The Search for Clarity: A Primer on the Transformation of Impeachment on the Ground of Betrayal of Public Trust

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I. INTRODUCTION

Impeachment is a method by which persons holding government positions of high authority, prestige, and dignity and with definite tenure may be removed from office for causes closely related to their conduct as public officials.[1] As has been repeatedly said, it is "the nation's inquest into the

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1. V. G. SINCO, PHILIPPINE POLITICAL LAW 373 (11th ed. 1962).

conduct of public men"[2] and an exception to the claim that courts must have a monopoly of the exercise of judicial functions.[3] The exercise of this power is what the French call "political justice."[4]

As a formal process in which an official is accused of unlawful activity, the object of impeachment is not to punish but only to remove a person from office.[5] As Justice Joseph Story put it in his commentary on the Constitution, such "a proceeding, purely of a political nature, is not so much designed to punish an offender as to secure the state against gross political misdemeanors."[6] He goes further to say that "it touches neither his person nor his property, but simply divests him of his political capacity."[7] The political nature of impeachment is seen in that

> [th]e jurisdiction is to be exercised over offences, which are committed by public men in violation of their public trust and duties. Those duties are, in many cases, political. ... Strictly speaking, then, the power partakes of a political character, as it respects injuries to the society in its political character.[8]

Father Joaquin G. Bernas, S.J. notes that, "[p]ut differently, removal and disqualification are the only punishments that can be imposed upon conviction by impeachment. Criminal and civil liability can follow after the officer has been removed by impeachment."[9]

II. HISTORY AND NATURE

Historically, the word impeachment comes from the Latin language expressing the idea of becoming caught or entrapped.[10] It is analogous to the French word *empêcher*, which means to prevent. Moreover, its etymology is

2. *See* Alexander Hamilton, The Powers of the Senate Continued (A portion of Yale Law School's The Avalon Project: The Federalist Papers No. 65), *available at* http://avalon.law.yale.edu/18th_century/fed65.asp (last accessed May 5, 2012).
3. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1149 (2009).
4. *Id.*
5. *Id.* at 1150.
6. *Id.* (citing JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 274 (1987)).
7. *Id.*
8. Michael J. Gerhardt, *The Constitutional Limits to Impeachment and its Alternatives*, 68 TEX. L. REV. 1, 86 (1989) (citing STORY, *supra* note 6, § 385, at 272-73 (R. Rotunda & J. Nowak eds. 1987) [hereinafter Gerhardt, *Limits to Impeachment*].
9. BERNAS, S.J., *supra* note 3, at 1150.
10. NATIONAL ASSOCIATION FOREIGN ATTORNEYS, NAFA'S BLUE BOOK: LEGAL TERMINOLOGY, COMMENTARIES, TABLES, AND USEFUL LEGAL INFORMATION 140 (2010).

also associated with the Latin word *impetere*, which means to attack.[11] In understanding impeachment clauses, many have turned to language and history as its most traditional guides.[12] Exploring the language of a provision of law would logically send a curious student towards turning to its history.[13] Before the process of impeachment was imagined, Dr. Benjamin Franklin noted —

> What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in [which] he was not only deprived of his life but of the opportunity of vindicating his character. It [would] be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.[14]

The process of impeachment was first used in the British political system, more specifically, through the creation of the English "Good Parliament" against Baron Latimer in the second half of the fourteenth century.[15] Thereafter, the constitutions of most states adopted the impeachment doctrine where the punishment of removal from office was the sole consequence.[16]

It can thus be said that Parliament has held the power of impeachment since time immemorial.[17] Originally, the House of Lords held this power, which was applicable only to the members of the peerage or the nobles as the Lords should try their own peers.[18] On the other hand, the commoners were trying their own peers through another system called the "jury system."[19] However, the Commons later declared that they had the right to

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11. *Id.*
12. Gerhardt, *Limits to Impeachment*, *supra* note 8, at 11.
13. *Id.*
14. *Id.* at 1 (citing 2 RECORDS OF THE FEDERAL CONVENTION OF 1787 64-65 (M. Farrand ed. 1966)).
15. *See* RAOUL BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 20-21 (1974).
16. *See* BERNAS, S.J., *supra* note 3, at 1149-50.
17. *See* BERGER, *supra* note 15, at 30.
18. *See generally* 2 SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS 264 (1753).
19. *See Basic jury principles violated*, PHIL. DAILY INQ., Feb. 27, 2012, *available at* http://opinion.inquirer.net/23857/basic-jury-principles-violated (last accessed May 5, 2012); Ted Laguatan, *The good that can come from Corona's impeachment trial*, PHIL. DAILY INQ., Jan. 24, 2012, *available at* http://globalnation.inquirer.net/23815/the-good-that-can-come-from-coronas-impeachment-trial (last accessed May 5, 2012); and United States Senate, Impeachment: The Senate's Impeachment Role, *available at* http://www.senate.gov/artandhistory/

impeach whomsoever they pleased and the Lords respected this decision.[20] From then on, the House of Commons possessed the power of impeachment while the House of Lords stood to try the case.[21]

The United States (U.S.) impeachment process was similarly crafted from the British system.[22] But the Americans found that certain modifications had to be made to the British impeachment process to "avoid or retard the common practice in England of using the impeachment process as a weapon of political warfare."[23] The U.S. system imposed several distinctions from the British system. The first modification involved limiting impeachment to a defined number of offices, namely the "[t]he President, Vice President[,] and all civil Officers of the United States."[24] The British process did not possess such limitation, allowing impeachment to all types of positions, less those of royalty.[25] Second, "the United States Constitution limits impeachable offenses to 'treason, bribery, or other high crimes and misdemeanors,'" whereas the British system relied heavily on their restrictive definition of impeachment in deciding whether an offense was impeachable or not without finding the need to list these types of offenses.[26] Third, the U.S. Constitution required more than a majority vote (two-thirds of the members present) for conviction.[27] Fourth, the result of impeachment was limited to "removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States,"[28] whereas the British system allowed sufficient discretion to the lords in determining the punishment resulting from conviction.[29] Fifth, the U.S. withheld from the

history/common/briefing/Senate_Impeachment_Role.htm (last accessed May 5, 2012).

20. *See* 11 J. SOMERS SOMERS, A COLLECTION OF SCARCE AND VALUABLE TRACTS, ON THE MOST INTERESTING AND ENTERTAINING SUBJECTS: BUT CHIEFLY SUCH AS RELATE TO THE HISTORY AND CONSTITUTION OF THESE KINGDOMS 307 (1814).

21. *See* BLACKSTONE, *supra* note 18, at 260-61.

22. Darnell Weeden, *Essay: The Clinton Impeachment Indicates A Presidential Impeachable Offense is Only Limited by Constitutional Process and Congress' Political Compass Directive*, 27 WM. MITCHELL L. REV. 2499, 2504 (2001).

23. *Id.*

24. Michael J. Gerhardt, *The Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, 605 (1999) (citing U.S. CONST. art. II, § 4) [hereinafter Gerhardt, *Lessons of Impeachment History*].

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* (citing U.S. CONST. art. I, § 3, cl. 7).

29. *Id.*

President the ability to pardon an impeached officer.[30] Sixth, impeachment in the British system was considered a criminal proceeding whereas the U.S. system required that a separate criminal action should be pursued which is distinct from the impeachment proceeding.[31] Seventh, judges were removed by the British through a number of processes while the U.S. removed a judge solely through impeachment.[32]

A. Political Aspect of Impeachment

In the U.S., several writers have painted a picture of impeachable offenses as those that are closely intertwined with the political sphere.[33] History has shown that "impeachment may be motivated by politics and, as a matter of practical reality, is usually resolved by politics."[34] It would be difficult to imagine that any type of analysis of whether an act constitutes a political offense is entirely free of political motives.[35] Attempts to limit the influence of partisan affairs should be essential, but again, complete elimination could be impossible.[36]

An impeachable offense is "any offense that causes great injury to the nation's political compass as determined by an appropriate majority of Congress."[37] Anything that results in harming this so-called political compass — the threshold of the nation as to what constitutes an offense against it — could result in an impeachment proceeding, although the compass is a standard that varies through a generation's values.[38]

B. Nature of Impeachment Proceedings

According to Professor Charles Black, "impeachment raises four major procedural questions: (1) whether an impeachment is a criminal or civil proceeding; (2) whether any presidential privilege is applicable; (3) what rules of evidence, if any, should be applicable; and (4) whether the Senate may appoint special trial committees to receive evidence for removal proceedings."[39]

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30. Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 605.

31. *Id.*

32. *Id.* at 606.

33. Weeden, *supra* note 22, at 2505.

34. *Id.* (citing Gerhardt, *Limits to Impeachment*, *supra* note 8, at 82).

35. *Id.*

36. *Id.* (citing Gerhardt, *Limits to Impeachment*, *supra* note 8, at 82-83).

37. Weeden, *supra* note 22, at 2506 (citing BERGER, *supra* note 15, at 88).

38. *Id.* (citing Terrance Sandalow, *Constitutional Interpretation*, 79 MICH. L. REV. 1033, 1069 (1981)).

39. Gerhardt, *Limits to Impeachment*, *supra* note 8, at 89.

Identifying whether an impeachment trial is a criminal or civil proceeding is relevant in deciding on the burden of proof required. If the impeachment trial was a criminal proceeding, a conviction beyond reasonable doubt would be necessary.[40] On the other hand, if the impeachment trial was a civil proceeding, then merely a preponderance of evidence would be necessary to remove the official from office.[41] The view of the majority shows that impeachment is "not strictly either a criminal or civil proceeding."[42] It reflects a civil proceeding in the sense that: the punishment for impeachment is limited to removal and disqualification from office;[43] the president is not allowed to pardon a person convicted by impeachment;[44] and the rules of evidence do not strictly apply to impeachment proceedings.[45] However, it also reflects a criminal proceeding since the grounds for impeachment include serious crimes such as treason[46] and bribery.[47] Professor Charles Black points out that

> [t]he essential thing is that no part whatever be played by the natural human tendency to think the worst of a person of whom one generally disapproves, and the verbalization of a high standard of proof may serve as a constant reminder of this. Weighing the factors, I would be sure that one ought not to be satisfied, or anything near satisfied, with the mere "preponderance"' of an ordinary civil trial, but perhaps must be satisfied with something a little less than the "beyond reasonable doubt"' standard of the ordinary criminal trial, in the full literal meaning of that standard. "Overwhelming preponderance of the evidence"' comes perhaps as close as present legal language can to denoting the desired legal standard.[48]

Due to the nature of impeachment, Congress is given the power to demand an accounting from the President in cases of abuses of power. Because the President should not be above the law, there "is no sound reason for exempting him from accountability, especially in the impeachment process."[49] History suggests that it is through the context of an impeachment proceeding that the President should not be allowed to assert

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40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* (citing U.S. CONST. art. I, § 3, cl. 7).

44. *Id.* (citing U.S. CONST. art. II, § 2, cl. 1).

45. Gerhardt, *Limits to Impeachment*, *supra* note 8, at 90.

46. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 114 (1932).

47. *Id.* arts. 210 & 211.

48. Gerhardt, *Limits to Impeachment*, *supra* note 8, at 91 (citing CHARLES BLACK, IMPEACHMENT: A HANDBOOK 17 (1974)).

49. *Id.* at 93.

his superiority over congress. This explains the argument that the presidential privilege should not be applicable. However, Professor Black argues that the executive privilege allows for an "efficacious and dignified conduct of the presidency and to the free flow of candid advice to the President."[50] By the executive privilege, the President is still able to "protect himself from [the] overreaching" of the other two branches of government.[51]

Given that special rules of evidence is allowed for efficiency and fairness, there seems to be no reason for assigning any specific rules of evidence that should be applied in impeachment proceedings.[52] Professor Black suggests that

> [b]oth the House and the Senate ought to hear and consider all evidence which seems relevant, without regard to technical rules. Senators are in any case continually exposed to "hearsay"' evidence; they cannot be sequestered and kept away from newspapers, like a jury. If they cannot be trusted to weigh evidence, appropriately discounting for all the factors of unreliability that have led to our keeping some evidence away from juries, then they are not in any way up to the job, and "rules of evidence"' will not help.[53]

On whether special committees may be appointed to receive evidence and to report a summary of the evidence to the Senate, the view such may be allowed, there being no prohibition against it.[54] The rules specified in the constitution are minimal. It can be said that "[t]he gap that is left as to the rest of the specifics of the Senate's trial is to be filled according to the discretion of the Senate."[55]

II. IMPEACHMENT IN THE PHILIPPINES

In the Philippines, impeachment is authorized by Article XI of the 1987 Philippine Constitution, which explicitly declares public office as a public trust and mandates public officers to, at all times, be accountable to the people; serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice; and lead modest lives.[56] Accordingly, only the President, Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment and only on the

50. *Id.* (citing BLACK, *supra* note 48, at 20-21).

51. *Id.*

52. *Id.*

53. *Id.* (citing BLACK, *supra* note 48, at 18).

54. Gerhardt, *Limits to Impeachment*, *supra* note 8, at 94.

55. *Id.*

56. PHIL. CONST. art. XI, § 1.

grounds of either culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.[57]

The Constitution further states that the House of Representatives shall have the exclusive power to initiate all cases of impeachment,[58] following this process:

(1) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof.[59]

(2) The verified complaint shall be included in the Order of Business within 10 session days.[60]

(3) The verified complaint shall be referred to the proper Committee within three session days thereafter.[61]

(4) The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within 60 session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.[62]

(5) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.[63]

(6) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.[64]

A. The Corona Impeachment

As has been already discussed, the House of Representatives approved the impeachment complaint filed by Representatives Niel C. Tupas, Jr., Joseph

57. PHIL. CONST. art. XI, § 2.

58. PHIL. CONST. art. XI, § 3 (1).

59. H. Rules of Procedure in Impeachment Proceedings [H. Rules on Impeachment], § 2 (a) & (b), 15th Cong. (Aug. 3, 2010).

60. *Id.* § 3.

61. *Id.*

62. *Id.* § 8.

63. *Id.* § 10.

64. *Id.*

Emilio A. Abaya, Lorenzo R. Tañada III, Reynaldo V. Umali, and Arlene J. Bag-ao against Chief Justice Corona.[65]

Summarily, the complaint is anchored on the grounds of betrayal of public trust, culpable violation of the Constitution, and graft and corruption allegedly committed by Chief Justice Corona.[66]

The complaint goes further by saying that

> [n]ever has the position of Chief Justice, or the standing of the Supreme Court, as an institution been so tainted with the perception of bias and partiality, as it is now: not even in the dark days of martial law, has the chief magistrate behaved with such arrogance, impunity, and cynicism. ... To have any justice, much more, a Chief Justice, who does not live up to the expectation of being like Caesar's wife — beyond reproach — is to fatally impede the ability of our institutions to function and dispense true justice to the people.[67]

The complaint discusses the grounds for impeachment in the following manner:

(1) Betrayal of Public Trust through Chief Justice Corona's track record marked by partiality and subservience in cases involving the Aquino administration from the time of his appointment as a Supreme Court Justice until his dubious appointment as a midnight Chief Justice to the Present;[68]

(2) Culpable violation of the Constitution and/or betrayal of public trust when he failed to disclose to the public his Statement of Assets, Liabilities, and Net Worth as Required under Section 17, Article XI of the 1987 Constitution;[69]

(3) Culpable violations of the Constitution and betrayal of public trust by failing to meet and observe the stringent standards under Article VIII, Section 7 (3) of the Constitution[70] in allowing the Supreme Court to act on mere letters filed by a counsel which caused the issuance of flip-flopping decisions in final and

65. *See* In Re: Impeachment of Honorable Chief Justice Renato C. Corona, Impeachment Case No. 002-2011, Verified Complaint for Impeachment (Dec. 12, 2011) [hereinafter Verified Impeachment Complaint].

66. *See generally* Verified Impeachment Complaint.

67. *Id.*

68. *Id.* art. I.

69. *Id.* art. II.

70. This Section states that "[a] Member of the Judiciary must be a person of proven competence, integrity, probity, and independence." PHIL. CONST. art. VIII, § 7 (3).

executory cases, in creating an excessive entanglement with Mrs. Arroyo through her appointment of his wife to office, and in discussing with litigants regarding cases pending before the Supreme Court;[71]

(4) Betrayal of public trust and/or the commission of culpable violation of the Constitution when he blatantly disregarded the principle of separation of powers by issuing a "Status Quo Ante" Order against the House of Representatives in the case concerning the impeachment of then Ombudsman Merceditas Navarro-Gutierrez;[72]

(5) Betrayal of public trust through wanton arbitrariness and partiality in consistently disregarding the principle of *res judicata* in cases involving the 16 newly-created cities, and the promotion of Dinagat Island into a province;[73]

(6) Betrayal of public trust by arrogating unto himself and the committee he created the authority and jurisdiction to improperly investigate a justice of the Supreme Court for the purpose of exculpating him when such authority and jurisdiction is properly reposed by the Constitution in the House of Representatives via Impeachment;[74]

(7) Betrayal of public trust through his partiality in granting a temporary restraining order in favor of Former President Gloria Macapagal-Arroyo and her husband Jose Miguel Arroyo in order to give them an opportunity to escape prosecution and to frustrate the ends of justice, and in distorting the Supreme Court decision on the effectivity of the TRO in view of a clear failure to comply with the conditions of the Supreme Court's own TRO;[75] and

(8) Betrayal of public trust and/or commission of graft and corruption when he failed and refused to account for the judiciary development fund and special allowance for the judiciary collections.[76]

B. Impeachable Offenses, Revisited

71. Verified Impeachment Complaint, art. III.

72. *Id.* art. IV.

73. *Id.* art. V.

74. *Id.* art. VI.

75. *Id.* art. VII.

76. *Id.* art. VIII.

The Articles of Impeachment against Chief Justice Corona hurls extensive accusations of betrayal of public trust.[77]

Culpable violation of the Constitution is committed through a deliberate and wrongful breach of the Constitution.[78] This means that the impeachable officer has committed a violation of the Philippine Constitution through a purposeful and intentional manner.[79]

As regards treason, it is defined by the Revised Penal Code as the act of levying war against the Philippines or adherence to her enemies by giving them aid or comfort within the Philippines or elsewhere.[80]

Bribery, on the other hand, may be direct or indirect. Direct bribery is committed by any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift, or present received by such officer, personally or through the mediation of another.[81] Indirect bribery is committed by any public officer who shall accept gifts offered to him by reason of his office.[82]

Graft and corruption is defined as a violation of the provisions of Republic Act No. 3019.[83]

In the U.S., other high crimes refer to serious abuse and misuse of office ranging from tax evasion to obstruction of justice.[84] The term "other high crimes and misdemeanors" as provided in the U.S. constitution is viewed to comprise technical terms that point towards political crimes.[85] These crimes incorporate those that are of "great and dangerous offenses" that affect the state.[86] While the general view is that these acts are not indictable offenses, the minority definition of this term still confines itself to criminal activities.[87] On the other hand, the generally accepted viewpoint defines high crimes as any serious abuse of power — including both legal and illegal activities.[88]

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77. *See generally* Verified Impeachment Complaint.

78. BERNAS, S.J., *supra* note 3, at 1152.

79. *Id.*

80. REVISED PENAL CODE, art. 114.

81. *Id.* art. 210.

82. *Id.* art. 211.

83. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 1 (1960).

84. Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 617-19.

85. *Id.* at 610.

86. *Id.* at 603.

87. *See generally* Gerhardt, *Lessons of Impeachment History*, *supra* note 24.

88. *See* BERNAS, S.J., *supra* note 3, at 1152-23.

However, in the Philippine setting, betrayal of public trust, to this date, has not been defined by the Supreme Court.[89] Studies from the U.S. on the grounds of impeachment have stated that "betrayal of public trust" stems from and is related to "other crimes and misdemeanors."[90] Michael J. Gerhardt, in his studies corresponding to the history of impeachment, observed that "[o]ftentimes, ["other high crimes and misdemeanors"] were characterized further as serious abuses of official power or serious breaches of the public trust."[91]

In *Francisco v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino*,[92] the Supreme Court of the Philippines ruled that the definition of "betrayal of public trust" is "a non-justiciable political question which is beyond the scope of its judicial power" under the Constitution.[93] It did not prescribe which branch of government has the power to define it, but implies that Congress, which handles impeachment cases, has the power to do so.[94] In other words, the crux of deciding on whether an act falls under the definition of betrayal of public trust rests on the House of Representatives when they agree to impeach an officer and on the Senate to convict such officer and render the corresponding consequences of impeachment.[95]

C. Betrayal of Public Trust

The concept of public trust relates back to the origins of democratic government and its seminal idea that within the public lies the true power and future of a society; therefore, whatever trust the public places in its officials must be respected.[96] The essence of this premise is, however, lost in the circumstances that envelop the existence of public officials who are appointed for in the Philippine setting, as the politics of appointment is one that is often abused, misused, and misinterpreted notwithstanding the principle of checks and balances between the three main branches of our government.

A famous example of betrayal of public trust is the assassination of Julius Caesar who was killed by the Roman senators as the latter believed they had

89. *See generally* Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., 415 SCRA 44 (2003).

90. Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 603.

91. *Id.*

92. *Francisco, Jr.*, 415 SCRA at 44.

93. *Id.* at 152.

94. *See generally Francisco, Jr.*, 415 SCRA at 44.

95. *Id.*

96. *See Francisco, Jr.*, 415 SCRA at 152.

to act drastically to preserve the republic against the former's alleged monarchical ambitions.

In the 1935 and 1973 Philippine Constitutions, betrayal of public trust was not an impeachable offense.[97] However, the framers of the 1987 Philippine Constitution deemed it fit to include this in the enumeration as can be seen in the arguments set forth during the deliberations[98] —

> MR. REGALADO: I have a series of questions here, some for clarification, some for the cogitative and reading pleasure of the members of the Committee over a happy weekend, without prejudice later to proposing amendments at the proper stage. First, this is with respect to Section 2 on the grounds for impeachment, and I quote:
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> ...
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> culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption or betrayal of public trust.
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> Just for the record, what would the Committee envision as a betrayal of public trust which is not otherwise covered by the other terms antecedent thereto?
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> MR. ROMULO: I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of a public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed that trust.
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> ...
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> MR. DE LOS REYES: The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. And so the term 'betrayal of public trust,' as explained by Commissioner Romulo, is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable breach of official duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President. Thank you.
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> MR. ROMULO: If I may add another example, because Commissioner Regalado asked a very good question. This concept would include, I think, obstruction of justice since in his oath he swears to do justice to every man;

97. *See* 1935 PHIL. CONST. art. VIII, § 2 (superseded 1973) and 1973 PHIL. CONST. art. IX, § 1 (superseded 1987).

98. 2 RECORD OF THE CONSTITUTIONAL COMMISSION (1986).

so if he does anything that obstructs justice, it could be construed as betrayal of the public trust. Thank you.

...

MR. GUINGONA: My first question concerns that matter of the additional ground for impeachment which is betrayal of trust. I presume that the Members are aware of the UP Law Center Constitutional Project which made mention of this additional ground for impeachment, to wit:

> Acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers.

Does the Committee accept this definition?

...

MR. ROMULO: We accept.

MR. GUINGONA: There are additional grounds for impeachment mentioned in the 1970 Revision Project aside from those that I have just mentioned. They added 'profanity, obscenity, habitual drunkenness while performing official duty.' Would the sponsor agree?

MR. ROMULO: No, we do not agree to that.

MR GUINGONA: Thank you. In the 1986 UP Proposal which the sponsor said he is aware of, there is this statement referring to the addition of the words 'betrayal of public trust,' which reads: 'such an overreaching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature.' Would the sponsor agree to this?

MR. ROMULO: In view of the clarification already read into the Record, we believe that that is sufficient to guide the future Congress.

MR. GUINGONA: Would it not be better to add the word GROSS to the words 'betrayal of public trust' to make the statement less broad?

MR. ROMULO: If the Commissioner will submit that as an amendment, we will consider it.[99]

The Constitutional Commission went on to deliberate and agree that the term "betrayal of public trust" likewise included the inaction on the part of the President which will result in a failure of justice as evidenced by gross violation of human rights.[100]

As can be culled from the deliberations, the enumeration of impeachable offenses required a catchall phrase in the event that the offense committed by the officer could not squarely fit into the definitions of the other grounds.

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99. *Id.* at 272 & 285-86.

100. *See generally* 2 RECORD OF THE CONSTITUTIONAL COMMISSION, *supra* note 98.

Further, the fact that the act was not considered a criminal offense is not sufficient protection from impeachment.[101] However, the deliberations show that the catchall phrase was limited only to acts that are closely referring to the officer's oath of office.[102] Several years later, this limitation envisioned in the deliberations showed that it was not enough to allow courts to decide whether an act constituted a "betrayal of public trust."[103]

D. Defining Impeachable Offenses

The difficulty in defining impeachable offenses, particularly under the grounds of "other high crimes and misdemeanors" and "betrayal of public trust," is highly supported by the line of impeachment cases against presidents and district court judges, particularly in the U.S. Defining impeachable offenses would definitely be complex, at the least, but could be summed up to those involving serious offenses to the government.[104] Impeachment was supposed to bring punishment to offenders for crimes which everyone considered to be high crimes and misdemeanors against the government and would greatly injure the community.[105]

Through the line of impeachment cases in the U.S., certain trends have appeared that could shed light in limiting the scope of what constitutes a betrayal of public trust.

One trend shows that the question of whether impeachment should stem from a criminal offense has already been discussed. Yet, it should be worthy to note that the conviction for a criminal or indictable offense served as an easier source for which impeachment, and later on conviction for impeachment, was upheld.[106] History has shown that "Congress is especially likely to impeach and remove officials who have previously been convicted of felonies in court."[107] However, this must be met with caution so that the conviction would not unduly impose pressure on Congress to impeach an officer.[108]

Another trend refers to the "paradigmatic case" where "there must be not only serious injury to the constitutional order but also a nexus between the misconduct of an impeachable official and the official's formal duties."[109]

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101. *Id.*

102. *Id.*

103. *See Francisco, Jr.*, 415 SCRA at 152.

104. Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 607.

105. *Id.* at 607-08.

106. *Id.* at 608.

107. *Id.*

108. *Id.* at 616.

109. *Id.*

The injury must be political, meaning, an injury done to society itself. In the impeachment of Richard M. Nixon, he was charged with three grounds, namely: obstruction of justice, abuse of powers, and unlawful refusal to supply material subpoenaed by the House of Representatives.[110] These charges could not have come further away from the use of his official powers.[111] On the other side of the coin are acts that are not "paradigmatic" that consequently resulted in unsuccessful impeachment complaints. Thus, grounds such as refusal to share contemplated nominees for certain positions and vetoing of legislation that is sponsored by a particular person did not count as an impeachable offense.[112] In a more general sense, the fact that constitutional and policy judgments are "wrong-headed or even poorly conceived" or are considered as "mistaken or erroneous policy judgments" are not within the ambit of impeachable offenses under the paradigmatic case trend.[113]

The case of Federal District Judge Harry E. Claiborne brought up some insights in support of the paradigmatic case. In 1968, Judge Claiborne was impeached and removed from his position because of income tax evasion charges.[114] It was said that —

> in impeaching and removing Claiborne, Congress reached the judgment that integrity is an indispensable criterion for someone to function as a federal judge. Moreover, as the House Report and subsequent Senate debate on Claiborne's impeachment reflected, the members of Congress concluded that the commission of tax evasion robs a federal judge of the moral authority required to oversee the trials and sentencing of others for the very same offense. In other words, a federal judge must have integrity beyond reproach in order to perform the functions of his or her office. Incontrovertible proof that a federal judge lacks integrity effectively disables a federal judge completely from performing his or her duties.[115]

Similarly, District Judge Walter L. Nixon, Jr. was impeached and removed from his position for making false statements to a grand jury regarding his efforts to influence the outcome of a case that involved the son of his business partner. While this does not apply squarely to the

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110. Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 607.

111. *Id.* at 617. Nixon used his position to "facilitate his re-election and to hurt his political enemies, as well as to frustrate or to impede inappropriately legitimate attempts to investigate the extent of his misconduct." *Id.*

112. These were the grounds of the impeachment case against U.S. President John Tyler. *Id.* at 618.

113. *Id.*

114. *Id.* at 619.

115. Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 619. (citing House Comm. on the Judiciary, Impeachment of Judge Harry E. Claiborne, H.R. Rep. No. 99-688, at 23 (1986); 132 Cong. Rec. 30, 251-58 (1986)).

paradigmatic case, there being no clear connection between the misconduct and the performance of his duties, it was still reasoned that —

> [c]learly, the misconduct alleged did not strictly relate to Nixon's formal actions as a federal judge (for example, he was not formally functioning as a federal judge when talking with the state prosecutor about dropping the case). Nevertheless, whatever influence Nixon had available to exercise on behalf of his business partner's son existed by virtue of the federal judgeship he held. Moreover, making false statements to a grand jury impugns a judge's integrity at least as much, if not more, than does tax evasion (which involves the making of false statements under oath in a different manner). Again, the House and the Senate each reasonably concluded that the demonstrated lack of integrity robs a federal judge of the most important commodity he must have in order to perform his constitutional function. Nixon's misconduct completely disabled him from continuing to function as a federal judge.[116]

The cases of District Judge Harry Claiborne and of District Judge Walter Nixon, Jr. are examples of offenses that were found to be both injurious to the constitutional order and connected to the very duties required of a judge. Judge Claiborne was charged with income tax evasion, which, arguably enough, is straightforward when put to the test of the paradigmatic case.[117] However, in the investigation of Judge Nixon Jr., the offense did not fit squarely into the paradigmatic case.[118] His offense showed no clear connection between his duty and the misconduct performed; but the House and the Senate was able to justify that his influence in the outcome of the case involving the son of his business partner would ultimately compromise his integrity as a judge.[119]

The problem then becomes, not so much if it falls into the paradigmatic case, but how to give a justification for the act or omission of the officer to fit into the standards of 1) injury to the constitution and 2) connection between the misconduct and duty of such officer.

The Senate — the ultimate body that removes the officer — is the last line of defense of the person whose office is at stake. Thus, it shall bear the burden of scrutiny from all, including the test or judgment of history. While the impeachment complaint, from which the House decides that indeed impeachment should be had, contains the grounds that should substantiate its result, the Senate ends up having to check whether such grounds hold any water. More particularly, they must erase all traces of partisan motivations for the complaint. Records show that "in the midst or near the end of

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116. *Id.* at 620.

117. See Gerhardt, *Lessons of Impeachment History*, *supra* note 24, at 619-20.

118. *Id.*

119. *Id.*

impeachment trials, [senators] expressed the awareness that their final decision to achieve legitimacy needed to withstand the test of time."[120] This trend supports the fact mentioned earlier that impeachment, more often than not, proceeds from political motivations.

E. Allegations Against Corona — Betrayal of Public Trust?

As can be inferred in the deliberations of the Constitutional Commission, the main contention set forth in the inclusion of the concept of betrayal of public trust is that it is too broad that it may be subject to abuse.

Fr. Joaquin Bernas believes that

> the way the full provision is worded is significant. It enumerates the grounds for impeachment as culpable violation of the constitution, treason, bribery, graft and corruption, *other* high crimes, or betrayal of public trust. The word 'other' is significant. Under the *ejusdem generis* rule, when the law makes an enumeration of specific objects and follows it with 'other' unspecified objects, those unspecified objects must be of the same nature as those specified. Thus, for 'graft and corruption' and 'betrayal of public trust' to be grounds for impeachment, their concrete manner of commission must be of the same severity of 'treason' and 'bribery,' offenses that strike at the very heart of the life of the nation.[121]

The Author subscribes to this argument as this is precisely the same fear Mr. Guingona and the 1986 UP proposal were seeking to avoid. The proponent of the provision, Mr. Romulo, however, believed that the clarification of the scope of the concept betrayal of public trust is sufficient to guide future Congress.

To the mind of the Authors, Mr. Gerald R. Ford, Jr., in 1970, had seen the danger of imposing grounds that are too broad that will entail the impeachment of a public official. It "is whatever a majority of the House of Representatives considers it to be given at a moment in history."[122] It has been said that —

> [a]t the end of the impeachment day, an impeachable offense is defined by the political realities of an appropriate majority of the members of Congress and all the Constitution requires is that the important decision be justified as a serious political offense. The Constitution allows the President to be at risk of impeachment for any political, criminal[,] or civil offense serious enough to offend the political compass of an adequate majority in the United States House of Representatives. If the President offends the

120. *Id.* at 623.

121. BERNAS, S.J., *supra* note 3, at 1153-54.

122. Weeden, *supra* note 22, at 2505 (citing 116 Cong. Rec. 11,913 (1970) (statement of Rep. Gerald Ford)).

> political compass of America enough for Congress to start impeachment proceedings, the following steps will be taken.[123]

Mr. Ford may have made reference to the political compass of the state in determining whether there is sufficient justification for impeachment to proceed. The fact that the political compass is steered by the very few who are elected into office in a very political economy, such political compass becomes very much open to influence from other partisan factors.

III. CONCLUSION

As can be culled from the deliberations of the Constitutional Commission, the concept of betrayal of public trust was accepted in view of the various acts committed by then President Ferdinand E. Marcos, which did not quite fit into the mold of an impeachable offense under the 1973 Constitution, and which any prosecution will not be able to substantiate given that the accumulation of evidence during that time was close to impossible.[124] The Constitutional Commission did not foresee the possible impeachment of a chief justice on the ground of betrayal of public trust given that it made betrayal of public trust a catch all phrase to include all acts not otherwise punishable by statutes but render the official unfit to continue in office. This is akin to conduct unbecoming of a soldier that merits his dismissal from office. The only difference is that a soldier goes through trial before the court martial, while a chief justice goes through trial before a highly politicized Senate and a very vulnerable nation.

Given that the context of the offense of Betrayal of Public trust being a catchall phrase, as we are led to believe in Chief Justice Corona's impeachment case, why then are there grounds specifically enumerated in Section 2, Article 11 of the Constitution? Why did the framers of the Constitution find the need to differentiate impeachment, limited to a small number of officials, from expulsion of a member of Congress? Article VI, Section 16 (3) provides that each house, with the concurrence of at least two-thirds of all its members, may suspend or expel a member.[125] The power to expel a member is not limited by any set of grounds, as in the case of impeachment. The prerogative to remove an officer of the House would wholly rest on whether at least two-thirds of the members of either the Senate or Congress finds a reason thereto, regardless of the conduct performed.

Chief Justice Corona's alleged track record marked by partiality and subservience in cases involving the Aquino administration until his midnight

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123. *Id.* at 2502-03.

124. *See generally* 2 RECORD OF THE CONSTITUTIONAL COMMISSION, *supra* note 98.

125. PHIL. CONST. art. VI, § 16 (2).

appointment as Chief Justice, his failure to disclose to the public his statement of assets, liabilities, and net worth, his failure to observe the stringent standards of the Constitution in allowing the Supreme Court to act on mere letters filed by a counsel resulting in the issuance of flip-flopping decisions in final and executory cases, the appointment of his wife to office, the discussion of the cases pending before the Supreme Court with the litigants, the issuance of a Status Quo Ante Order against the House of Representatives in the case concerning the impeachment of then Ombudsman Merceditas N. Gutierrez, the disregard of the principle of *res judicata* in cases, in arrogating unto himself and the committee he created the authority to improperly investigate a justice of the Supreme Court, the grant of a TRO in favor of the Arroyos, and the failure to account for the judicial development fund and special allowance for the judicial collections may very well fit the mold of this catch all phrase if only the rules of statutory construction were not invented for the sole purpose of aiding the legislature in crafting a sensible law and the judiciary in properly interpreting the same.

Mr. Martin L. Gross, in 1993, described the world we live in as a world in which politics has replaced philosophy.[126] It is true that the procedural aspect of the impeachment proceeding against Chief Justice Corona is in order. Will not the fact that some of the members of the House signed the Articles of Impeachment without having read the same likewise come well within the present interpretation of the concept of betrayal of public trust as an inexcusable breach of official duty and tyrannical abuse of power to the prejudice of public interest and which tend to bring the office into disrepute, obstruction of justice, and violation of their oaths?

Would the same situation arise if, let us say, an impeachable officer would be caught jaywalking? On the theory that betrayal of public trust is a catch all phrase, could this misconduct be construed as an inexcusable breach of official duty to the prejudice of some public interest?

The dangers of a catch all phrase may even send an officer who is issued a ticket for speeding along Commonwealth Highway, beyond the 60-kilometer per hour speed limit,[127] into the impeachment court for disrepute, obstruction of justice, and violation of his oath.

The framers of the 1987 Constitution were warned against politicizing this process to the point of absurdity. They failed to heed the warning, perhaps because they believed that the House will be composed of statesmen throughout the generations. They are obviously mistaken.

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126. MICHAEL CRANE, THE POLITICAL JUNKIE HANDBOOK 461 (2004).

127. Mike Frialde, YEARENDER: MMDA takes on smokers, speeding drivers and billboard firms, PHIL. STAR, Dec. 27, 2011, *available at* http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=65&articleid=762372 (last accessed May 5, 2012).

Mr. Guingona, was, after all, correct in insinuating that the records of the long forgotten Constitutional Commission will not be sufficient to guide the future Congress.