

lead its graduates to work mainly for multinational companies and the cream of Philippine society, where their high-end knowledge and skills are best flexed and employed. The march towards globalization and adoption of best-practice standards, which by definition are western standards as it has been debated in the fields of commerce and economics, would also open up the same issues in the area of Bar reforms *vis-à-vis* the ill effects they have on the greater majority of the populace of a poor country like the Philippines.

Fortunately, that is not the main thrust of this paper, and those issues will have to be considered more exhaustively in another study.

## Grounds for the Impeachment of Justices of the Supreme Court: A Policy Analysis

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### I. INTRODUCTION

*Public office is to be conceived as a responsibility and not a right.<sup>1</sup>*

This article aims to analyze the policy behind the impeachment of Supreme Court Justices and to identify the grounds and standards for such.

The term "policy" has a specific meaning in Public Administration, which may be useful in understanding the rationale behind judicial impeachment. It has been defined as follows:

*Policy is a rule of action, manifesting or clarifying specific organization goals, objectives, values, ideals and often prescribing the obligatory or most desirable ways and means for their accomplishment. Such a rule for action established for the purpose of framing, guiding, or directing organizational activities, including decision-making, intends to provide relative stability, consistency, uniformity, and continuity in the operations of the organization.<sup>2</sup>*

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1. 63 AM. JUR. 2D *Public Officers and Employees* § 6 (1989).

2. Dean Romeo Ocampo, *The Nature and Need for Policy Studies*, in SEMINAR PAPERS ON POLICY STUDIES I (1978) (emphasis supplied).

An examination of the policy behind the impeachment process is crucial since it will outline the requirements set down by law and at the same time, it will help bridge probable gaps in the law. The public policy behind the law serves as a guide in properly understanding properly the possible responses to legal issues that may arise.

## II. THE IMPEACHMENT PROCESS

### A. Impeachment under the 1987 Constitution

The underlying principle behind the impeachment process is the accountability of public officers. Public officers are merely agents of the people and not their rulers and no man possesses a proprietary or contractual right to a public office but merely holds it in trust for the people.<sup>3</sup> In other words, public office is simply a public trust and for this reason, public officers and employees must be accountable to the people at all times.<sup>4</sup> If the officer breaches the said public trust, he may be subjected to sanctions provided for by law, one of which is impeachment.

The impeachment process has been said to be an act of political justice.<sup>5</sup> It is an exception to the principle of judicial independence where the courts maintain a monopoly of the exercise of judicial functions.<sup>6</sup> The concept of impeachment may be expressed in the following manner:

Acknowledging the possibility of men in public office betraying their trust to the prejudice of the people, the Constitution provides for a special process of removal known as impeachment. Impeachment has been defined as a method of national inquest into the conduct of public men. Corwin describes it as "the most formidable weapon in the arsenal of democracy." Less dramatically viewed, it is an extraordinary means of removal exercised by the legislature over a selected number of officials, the purpose being to ensure the highest care in their indictment and conviction and the

3. See JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 988 (1996 ed.) (citing *Cornelio V. Gabriel*, 41 Phil. 188 [1920]) [hereinafter BERNAS].

4. PHIL. CONST. art. XI, § 1. The provision reads in full: "Public office is a public trust. Public officers and employees must 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."

5. *Id.* at 989.

6. *See id.*

imposition of special penalties in the case of a finding of guilt, taking into account the degree or nature of the offense committed and the high status of the wrongdoers.<sup>7</sup>

Section 2, Article XI of the 1987 Constitution is the controlling provision on the impeachment process. It sets forth who are the officers subject to impeachment and lays down the grounds therefore.

The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.<sup>8</sup>

Only five public officers may be removed through the impeachment process. These are: (1) the President; (2) the Vice-President; (3) the Supreme Court Justices; (4) the Constitutional Commission members; and (5) the Ombudsman. All others may be removed from office in the manner provided by law but not through impeachment. Thus, under the Constitution, in the judicial branch, it is only the Justices of the Supreme Court who are subject to removal via impeachment.<sup>9</sup> The other judicial officers may be removed through administrative proceedings.<sup>10</sup>

Moreover, there are only six grounds for impeaching a public officer. These are: (1) culpable violation of the Constitution; (2) treason; (3) bribery; (4) graft and corruption; (5) other high crimes; and (6) betrayal of public trust. Culpable violation of the Constitution, a ground not present under American Constitution, has been defined as a "willful and intentional violation of the Constitution and not violations committed unintentionally or involuntarily or in good faith or through an honest mistake of judgment."<sup>11</sup> Meanwhile, high crimes are those "indictable offenses and are of such enormous gravity that they strike at the very life or orderly working of the government."<sup>12</sup>

As stated earlier, under the Constitution, only the Justices of the Supreme Court are subject to removal via impeachment in the judicial branch. To understand the policy in impeaching the Supreme Court Justices, it is proper

7. ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 313-14 (1989 ed.).

8. PHIL. CONST. art. XI, § 2.

9. In the United States of America, federal judges are also impeachable officers.

10. RULES OF COURT, Rule 140, as amended by SC Administrative Memorandum 01-08-10 (Sept. 11, 2001).

11. BERNAS, *supra* note 3, at 991 (citations omitted).

12. *Id.* (citation omitted).

to compare the policies drawn by the American impeachment processes, which can be used as guidelines in this jurisdiction.

### B. U.S. Experience on Judicial Impeachment

It is important to note that in the entire 102-year history of the Philippine Supreme Court, no member of the tribunal has ever been removed by impeachment. In contrast, in the United States, seven of fifteen men who have been the subjects of impeachment proceedings before the U.S. Senate were actually convicted, and all those convicted were members of the judiciary.<sup>13</sup> Consequently, the American experience may provide valuable insights on the policy behind judicial impeachment. It is essential to bear in mind that the Philippines' system of government, which is a "republican and democratic state,"<sup>14</sup> was basically modeled after the American prototype.

The first judicial impeachment in U.S. history was that of Federal Judge John Pickering in 1803. Judge Pickering was removed due to "drunkenness and insanity." The problem of the impeachment court was that those two grounds were not impeachable offenses under the Constitution since these did not constitute "treason, bribery, or other high crimes and misdemeanors."<sup>15</sup> Regardless of the constitutional problem, the Senate nonetheless by a vote of 19 to 1, removed Judge Pickering through impeachment, stating that he was "guilty as charged" and not "guilty of high crimes and misdemeanors."<sup>16</sup> Thus, very early in American impeachment history, a judicial officer was impeached and removed from office on grounds other than "treason, bribery, or other high crimes and misdemeanors."

In 1912, Circuit Judge Robert W. Archbald was accused of using his position as U.S. Commerce Court judge to enrich himself by entering into profitable business deals with potential litigants. He was accused of behavior, which was not in itself an abuse of his judicial office and clearly not one of the impeachable offenses. Nonetheless, the House committee that drafted the articles of impeachment against Judge Archbald argued that the constitutional provision that judges hold their office only during "good behavior" made a judicial officer subject to impeachment not only on grounds of "treason,

13. See NATHAN AASENG, *THE IMPEACHMENT OF BILL CLINTON* 13 (2000).

14. PHIL. CONST. art. II, § 1. The Constitution provides: "The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."

15. U.S. CONST. art. II, § 4.

16. See EMILY FIELD VAN TASSEL & PAUL FINKELMAN, *IMPEACHABLE OFFENSES: A DOCUMENTARY HISTORY FROM 1787 TO THE PRESENT* 91-92 (1999) [hereinafter VAN TASSEL & FINKELMAN].

bribery, or other high crimes and misdemeanors" but even on offenses that were, in fact, non-criminal in nature but constituted inappropriate judicial conduct. *Simply put, if judges hold their offices during "good behavior," then bad behavior is a violation of the condition for holding office and, hence, an additional basis for impeachment and removal.* The Senate agreed by voting to remove Judge Archbald from office.

This case of Judge Archbald represents the first solid precedent for the view that the ground for impeachment need not be "criminally indictable" and need not fall under the grounds for impeachment under the U.S. Constitution.<sup>17</sup>

Almost two centuries after the impeachment and removal of Judge Pickering, the constitutional problem regarding removal of federal judges - that they were only removable by means of impeachment - was once again highlighted. Federal Judge Harry E. Claiborne had been charged and convicted of falsifying his income tax returns. Even while serving his sentence, he continued to receive his salary<sup>18</sup> as a Federal Judge since, legally, he had not been removed from public office by his criminal conviction and he could only be validly removed through impeachment proceedings. The Congress and the Senate, upon receiving notice of Judge Claiborne's situation, fast-tracked his impeachment and removed him from office. *It is worth noting that one of the articles of impeachment against him stated that the mere fact of criminal conviction constituted an impeachable offense.* The Senate rejected this argument and although, theoretically, a conviction for tax evasion plainly did not fall under the constitutional provision on impeachable offenses, Judge Claiborne's impeachment and removal was deemed, at the time, a foregone conclusion. Thus, regardless of the less than airtight grounds for impeachment and removal, Judge Claiborne was removed essentially for bringing the judiciary into "scandal and disrepute."<sup>19</sup>

### III. OUTLINING THE IMPEACHMENT STANDARD FOR JUDICIARY

As shown by the foregoing, under American Law, a different standard of behavior is expected of judicial officers for purposes of impeachment as compared to members of the executive or legislative branches of government. The grounds for the impeachment and removal of members of the judiciary are not limited to the constitutionally stated grounds of "treason, bribery, or other high crimes and misdemeanors," but also include the application of the standard of "good behavior."

17. See *id.* at 132-34.

18. He received about \$80,000 a year at that time.

19. See VAN TASSEL & FINKELMAN, *supra* note 16, at 168-72.

### A. Different Impeachment Standard for Judiciary

Another question that has surfaced time and again is whether judges may be impeached for behavior that elected officials may not be impeached for, because of the constitutional statement that judges "shall hold their offices during good behavior."

In 1970, Gerald R. Ford of Michigan sought the ouster of Supreme Court Justice William O. Douglas for what he considered to be disreputable, but not criminal, private behavior. In so doing, he distinguished between the standards of impeachment for judges, and all other civil officers, saying:

In my view, one of the specific or general offenses cited in Article II [of the Constitution: treason, bribery, or other high crimes and misdemeanors] is required for removal of the directly elected President and Vice-President and all appointed civil officers of the executive branch of the Federal Government, whatever their terms of office. But in the case of members of the judicial branch, federal judges and justices, I believe an additional and much stricter requirement is imposed by Article III, namely "good behavior."<sup>20</sup>

For all other officials, therefore, Ford acknowledged the limits that the impeachment clause imposes.

*Impeachment has historically appeared to operate on different levels according to the official implicated in the process. Since impeachment is the only way, other than resignation or death, to get a federal judge off the bench, and since the Constitution mandated that federal judges hold their offices "during good behavior," it may be that the standards for impeaching judges are different from those for officials who hold office for a limited term of years and who can be removed by the president or by voters through democratic elections.... Certainly the lion's share of impeachments has been directed toward the judicial branch, suggesting a willingness on the part of Congress to allow democratic processes to weed out bad actors where the power to do so exists.<sup>21</sup>*

### B. Policy behind the Different Standard for Judicial Officers

From the foregoing, the conclusion may be drawn that the rule on impeachment is *much stricter*<sup>22</sup> for members of the judiciary and, therefore, their conviction and removal from public office by impeachment is *essentially less difficult* compared to non-judicial officers.

20. *Id.* at 7.

21. *Id.* at 7-8 (emphasis supplied).

22. "Stricter" in the sense that the implementation of the standards of impeachability is more severe and that the actual grounds for impeachment are essentially broadened by the harsher standard.

*It should be emphasized that this policy is a direct result of the nature of judicial office and not merely due to the additional constitutional requirement for holding office only "during good behavior."*

For example, *the different duties or circumstances of impeachable officers might justify different bases for their respective impeachments.* In the case of federal judges, the good behavior clause meant to guarantee not that they may not be impeached on the basis of a looser standard than the President or other impeachable officials, but rather that they may be impeached on a basis that takes into account their special duties or functions. *Thus, a federal judge may be impeached for a particularly controversial law review article or speech, because these actions undermine confidence in the judge's neutrality and impugn the integrity of the judicial process.* In contrast, an executive official who has done the same thing may not be impeached, because neutrality is not necessarily important to his or her job, especially if the person has been charged with advancing a controversial policy agenda.<sup>23</sup>

The comparatively easier impeachability and removal of judicial officers is predicated on the fact that judges and justices have a significantly longer term of office as compared to members of the executive and legislative branches. This longer term of office, especially for Justices of the Philippine Supreme Court who hold office till the age of 70,<sup>24</sup> compared to the shorter terms of elected public officials<sup>25</sup> means that the public would have to bear with an unfit judicial officer much longer than with officers in the executive or legislature.

To guard against the selection or retention of unfit Presidents and Vice-presidents, the Constitution provides for periodic elections. Frequent and regular elections mean that if the American people are unhappy with the job that these officers are doing, or disapprove of their behavior generally, they may turn them out of office.... But what about judges who engage in odious behavior, but who

23. MICHAEL J. GERHARDT, *THE FEDERAL IMPEACHMENT PROCESS* 105-06 (2000).

24. The minimum age for a Philippine Supreme Court Justice is forty. Article VIII, § 7 (1) of the Constitution provides that "[n]o person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court *must be at least forty years of age* and, must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines." (emphasis supplied) Thus, theoretically, a person may be a member of the tribunal for *thirty years*.

25. The terms of office of elected public officials, as stated in the Constitution, are as follows: (1) President – six years (Article VII, § 4); (2) Vice-President – six years (Article VII, § 3-4); (3) Senators – six years (Article VI § 4); (4) Members of the House of Representatives – three years (Article VI, § 7); and (5) Local elective officials, except barangay officials, which shall be determined by law (now governed by the Local Government Code of 1991) – three years (Article X, § 8).

ostensibly hold their offices for life? To provide a means for removing civil officers who abuse their power in office, the impeachment process was devised as a grave remedy of last resort.<sup>26</sup>

Due to the fact that for legislative and executive public officers there are sufficient mechanisms - specifically elections and, in the Philippines, also recall proceedings - for removal and replacement of unfit public officers, whereas for judicial officers these mechanisms are inapplicable and inappropriate, the higher standard of behavior for judicial officers and the broader grounds for their impeachment and removal operate as means of achieving the same purpose for holding regular elections - removal of people unfit for public service.

#### IV. HIGHER STANDARDS APPLY TO PHILIPPINE SUPREME COURT JUSTICES

The view that members of the judiciary may be removed from public office due to "bad behavior" should be applicable to the Philippine judiciary being in consonance with the constitutional mandate that members of the Philippine Supreme Court also hold office only "during good behavior."<sup>27</sup> Therefore, the grounds stated under Article XI, Section 2 namely, "culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust" should not be exclusive grounds for impeachment of Supreme Court Justices.

*As in the American model, there is a need for a high standard of behavior for impeachable judicial officers in the Philippines.* With regard to the Justices of the Supreme Court, being the only impeachable judicial officers under the Constitution, these Justices must similarly act in accordance with the higher behavioral standard and be subjected to a stricter rule on impeachability. This is a necessary consequence of their high judicial office, as these *justices who are endowed with such immense judicial power should have, concomitantly, higher standards of behavior.*

Furthermore, for a Supreme Court Justice to hold office even during "bad behavior" would, in fact, constitute a "culpable violation of the

26. VAN TASSEL & FINKELMAN, *supra* note 16, at 2-3 (emphasis supplied).

27. PHIL CONST. art. VIII, § 11. The Constitution provides in full: "The *Members of the Supreme Court* and judges of lower courts *shall hold office during good behavior* until they reached the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon." (emphasis supplied)

Constitution" since he may only hold judicial office during "good behavior." Consequently, this would be a ground for impeachment and removal under Section 2 of Article XI. Thus, there are valid grounds for the application of the "good behavior" standard on the impeachment of judicial officers in the Philippine setting.

#### V. CONCLUSION

Judicial impeachment under Philippine Law, as a manifestation of the "goals, objectives, values, and ideals" of our society, is an acknowledgment of both the high dignity and respect accorded to the Justices of the Supreme Court and the equally high standards demanded of their conduct. Borrowing from the richer experience of American history on judicial impeachment, Supreme Court Justices must likewise be subjected to a stricter criterion of impeachability, in comparison to executive or legislative officers, due to the nature of their judicial office.

Clearly, it is an indispensable requirement for a republican and democratic society such as the Republic of the Philippines, which values the rule of law and fairness, to have Justices of the Supreme Court who exemplify the highest standards of behavior and whose conduct and character are, in the fullest and truest sense, "unimpeachable."