensive procedural framework reflects a doctrinal choice. Philippine administrative law has traditionally relied more heavily on substantive delegation standards and judicial review than on proceduralization as mechanisms of control.³⁷ Courts have assumed the role of policing administrative discretion through post-promulgation review rather than *ex ante* participatory requirements.

Nevertheless, the Supreme Court has occasionally recognized the value of consultation and transparency in administrative governance. In *GMA Network, Inc v Commission on Elections*, the Court underscored the importance of fairness and reasonableness in the issuance of administrative rules that significantly affect regulated parties.³⁸ While the case did not impose a general notice-and-comment obligation, it signaled judicial sensitivity to procedural fairness.

12. Due Process and the Nature of Administrative Rules

Due process requirements in administrative rule-making vary depending on the nature and impact of the regulation. Rules of general applicability that merely implement statutory policy may not require individualized notice or hearings. However, where administrative action substantially affects vested rights or imposes burdens akin to adjudicative determinations, stronger procedural protections may be warranted.

The Supreme Court has consistently distinguished between quasi-legislative and quasi-judicial functions of administrative agencies. Quasi-legislative acts generally do not require trial-type hearings, while quasi-judicial acts do.³⁹ This distinction reflects a functional understanding of due process tailored to the nature of administrative action.

³⁷ Mark Elliott and Robert Thomas, *Public Law* (4th edn, OUP 2021) 602–605.

³⁸ *GMA Network, Inc v Commission on Elections*, G.R. No. 205357 (2 September 2014).

³⁹ *Ang Tibay v Court of Industrial Relations*, G.R. No. 46496 (27 February 1940).

Nevertheless, even quasi-legislative rules must satisfy baseline procedural requirements of legality, including publication and conformity with statutory authority. Failure to observe these requirements renders administrative regulations vulnerable to invalidation on due process grounds.

13. Implications of Procedural Minimalism

The relative procedural minimalism of Philippine administrative law has important doctrinal implications. Because administrative rule-making is not extensively proceduralized, greater reliance is placed on legislative standards and judicial review to constrain administrative discretion. This places a premium on clear statutory drafting and consistent judicial application of delegation doctrine.

At the same time, the absence of mandatory participatory mechanisms raises concerns about transparency and democratic accountability, particularly as administrative regulations increasingly shape economic and social policy. While these concerns do not render existing doctrine unconstitutional, they underscore the need for careful judicial scrutiny and doctrinal clarity to compensate for limited procedural safeguards.

14. Judicial Review as the Principal Constitutional Safeguard

Judicial review functions as the primary constitutional mechanism for controlling administrative rule-making in the Philippine legal system. In the absence of extensive procedural requirements governing the promulgation of administrative regulations, courts play a central role in ensuring that delegated authority is exercised within constitutional and statutory bounds. Through judicial review, courts assess both the validity of the delegation itself and the conformity of administrative regulations with legislative intent and constitutional guarantees.⁴⁰

⁴⁰ Joaquin G Bernas SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (Rex Book Store 2009) 972–975.

The power of judicial review is anchored in Article VIII of the 1987 Constitution, which vests judicial power in the courts and explicitly includes the duty to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.⁴¹ This expanded definition of judicial power provides constitutional grounding for close judicial scrutiny of administrative action, including quasi-legislative rule-making.

15. Scope of Judicial Review in Administrative Rule-Making

In reviewing administrative regulations, Philippine courts typically inquire into several related questions. First, they assess whether the enabling statute validly delegates rule-making authority, applying the completeness and sufficient-standard tests. Second, they determine whether the regulation falls within the scope of authority granted by the statute or is *ultra vires*. Third, they examine whether the regulation complies with procedural requirements, including publication and due process. Finally, where applicable, courts evaluate the regulation's consistency with constitutional rights.

This multi-layered approach reflects the understanding that administrative rule-making implicates both structural constitutional concerns (separation of powers and delegation) and rights-based considerations (due process, liberty, and property). Judicial review thus operates as an integrative mechanism that harmonizes these dimensions.

16. Administrative Deference and Institutional Competence

Philippine courts have long recognized the institutional competence of administrative agencies in technical and specialized fields. As a general rule, courts accord deference to administrative expertise in matters involving factual determinations, policy implementation, and technical regulation.⁴² This deference is grounded in practical considerations: agencies often possess specialized knowledge, experience, and regulatory capacity that courts lack.

⁴¹ Constitution of the Republic of the Philippines 1987, art VIII s 1.

⁴² Eastern Shipping Lines, Inc v POEA, G.R. No. 76633 (18 October 1988).

However, judicial deference in the Philippines is qualified rather than absolute. Courts have emphasized that deference does not extend to questions of law, statutory interpretation that alters legislative policy, or regulations that exceed statutory authority. Where an administrative regulation conflicts with the statute it purports to implement, courts have not hesitated to invalidate it.⁴³

In *ABAKADA Guro Party List v Ermita*, the Court upheld certain delegations in tax administration while simultaneously emphasizing that Congress must retain control over fundamental tax policy choices.⁴⁴ The decision illustrates how deference operates within clearly defined constitutional limits.

17. Calibrated Scrutiny: Penal Consequences and Fundamental Rights

One of the defining features of Philippine administrative law is the Court's adoption of a calibrated model of judicial scrutiny. The intensity of review varies depending on the nature and impact of the administrative regulation under challenge.

Where administrative rules impose penal consequences or create the possibility of criminal liability, courts apply strict scrutiny. As discussed earlier, the prohibition against administrative penal legislation reflects a categorical constitutional limit on delegation. Regulations that impose penal sanctions without clear statutory authorization are invalid, regardless of administrative expertise or regulatory objectives.⁴⁵

Similarly, where administrative regulations substantially affect fundamental rights, courts subject them to heightened review. In such cases, the Court examines not only statutory authority but also the reasonableness and proportionality of the regulation. This approach aligns administrative law with constitutional rights adjudication and reinforces

⁴³ Commissioner of Internal Revenue v Fortune Tobacco Corporation, G.R. No. 167274 (15 July 2008).

⁴⁴ ABAKADA Guro Party List v Ermita, G.R. No. 168056 (1 September 2005).

⁴⁵ People v Maceren, G.R. No. L-32166 (18 October 1977).

the principle that regulatory efficiency cannot justify undue infringement of constitutional liberties.⁴⁶

18. Reasonableness, Rationality, and the Requirement of Justification

Beyond questions of authority and rights, Philippine courts have also assessed administrative regulations for reasonableness and rationality. Although Philippine jurisprudence does not formally adopt the U.S. “arbitrary and capricious” standard, courts have invalidated regulations that are manifestly unreasonable or unsupported by the statutory framework.

This emphasis on rationality echoes the broader principle of reasoned administration articulated in *Ang Tibay v Court of Industrial Relations*, which requires administrative decisions to be grounded in evidence and reason.⁴⁷ While *Ang Tibay* concerned quasi-judicial action, its underlying rationale informs judicial expectations of administrative governance more generally, including rule-making.

19. Doctrinal Balance and Contemporary Challenges

The Philippine approach to judicial review of administrative rule-making reflects a careful balancing of competing institutional considerations. On one hand, courts recognize the necessity of administrative discretion and expertise in modern governance. On the other hand, they remain vigilant against delegations that threaten legislative supremacy or constitutional rights.

This calibrated model of review allows administrative governance to function effectively while preserving constitutional accountability. However, as regulatory complexity increases and administrative rules increasingly shape core aspects of social and economic life, the demands placed on judicial review intensify. Courts must continue to refine doctrinal standards to ensure consistency, predictability, and constitutional fidelity.

⁴⁶ White Light Corporation v City of Manila, G.R. No. 122846 (20 January 2009).

⁴⁷ *Ang Tibay v Court of Industrial Relations*, G.R. No. 46496 (27 February 1940).

20. Comparative Analysis as Doctrinal Context

Comparative administrative law does not function in this Article as a source of reformist prescription. Rather, it is employed as a contextual and analytical tool to illuminate how other constitutional systems confront the shared problem of reconciling legislative supremacy with administrative necessity. The Philippine experience is not unique in facing tensions between delegation, accountability, and expertise. Examining mature regulatory systems such as those of the United States and the United Kingdom clarifies alternative doctrinal strategies for disciplining administrative rule-making without disabling the regulatory state.

21. United States: Proceduralized Delegation and Reasoned Rule-Making

In the United States, the constitutional non-delegation doctrine has historically been weakly enforced. Although the U.S. Supreme Court has occasionally invalidated delegations in the early twentieth century, modern jurisprudence has largely tolerated broad legislative delegations to administrative agencies.⁴⁸ This tolerance is compensated for by an elaborate framework of procedural and judicial controls under the Administrative Procedure Act of 1946 (APA).

The APA requires agencies engaging in legislative rule-making to follow notice-and-comment procedures, allowing affected parties to participate in the regulatory process.⁴⁹ Agencies must also provide a reasoned explanation for their rules, demonstrating that the regulation is grounded in statutory authority and supported by relevant considerations. Judicial review under the APA authorizes courts to invalidate regulations that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁵⁰

⁴⁸ Cass R Sunstein, ‘Nondelegation Canons’ (2000) 67 *University of Chicago Law Review* 315, 322–325.

⁴⁹ Administrative Procedure Act of 1946 (US), 5 USC § 553.

⁵⁰ Motor Vehicle Manufacturers Association v State Farm Mutual Automobile Insurance Co 463 US 29 (1983).

Scholars such as Jerry Mashaw and Peter Strauss have argued that these procedural and justificatory requirements function as substitutes for strict non-delegation enforcement.⁵¹ Rather than policing delegation at the front end, U.S. courts discipline administrative discretion through procedural regularity and reasoned decision-making. This model reflects a constitutional accommodation of the administrative state through process-based legitimacy.

From a Philippine perspective, the U.S. model highlights an alternative approach to controlling administrative power. While Philippine law does not mandate notice-and-comment rule-making, the emphasis on reasoned explanation and judicial review offers insight into how administrative discretion can be disciplined even where legislative standards are broad.

22. United Kingdom: Parliamentary Control and Legality Review

The United Kingdom adopts a distinct approach grounded in parliamentary sovereignty rather than constitutional separation of powers. Delegated legislation typically takes the form of statutory instruments, which are issued pursuant to authority conferred by Parliament. These instruments are subject to varying degrees of parliamentary scrutiny, including affirmative or negative resolution procedures.⁵²

Judicial review of delegated legislation in the United Kingdom is anchored in the ultra vires doctrine, which examines whether the delegated authority has been exercised within the scope intended by Parliament. Courts assess whether the regulation is authorized by statute and whether it complies with principles of legality.⁵³ Unlike the U.S., procedural requirements for rule-making are less formalized, but parliamentary oversight serves as an *ex ante* political check.

⁵¹ Jerry L Mashaw, *Reasoned Administration* (Yale University Press 1985) 3–25; Peter L Strauss, ‘The Place of Agencies in Government: Separation of Powers and the Fourth Branch’ (1984) 84 *Columbia Law Review* 573.

⁵² UK Cabinet Office, *Guide to Making Legislation* (2023).

⁵³ Paul Craig, *Administrative Law* (9th edn, Sweet & Maxwell 2021) chs 5–6.

The enactment of the Human Rights Act 1998 introduced an additional dimension of review. Courts now examine whether delegated legislation is compatible with Convention rights, applying proportionality analysis where fundamental rights are implicated.⁵⁴ This development underscores the integration of administrative law with rights-based constitutionalism, even in a system without a written constitution.

For Philippine administrative law, the U.K. experience underscores the importance of statutory fidelity and proportionality review. While the institutional context differs, the emphasis on legality and rights compatibility resonates with Philippine jurisprudence, particularly in cases involving ultra vires action and heightened scrutiny for rights-affecting regulations.

23. Doctrinal Significance for the Philippine Context

The comparative experiences of the United States and the United Kingdom reveal that constitutional systems employ different mechanisms to manage delegation but share common concerns about accountability and legitimacy. The U.S. emphasizes proceduralization and reasoned decision-making; the U.K. relies on parliamentary control and legality review. The Philippine approach, by contrast, places greater reliance on judicially crafted delegation standards and post-promulgation review.

These differences do not suggest doctrinal deficiency. Rather, they reflect distinct constitutional architectures and institutional capacities. Philippine administrative law has developed a hybrid approach that tolerates delegation subject to substantive standards and judicial scrutiny. Comparative analysis highlights potential areas of doctrinal refinement, such as clearer articulation of reasonableness review and greater emphasis on justification, without implying the necessity of wholesale institutional transplantation.

⁵⁴ Human Rights Act 1998 (UK) c 42.

Ultimately, comparative administrative law reinforces the central thesis of this Article: that administrative rule-making can be constitutionally legitimate only when embedded within a coherent framework of legislative authorization, judicial control, and respect for fundamental rights.

IV. SUGGESTIONS AND RECOMMENDATIONS

A. Doctrinal Clarification and Judicial Articulation

The analysis undertaken in this Article demonstrates that Philippine administrative law rests on a set of coherent but incrementally developed doctrines governing administrative rule-making. One of the principal challenges facing the doctrine is not conceptual incoherence, but insufficient doctrinal synthesis. The Supreme Court has articulated the limits of delegation through multiple cases, yet these principles are often stated in context-specific terms rather than as part of an integrated framework.

A first and modest recommendation, therefore, is for courts to more explicitly synthesize existing delegation doctrine. Judicial opinions addressing administrative rule-making could benefit from systematically identifying:

- whether the enabling statute satisfies the completeness test;
- whether it provides sufficient standards;
- whether the regulation is *intra vires*; and
- whether heightened scrutiny is required due to penal consequences or rights implications. Such explicit articulation would enhance doctrinal clarity without altering substantive constitutional limits.⁵⁵

B. Clarifying the Threshold for Heightened Scrutiny

⁵⁵ Vicente V Mendoza, 'The Non-Delegation of Legislative Power' (1978) 53 *Philippine Law Journal* 1, 18-20.

Philippine jurisprudence already applies stricter scrutiny to administrative regulations that impose penal consequences or substantially affect fundamental rights. However, the criteria triggering such heightened review are not always clearly articulated. Courts often move directly from statutory interpretation to invalidation without expressly situating the decision within a structured standard of review.

A second recommendation is therefore the clarification of thresholds for heightened judicial scrutiny. Where regulations impose criminal liability, affect liberty interests, or substantially burden property rights, courts should expressly acknowledge the application of stricter review. This would reinforce constitutional accountability while preserving judicial discretion to adapt standards to context.⁵⁶

C. Reinforcing the Distinction Between Administrative and Penal Sanctions

The categorical prohibition against administrative penal legislation remains a cornerstone of Philippine delegation doctrine. Nevertheless, regulatory practice increasingly blurs the line between administrative sanctions and penal consequences, particularly where substantial fines, closures, or suspensions are involved.

Courts and administrative agencies alike would benefit from clearer doctrinal articulation of the distinction between administrative sanctions and criminal penalties. While administrative sanctions may be permissible within statutory limits, regulations that effectively create criminal liability should be subject to explicit legislative authorization. Reinforcing this distinction preserves the constitutional requirement of legislative accountability in the exercise of coercive state power.⁵⁷

D. Enhancing Reasoned Rule-Making Within Existing Doctrine

Although Philippine administrative law does not mandate notice-and-comment rule-making, judicial expectations of rationality and justification are increasingly evident in jurisprudence. Without importing foreign procedural regimes wholesale, courts may

⁵⁶ White Light Corporation v City of Manila, G.R. No. 122846 (20 January 2009).

⁵⁷ People v Maceren, G.R. No. L-32166 (18 October 1977).

continue to encourage reasoned administrative rule-making by requiring agencies to articulate the statutory basis and policy rationale for regulations that significantly affect rights or obligations.

Such an approach aligns with existing doctrine on reasonableness and due process, strengthens judicial review, and enhances regulatory legitimacy without exceeding constitutional or statutory boundaries.⁵⁸

E. Legislative Drafting and Delegation Discipline

Finally, doctrinal clarity depends not only on judicial interpretation but also on legislative drafting discipline. Congress plays a critical role in shaping the constitutional validity of administrative rule-making by clearly articulating policy objectives and standards in enabling statutes. Well-drafted statutes reduce the risk of unconstitutional delegation and provide clearer guidance to administrative agencies.

While legislative reform lies beyond judicial control, doctrinal analysis can underscore the importance of legislative precision as a constitutional safeguard. This reinforces the shared responsibility of Congress, agencies, and courts in sustaining lawful administrative governance.

V. CONCLUSION

Administrative rule-making is no longer a peripheral phenomenon in Philippine public law. It is a structural feature of contemporary governance, reflecting the realities of an increasingly complex, technical, and regulatory state. Congress, as a deliberative and politically accountable institution, cannot realistically legislate at the level of detail demanded by modern regulation. Delegation of rule-making authority to administrative agencies has therefore emerged not as a constitutional anomaly, but as an institutional necessity inherent in constitutional democracies.

⁵⁸ Jerry L Mashaw, *Reasoned Administration* (Yale University Press 1985) 45–67.

Necessity, however, does not dissolve constitutional constraint. The 1987 Constitution vests legislative power in Congress and embodies a commitment to democratic accountability, separation of powers, and the protection of fundamental rights. Philippine constitutional doctrine has consistently sought to reconcile administrative necessity with these commitments. Through the non-delegation doctrine, the completeness and sufficient-standard tests, the ultra vires principle, procedural safeguards such as publication, and the availability of judicial review, the Supreme Court has articulated a framework that permits administrative rule-making while preserving legislative supremacy.

This Article has shown that Philippine jurisprudence reflects a calibrated approach to administrative governance. Courts tolerate delegation where Congress has articulated fundamental policy choices and intelligible standards, and where administrative agencies act within the bounds of statutory authority. At the same time, the Court has drawn firm constitutional lines. Administrative agencies may not determine whether a law shall operate, may not create crimes or impose penal sanctions absent clear legislative authorization, and may not promulgate regulations that substantially infringe fundamental rights without satisfying heightened standards of scrutiny.

Judicial review occupies a central place in this framework. Philippine courts accord deference to administrative expertise in technical matters, but such deference is neither uncritical nor unbounded. Where administrative regulations implicate constitutional structure or individual rights, courts have asserted their role as guardians of legality and constitutional fidelity. This differentiated standard of review reflects an implicit theory of institutional competence that balances efficiency with accountability.

Comparative analysis underscores that the Philippine approach is neither anomalous nor deficient. Other jurisdictions confront similar tensions and deploy different doctrinal strategies. The United States emphasizes proceduralization and reasoned decision-making, while the United Kingdom relies on parliamentary control and proportionality

review. The Philippine model, which relies heavily on substantive delegation standards and judicial review, reflects its own constitutional architecture and institutional realities.

Ultimately, the legitimacy of administrative rule-making in the Philippines depends on doctrinal clarity and principled application. The existing framework is coherent in its core commitments, but its continued effectiveness requires clearer synthesis and consistent articulation. As the regulatory state continues to expand, courts, agencies, and legislators alike must remain attentive to the constitutional boundaries that sustain democratic governance.

Properly confined, administrative rule-making remains an instrument of statutory implementation rather than a substitute for legislative judgment. Within this doctrinal equilibrium, where delegation is permitted, abdication is forbidden, and judicial review remains vigilant, the Philippine administrative state can continue to function effectively without compromising constitutional principles.

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