

Testing Constitutional Waters III: Areas for Constitutional Reform in the System of Checks and Balances — Making Sense of P-Noy’s *Tuwid na Landas*

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I. INTRODUCTION

On 30 June 2010, Benigno S. Aquino III ended his Inaugural Address as the 15th President of the Republic of the Philippines with a call to the Filipino people by saying, "*Tayo na sa tuwid na landas.*"¹ This statement, encouraging his countrymen to collectively take the "righteous path," has, since then,

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1. Benigno S. Aquino III, 15th President of the Republic of the Philippines, Inaugural Address at Quirino Grandstand, Manila (June 30, 2010) (transcript available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20100630-278403/Inaugural-Speech-of-President-Benigno-S-Aquino-III> (last accessed May 28, 2012)) [hereinafter Aquino, Inaugural Address]. The direct translation of the above quoted words cannot be found in the official English translation provided by the Aquino Media Bureau. *Id.* However, these words can roughly be translated to "Let us all move forward and take the righteous path."

defined Aquino's policies, administrative acts, and political pronouncements.²

Taking the "righteous path," viewed from a different angle, shows the President's fight against corrupt practices and abuse of power by government officials. That this fight should underscore the President's actions calls to mind one of his slogans during the May 2010 elections, that is, "*Kung walang corrupt, walang mahirap*. (If there is no corruption, then the people will not be poor.)"

Almost a year later, the President's emphasis on the *tuwid na landas* and his stance on corruption has not slackened. In delivering his Second State of the Nation Address, the President hit the mark in acknowledging the collective frustrations of the Filipino people on issues of corruption, abuse of power, and the "mindset of entitlement" simply through the institution of his "no *wang-wang* policy."³ During his speech, Aquino constantly referred to his countrymen as his "bosses,"⁴ similar to how he had called them during his Inaugural Address, seemingly as a gesture that the President answers not to political alliances, parties, or patrons but to the Filipino people. The President, in using a familiar term, wanted to present his administration as one that stands in direct and stark contrast to ones characterized by dictatorships and plagued by practices that are beneficial only to those who are in power and do not attend to the needs of the Filipinos.⁵

2. See generally Aquino Promises Tracker, Government Ethics, available at <http://www.abs-cbnnews.com/aquino-promises/all> (last accessed May 28, 2012).

3. Benigno S. Aquino III, 15th President of the Republic of the Philippines, Second State of the Nation Address at the Session Hall of the House of Representatives, Batasan Pambansa Complex, Quezon City (July 25, 2011) (transcript available at <http://www.gov.ph/2011/07/25/benigno-s-aquino-iii-second-state-of-the-nation-address-july-25-2011-en/> (last accessed May 28, 2012)) [hereinafter Aquino, Second SONA]. In the official English translation of his Second State of the Nation Address (SONA), the President stated,

Over the years, the *wang-wang* had come to symbolize abuse of authority. It was routinely used by public officials to violate traffic laws, inconveniencing ordinary motorists — as if only the time of the powerful few, and no one else's, mattered. Instead of behaving like public servants, they acted like kings. This privilege was extended to their cronies and patrons, who moved along the streets as if they were aristocracy, indifferent to those who were forced to give way and were left behind. Abusing privilege despite promising to serve — this is the *wang-wang* mindset; this is the mindset of entitlement.

Id.

4. *Id.*

5. Aquino, Inaugural Address, *supra* note 1.

A closer look at Aquino's platform during the 2010 Presidential Elections, titled "A Social Contract with the Filipino People" (Social Contract),⁶ should paint a clearer picture of the motives that underlie the President's actions since taking his oath. First, the Social Contract listed Aquino's role in taking the "righteous path" as the "nation's first and most determined fighter of corruption."⁷ In line with this role is his goal of transformation in the area of national leadership, especially as coming from an administration characterized as one

[whose] legitimacy is under question; ... persecutes those who expose the truth about its illegitimacy and corruption; ... stays in power by corrupting individuals and institutions; ... confuses the people with half-truths and outright lies; ... rewards, rather than punishes, wrongdoing; ... offers no lasting solutions for the many problems of the country; ... weakens the democratic institutions that hold our leaders accountable; ... hinders our local governments from delivering basic services; [and] has no vision of governance beyond political survival and self-enrichment.⁸

Thus, Aquino's Social Contract includes a 16-point agenda that responds to his vision and enumerates his commitments in priority areas, namely: transformational leadership, the economy, government service, gender equality, peace and order, and the environment.⁹ In the same platform, the President calls to the Filipino people when he refers to his mission as beginning with "ourselves — by doing the right things, by giving value to excellence and integrity and rejecting mediocrity and dishonesty, and by giving priority to others over ourselves."¹⁰ Finally, Aquino commits that the change in leadership will be made "across many aspects of our national life."¹¹

Aquino's Social Contract, particularly, its socio-economic reforms, has been lauded by the Philippine Development Forum as "[going] to the heart of the many development challenges that Filipinos confront today."¹² Notably, and in line with his transformational leadership policy, Executive

6. Benigno S. Aquino III, A Social Contract with the Filipino People, *available at* <http://www.gov.ph/the-republic/the-president/benigno-simeon-cojuangco-aquino-iii/platform-of-government/> (last accessed May 28, 2012) [hereinafter Aquino Social Contract].

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Development partners pleased with Aquino's reform programs*, MANILA BULL., Feb. 28, 2011, *available at* <http://www.mb.com.ph/node/306635/development-partner> (last accessed May 28, 2012).

Order (E.O.) No. 43,¹³ entitled, “Pursuing Our Social Contract with the Filipino People through the Reorganization of the Cabinet Clusters,” has been characterized by former Chief Justice Artemio V. Panganiban as “Aquino’s polestar,”¹⁴ as telling of the “values and standards that guide his governance: transparency, accountability, [and] integrity”¹⁵ and as a direct reflection of his vision of a Philippines “with a re-awakened sense of right and wrong, through the living examples of our highest leaders.”¹⁶ Secretary Herminio Coloma, Jr. of the Presidential Communication Operations Office has described Aquino’s Social Contract on similar terms during the President’s one-year mark in office, on the date of which he “renewed the vows” he made to the Filipino people during his campaign.¹⁷

It has been more than one and a half years since Aquino took his presidential oath and entered into his Social Contract with the Filipinos. Despite the initial praise heaped on Aquino’s persistent efforts to fight corruption,¹⁸ numerous events have, since then, transpired which placed his administration under tight scrutiny, due in large part to its clash with a co-equal branch of the Government — the Judiciary.

Since the controversial and highly debated appointment of Renato C. Corona as the 23d Chief Justice of the Supreme Court of the Philippines, Aquino has not been remiss in his criticisms regarding the actions and decisions of the High Court. Much ado was made over the fact that Aquino took his oath before then Associate Justice Conchita Carpio-Morales as

13. Office of the President, Pursuing Our Social Contract with the Filipino People through the Reorganization of the Cabinet Clusters, Executive Order No. 43 [E.O. No. 43] (May 13, 2011).

14. Artemio V. Panganiban, *President Aquino’s polestar*, PHIL. DAILY INQ., May 29, 2011, available at <http://opinion.inquirer.net/5539/president-aquino’s-polestar> (last accessed May 28, 2012).

15. *Id.*

16. *Id.*

17. Mia M. Gonzalez, *Aquino to renew ‘social contract,’* BUS. MIRROR., June 29, 2011, available at <http://www.businessmirror.com.ph/home/top-news/13126-aquino-to-renew-social-contract-> (last accessed May 28, 2012).

18. *High marks for anti-corruption*, MANILA TIMES, Jan. 3, 2012, available at <http://www.manilatimes.net/index.php/opinion/110-editorials/14333-high-marks-for-anti-corruption> (last accessed May 28, 2012); *The untouchables*, THE ECONOMIST, Jul. 7, 2011, available at <http://www.economist.com/node/18929267> (last accessed May 28, 2012); & Ramon R. del Rosario, Jr., Chairman of the Makati Business Club, Reaction to Economic Briefing by Government at the Philippine Mid-year Economic Briefing at Dusit-Thani, Manila (Aug. 18, 2010) (transcript available at <http://www.mbc.com.ph/news/updates/aquino-administration-holds-first-mid-year-economic-briefing/> (last accessed May 28, 2012)).

opposed to what should traditionally have been an oath administered by Chief Justice Corona.¹⁹ Aquino's most public and pronounced criticism of the Judiciary was made during the President's speech at the First National Criminal Justice Summit (NCJS).²⁰ Standing a few meters away from Chief

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19. Caroline J. Howard, Much ado about presidential oath-taking, *available at* <http://www.abs-cbnnews.com/-depth/05/18/10/much-ado-about-presidential-oath-taking> (last accessed May 28, 2012); Dona Pazzibugan, *SC accepts Aquino decision on oath-taking*, PHIL. DAILY INQ., May 21, 2010, *available at* <http://newsinfo.inquirer.net/breakingnews/nation/view/20100521-271298/SC-accepts-Aquino-decision-on-oath-taking> (last accessed May 28, 2012); Rodel Rodis, *No Corona-tion for Noynoy*, PHIL. DAILY INQ., May 24, 2010, *available at* <http://globalnation.inquirer.net/columns/columns/view/20100524-271792/No-Corona-tion-for-Noynoy> (last accessed May 28, 2012); & Jerome Aning, *Corona: No hard feelings on Aquino's oath-taking before Morales*, PHIL. DAILY INQ., May 11, 2010, *available at* <http://newsinfo.inquirer.net/breakingnews/nation/view/20100611-275008/Corona-No-hard-feelings-on-Aquinos-oath-taking-before-Morales> (last accessed May 28, 2012).
20. Benigno S. Aquino III, 15th President of the Republic of the Philippines, Speech during the First National Criminal Justice Summit, Manila (Dec. 5, 2010) (transcript *available at* <http://www.gov.ph/2011/12/05/speech-of-president-aquino-at-the-1st-national-criminal-justice-summit-english-december-5-2011/> (last accessed May 28, 2012)) [hereinafter Aquino NCJS Speech]. President Aquino touched upon the Supreme Court decisions on the unconstitutionality of the Truth Commission and the creation of the districts within Camarines Sur, the alleged electoral fraud in the 2004 and 2007 elections, the temporary restraining order issued on the hold departure order against Congresswoman (and former President) Gloria Macapagal-Arroyo, and, finally, the constitutionality of the appointment of Chief Justice Renato C. Corona himself. As provided in the official English translation of his speech, the President remarked —

This is not the first time we were perplexed by a ruling of the Supreme Court. According to Article 7, Section 15 of the Constitution, "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety." But we all know how Mrs. Arroyo insisted on appointing the Chief Justice. He was appointed, not two months before the election, but a week after. According to the law and one of their previous decisions, the Supreme Court ruled that the President could not appoint any official two months before an election, except for temporary appointments to the executive position. But they turned their back on their pronouncements when Mrs. Arroyo appointed the Honorable Chief Justice Renato Corona — in a position that was not in the [E]xecutive branch, but of the [J]udiciary. The question now is: is the Supreme Court in violation of the Constitution?

Id. (emphases supplied).

Justice Corona, who was also an attendee of the event, Aquino impugned several of the High Court's decisions, including the decision upholding the constitutionality of the Chief Justice's appointment.²¹

This tirade prompted Supreme Court spokesperson, Atty. Midas P. Marquez, to remark that such "public ... [denouncement of] the [C]ourt's independent actions" as "considerably unusual" and "quite disturbing."²² Institutions such as the Volunteers Against Crime and Corruption, the Integrated Bar of the Philippines (IBP), and members of the legal community such as noted constitutionalist Fr. Joaquin G. Bernas, S.J. have expressed their disapproval over the President's speech,²³ with the IBP stating that "[w]hile the President is entitled to express his views on the resolution of cases by the Supreme Court, *such open criticisms must deal with the demands of the [r]ule of [l]aw and the doctrine of separation of powers.*"²⁴

The brewing conflict between the President and the Chief Justice reached its boiling point on 12 December 2011 when 188 members of the House of Representatives signed an impeachment complaint filed against Chief Justice Corona.²⁵ Representative Niel C. Tupas, Jr., as the main proponent of the impeachment complaint, denies that Malacañang had any hand in the process, but claims that he has Aquino's support.²⁶ Inevitably, the impeachment of Corona was seen as a part of Aquino's *tuwid na landas*. In response to a speech delivered by Corona on the perils of an "Aquino

21. *Id.*

22. Christine O. Avedaño & Marlon Ramos, *Aquino lambasts Supreme Court in front of Corona*, PHIL. DAILY INQ., Dec. 6, 2011, available at <http://newsinfo.inquirer.net/105887/aquino-lambasts-supreme-court-in-front-of-corona> (last accessed May 28, 2012).

23. Rey G. Panaligan, *Corona won't resign*, MANILA BULL., Dec. 6, 2011, available at <http://www.mb.com.ph/articles/343838/corona-not-resigning> (last accessed May 28, 2012).

24. ABS-CBNnews.com, IBP 'gravely concerned' over Aquino's tirades vs SC, available at <http://www.abs-cbnnews.com/nation/12/06/11/ibp-gravely-concerned-over-aquinos-tirades-vs-sc> (last accessed May 28, 2012) (emphasis supplied).

25. Jess Diaz, *Corona impeached*, PHIL. STAR, Dec. 13, 2011, available at <http://www.philstar.com/Article.aspx?articleId=757890> (last accessed May 28, 2012).

26. Maila Ager, *Aquino supports impeachment move against Chief Justice Corona — Solon*, PHIL. DAILY INQ., Dec. 13, 2011, available at <http://newsinfo.inquirer.net/110355/aquino-supports-impeachment-move-against-chief-justice-corona-solon> (last accessed May 28, 2012).

dictatorship,”²⁷ Malacañang, through its spokesperson, Edwin Lacierda, dismissed such claims and stated that since Corona is regarded by Malacañang as a “stumbling block” to its reforms and “as someone we cannot rely on *to observe the rule of law*,” the Chief Justice’s impeachment is part of the plan of the Aquino administration “to dismantle the Arroyo apparatus of trying to protect her from accountability.”²⁸

Looking at the exchange of words during the Aquino–Corona conflict, common threads in the form of the use of the following phrases can be picked out: rule of law, separation of powers, checks and balances, and accountability. These phrases have been thrown around not only by the prosecution²⁹ and the defense³⁰ in their respective pleadings for the impeachment court, but also by the senator-judges, various institutions and members of the legal community,³¹ columnists,³² and even the President himself.

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27. Marlon Ramos, *Corona declares war on Aquino*, PHIL. DAILY INQ., Dec. 15, 2011, available at <http://newsinfo.inquirer.net/111107/corona-raps-aquino-impeachment-bid> (last accessed May 28, 2012).
 28. Bea Cupin, *Corona impeachment part of effort to ‘dismantle Arroyo apparatus’ — Palace*, available at <http://www.gmanetwork.com/news/story/241683/news/nation/corona-impeachment-part-of-effort-to-dismantle-arroyo-apparatus-ndash-palace> (last accessed May 28, 2012) (emphasis supplied).
 29. Verified Complaint for Impeachment Prefatory Statement, In Re: Impeachment of Honorable Chief Justice Renato C. Corona as Chief Justice of the Supreme Court of the Philippines, Case No. 002-2011 (Dec. 12, 2011) [hereinafter *Corona Impeachment Complaint*].
 30. Answer to Verified Complaint for Impeachment ¶¶ 11, 13, & 15, In Re: Impeachment of Honorable Chief Justice Renato C. Corona as Chief Justice of the Supreme Court of the Philippines, Case No. 002-2011 (Dec. 21, 2011).
 31. Ed Javier, *‘Hindi ka nag-iisa,’* BUS. MIRR., Dec. 19, 2011, available at <http://www.businessmirror.com.ph/home/opinion/20930-hindi-ka-nag-iisa> (last accessed May 28, 2012).
 32. Compare Conrado de Quiros, *Rule of law*, PHIL. DAILY INQ., Feb. 20, 2012, available at <http://opinion.inquirer.net/23485/rule-of-law> (last accessed May 28, 2012) (arguing that Aquino is merely exercising his powers “as demanded by the people” and equating “rule of the people” with “rule of law”), with Charlie Manalo, *Noy’s Plan B vs Corona: Mob rule*, DAILY TRIBUNE, Jan. 3, 2012 available at http://www.tribuneonline.org/commentary/20120103_com6.html (last accessed May 28, 2012) (citing Aquino’s mob rule as done in “blatant disrespect of the rule of law”). See also Randy David, *Separation of powers*, PHIL. DAILY INQ., Dec. 14, 2011, available at <http://opinion.inquirer.net/19157/separation-of-powers> (last accessed May 28, 2012) (stating that Corona must rely “on a reserve of public esteem,” drawing comparisons to the impeachment of former Chief Justice Hilario G. Davide, Jr., for “disputes of this nature are settled on the basis of public trust”); Amando Doronila, *Collision*

For example, Senator Juan Ponce Enrile, Presiding Officer of the Senate sitting as an impeachment court, called for upholding the rule of law in light of “disturbing developments in the impeachment trial.”³³ Senator Miriam Defensor-Santiago, in the same vein, called for the application of checks and balances and respect for the separation of powers of equal branches of the government.³⁴ The Philippine Bar Association, for its part, “views the impeachment proceedings commenced against Chief Justice Renato Corona as the constitutionally ordained process which epitomizes the [r]ule of [l]aw at work.”³⁵

President Aquino, on the one hand, assures that “the ‘sacredness’ of the separation of the branches of the government is and will be preserved in light of his support for the impeachment of [the] Chief Justice[.]”³⁶ Chief Justice Corona, on the other hand, decried, to the very end of the impeachment trial, the President’s heavy involvement in the prosecution of his case as it violates the basic notions of justice and fair play and even questioned Aquino’s use of the entire machinery of the government against him as part of the former’s *tuwid na landas*.³⁷

avoided, PHIL. DAILY INQ., Feb. 28, 2012, *available at* <http://opinion.inquirer.net/24009/collision-avoided> (last accessed May 28, 2012) (chastising Aquino for his public statements on Corona’s guilt and for “[making] his own interpretation of the law, like a chief justice, even though he is not a lawyer”); and Rigoberto Tiglao, *Aquino savages the rule of law*, PHIL. DAILY INQ., Dec. 7, 2011, *available at* <http://opinion.inquirer.net/18695/aquino-savages-the-rule-of-law> (last accessed May 28, 2012) (criticizing Aquino for organizing “a lynch mob against a crucial institution of a civilized society, alleging that the Supreme Court justices rule not on the basis of the law but on the command of who appointed them to their posts”).

33. Amando Doronila, *Enrile rebuffs Palace on rule of law*, PHIL. DAILY INQ., Feb. 21, 2012, *available at* <http://opinion.inquirer.net/23543/enrile-rebuffs-palace-on-rule-of-law> (last accessed May 28, 2012).
34. ABS-CBNnews.com, *Miriam: Impeach court is not almighty*, *available at* <http://www.abs-cbnnews.com/-depth/02/13/12/miriam-impeach-court-not-almighty> (last accessed May 28, 2012).
35. Ronald Olivar Solis, *Ordained by Charter*, PHIL. DAILY INQ., Dec. 23, 2011, *available at* <http://opinion.inquirer.net/19629/ordained-by-charter> (last accessed May 28, 2012).
36. Recto Mercene, *Aquino assures ‘sacredness’ of separation of powers will be preserved despite move vs Chief Justice*, BUS. MIRR., Dec. 14, 2011, *available at* <http://businessmirror.com.ph/home/nation/20703-aquino-assures-sacredness-of-separation-of-powers-will-be-preserved-despite-move-vs-cj> (last accessed May 28, 2012).
37. Renato C. Corona, *Tugon ng Punong Mahistrado sa Talumpati ng Pangulo sa La Consolacion College tungkol sa Impeachment Proceedings* (Feb. 17, 2012) (transcript

Thus, in view of the factual setting presented by the events that have transpired from the beginning of President Aquino's administration, particularly, the collision course on which the Executive and the Judicial branches of the Government have been placed, this Article will examine implications for constitutional reform in light of the constitutional issues that present themselves.

First, as in any conflict between the branches of the Government, a review of the principle on checks and balances will be conducted. This principle will be related to the corollary doctrine of separation of powers and will be linked to the application of the rule of law. Next, the antecedent facts pertaining to this conflict will be enumerated. Finally, implications for constitutional reform will be sought and analyzed with the end in view of providing more stability and effectivity for the institutions that contribute to the democratic process enshrined in the Philippine Constitution.

II. A REVIEW OF THE PRINCIPLES OF SEPARATION OF POWERS, CHECKS AND BALANCES, AND THE RULE OF LAW

A. Separation of Powers

The invocation of the doctrine of separation of powers, the principle of checks and balances, and the rule of law in relation to conflicts between the three branches of the Government is not something new. As early as 1936, in *Angara v. Electoral Commission*,³⁸ the Supreme Court had remarked that “[i]n times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated.”³⁹

Again, in 2003, these concepts were used in the landmark case of *Francisco, Jr. v. Nagmamalakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*,⁴⁰ in support of the “complex issues”⁴¹ arising from a second impeachment complaint filed against then Chief Justice Hilario G. Davide, Jr. in this wise —

available at <http://newsinfo.inquirer.net/147423/corona's-response-to-aquino's-speech-in-la-consolacion> (last accessed May 28, 2012)).

38. *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

39. *Id.* at 157.

40. *Francisco, Jr. v. Nagmamalakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, 415 SCRA 44 (2003). In *Francisco, Jr.*, the Supreme Court ruled as unconstitutional Sections 16 and 17 of Rule V of the Rules of Procedure in Impeachment Proceedings and, as a consequence, the second impeachment complaint filed against then Chief Justice Davide was prohibited under ¶ 5, § 3 of Article XI of the Constitution. *Id.* at 179.

41. *Id.* at 105.

[T]his Court is ever mindful of the essential truth that the inviolate doctrine of separation of powers among the [L]egislative, [E]xecutive[,] or [J]udicial branches of [G]overnment by no means prescribes for absolute autonomy in the discharge by each of that part of the governmental power assigned to it by the sovereign people.

At the same time, the corollary doctrine of checks and balances which has been carefully calibrated by the Constitution to temper the official acts of each of these three branches must be given effect without destroying their indispensable co-equality.

Taken together, these two fundamental doctrines of [R]epublican [G]overnment, intended as they are to insure that governmental power is wielded only for the good of the people, mandate a relationship of interdependence and coordination among these branches where the delicate functions of enacting, interpreting[,] and enforcing laws are harmonized to achieve a unity of governance, guided only [by] what is in the greater interest and well-being of the people. Verily, *salus populi est suprema lex*.⁴²

Even as a “fundamental principle in our system of government,” there is no singular, express provision for the doctrine of separation of powers in the 1987 Philippine Constitution.⁴³ The doctrine can be gleaned from how the provisions in the Constitution confer on each “department of the government ... *exclusive cognizance of matters within its jurisdiction*.”⁴⁴ This exclusive jurisdiction, most simply put, means that “the [L]egislative [branch] is empowered to make laws; the [E]xecutive [branch] is required to carry out the law; and the [J]udiciary ... is charged with interpreting the law.”⁴⁵ These branches are “separate, co-equal, coordinate[,] and supreme within their respective spheres but, imbued with a system of checks and balances to prevent unwarranted exercise of power.”⁴⁶ By design, the doctrine of separation of powers is intended “to restrain one branch from inappropriate interference in the business, or intruding upon the central prerogatives, of another branch; it is a blend of courtesy and caution, ‘a self-executing

42. *Id.*

43. *Angara*, 63 Phil. at 156.

44. *Id.* (emphasis supplied).

45. *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 568 SCRA 402, 669 (2008) (J. Velasco, Jr., dissenting opinion) (citing BLACK’S LAW DICTIONARY 1305 (6th ed. 1991)).

46. *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 549 SCRA 77, 138 (2008).

safeguard against the encroachment or aggrandizement of one branch at the expense of the other.”⁴⁷

Justice Irene R. Cortes, speaking for the Court in *Marcos v. Manglapus*,⁴⁸ resolved the issue of limitations to one’s right to travel or, particularly, the issue of whether former President Corazon C. Aquino may prohibit the return of the Marcoses to the Philippines.⁴⁹ She approached the problem by reviewing the doctrine of separation of powers in relation to the provisions of the 1987 Constitution and the extent of each power conferred upon the three departments, thus —

[T]he 1987 Constitution explicitly provides that ‘the legislative power shall be vested in the Congress of the Philippines[,]’ ‘the executive power shall be vested in the President of the Philippines[,]’ and ‘the judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.’ These provisions not only establish a separation of powers by actual division but also confer plenary legislative, executive[,] and judicial powers subject only to limitations provided in the Constitution.⁵⁰

B. Checks and Balances

The doctrine of separation of powers, as stated in the case of *Francisco, Jr.*, is closely related with the principle of checks and balances.⁵¹ The Supreme Court has used this principle in the resolution of conflicts arising from acts that impinge on the “mutual independence” of the three branches of the Government.⁵² For example, it has been used to deny⁵³ a petition for *mandamus* against the Senate, which petition compelled them to reinstate the petitioner and allow him to take his seat as a senator, despite a resolution depriving him of such office and all its emoluments for a year.⁵⁴ To do so, the Court ruled, would be “to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control.”⁵⁵ It has also been

47. *Id.* (citing *Younstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 528, 635 (1952), *U.S. v. Munoz-Flores*, 495 U.S. 385 (1990), & *Buckley v. Valeo*, 424 U.S. 1 (1976)).

48. *Marcos v. Manglapus*, 177 SCRA 668 (1989).

49. *Id.* at 688.

50. *Id.* at 688-89 (citing PHIL. CONST. arts. VI, § 1; VII, § 1; & VIII, § 1) (emphasis supplied).

51. *Francisco, Jr.*, 415 SCRA at 105.

52. *Vargas v. Rilloraza*, 80 Phil. 297, 315 (1948).

53. *Alejandrino v. Quezon*, 46 Phil. 83, 97 (1924).

54. *Id.* at 86-87.

55. *Alejandrino*, 46 Phil. at 88.

used to strike down as unconstitutional a section of a law which was deemed to “arrogate judicial power unto [Congress],” by virtue of the law’s creation of a congressional oversight committee, without abiding by the limits set by the Constitution.⁵⁶

In *Lansang v. Garcia*,⁵⁷ the Supreme Court exercised its power of judicial review and ruled on the propriety of the President’s suspension of the privilege of the writ of habeas corpus and explained how the principle of checks and balances operates between the Executive and the Judicial branches of the Government, thus —

Pursuant to the principle of separation of powers underlying our system of government, the Executive is supreme within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is *supreme*, as regards the suspension of the privilege, but only *if* and *when* he acts *within* the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, in this respect, is, in turn, constitutionally supreme.

In the exercise of such authority, the function of the Court is merely to *check* — not to *supplant* — the Executive, *or to ascertain merely whether he had gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act.⁵⁸

On exercising the power of judicial review over a co-equal branch of the government, the Supreme Court emphasized that this does not mean a supremacy of one branch over the other,⁵⁹ nor does it mean that one branch should supplant the will of another.⁶⁰ It is all but part of the system of checks and balances as mandated by the Constitution⁶¹ or a system that will ensure “that any act of government is done in consonance with the authorities and rights allocated to it by the [same].”⁶² Should any act of any branch of the government exceed that which is allocated to it by the Constitution, the Supreme Court, in the exercise of the power of judicial review “will not be deterred to pronounce said act as void and unconstitutional.”⁶³

56. *Abakada Guro Party List v. Purisima*, 562 SCRA 251, 286-89 & 299-300 (2008).

57. *Lansang v. Garcia*, 42 SCRA 448 (1971).

58. *Id.* at 479-80 (citing BERNARD SCHWARTZ, AN INTRODUCTION TO AMERICAN ADMINISTRATIVE LAW 190-91 (2d ed. 1962)) (emphases supplied).

59. *Dabuet v. Roche Pharmaceuticals, Inc.*, 149 SCRA 386, 394 (1987).

60. *Biraogo v. Philippine Truth Commission of 2010*, 637 SCRA 78, 177 (2010).

61. *Dabuet*, 149 SCRA at 394.

62. *Biraogo*, 637 SCRA at 177.

63. *Id.*

In *Angara*, a more interrelated view of the operation of the principle of checks and balances within the three branches of the Government is explained by Justice Jose P. Laurel, thus —

[T]he Chief Executive under our Constitution is so far made a check on the legislative power that his assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointments of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.⁶⁴

C. *The Rule of Law*

The phrase “rule of law” calls for different meanings, depending upon the context in which the phrase is used.⁶⁵ Scholars have long argued on the

64. *Angara*, 63 Phil. at 156-57. Note that under Article VI, Section 27 (1) of the 1987 Constitution, a two-thirds vote of the House of Representatives is required to pass a bill on reconsideration. PHIL. CONST. art. VI, § 27 (1). Further, according to Article VII, Section 21 of the same, the number of votes required to ratify a treaty is two-thirds of all the members of the Senate. PHIL. CONST. art. VII, § 21.

65. BLACK’S LAW DICTIONARY 1332 (7th ed. 1999). Under Black’s Law Dictionary the phrase “rule of law” can mean:

- (1) A substantive legal principle ... [;]
- (2) The supremacy of regular as opposed to arbitrary power ... [;]
- (3) The doctrine that every person is subject to the ordinary law within the jurisdiction ... [;]
- (4) The doctrine that general constitutional principles are the result of judicial decisions determining the rights of private individuals in court ... [;] [or]
- (5) Loosely, a legal ruling; a ruling on a point of law

Id.

propriety of “thin” versus “thick” definitions ascribed to the phrase.⁶⁶ A “thin” definition “[focuses] narrowly on whether existing rules and laws are enforced, whereas a “thick” definition “emphasizes more the justice of the content of the laws.”⁶⁷ For example, the International Bar Association (IBA) describes that the rule of law, as “the foundation of a [civilized] society ... [,] establishes a transparent process accessible and equal to all ... [,] [and] ensures adherence to principles that both liberate and protect.”⁶⁸ On the one hand, the IBA definition enumerates particular elements that are reflective in a system of justice that abides by the rule of law.⁶⁹ On the other hand, the United Nations Secretary General provides a more general definition of the phrase by stating that the rule of law is

a principle of governance in which all persons, institutions[,] and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced[,] and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness[,] and procedural and legal transparency.⁷⁰

Rachel Kleinfeld Belton states that, generally, the definitions of rule of law fall under either the “ends” it seeks to effectuate in a community or the “attributes” required to give effect to a rule of law.⁷¹ She recognizes that the ends-based definition is more favored and argues that there is no “single, unified” end that may be ascribed to the rule of law.⁷² Instead, the rule of law, viewing it from an ends-based standpoint, is composed of five separate

66. Daniel Kaufman, et al., *The Worldwide Governance Indicators: Methodology and Analytical Issues* (World Bank Policy Research Working Paper No. 5430) 3, available at http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1682130_code468680.pdf?abstractid=1682130&mirid=1 (last accessed May 28, 2012).

67. *Id.*

68. Francis Neate, *Commentary on the IBA Council ‘Rule of Law’ Resolution of September 2005* (A Commentary from the International Bar Association) 2, available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=A89CFFB1-BD4A-445C-8CAB-553AF21BD7A7> (last accessed May 28, 2012).

69. *Id.*

70. U.N. Secretary General, *The rule of law and transitional justice in conflict and post-conflict societies*, ¶ 6, U.N. Doc. S/2004/616 (Aug. 23, 2004).

71. Rachel Kleinfeld Belton, *Competing Definitions for the Rule of Law* (An Unpublished Paper Submitted to the Carnegie Endowment for International Peace) 6-7, available at <http://carnegieendowment.org/files/CP55.Belton.FINAL.pdf> (last accessed May 28, 2012).

72. *Id.* at 7-8.

and distinct goods: “(1) a government bound by law, (2) equality before the law, (3) law and order, (4) predictable and efficient rulings, and (5) human rights.”⁷³

In the Philippine context, the use of the phrase can be seen in the preamble of the 1987 Constitution which states that the sovereign Filipino people shall build a government that secures to [themselves] and [their] posterity the blessings of independence and democracy *under the rule of law*.⁷⁴ Based on a study conducted by the World Justice Project, which “measures the extent to which countries adhere to the rule of law” based on several factors,⁷⁵ the extent to which the constitutional mandate of “democracy under the rule of law” is applied in the Philippines yields mixed results. The Philippines ranks highly in terms of effective checks and balances and regulatory enforcement but performs poorly in terms of violations of human rights and the effectivity of the civil court system.⁷⁶

Regarding the definition of the rule of law, the Philippine Supreme Court has used the phrase to mean as that which “narrows the range of governmental action and makes it a subject to control by certain legal devices.”⁷⁷ It is with this definition that one can see how upholding the rule of law is related to the earlier discussed principles of separation of powers and checks and balances — that is, each branch of the Government can and must act only within the limits given to it by law. Otherwise stated, it is “essential

73. *Id.* at 3.

74. PHIL. CONST. pmb. (emphasis supplied).

75. Mark David Agrast, et al., *The Rule of Law Index 2011* (A Report Submitted to the World Justice Project) 1, available at http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf (last accessed May 28, 2012). For this Study, the World Justice Project (WJP) used an attributes-based definition of rule of law. According to the WJP, a society that upholds the rule of law should also uphold the following principles:

- (1) The government and its officials and agents are accountable under the law.
- (2) The laws are clear, publicized, stable, and fair, and protect fundamental rights, including the security of persons and property.
- (3) The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- (4) Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the [make-up] of the communities they serve.

Id.

76. *Id.* at 29.

77. *Pangasinan Trans. Co. v. Public Service Commission*, 70 Phil. 221, 228 (1940).

to the rule of law” that the three departments of the Government respect these principles which are and deemed as the foundation of a republican government⁷⁸ and contained in no less than the Constitution itself. Thus, according to former Chief Justice Enrique M. Fernando, to hold government acts rendered in excess of the power conferred upon them by law is but

a logical corollary to the principle of separation of powers. Once we accept the basic doctrine that each department as a coordinate agency of government is entitled to the respect of the other two, it would seem to follow that at the very least, there is a presumption of the validity of the act performed by it, unless subsequently declared void in accordance with legally accepted principles. The rule of law cannot be satisfied with anything less.⁷⁹

In *Francisco, Jr.*, the Supreme Court, citing *People v. Veneracion*,⁸⁰ invoked the rule of law when it decided against the respondent’s call for judicial restraint in the Court’s exercise of its power of judicial review over the initiation of the impeachment complaint,⁸¹ thus —

*Obedience to the rule of law forms the bedrock of our system of justice. If public officers, under the guise of religious or political beliefs[,] were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. A government of laws, not of men[,] excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, public officers are guided by the [r]ule of [l]aw, and ought ‘to protect and enforce it without fear or favor,’ resist encroachments by governments, political parties, or even the interference of their own personal beliefs.*⁸²

Examples of the interrelated application of the three concepts of rule of law, separation of powers, and checks and balances can be seen in *Lansang* and *Neri v. Senate Committee on Accountability of Public Officers and Investigations*.⁸³

Lansang upheld the constitutionality of a presidential proclamation suspending the privilege of the writ of habeas corpus⁸⁴ due to a finding of “a state of lawlessness and disorder affecting public safety and security of the

78. *Severino v. Governor-General*, 16 Phil. 366, 383 (1910).

79. *Municipality of Malabang v. Benito*, 27 SCRA 533, 544-45 (1969) (J. Fernando, concurring opinion).

80. *People v. Veneracion*, 249 SCRA 244 (1995).

81. *Francisco, Jr.*, 415 SCRA at 158-63.

82. *Id.* at 163 (citing *Veneracion*, 249 SCRA at 251) (emphases supplied).

83. *Neri*, 549 SCRA 77.

84. *Lansang*, 42 SCRA at 495.

State.”⁸⁵ In so ruling, the Court stated that to respect the power granted unto the President by the Consitution would be to respect the rule of law.⁸⁶ To refuse recognition to a valid and reasonable exercise of the power to suspend the privilege of the writ of habeas corpus would be to “[encroach] upon a power vested in [the President] by the Supreme Law of the land and [to deprive] him, to this extent, of such power ... [will violate] the Constitution and [jeopardize] the very [r]ule of [l]aw the Court is called upon to epitomize.”⁸⁷

In *Neri*, the respect accorded to the rule of law as interrelated with the application of the doctrine of separation of powers and the principle of checks and balances is seen in the concluding words of Associate Justice Teresita J. Leonardo-de Castro. In this case, the Supreme Court nullified a contempt order issued by different Senate Committees as it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.⁸⁸ The decision was rendered on the basic rule that “the principles of constitutional law cannot be subordinated to the needs of a particular situation.”⁸⁹ Thus, *Neri* ended with the following words —

The Court’s mandate is to preserve these constitutional principles at all times to keep the political branches of government within constitutional bounds in the exercise of their respective powers and prerogatives, even if it be in the search for truth. This is the only way we can preserve the stability of our democratic institutions and uphold the [r]ule of [l]aw.⁹⁰

A review of Philippine case law on the principles of rule of law, separation of powers, and checks and balances pointedly shows the importance of judicial review in upholding their proper application in times of conflict between the branches of the Government. These principles, which form the bedrock of Philippine Government and democracy, allow the three departments to exercise plenary powers within constitutionally-defined limits. Despite these “deft strokes and bold lines” through which the Constitution has conferred limits on these plenary powers, it is still recognized that “[t]he overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins.”⁹¹

85. *Id.* at 482 (citing Office of the President, Presidential Proclamation No. 889-A [P.P. No. 889-A], whereas cl. (Aug. 30, 1971)).

86. *Id.* at 475.

87. *Id.*

88. *Neri*, 549 SCRA at 139.

89. *Id.* at 138.

90. *Id.*

91. *Angara*, 63 Phil. at 157.

Still, accountability mechanisms are present in the constitutional framework to keep the delicate balance of power among the three branches separate and in check. Denise Meyerson, in her article on the dynamics between the rule of law and the separation of powers, includes an aspect of accountability to the rule of law and attributes this to the power of judicial review.⁹² According to Meyerson, the exercise of the power of judicial review does not mean that one branch stands at a lesser ground than the Judiciary; rather, it operates, rightly, as a check for any government act with the ultimate goal that “the interests of the individual are protected accordingly”⁹³ and the “enforcement of the supremacy of the Constitution.”⁹⁴

Looking at facts antecedent to the Aquino–Corona conflict, the exercise of the power of judicial review against acts of the Executive branch of the Government seems to be the reason behind Aquino’s support for Corona’s impeachment. In line with his “righteous path” and Social Contract, Aquino desires to remove those who have “[weakened] the democratic institutions that hold our leaders accountable.”⁹⁵ However, several acts of Aquino in this regard have met opposition in the form of Supreme Court decisions. Thus, Corona, as the head of the department that can strike and has struck down as void, null, or unconstitutional acts of the Aquino administration in line with its *tuwid na landas* policy, is viewed as a “stumbling block”⁹⁶ to the current administration’s path. Despite criticisms of Aquino’s thrust sending a “chilling effect”⁹⁷ to the Supreme Court, the President remains strong and steadfast in his support for the removal of the Chief Justice, believing Corona to be the “face of what we are fighting for to fix the [J]udiciary.”⁹⁸

III. ANTECEDENT FACTS

92. Denise Meyerson, *The Rule of Law and the Separation of Powers*, 4 MACQUARIE L.J. 1 (2004).

93. *Id.*

94. *Garcia v. Executive Secretary*, 583 SCRA 119, 129 (2009) (citing HECTOR DE LEON, PHILIPPINE CONSTITUTIONAL LAW: PRINCIPLES AND CASES 473 (2004 ed.)).

95. Aquino Social Contract, *supra* note 6.

96. Cupin, *supra* note 28.

97. David Dizon, Bernas: impeach rap sends ‘chilling effect’ on judiciary, *available at* <http://www.abs-cbnnews.com/nation/12/13/11/bernas-impeach-rap-sends-chilling-effect-judiciary> (last accessed May 28, 2012).

98. Christine O. Avendaño, *Aquino won’t stop attacks on Corona*, PHIL. DAILY INQ., Feb. 20, 2012, *available at* <http://newsinfo.inquirer.net/148657/aquino-wont-stop-attacks-on-corona> (last accessed May 28, 2012).

A closer look at the antecedent facts to this conflict should also provide the context or the underlying motive for Aquino's acts. Most of the President's steps in taking his "righteous path," particularly the measures directed against removing what he calls "the culture of impunity" surrounding former President Arroyo and her allies, have been nullified or declared unconstitutional. For clarity's sake, the following discussion is structured according to major events that transpired during the Aquino administration.

A. Corona, the Chief Justice

The vacancy created by the compulsory retirement of former Chief Justice Reynato S. Puno by 17 May 2010 and the May 2010 presidential elections introduced legal issues that were decided by the Supreme Court in *De Castro v. Judicial Bar Council (JBC)*.⁹⁹ One of the issues presented itself in the form of two conflicting provisions of the Constitution.¹⁰⁰ On the one hand, Article VII, Section 15 of the Constitution prohibited a president from making appointments "two months immediately before the next presidential elections and up to the end of his term."¹⁰¹ On the other hand, Article VIII, Section 4 (1) of the same mandates that vacancies in the Supreme Court "shall be filled within [90] days from the occurrence thereof."¹⁰² The appointment of Corona as the succeeding Chief Justice fell right in between these two constitutional mandates, making his entry as the *primus inter pares*¹⁰³ of the Supreme Court a highly debated issue.

In resolving the issue, *De Castro* reversed¹⁰⁴ the often-cited precedent in *In Re: Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta*¹⁰⁵ stating that *Valenzuela's* reasoning does not find any ground or support from the deliberations of the Constitutional Commission.¹⁰⁶ The Supreme Court

99. *De Castro v. Judicial and Bar Council (JBC)*, 615 SCRA 666, 702 (2010).

100. *Id.* at 710 & 732.

101. *Id.* at 702. (citing PHIL. CONST. art. VII, § 15).

102. *Id.* (citing PHIL. CONST. art. VIII, § 4 (1)).

103. Ramos, *supra* note 27. See also *De Castro*, 615 SCRA at 755-56 (J. Carpio-Morales, dissenting opinion).

104. *De Castro*, 615 SCRA at 734-35 & 740.

105. *In Re: Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta*, 298 SCRA 408 (1998).

106. *De Castro*, 615 SCRA at 737. The case points out that Article VIII, Section 4 (1) stands as a "true mandate" for the President. *Id.* (emphasis omitted).

MR. DE CASTRO. I understand that our justices now in the Supreme Court, together with the Chief Justice, are only 11.

MR. CONCEPCION. Yes.

MR. DE CASTRO. *And the second sentence of this subsection reads: 'Any vacancy shall be filled within ninety days from the occurrence thereof.'*

upheld the constitutionality of Corona's appointment by stating that the mandate to fill vacancies in the Supreme Court "stands *independently*" of the prohibition on presidential appointments two months prior to the presidential elections.¹⁰⁷ *De Castro* was clear that the constitutional prohibition did not extend to appointments to the Judiciary.¹⁰⁸

De Castro was promulgated on 17 March 2010.¹⁰⁹ Aquino, in a show of disapproval against the Supreme Court decision on the constitutionality of Corona's appointment, went on record in stating that he would rather take his oath before a *barangay* captain.¹¹⁰ Right on cue, on 30 June 2010, Aquino took his oath before former Associate Justice Carpio-Morales,¹¹¹ who was, notably, the lone dissenter in *De Castro*.¹¹²

On 30 July 2010, Aquino signed E.O. No. 2¹¹³ nullifying any appointments by the previous administration to executive positions that were made in contravention of the constitutional prohibition on midnight appointments.¹¹⁴ The Supreme Court welcomed this E.O. as a "categorical acknowledgment" by Malacañang of Corona as the 23d Chief Justice.¹¹⁵ However, on 12 October 2010, pending the resolution of a case involving the constitutionality of E.O. No. 2, the Court issued a *status quo ante* order

MR. CONCEPCION. *That is right.*

MR. DE CASTRO. *Is this now a mandate to the [E]xecutive to fill the vacancy?*

MR. CONCEPCION. *That is right. That is borne out of the fact that in the past 30 years, seldom has the Court had a complete complement.*

Id. (citing V Record of the 1986 Constitutional Commission, 632-33 (1986)) (emphasis supplied).

107. *Id.* at 739. (emphasis supplied).

108. *Id.* at 740 (citing *Aytona v. Castillo*, 4 SCRA 1 (1962)).

109. *Id.* at 666.

110. Delon Porcalla, *Noynoy to take oath before barangay captain*, PHIL. STAR, May 15, 2010, available at <http://www.philstar.com/Article.aspx?articleid=575369> (last accessed May 28, 2012).

111. Howard, *supra* note 19.

112. *De Castro*, 615 SCRA at 755 (J. Carpio-Morales, dissenting opinion).

113. Office of the President, *Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments, and for Other Purposes*, Executive Order No. 2 [E.O. No. 2] (July 30, 2010).

114. *Id.* § 2.

115. Edmer F. Panesa, *Palace's recognition of Corona welcomed*, MANILA BULL., Aug. 5, 2010, available at <http://www.mb.com.ph/articles/270918/palace-s-recognition-corona-welcomed> (last accessed May 28, 2012).

(SQAQO) on the effectivity of the same.¹¹⁶ Two days later, President Aquino issued a statement stating that the SQAQO issued on E.O. No. 2 has the potential to cause “chaos and paralysis” as it will “derail, or even nullify, [the government’s] efforts to uncover and reverse midnight deals ... and implement reforms to bring back good governance.”¹¹⁷

B. *The Ombudsman*

On 14 September 2010, the Supreme Court issued a SQAQO on the impeachment proceedings against Ombudsman Ma. Merceditas N. Gutierrez.¹¹⁸ The charges against Gutierrez hinged on her low conviction rates and supposed inaction on cases arising from scandals during the Arroyo administration and cases against former President Arroyo herself.¹¹⁹ In the same statement issued by Aquino on the SQAQO issued on E.O. No. 2, Aquino warned that these “recent [actions] of the Supreme Court [test] the limits of its constitutional authority, and ... could precipitate a clash with another separate, co-equal branch of government.”¹²⁰

Gutierrez questioned the constitutionality of two resolutions issued by the House of Representatives Committee on Justice finding the two impeachment complaints sufficient in form and substance.¹²¹ She argued that the House Resolutions on the two complaints were violative of the one-year bar on impeachment proceedings, which period, petitioner argues, is reckoned from the date of the filing of the first impeachment complaint.¹²² The Court rejected such argument, following the doctrine laid down in *Francisco, Jr.* — that an impeachment proceeding is initiated by the referral of a verified complaint to the House Committee on Justice and not by a mere

116. Kathrina Alvarez, et al., Court battle on ‘midnight appointments’ looms, *available at* <http://www.sunstar.com.ph/manila/local-news/court-battle-midnight-appointments-looms> (last accessed May 28, 2012).

117. Benigno S. Aquino III, Statement of His Excellency BENIGNO S. AQUINO III President of the Philippines on the Issuance of a Status Quo Ante Order Regarding Executive Order No. 2 by the Supreme Court, *available at* <http://www.gov.ph/2010/10/14/statement-of-president-aquino-on-the-scs-issuance-of-a-status-quo-ante-order-regarding-eo-no-2/> (last accessed May 28, 2012) [hereinafter Aquino Statement on SQAQO Issuance on E.O. No. 2].

118. *Gutierrez v. House of Representatives Committee on Justice*, 643 SCRA 198, 229 (2011).

119. Andreo C. Calonzo, Ombudsman Gutierrez faces 6 impeach charges, *available at* <http://www.gmanetwork.com/news/story/215180/news/nation/ombudsman-gutierrez-faces-6-impeach-charges> (last accessed May 28, 2012).

120. Aquino Statement on SQAQO Issuance on E.O. No. 2, *supra* note 117.

121. *Gutierrez*, 643 SCRA at 225-56.

122. *Id.* at 249.

deliberation by the House on a resolution.¹²³ The SQAQO was lifted¹²⁴ and the impeachment trial date was set. In a show of support, Malacañang welcomed the impeachment proceedings against Gutierrez, calling it a “momentous occasion for Philippine governance.”¹²⁵ However, 10 days before the impeachment trial began, Gutierrez resigned from her position as the Ombudsman.¹²⁶

C. *The Truth Commission*

In a move to give teeth to his campaign slogan, Aquino’s first E.O.¹²⁷ created the Truth Commission, an investigative body organized to “primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption ... committed by public officers and employees, their co-principals, accomplices[,] and accessories from the private sector, if any, during the previous administration.”¹²⁸ According to Aquino, E.O. No. 1 “begins ‘the process of bringing necessary closure to the allegations of official wrongdoing and impunity.’”¹²⁹

However, on 7 December 2010, in *Biraogo v. Philippine Truth Commission of 2010*,¹³⁰ the Supreme Court declared E.O. No. 1 unconstitutional¹³¹ for violation of the equal protection clause due to the “plain, patent, and manifest” intent to single out the Arroyo administration in the scope of the Commission’s investigation.¹³² Aquino accepted the decision in recognition

123. *Id.* at 263 (citing *Francisco, Jr.*, 415 SCRA at 931).

124. *Id.* at 269.

125. ABS-CBNnews.com, ‘Sufficient grounds in 2 impeach complaints vs Merci,’ available at <http://www.abs-cbnnews.com/nation/03/01/11/sufficient-grounds-impeach-gutierrez> (last accessed May 28, 2012).

126. Tetch Torres, et al., *Ombudsman resigns*, PHIL. DAILY INQ., Apr. 29, 2011, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20110429-333621/Ombudsman-Gutierrez-resignsPalace-source> (last accessed May 28, 2012).

127. Office of the President, Creating the Philippine Truth Commission of 2010, Executive Order No. 1 [E.O. No. 1] (July 30, 2010).

128. *Id.* § 1.

129. ABS-CBNnews.com, Aquino forms Truth Commission, available at <http://www.abs-cbnnews.com/nation/07/30/10/aquino-forms-truth-commission> (last accessed May 28, 2012).

130. *Biraogo*, 637 SCRA 78.

131. *Id.* at 178.

132. *Id.* at 170.

that it is the Supreme Court which is “the final arbiter of our laws.”¹³³ Furthermore, he adds that he is no longer interested in pursuing the institution of an investigative body similar to the Truth Commission, as “he is confident that newly-appointed Ombudsman Conchita Carpio-Morales can do the job of the truth body.”¹³⁴ During his speech at the NCJS, however, the President criticized the *Biraogo* decision, likening the declared unconstitutionality of the Truth Commission as a “barricade” set against his “first step” on his *tuwid na landas*.¹³⁵

D. *The Right to Travel and the Arroyos*

In an *en banc* Resolution dated 15 November 2011, the Supreme Court issued a temporary restraining order (TRO) preventing the respondents in *Gloria Macapagal-Arroyo v. Hon. M. Leila de Lima*¹³⁶ “from enforcing or implementing [Department of Justice (DOJ)] Department Circular No. 41 and Watchlist Order Nos. ASM-11-237 dated [9 August 2011], 2011-422 dated [6 September 2011] and 2011-573 dated [27 October 2011]” against the Arroyos, subject to three conditions.¹³⁷ However, on the same day, DOJ Secretary Leila M. de Lima, in open defiance¹³⁸ of the Supreme Court TRO, instructed immigration officials to stop Arroyo at the airport from leaving the country to seek medical treatment abroad.¹³⁹

This “hasty” issuance of the TRO which prevented the Government from presenting its side, Malacañang argues, was “‘the trigger point’ that

133. Norman Bordadora, *Aquino accepts SC ruling on truth commission*, PHIL. DAILY INQ., July 27, 2011, available at <http://newsinfo.inquirer.net/31265/aquino-accepts-sc-ruling-on-truth-commission> (last accessed May 28, 2012).

134. Amita Legaspi, *Aquino no longer wants a Truth Commission*, available at <http://www.gmanetwork.com/news/story/227559/news/nation/aquino-no-longer-wants-a-truth-commission> (last accessed May 28, 2012).

135. Aquino NCJS Speech, *supra* note 20.

136. *Gloria Macapagal-Arroyo v. Hon. Leila M. de Lima*, in her Capacity as Secretary of the Department of Justice and Ricardo A. David, Jr., in his capacity as Commissioner of the Bureau of Immigration, G.R. No. 199034, Nov. 15, 2011.

137. *Id.*

138. Christian V. Esguerra & Marlon Ramos, *TRO issue moot if raps vs Arroyo filed*, PHIL. DAILY INQ., Nov. 18, 2011, available at <http://newsinfo.inquirer.net/95937/tro-issue-moot-if-raps-vs-arroyo-filed> (last accessed May 28, 2012).

139. Virgil Lopez, et al., *Arroyo couple blocked at airport*, available at <http://www.sunstar.com.ph/manila/local-news/2011/11/15/arroyo-couple-blocked-airport-190702> (last accessed May 28, 2012).

caused the deterioration of relations between the [E]xecutive branch and the [J]udiciary” and not the *Hacienda Luisita* decision.¹⁴⁰

E. The Hacienda Luisita Factor

On 22 November 2011, the Supreme Court ended the years-long *Hacienda Luisita* dispute when it reiterated its ruling in *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*¹⁴¹ and denied a Motion for Reconsideration by the petitioner, Hacienda Luisita, Inc. (HLI).¹⁴² HLI was directed by the Supreme Court to pay more than ₱1.3 billion to the corporation’s farmworker-beneficiaries.¹⁴³ The same Resolution also stated that the amount of just compensation that HLI is entitled to “for the agricultural land that will be transferred to [the Department of Agrarian Reform should] be reckoned from [21 November 1989], the date of the issuance of the resolution questioned by HLI, as this was the date that the farmworker-beneficiaries were deemed to “own and possess” the land.¹⁴⁴

HLI argued otherwise, submitting that the date of the taking of the property should either be at 2006 or 2011 prices, since the 1989 prices would be “arbitrary, unjust, and oppressive considering the improvements, expenses in the maintenance and preservation of the land, and rise in land prices or the value of the property.”¹⁴⁵ HLI further argued that the distribution of the lands to the farmworker-beneficiaries would be improper, “either in law or equity,” as it, among others, “would violate the stringent provisions of the Corporation Code and corporate practice.”¹⁴⁶

Several workers’ groups believe the *Hacienda Luisita* decision to be the root of the President’s verbal tirades against the Judiciary.¹⁴⁷ Aquino “refused

140. Norman Bordadora, *TRO on Arroyo travel ban, not Hacienda ruling, sparked row with SC — Palace*, PHIL. DAILY INQ., Dec. 8, 2011, available at <http://newsinfo.inquirer.net/107447/tro-on-arroyo-travel-ban-not-hacienda-ruling-sparked-row-with-sc—palace> (last accessed May 28, 2012).

141. *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, 653 SCRA 154 (2011).

142. *Hacienda Luisita, Incorporated v. Luisita Industrial Park Corp.*, 660 SCRA 525 (2011).

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Sun Star, *Hacienda Luisita ruling irks Aquino: group*, available at <http://www.sunstar.com.ph/breaking-news/2011/12/08/hacienda-luisita-ruling-irks-aquino-group-194706> (last accessed May 28, 2012) & Ina Reformina, *Farmers urge SC to stand firm on Luisita ruling*, available at

to give a categorical statement on the ... decision” but maintains that “his relatives will respect and comply” with the order of the Supreme Court.¹⁴⁸

F. The Chief Justice’s Impeachment

Nine days after the President’s speech at the NCJS, or on the morning of 12 December 2011, Chief Justice Corona delivered a speech during the morning flag ceremony, warning of a “plot to destabilize the Supreme Court ... and undermine its independence.”¹⁴⁹

Hours later, in a move that is “reportedly orchestrated by the Liberal Party,”¹⁵⁰ 188 members of the House of Representatives, a number more than the constitutionally mandated one-third of the House’s membership, signed the 57-page impeachment complaint against Corona containing eight articles which charged the Chief Justice of betrayal of public trust and culpable violation of the Constitution.¹⁵¹ On 16 January 2012, the impeachment trial of the Chief Justice began.¹⁵²

The speed at which the members of the House of Representatives signed the impeachment complaint was the subject of much criticism as it was “a blatant assault on the rule of law.”¹⁵³ Members of the opposition called what happened on the afternoon of 12 December as the “mother of all blackmails,” referring to pressures exerted on some congressmen regarding the release of their Priority Development Assistance Fund.¹⁵⁴ Representative Milagros H. Magsaysay seemed defeated by the numbers game when she asked, “What can we do when they (majority) have the numbers?”¹⁵⁵ Malacañang, for its part, asserts that what happened was not a “demolition

<http://www.abs-cbnnews.com/nation/02/22/12/farmers-urge-sc-stand-firm-luisita-ruling> (last accessed May 28, 2012).

148. Jill Beltran, Aquino: Family will comply with Hacienda Luisita ruling, *available at* <http://www.sunstar.com.ph/manila/local-news/2011/11/25/aquino-family-will-comply-hacienda-luisita-ruling-192498> (last accessed May 28, 2012).

149. Rey G. Panaligan & Ben R. Rosario, *Corona vows to defend judiciary*, MANILA BULL., Dec. 12, 2011, *available at* <http://www.mb.com.ph/articles/344616/move-oust-sc-chief-rushed-house> (last accessed May 28, 2012).

150. *Id.*

151. Diaz, *supra* note 25 & Panaligan, *supra* note 149.

152. Maila Ager, *Senate opens Corona impeachment trial*, PHIL. DAILY INQ., Jan. 16, 2012, *available at* <http://newsinfo.inquirer.net/128993/senate-opens-corona-impeachment-trial> (last accessed May 28, 2012).

153. Diaz, *supra* note 25.

154. *Id.*

155. *Id.*

job” as “[i]mpeachment is an accountability mechanism that is found in the Constitution itself.”¹⁵⁶

After much ado over whether Corona would or should take the stand,¹⁵⁷ on 22 May 2012, in an unprecedented style, the Chief Justice delivered his testimony through a narration of facts,¹⁵⁸ instead of the traditional mode of presentation and delivery of oral testimony in trial through a direct examination.¹⁵⁹

From the contents of his three-hour speech, Corona seemed intent on addressing the two audiences in his trial — the impeachment court and the Filipino public.¹⁶⁰ Taking it as the opportunity to confront the issues that are relevant to both his audiences, the Chief Justice detailed his, upbringing, family background, and lifestyle.¹⁶¹ He also narrated his struggles with Malacañang and the media, tackled the history of the Basa-Guidote controversy, and rebuffed the testimony of Ombudsman Carpio-Morales with a Powerpoint presentation of his own.¹⁶² Finally, he stated that he had \$2.4 million in foreign currency deposits, which amount he had built up over time and through various transactions in the foreign currency exchange market, but did not declare due to the confidentiality mandated by the Foreign Currency Deposits Act.¹⁶³

156. *Id.*

157. Artemio V. Panganiban, *Will Corona testify?*, PHIL. DAILY INQ., May 19, 2012, available at <http://opinion.inquirer.net/29033/will-corona-testify> (last accessed May 28, 2012) & *Lawyers won't let Corona testify*, PHIL. STAR, May 3, 2012, available at <http://www.philstar.com/Article.aspx?articleId=803009&publicationSubCategoryId=> (last accessed May 28, 2012).

158. Floyd Whaley, *Philippine Chief Justice Denies Corruption Charges*, N.Y. TIMES, May 22, 2012, available at <http://www.nytimes.com/2012/05/23/world/asia/renato-corona-philippines-judge-testifies-at-impeachment-trial.html> (last accessed May 28, 2012).

159. REVISED RULES ON EVIDENCE, rule 132, §§ 4 (a) & 5.

160. Senate of the Philippines, Record of the Senate Sitting as an Impeachment Court, Tuesday, May 22, 2012, 8, available at <http://www.ibp.ph/PDF/Impeachment/May/Day%2040,%20May%2022,%202012/94644879-May-22-Senate-impeachment-court-record.pdf> (last accessed May 28, 2012) [hereinafter Senate Record of Corona Testimony]. In fact, the Chief Justice begins his testimony with the words “[m]ga minamahal kong kababayan (my dearest countrymen).” *Id.*

161. *Id.* at 12-13.

162. *Id.* at 14-27.

163. Kathrina Alvarez, Prosecution claims Corona fails to support testimony, available at <http://www.sunstar.com.ph/manila/local-news/2012/05/26/prosecution-claims-corona-fails-support-testimony-223544> (last accessed May 28, 2012).

In a moment of high drama, Corona produced and signed a waiver authorizing banking institutions, government agencies, and the Supreme Court's Clerk of Court to disclose to the public any information pertinent to the determination of his assets, net worth, and liability, such as his foreign and local currency bank deposits.¹⁶⁴ The trial for that day ended due to the abrupt exit of the Chief Justice for health reasons.¹⁶⁵ Initially, the waiver was conditioned upon the signing of the same by the 188 congressmen who signed his impeachment complaint, in a view to give teeth to the values of "transparency and public accountability" which Aquino's government has espoused.¹⁶⁶ With a handful of exceptions, the lawmakers involved generally refused to sign the waiver, with Deputy Speaker Lorenzo M. Tañada III calling it as "almost laughable."¹⁶⁷

After 41 days of trial, or on 29 May 2012, the Senate, by a vote of 20-3, found Corona guilty of the charge under Article II of the impeachment complaint.¹⁶⁸ Pursuant to Section 3 (7), Article XI of the Constitution,¹⁶⁹ Corona was meted "the penalty of removal from office and disqualification to hold any office under the Republic of the Philippines."¹⁷⁰

IV. ANALYSIS

The facts in the Aquino-Corona conflict show the exercise of accountability mechanisms, or checks and balances, by one branch against the other. On

164. Senate Record of Corona Testimony, *supra* note 160, at 28-30.

165. Maila Ager, *Walkout-marred trial adjourned*, PHIL. DAILY INQ., May 22, 2012, available at <http://newsinfo.inquirer.net/198323/walkout-marred-trial-adjourned> (last accessed May 28, 2012).

166. Senate Record of Corona Testimony, *supra* note 160, at 29-30.

167. Llanesca T. Panti & Jefferson Andrada, *Lawmakers refuse to sign waiver*, MANILA TIMES, May 26, 2012, available at <http://www.manilatimes.net/index.php/news/top-stories/23623-lawmakers-refuse-to-sign-bank-waiver> (last accessed May 28, 2012) & Paolo Romero, *More lawmakers ready to sign waivers*, PHIL. STAR, May 25, 2012, available at <http://www.philstar.com/Article.aspx?publicationSubCategoryId=63&articleId=810427> (last accessed May 28, 2012).

168. Senate of the Philippines, *Verdict of the Senate sitting as impeachment court*, May 29, 2012, available at <http://www.gov.ph/2012/05/29/verdict-of-the-senate-sitting-as-impeachment-court-may-29-2012/> (last accessed May 28, 2012) [hereinafter *Senate Verdict*] & Maila Ager, *Senate votes 20-3 to convict Corona*, PHIL. DAILY INQ., May 29, 2012, available at <http://newsinfo.inquirer.net/202929/senate-convicts-corona> (last accessed May 28, 2012).

169. PHIL. CONST. art XI, § 7 (3).

170. Senate Verdict, *supra* note 168.

the one hand, the Supreme Court has wielded its power of judicial review over several acts of the Aquino administration. On the other hand, President Aquino himself has stood in staunch support of Corona's impeachment by the House of Representatives. Some events in the conflict also point to a disregard of the principle of separation of powers. For example, despite criticisms of sending a "chilling effect" on the independence of the branch of the Government that holds neither the power of the purse nor the sword, Aquino remains headstrong in his attempts to remove what he considers to be barricades in his *tuwid na landas*.

Within the context of these issues, the following questions need to be asked:

- (1) From an understanding of what underscores Aquino's actions and policies as discussed in Part I of this Article, can certain acts of the President, as discussed in Part III, be validly classified as "extra-legal measures?";
- (2) Considering that two of the events enumerated in Part III involve the impeachment of appointed officers, is there any implication for constitutional reform in the area of the process of appointments?;
- (3) In view of the principles discussed in Part II (i.e., separation of powers, checks and balances, and rule of law), should the charges leveled against the Chief Justice in his impeachment be considered as a veiled threat against the Judiciary and as possibly underscored by a dictatorship of the party system in the Congress?; and, finally,
- (4) Bearing in mind the importance of upholding the rule of law in a democratic society, what are the limits of the exercise of governmental power within a constitutional democracy?

A. The Extra-legal Measures Model

Oren Gross and Fionnuala Ní Aoláin, in their book "Law in Times of Crisis: Emergency Powers in Theory and Practice," discuss various models of extra-legality by which "a public officer may act extra-legally when they believe that such action is necessary for protecting the nation and the public in face of calamity, provided that they openly and publicly acknowledge the nature of their actions."¹⁷¹ Similarly, Frederick Schauer states that "[p]ublic officers ... ought to obey the law, even when they disagree with specific legal commands. However, there may be extreme exigencies where officials may

171. OREN GROSS & FIONNUALA NÍ AOLÁIN, LAW IN TIMES OF CRISIS: EMERGENCY POWERS IN THEORY AND PRACTICE 111-12 (2006).

regard strict disobedience to legal authority as irrational or immoral.”¹⁷² The extra-legal measures model thus refers to actions in response to

circumstances where the appropriate method of tackling extremely grave national dangers and threats may entail going outside the legal order, at times even violating otherwise accepted constitutional principles. However, for such an action to be appropriate[,] it must be aimed at the advancement of the public good and must be openly, candidly, and fully disclosed to the public. Once disclosed, it is then up to the people to decide, either directly or indirectly (e.g., through their representatives), how to respond to such extra-legal actions.¹⁷³

From the discussion in Part III of this Article, two distinct examples can be used to show actions that may be considered as extra-legal measures: *first*, Aquino’s tirade on the Judiciary during the NCJS and *second*, Secretary de Lima’s violation of a TRO issued by the Supreme Court. Both examples arguably show a violation of the constitutional principle of separation of powers (i.e., non-recognition of Supreme Court decisions as valid and binding). At the same time, both acts are believed to be in line with an advancement of a public good (i.e., they are in line with Aquino’s search for accountability in his *tuwid na landas*).

However, a closer look at the factual antecedents will show that the extra-legal measures model cannot validate the said acts. Arthur M. Schlesinger, Jr. enumerates “stringent and persuasive conditions that must exist for recourse to the emergency prerogative to be considered legitimate.”¹⁷⁴ Schlesinger states that in order that there be a valid resort to an extra-legal measure, “there must be a clear, present[,] and broadly perceived danger to the life of the nation,” the existence of this danger “must be broadly shared by the Congress and the [Filipino] people,” and “the danger must be one that can be met *in no other way* than by presidential initiative beyond the laws and the constitution.”¹⁷⁵

First, both President Aquino and Secretary de Lima have not defined nor explained any danger to the life of the nation for them to validly resort to extra-legal measures. They have also not shown the existence of this danger as shared by both the Congress and the Filipino people. Additionally, both in contrast to the extra-legal measures model and in support of Schlesinger’s elements, the Constitution itself provides when the President may exercise emergency powers in Article VI, Section 23 (3) thereof. In line with this,

172. *Id.* at 134 (citing Frederick Schauer, *The Questions of Authority*, 81 GEO. L.J. 95, 110-15 (1992)).

173. *Id.* at 112.

174. *Id.* at 157 (citing ARTHUR M. SCHLESINGER, JR., *THE IMPERIAL PRESIDENCY* 459 (2004)).

175. *Id.* at 158 (emphasis supplied).

Congress has not declared any national emergency nor has it authorized the President “to exercise emergency powers necessary and proper to carry out a declared national policy.”¹⁷⁶

Furthermore, the extra-legal measures model is not without its critics. The very essence of the extra-legal measures model goes against the rule of law as it enables “totalitarianism and authoritarianism.”¹⁷⁷ Gross and Aoláin write —

If we accept the possibility, in extreme cases, of governmental actions that are extra-legal so long as they are taken to advance the public good, there can be no constitutional or legal limitations on such governmental exercise of power. *If we accept that the [E]xecutive may act outside the law in order to avert or overcome catastrophes, there is nothing to prevent the wielder of such awesome powers from exercising them in violation of any constitutional and legal limitations on the use of such powers.* Extra-legal power can only mean an unlimited power, constrained neither by any legal norms nor by principles or rules of the constitutional order.¹⁷⁸

Further, in *Olmstead v. United States*,¹⁷⁹ Justice Louis D. Brandeis stated his concerns regarding resorts to extra-legal measures by government officials

Decency, security[,] and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. ... Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. If the Government becomes a law-breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.¹⁸⁰

Part II of this Article has shown the importance of the principles of separation of powers and checks and balances as part of the bedrock of Philippine democracy. In line with these principles, any act executed by any branch of the Government is only valid to the extent that it is exercised within the limits conferred upon it by the Constitution. The delicate balance of powers among the three branches of Government can only be maintained if each branch respects the Constitutional mandates designed to keep them both separate and in check. Therefore, by design, our Constitution is designed to uphold the rule of law, thus —

176. PHIL. CONST. art. VI, § 23 (3). For other “crisis provisions” in the Philippine Constitution, see Raymundo A. Armovit, *Emergency Powers*, 29 PHIL. L.J. 686, 689-90 (1954).

177. GROSS & AOLÁIN, *supra* note 171, at 143.

178. *Id.*

179. *Olmstead v. United States*, 277 U.S. 438 (1928).

180. *Id.* at 485 (J. Brandeis, dissenting opinion).

It is but the recognition that at times good institutional design requires norms that compel decision makers to defer to the judgments of others with which they disagree. Some call this positivism. Others call it formalism. We call it law.¹⁸¹

Despite statements promising respect of the principle of separation of powers, Aquino's relentless and public criticism of the Judiciary and its decisions and de Lima's disobedience of Supreme Court orders are indicative of distrust of and attacks on a co-equal branch and makes orders of the Supreme Court both suspect and, compliance therewith, optional. These implications are highly problematic for the Supreme Court. Holding "neither the sword nor the purse,"¹⁸² the power of the Supreme Court, as part of the Judicial branch of the Government, lies in and is only exercised through its decisions.¹⁸³

Furthermore, in view of the principle of separation of powers, it must be remembered that it is not within the province of the Executive branch to interpret the laws but, rather, is constitutionally mandated to ensure that the "laws [are] faithfully executed."¹⁸⁴ Included in these laws are Supreme Court decisions which, by operation of law, become part of the law of the land.¹⁸⁵ Thus, the rule of law "require[s] public officials to obey a constitution as it is interpreted by the courts, regardless of whether or not they agree with the court's particular interpretation."¹⁸⁶ *Maglasang v. People*¹⁸⁷ is instructive in this regard —

We further note that in filing the 'complaint' against the [J]ustices of the Court's Second Division, even the most basic tenet of our government system — the separation of powers between the [J]udiciary, the [E]xecutive, and the [L]egislative branches — has been lost on [the complainant]. We therefore take this occasion to once again remind all and sundry that 'the Supreme Court is supreme — the third great department of government entrusted exclusively with the judicial power to adjudicate with finality all justiciable disputes, public and private. No other department or agency may pass upon its judgments or declare them

181. Larry Alexander & Frederick Schauer, *On Extrajudicial Constitutional Interpretation*, 110 HARV. L.REV. 1359, 1387 (1997).

182. *Planas v. Gil*, 67 Phil. 62, 74 (1939).

183. KENT C. OLSON, LEGAL INFORMATION: HOW TO FIND IT, HOW TO USE IT 134 (1999).

184. PHIL. CONST. art. VII, § 17.

185. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 8 (1950).

186. GROSS & AOLÁIN, *supra* note 171 at 135.

187. *Maglasang v. People*, 190 SCRA 306 (1990).

‘unjust.’ Consequently, and owing to the foregoing, not even the President of the Philippines as Chief Executive may pass judgment on any of the Court’s acts.¹⁸⁸

B. Constitutional Reform in the Appointing Process

It cannot be denied that an issue that permeated the Aquino–Corona conflict is Corona’s appointment as the Chief Justice. The impeachment of another presidential appointee, the Ombudsman, also compounds the issue of propriety in the process of appointment. The presence of these two events involving presidential appointees compel an examination of the Judicial and Bar Council (JBC) as the body with the “principal function of nominating appointments to the Judiciary” and for the position of the Ombudsman.¹⁸⁹

The JBC is a constitutionally created body that provides the list of nominees from which the President shall choose his appointees to, among others, positions of Justiceships in the Supreme Court¹⁹⁰ and the position of the Ombudsman.¹⁹¹ Both appointments need no confirmation.¹⁹² In line with the function of the JBC, Article VIII, Section 8 (1) of the 1987 Constitution provides —

A [JBC] is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.¹⁹³

Section 8 (2) of the same further provides —

188. *Id.* at 314 (citing *In re: Wenceslao Laureta*, 148 SCRA 382, 417 (1987)) (emphasis supplied).

189. Judicial Bar Council, Historical Background, *available at* <http://jbc.judiciary.gov.ph/index.php/about-the-jbc/what-is-new-in-1-5> (last accessed May 28, 2012) [hereinafter JBC Historical Background].

190. PHIL. CONST. art. VIII, § 9.

191. PHIL. CONST. art. XI, § 9.

192. PHIL. CONST. arts. VIII, § 9 & XI, § 9.

193. PHIL. CONST. art. VIII, § 8 (1). Although the Constitution provides for seven members of the Judicial Bar Council (JBC),

[i]n practice, however, two representatives from Congress sit in the JBC — the chairs of the respective committees on justice of the Senate and the House of Representatives — thus making for an eight-member JBC. In practice, too, all eight members, including the chief justice, cast one vote each for every nominee, including the three *ex-officio* members.

Malou Mangahas, Fickle presidents, opaque JBC process, elitist court, *available at* <http://pcij.org/stories/fickle-presidents-opaque-jbc-process-elitist-court/> (last accessed May 28, 2012).

*The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired justice for two years, and the representative of the private sector for one year.*¹⁹⁴

If the “main argument for the continued existence” of the JBC is “the necessity of attaining and preserving the independence of the Judiciary,”¹⁹⁵ then an appointment process that begins and ends with the President presents the questions of whether true independence can exist with respect to the Judiciary and whether constitutional reforms, if any, should be made to strengthen the independence of this appointing body.

1. The Appointment Process

The appointment process to the position of a Supreme Court Justice is divided into three stages: “the pre-nomination stage, nomination stage, and the final stage of appointment and confirmation.”¹⁹⁶ Vacancies in both the Office of the Ombudsman, the Chief Justice, and any of the Associate Justices must be filled within 90 days from the occurrence thereof.¹⁹⁷ According to the Rules of the JBC (JBC Rules), vacancies in any of these offices “[open], *ipso facto*, the vacant position for filling and acceptance of applicants therefor.”¹⁹⁸ Applications for the position may be done by the applicant himself or upon a recommendation and must be submitted within the guidelines prescribed by the Council.¹⁹⁹ Should the vacancy involve a position in the Supreme Court, the Council must give “due weight and regard to the recommendees of the Supreme Court.”²⁰⁰ The list of applicants will be published in a newspaper of general circulation according to Rule 1, Section 9 of the JBC Rules.²⁰¹ A copy thereof will also be given to the

194. PHIL. CONST. art. VIII, § 8 (2).

195. JBC Historical Background, *supra* note 189.

196. Leslie Flores, Lessons from US Supreme Court Appointments: A Quick Look at Justice Sotomayor’s Experience, *available at* http://www.tan.org.ph/index.php?option=com_content&view=article&id=77:lessons-from-us-supreme-court-appointments-a-quick-look-at-justice-sotomayors-experience&catid=50:supreme-court-appointments-watch&Itemid=89 (last accessed May 28, 2012).

197. PHIL. CONST. arts. VIII, § 4 (1) & XI, § 9.

198. Judicial Bar Council, Rules of the Judicial Bar Council [JBC-009], rule 1, § 4 (Oct. 18, 2000).

199. *Id.* rule 1, §§ 5-8.

200. *Id.* rule 8, § 1.

201. *Id.* rule 1, § 9.

IBP.²⁰² Each applicant must comply with the constitutional and statutory qualifications for appointment as summarized in Rule 2.²⁰³

The Council will then evaluate the competence of the applicants, which competence is determined by their educational qualifications, experience in either government service or private practice, performance ratings, and other accomplishments.²⁰⁴ The applicant shall also undergo physical tests and psychological and psychiatric evaluation to determine his “physical health and sound mental [or] psychological and emotional condition.”²⁰⁵ Finally, the applicants will undergo personal interviews to be conducted either by the Council sitting *en banc* or by a panel of members as authorized by the Council.²⁰⁶

An applicant is considered included in the list of nominees for submission to the President if he obtains “the affirmative vote of at least a majority of all the Members of the Council.”²⁰⁷ The shortlist of three nominees for the vacant position is then submitted to the President.²⁰⁸ Again, should the President choose from any of these nominees, the appointment to the vacant position needs no confirmation from the Commission on Appointments.²⁰⁹

A curiosity arises should the President not want any of the names submitted by the JBC. According to the deliberations of the 1986 Constitutional Commission, in the event that the President should not prefer any of the nominees on the shortlist of candidates, the JBC can just submit another list with names of three other candidates for the vacancy.²¹⁰

2. Critiques

When asked what provisions of the Constitution he would like to see amended, Bernas, a member of the 1986 Constitutional Commission and noted expert on Constitutional Law, responded with “the process for

202. *Id.*

203. *See generally* JBC-009, rule 2.

204. JBC-009, rule 3.

205. *Id.* rule 6, § 1.

206. *Id.* rule 7.

207. *Id.* rule 10, § 1.

208. PHIL. CONST. art. VIII, § 9.

209. PHIL. CONST. art. VIII, § 9.

210. Joaquin G. Bernas, S.J., *Appointing a Supreme Court Justice*, PHIL. DAILY INQ., Aug. 3, 2009, available at <http://opinion.inquirer.net/inquireropinion/columns/view/20090803-218475/Appointing-a-Supreme-Court-justice> (last accessed May 28, 2012).

appointing justices of the Supreme Court.”²¹¹ For reference, the part of the deliberations that Bernas is critical of is reproduced as follows —

MR. RODRIGO. ... The Council submits three nominees, but the President does not want to appoint any of them. Can he ask the Council to submit another list of nominees?

MR. CONCEPCION. Yes, definitely.

MR. RODRIGO. And if he does not want these three new nominees, the Council could still submit another three?

MR. CONCEPCION. Yes[.]²¹²

According to Bernas, this exchange “cement[s] presidential control of the appointing process” as it “accords to the most political authority of them all the power to dictate the outcome,” despite the intent of the Commission “to insulate the appointing process from the politics of the Commission on Appointments[.]”²¹³ Bernas, therefore, recommends a return to the 1935 Constitution, which required judicial appointees to be confirmed by the Commission on Appointments, arguing that the confirmation that ends the process of appointment has yielded “satisfactory” results.²¹⁴

Another critique of the appointing process is on its results, which yields appointees who are “[m]ostly old, mostly male, mostly born and bred in imperious Luzon[,] and all schooled in imperial Manila.”²¹⁵ According to an empirical study of appointees to the Supreme Court, this homogeneity of demographics among the Supreme Court Justices could pose problems for the legitimacy of the Court’s decisions as it has “implications for minorities who may not view the court’s decisions as legitimate”²¹⁶

Other “worrisome” characteristics of the appointment process of Supreme Court Justices are the “fast turnover rate of [J]ustices” and the “trend of several names reappearing as applicants and nominees.”²¹⁷ The latter indicates a “shallow bench from where nominees are recruited” and

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* The recommended Provision states, “The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments[.]” 1935 PHIL. CONST. art. 8, § 5 (superseded 1973).

²¹⁵ Mangahas, *supra* note 193.

²¹⁶ Dante B. Gatmaytan & Cielo Magno, *Averting Diversity: A Review of Nominations and Appointments to the Philippine Supreme Court (1988-2008)*, 6 ASIAN J. COMP. L. 1, 18 (2011).

²¹⁷ Mangahas, *supra* note 193.

“does not augur well for diversity on the court.”²¹⁸ The former points to the mandatory retirement age of 70 years old as its cause and “would explain why the Philippines had 41 appointees to the Supreme Court between 1988 and 2008 while the United States [(U.S.)] had a mere seven during the same period. All seven were still at the U.S. high court at the close of 2008.”²¹⁹

Finally, Alan Tarr speaks of the problems inherent in any commission-based appointive systems such as the JBC, thus: “The commission itself can make no claim to be a representative body: even if its members reflect the diversity of the population, they have no constituency, and they cannot be held accountable by the public for their actions.”²²⁰

3. Constitutional Reform

A look at the current process of appointment of U.S. Supreme Court Justices should provide insight as to what can be improved with regard to the Philippine process as the Philippine Judiciary is closely modeled upon that of its American counterpart.²²¹ Similar to the Philippine process, the U.S. process of appointment is made up of three stages. However, the parts that comprise each stage are markedly different.

Leslie Flores, in her article, “Lessons from US Supreme Court Appointments: A Quick Look at Justice Sotomayor’s Experience,” compares each stage of the U.S. and Philippine processes. One difference that can

218. Gatmaytan & Magno, *supra* note 216, at 18.

219. Mangahas, *supra* note 193.

220. Alan Tarr, Creating the Best Appointment System for Judges (A Paper Submitted to the Rutgers-Camden Center for State Constitutional Studies) 2, available at <http://camlaw.rutgers.edu/statecon/publications/creating.pdf> (last accessed May 28, 2012).

221. Mangahas, *supra* note 193. Also, note that a commission- or council-based appointing system does have its merits, as compared to other systems of appointment (e.g., a judicial civil service commonly found in countries with a common law tradition, judicial self-appointment, and judicial elections) it provides a “happy medium” “between the polar extremes of letting judges manage their own affairs and the alternative of complete political control of appointments.” United States Institute of Peace, Judicial Appointments and Judicial Independence, (A Report by USIP’s Rule of Law Center on Judicial Independence in Iraq) 4, available at <http://www.usip.org/files/Judicial-Appointments-EN.pdf> (last accessed May 28, 2012). Similar to the reason for the creation of the JBC, a council-based appointing system is “designed to insulate the functions of appointment, promotion, and discipline of judges from the partisan political process while ensuring some level of accountability.” *Id.* Additionally, “a purportedly non-partisan body like a commission will be more attuned to the professional considerations that make a good judge than will a political body like a [S]enate.” Tarr, *supra* note 220, at 2.

readily be seen in Flores' comparison is the presence of a stage of confirmation. Confirmation of appointees to the Supreme Court is not needed in the Philippines. On the other hand, the U.S. process of appointment involves a Senate Judiciary Committee, which provides another level of evaluation and investigation on the nominee.²²² Further, similar to Bernas' recommendation of a return to the 1935 Constitutional provision of confirming judicial appointments, the U.S. Senate Judiciary Committee votes to confirm the presidential nominee.²²³

A restoration of the confirmation of judicial appointments should address the problem of presidential involvement in the appointing process and, also, any questions regarding the independence of the appointed officials. Considering that, strictly speaking, four out of the seven positions in the JBC are put into the position by the President²²⁴ and the fact that the Philippine appointing process immediately ends with the President himself, the idea that Justices should be beholden to the appointing authority is not entirely without any basis. This problem is compounded by the fact that appointing processes are seen as largely political.²²⁵ Therefore, the importance of, at the

222. Flores, *supra* note 196. The pertinent provision in the United States Constitution provides —

[The President] shall nominate, and *by and with the advice and consent of the Senate*, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

U.S. CONST. art. 2, § 2, cl. 2. (emphasis supplied).

223. Flores, *supra* note 196.

224. PHIL. CONST. art. VIII, § 8 (2).

225. Tarr, *supra* note 220, at 1. Tarr, on the politics involved in the process of appointment, states —

In designing a system of judicial selection, one must acknowledge at the outset that there are no immaculate conceptions. No system of judicial selection likely to be adopted in the United States can hope to eliminate politics, and the effort to do so will merely distract from the task of ensuring that good judges are selected. The most concerted effort to eliminate politics from judicial selection is found in European countries that use a system of schools and exams to train and select judges and produce a judiciary that resembles a judicial civil service. Such a system is not compatible with American traditions or understandings of judging. And even in Europe, the recognition that constitutional courts have a political role has led to a more political process for selecting the members of those courts. [] If politics is

very least, decreasing presidential control over the current appointing process goes into judicial independence, thus:

Judicial independence is a central goal of most legal systems, and systems of appointment are seen as a crucial mechanism to achieve this goal. Judges who are dependent in some way on the person who appoints them may not be relied upon to deliver neutral, high-quality decisions, and so undermine the legitimacy of the legal system as a whole.²²⁶

The observations of Bernas, Flores, and Tarr all point to a reinstatement of the confirmation stage in the Philippine process of appointment as it provides a proper check and balance, “a desirable feature of any appointing system,”²²⁷ to a system that is largely controlled by the Executive branch of the Government.

Flores also indicates other areas for reform, though not constitutional in nature, for the Philippine process of appointments to the Judiciary. One of Flores’ recommendations is on point with regard to the dearth of empirical studies on the Philippine Supreme Court.²²⁸ Despite the adoption of the JBC of a resolution allowing the conduct of public interviews in 2002²²⁹ and an open-voting policy in 2008,²³⁰ Flores notes that “a transparent selection and appointments process to the [Philippine] Supreme Court is truly far behind the [U.S.] experience[.]” citing the abundance of publicly available materials with regard to each stage of the process of appointment.²³¹ It

inevitably a part of the selection process, then it is inaccurate to defend an approach to selection as “non-political.” This is true for appointive systems, even appointive systems with commissions.

Id.

226. United States Institute of Peace, *supra* note 221, at 1.

227. Tarr, *supra* note 220, at 2.

228. Mangahas, *supra* note 193.

229. Judicial Bar Council, Rule to Further Promote Public Awareness of and Accessibility to the Proceedings of the Judicial Bar Council [JBC-10], § 5 (Sep. 23, 2002).

230. Flores, *supra* note 196.

231. *Id.* In the United States, Flores observes that

confirmation hearings were aired on national television, the hearings can likewise be viewed online. The Senate voting was also done in public, thus, citizens can easily find out how their legislators voted during the Senate confirmation. All related materials on [a Justice’s] appointment including hearing records, Committee votes, Senate votes, Committee questionnaire, archived webcast of committee hearings, and other resources were made available in the Senate Judicial Committee website.

Id. Compare with Gatmaytan & Magno, *supra* note 216, at 6 (“We use only very limited publicly available data as our requests for additional data were denied by

would do well for the JBC to consider additional measures of increasing access to information related to the process of appointment for the Council to be on point with its goal of “transparency and public awareness of its proceedings in the consideration of candidates[.]”²³²

C. A “Chilling Effect” on the Judiciary and the Numbers Game

1. A Chilling Effect

Members of the legal community warn of the “chilling effect” that the impeachment of the Chief Justice would have on the Judiciary.²³³ According to Roan Libarios, President of the IBP, the impeachment complaint “sends a signal to judges that if the [P]resident does not like your ruling, they can make life difficult for you, or worse (you may) be impeached and removed.”²³⁴ Thus, could the impeachment of Chief Justice Corona be rightfully considered as a veiled threat to the Judiciary?

At the outset, the part of the question that, without any reservation, associates the process of impeachment with threats to judicial independence disregards its character as a mechanism for accountability. As a “method of national inquest into the conduct of public men,”²³⁵ the process of impeachment should be rightfully considered as a check and balance on the five classes of public officers that the law considers to be impeachable.²³⁶ Included in this set of impeachable officers are Justices of the Supreme Court, as the Constitution itself provides that “members of the Supreme Court may be removed from office on impeachment for, and conviction of,

the JBC. As others have explained, the likelihood of obtaining documents from the JBC is ‘practically nil’ as requests for data are repeatedly turned down.”).

232. JBC-10, whereas cl.

233. Dizon, *supra* note 97 & Ryan Chua, Miriam: Corona impeachment to cause instability, available at <http://beta.abs-cbnnews.com/nation/12/14/11/miriam-corona-impeachment-cause-instability> (last accessed May 28, 2012) (Senator Miriam Defensor-Santiago explains, “[o]f course all justices of the Supreme Court will now be frightened to death. They will now be frightened half out their wits to write what they truly feel should be the proper decision according to the law and the facts established.”).

234. Agence France-Presse, *Aquino’s war on corruption stirs debate*, PHIL. DAILY INQ., Dec. 15, 2011, available at <http://newsinfo.inquirer.net/111695/aquino’s-war-on-corruption-stirs-debate> (last accessed May 28, 2012).

235. Alexander Hamilton, *The Powers of the Senate*, in 2 ALEXANDER HAMILTON, ET AL., THE FEDERALIST PAPERS 365 (1999).

236. See PHIL. CONST. art. XI, § 2.

culpable violation of the constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.”²³⁷ Thus,

[w]hile impeachment is often described as a political process, it also functions as the *equivalent* of administrative disciplinary proceedings against impeachable officers. Impeachable officers are not subject to administrative disciplinary proceedings either by the Executive or Judicial branch, in the same manner that non-impeachable officers are subject. Thus, *impeachment by Congress takes the place of administrative disciplinary proceedings against impeachable officers as there is no other authority that can administratively discipline impeachable officers.*²³⁸

Therefore, on the premise that the impeachment of Chief Justice Corona is an exercise of a check and balance mechanism that is constitutionally provided for, the answer to the question is initially in the negative.

However, a look at the impeachment complaint paints a different picture. Seven out of the eight charges, either directly or indirectly, deal with decisions of the Supreme Court, a collegial body.²³⁹ Only Article II of the impeachment complaint, dealing with the Chief Justice’s failure to disclose to the public his Statement of Assets, Liabilities, and Net Worth,²⁴⁰ and the part of Article III charging Corona with “creating an excessive entanglement” with Arroyo²⁴¹ do not entail a review of the decisions of and an inquiry into the deliberations of the Supreme Court.

At this point, it is important to note that each member of the Supreme Court, whether the Chief Justice or a newly-appointed Associate Justice,

237. PHIL. CONST. art. XI, § 2.

238. In the Matter of the Charges of Plagiarism, Etc., Against Associate Justice Mariano C. Del Castillo, 642 SCRA 11, 29 (2011) (J. Carpio, dissenting opinion) (citing Robert W. Kastenmeier, Report of the National Commission on Judicial Discipline & Removal of the United States, 152 F.R.D. 265, 287-88 (1994)) (emphases supplied).

239. Corona Impeachment Complaint, *supra* note 29, Grounds for Impeachment. Fr. Joaquin G. Bernas, S.J. finds the charges in the impeachment complaint as “disturbing.” Dizon, *supra* note 97. Bernas explains —

It is a war not against an individual but an institution. If it was made clear that [Chief Justice Corona] is the only target, I think it would be less strenuous. What is happening is that it can have a chilling effect on the entire judiciary. I don't think that's good because the judiciary should remain independent.

Id. Even with regard to the remaining three Articles, two of them still involve a review of the decisions and deliberations of the Supreme Court in the related cases.

240. Corona Impeachment Complaint, *supra* note 29, at ¶¶ 2.1-2.4.

241. *Id.* at ¶¶ 3.4-3.4.8.

carries with him the power of only one vote.²⁴² A Justice writes the opinion of the Court but it speaks only of the vote of the majority of the Justices, as reached through deliberations whether sitting in divisions or *en banc*.²⁴³

The charges of the impeachment complaint, which for their resolution necessarily involve a review of the decisions of the Supreme Court, deeply damage the independence of the Judiciary and have a negative impact upon the core of judicial power — the decision-making process of the High Court. Again, the principle of separation of powers as discussed in Part II of this Article comes into play. *In re: Wenceslao Laureta*²⁴⁴ is enlightening —

To subject to the threat and ordeal of investigation and prosecution, a judge, more so a member of the Supreme Court for official acts done by him in good faith and in the regular exercise of official duty and judicial functions[,] is to subvert and undermine that very independence of the [J]udiciary, and subordinate the [J]udiciary to the [E]xecutive. ‘For it is a general principle of the highest importance to the proper administration of justice that a judicial officer in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom[] and would destroy that independence without which no judiciary can be either respectable or useful.’

Indeed, resolutions of the Supreme Court as a collegiate court, whether *en banc* or division, speak for themselves and are entitled to full faith and credence and are beyond investigation or inquiry under the same principle of conclusiveness of enrolled bills of the legislature.

...

To allow litigants to go beyond the Court’s resolution and claim that the members acted ‘with deliberate bad faith’ and rendered an ‘unjust resolution’ in disregard or violation of the duty of their high office to act upon their own independent consideration and judgment of the matter at hand would be to *destroy the authenticity, integrity[,] and conclusiveness* of such collegiate acts and resolutions and to disregard utterly the presumption of regular performance of official duty. To allow such collateral attack would destroy the separation of powers and undermine the role of the Supreme Court as the final arbiter of all justiciable disputes.

Dissatisfied litigants and/or their counsels cannot without violating the separation of powers mandated by the Constitution relitigate in another forum the final judgment of this Court on legal issues submitted by them and their adversaries for final determination to and by the Supreme Court and which fall within the judicial power to determine and adjudicate

242. PHIL. CONST. art. VIII, § 4 (2)-(3).

243. PHIL. CONST. art. VIII, § 13.

244. *In re: Wenceslao Laureta*, 148 SCRA 382.

exclusively vested by the Constitution in the Supreme Court and in such inferior courts as may be established by law.²⁴⁵

De Castro, Biraogo, Gutierrez v. House of Representatives Committee on Justice,²⁴⁶ and *Arroyo*, as presented in Part III of this Article, were all involved in the impeachment complaint against Corona. All the related charges in the complaint either delved into the correctness of the Court's decisions or implied that the Chief Justice's voting record in the cases is indicative of partiality. Unfortunately, unlike *In re: Wenceslao Laureta* on the issue of whether an "unjust decision" is a ground for a case to be brought to the *Tanodbayan*,²⁴⁷ the question of whether the manner in which a Justice votes in a collegial decision, or, when taken collectively, his voting pattern, as indicative of manifest partiality, can be considered as an impeachable offense has still not been categorically resolved. Case law is not very instructive in this regard as what constitutes an impeachable offense is considered as a political question.²⁴⁸

In response to the argument that the impeachment complaint drives at the decisions of a collegial court, the conduct of prosecutors²⁴⁹ and their Reply does imply a threat against the Judiciary —

In the first place, the power to impeach is the sole prerogative of the House of Representatives under the Constitution. It is the House of Representatives which determines if evidence is sufficient to warrant the filing of articles of impeachment against one and not another. At the moment, the evidence against Corona is stronger and more apparent than against the other Justices. *Moreover, it would be difficult to impeach and prosecute several Justices at the same time. But this does not necessarily mean that other Justices will not later on be similarly held accountable.*²⁵⁰

Malacañang insists that it does not want a "friendly court" but an independent one,²⁵¹ a wish that seems to be ironically undermined by its

245. *Id.* at 419-21 (citing *Bradley v. Fisher*, 80 U.S. 335 (1871); *United States v. Pons*, 34 Phil. 729 (1916); *Primicias and Gardiner v. Parades and Clarin*, 61 Phil. 118 (1934); & *Mabanag v. Lopez Vito*, 78 Phil. 1 (1947)) (emphases supplied).

246. *Gutierrez*, 643 SCRA 198.

247. *In re: Wenceslao Laureta*, 148 SCRA at 397-98.

248. *Francisco, Jr.*, 415 SCRA at 152.

249. Benjamin B. Pulta, *SC justices belittle prosecutor's impeach threat*, DAILY TRIB., Feb. 11, 2012, available at <http://www.tribuneonline.org/headlines/20120211hed3.html> (last accessed May 28, 2012).

250. Reply to the Answer dated 21 December 2011 ¶ 16, In Re: Impeachment of Honorable Chief Justice Renato C. Corona as Chief Justice of the Supreme Court of the Philippines, Case No. 002-2011 (Dec. 30, 2011) (emphasis supplied).

251. Cupin, *supra* note 28.

support for an impeachment complaint that attacks precisely at the core of judicial independence. In the context of Aquino's motive to remove the "stumbling blocks" along his *tuwid na landas*, one can see that the President's all-out support for Corona's impeachment rested on the premise that Justices are beholden to their appointing authority. Aquino curiously believes his appointees to be the exception to this theory.²⁵²

2. The Numbers Game

Thirty percent or 58 of the 188 members of the House of Representatives who signed the impeachment complaint are members of the Liberal Party, the political party of President Aquino. This means that almost 80% of those belonging to the Liberal Party in the House of Representatives voted to impeach the Chief Justice. Things did not bode well for the remaining 20%. Representative Hermilando I. Mandanas, a member of the Liberal Party and a non-signatory to the impeachment complaint, was stripped of his chairmanship of the "powerful" House Committee on Ways and Means and replaced with Representative Isidro T. Ungab, a signatory to the complaint and member of the same party.²⁵³

That the numbers game is played in Congress is nothing new. Voting according to the leanings of one's political party goes as far back as the Malolos Congress.²⁵⁴ Congress is thus under the bane and boon of the party system. As the department that is charged with initiating an impeachment complaint,²⁵⁵ the dictatorship of the party system in Congress makes objectivity in the process highly suspect.

Section 3 (6) of Article XI of the Constitution provides that "[n]o person shall be convicted without the concurrence of two-thirds of all the Members of the Senate."²⁵⁶ Considering that the current Senate is composed of 23 senators, 16 votes were needed to convict Corona of the charges against him. That a conviction rests on a two-thirds majority vote makes it imperative to discuss the numbers game as it was played in the Senate within

252. Willard Cheng, PNOy steps up attacks vs Corona, *available at* <http://www.abs-cbnnews.com/nation/12/13/11/pnoy-steps-attacks-vs-corona> (last accessed May 28, 2012).

253. Sheryl L. Miguel & Rey G. Panaligan, *Corona fights back*, MANILA BULL., Dec. 14, 2011, *available at* <http://www.mb.com.ph/articles/344811/corona-hits-pnoy> (last accessed May 28, 2012). The Authors also point out that Isidro T. Ungab is not a vice-chairman of the same committee. *Id.*

254. Ambeth R. Ocampo, *Numbers game*, PHIL. DAILY INQ., Jan. 17, 2012, *available at* <http://opinion.inquirer.net/21327/numbers-game> (last accessed May 28, 2012).

255. PHIL. CONST. art. XI, § 3 (1).

256. PHIL. CONST. art. XI, § 3 (6).

the context of the impeachment trial. Although twenty senators voted in favor of a conviction,²⁵⁷ four more than the necessary number of votes, the question of whether the Senators voted “legally” or “politically” should not be barred by recognition of this overwhelming majority alone. The reason behind the votes and any underlying motives therefor should also be examined.

It came as no surprise that the four senators affiliated with the Liberal Party voted to convict Corona,²⁵⁸ and in fact had, on several occasions, been charged of showing partiality in favor of the prosecution.²⁵⁹ The six senators who can run for re-election in 2013 also all voted to convict Corona.²⁶⁰ The three senators who voted in favor of acquittal are either secure in their terms until 2016 or are barred by the term limit in the Constitution.²⁶¹ Although there are senators, who are barred by the term limit or are secure in their seats until the next election, who voted in favor of a conviction, the most compelling fact against objectivity in the process still remains — it is the politically-aligned character of the 10 votes in favor of a conviction with respect to the senators who are running for re-election and whose political alignments make it favorable, if not necessary, for them to do so.

The reasoning of the senators who voted to convict Corona rested largely on the non-disclosure of the dollar and commingled peso accounts in the Chief Justice’s statement of assets, net worth, and liabilities as equivalent to a culpable violation of the constitution and amounting to an impeachable offense.²⁶² It is submitted that the resolution of this issue in the affirmative by

257. Ager, *supra* note 168.

258. They are Senators Franklin M. Drilon, Teofisto D. Guingona III, Ralph G. Recto, and Sergio R. Osmeña III.

259. Mario B. Casuyuran, *Enrile won't act on Drilon*, MANILA BULL., Jan. 27, 2012, available at <http://www.mb.com.ph/node/349475/enrile-wont-act-on-drilon> (last accessed May 28, 2012).

260. Gemma Bagayaua Mendoza, Spotlight on the Senator-judges, available at <http://www.rappler.com/nation/special-coverage/corona-trial/1606-spotlight-on-the-senator-judges> (last accessed May 28, 2012). They are Senators Alan S. Cayetano, Francis G. Escudero, Gregorio B. Honasan II, Loren B. Legarda, Aquilino D. Pimentel III, and Antonio F. Trillanes IV. *Id.*

261. Senator Joker P. Arroyo is barred by the two-term limit while Senators Miriam Defensor-Santiago and Ferdinand R. Marcos, Jr. are secure in their seats until the 2016 elections. *Id.*

262. See, e.g., Juan Ponce Enrile, Speech of Senate President Juan Ponce Enrile explaining his verdict on Chief Justice Renato Corona (May 29, 2012) (transcript available at <http://www.gov.ph/2012/05/29/speech-of-senate-president-juan-ponce-enrile-explaining-his-verdict-on-chief-justice-renato-corona-may-29-2012/> (last accessed May 28, 2012)). Enrile states that —

the Senate, sitting as an impeachment court, rests on shaky ground. Although what comprises an impeachable offense is a political question, the factual finding of a culpable violation of constitution by the senators still rested on “a determination of the ambiguous situation created by the concurrent application of the 1987 Constitution, the SALN law and the FCDU law,”²⁶³ which matter definitively involves the interpretation of the laws and the Constitution and thus, only the Supreme Court can pass upon.²⁶⁴

D. Upholding the Rule of Law: Limits on the Exercise of Governmental Power within a Constitutional Democracy

This Article sought to answer four issues that presented themselves in relation to the factual antecedents as discussed in Part III and as underscored by President Aquino’s motives as analyzed in Part I. With regard to the first three questions, the following conclusions were reached: *first*, the acts of the Executive branch which it believes to be in furtherance of a public good (Aquino’s *tuwid na landas* policy) cannot be classified as a valid extra-legal measure in view of the failure to meet the stringent conditions that should exist in order for the model properly apply; *second*, constitutional reform in the form of the reinstatement of the confirmation stage in appointments to the Supreme Court is necessary in order to decrease presidential control over the process and strengthen the independence of the both the appointing body and the appointed officers; and *third*, considering the nature of the

The so-called conflict of laws between [R.A.] Nos. 6713 and 6426 is more illusory than real to me. Section 8 of [R.A.] No. 6426 merely prohibits the examination, inquiry or looking into a foreign currency deposit account by an entity or person other than the depositor himself, because that depositor knows his deposit and he can reveal it, if he wants to, without any penalty or punitive sanction against him, unlike others who would reveal it. But there is nothing in [R.A.] No. 6426 which prohibits the depositor from making a declaration on his own of such foreign currency funds, especially in this case where the Constitution mandates the depositor who is a public officer to declare, under the Constitution itself, all assets owned by him or his family under oath.

Id.

263. Ferdinand R. Marcos, Jr., Speech of Senator Ferdinand Marcos, Jr. explaining his verdict on Chief Justice Renato Corona (May 29, 2012) (transcript available at <http://www.gov.ph/2012/05/29/speech-of-senator-ferdinand-marcos-jr-explaining-his-verdict-on-chief-justice-renato-corona-may-29-2012/> (last accessed May 28, 2012)).

264. *Endencia and Hugo v. David, etc.*, 93 Phil. 696, 700-01 (1953) (“[T]he interpretation and application of said laws belong exclusively to the Judicial department.”). See also the discussion in Part II of this Article.

charges as contained in the impeachment complaint, the impeachment of Chief Justice Corona can be rightfully viewed as a veiled threat against the Judiciary.

As underscored by the dictatorship of the party system in Congress, it is the third answer which seems to be the most problematic. Maintaining the delicate balance of powers among the three departments rests largely on the premise of non-interference in areas that, by law, should belong exclusively to one branch. Should interference be made, it must be within any of the checks and balances or mechanisms for accountability as provided for by the Constitution. In the impeachment trial of the Chief Justice, both in the initiation, process, and culmination thereof, objectivity, partiality, and fairness became highly questionable in view of the numbers game played by the Congress.

The limits on the exercise of government power are enshrined in the Constitution itself. As shown in Part II of this Article, respect for the principle of the separation of powers, as aided by the doctrine of checks and balances, is essential for a truly functioning democracy. It is through the Constitution that the sovereign people have ratified pre-eminent principles designed to ensure stability of institutions and consistency in purpose. Unfortunately, as in any clash between departments of the Government, these limits have been tested, especially in light of the Aquino-Corona conflict. It remains to be seen how human frailty, past mistakes, and admitted weaknesses of institutions factor into the strengthening of Philippine democracy, after the removal of Chief Justice Corona.

It bears repeating that the Constitution itself, in its preamble, provides that the democratic government to be established by the sovereign Filipino people should operate under the rule of law.²⁶⁵ Although, as discussed in Part II of this Article, there seems to be no precise definition of the concept, the phrase, as used in *Francisco, Jr.* seems to be most apt in the context of the Aquino-Corona conflict, thus —

Obedience to the rule of law forms the bedrock of our system of justice. If public officers, under the guise of religious or political beliefs[,] were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. A government of laws, not of men[,] excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, public officers are guided by the [r]ule of [l]aw, and ought 'to protect and enforce it without fear or favor,' resist encroachments by governments, political parties, or even the interference of their own personal beliefs.²⁶⁶

265. PHIL. CONST. pmb1.

266. *Francisco, Jr.*, 415 SCRA at 163 (citing *Veneracion*, 249 SCRA at 251).

V. CONCLUSION

President Aquino may consider the impeachment and eventual conviction of Chief Justice Corona as his defining moment at this stage of his presidency. But one may ask, “At what cost?” There are those who believe that we have all come out bruised as a people.

The predictable nature of the political exercise the nation has just gone through conveys a clear message that while we are able to see the impeachment trial toward its logical conclusion, there is a collective responsibility to personally address the very same issues that confronted the Chief Justice. Accountability is as much a responsibility of the executive officials, legislator-prosecutors, senator-judges, the media, and the citizens. The nation awaits a re-awakening of every citizen’s sense of honesty and fair play in whatever endeavor he or she may pursue.

Institutions and tools for accountability in a constitutional democracy, in the end, could only be effective if those who avail of these could demonstrate the capacity to take constructive steps in bridging the gaps which may have divided the different branches of the government. This is the ultimate test of a truly functioning democracy and a mature leadership.