Public Accountability: An Analysis of the Horizontal and Vertical Accountability Measures in Philippine Law

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> *Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.*
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> — James Madison[1]

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I. INTRODUCTION

The Philippine Constitution and other laws concerning public administration and public officers contain a myriad of accountability measures. Whether horizontal, as in cases of accountability imposed by a co-equal body, or vertical, as in cases of accountability to a superior, Philippine law and jurisprudence recognize varying modes of public accountability currently in place.

This Article aims to discuss these accountability measures and assess the effectiveness of each in light of recent global trends on public accountability. The Authors conclude that the Philippine legal system, as a behavioral matter, appears to favor neither vertical nor horizontal accountability mechanisms. Rather, it is social accountability, a third check, which is the prevailing measure. Social accountability is characterized by the participation of non-state actors and politically relevant social sectors.

The Constitution provides for the fundamental declaration on public accountability in Article XI, Section 1, which states that "[*p*]*ublic office is a public trust.* Public officers and *employees must at all times be accountable to the*

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1. James Madison, *The Federalist No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*, *in* THE FEDERALIST (Publius, 1788).

people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[2]

It is that declaration, among others in the Constitution, that pronounces the fiduciary nature of public office as a matter of trust and accountability between the holder of the office and the citizenry of the Philippines. Father Joaquin G. Bernas, S.J. describes this provision as "sum[ming] up the high sense of idealism that is expected of every officer of the government. ... *The notion of a public trust connotes accountability.*"[3] The provision is extracted from the 1973 Constitution.[4] The only addition of the framers of the current Constitution is the phrase, "act with patriotism and justice, and lead modest lives."[5]

In *De Guzman v. Delos Santos*,[6] the Supreme Court elucidated the concept of "public office is a public trust" by stating —

> A public officer or employee *does not merely have an obligation to obey and respect the law; it is his sworn duty to do so.* Assumption of *public office is impressed with the paramount public interest* that requires the highest standards of ethical conduct. A person aspiring to public office *must observe honesty, candor*[,] *and faithful compliance with the law.* Nothing less is expected. This ideal standard ensures that only those of known probity, competence[,] and integrity are called to the challenge of public service.[7]

To best appreciate the concepts of public accountability, the Authors deem it prudent to first discuss the concepts of public office and public officers in the eyes of the law.

II. CONCEPT OF A PUBLIC OFFICE

Floyd Russel Mechem describes a public office as having a triumvirate character as the right, authority, and duty of a person to a particular office.[8] He furthers that such office "[is] created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the

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2. PHIL. CONST. art. XI, § 1 (emphases supplied).
3. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1148 (2009 ed.) (emphasis supplied).
4. *Id.* (citing 2 RECORD OF THE CONSTITUTIONAL COMMISSION 274-75 (1986)).
5. *Id.*
6. De Guzman v. Delos Santos, 394 SCRA 210 (2002).
7. *Id.* at 219-20 (emphases supplied).
8. FLOYD RUSSEL MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS 1 (1890 ed.).

public."[9] Mechem continues the discussion on public office as a right that is rather limited as opposed to other legal rights. He states that "*the right to hold a public office under our political system is not a natural right. … It exists, where it exists at all, only because and by virtue of some law expressly or impliedly creating and conferring it.*"[10]

The concept of a public office as a right can be illustrated in the United States (U.S.) case of *People ex rel. Ryan v. Green*,[11] where it was held that while a person has no vested right to a public office, some semblance of a right exists when confronted by subsequent legislation attempting to retroactively affect the tenure of a person to his office.[12] It was held that "[t]hough there is *no vested right in an office, which may not be disturbed by legislation*, yet *the incumbent has*, in a sense, *a right to his office. If that right is to be taken away by statute, the terms should be clear in which the purpose is stated.*"[13]

Segovia v. Noel[14] is similar in its appreciation of the concept of a right to an office. In this case, Judge Vicente Segovia assailed the retroactive application of Act No. 3107, Section 1,[15] which mandated a maximum retirement age of years to all justices and auxiliary justices.[16] Judge Segovia, while over 65 years of age at the time of the passage of this particular law, contended that the provision should apply only prospectively and not retroactively as to him, since at the time of his appointment, the laws did not prescribe any term limit based on a person's age.[17]

The Supreme Court, through Justice George Malcolm, agreed with the prospectivity of the law and ruled in favor of Judge Segovia.[18] Significantly,

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9. *Id.* at 1-2.
10. *Id.* at 22 (emphasis supplied).
11. People ex rel. Ryan v. Green, 58 N.Y. 295 (1874) (U.S.).
12. *Id.* at 304.
13. *Id.* (emphases supplied).
14. Segovia v. Noel, 47 Phil. 543 (1925).
15. An Act to Amend and Repeal Certain Provisions of the Administrative Code Relative to the Judiciary in Order to Reorganize the Latter; Increasing the Number of Judges for Certain Judicial Districts; Increasing the Salaries of Judges of Courts of First Instance; Vesting the Secretary of Justice with Authority to Detail a District Judge Temporarily to a District or Province Other Than His Own; Regulating the Salaries of Justices of the Peace; Abolishing the Municipal Court and Justice of the Peace Court of the City of Manila and Creating in Lieu Thereof a Municipal Court with Three Branches; Regulating the Salaries of Clerks of Court and Other Subordinate Employees of Courts of First Instance, and for Other Purposes, Act. No. 3107, § 1 (1923).
16. *Segovia*, 47 Phil. at 544.
17. *Id.* at 545.
18. *Id.* at 548.

the Court took the occasion to rule against the contention of the petitioner that the provisions of Act No. 3107 were unconstitutional for impairing his contractual right to his office.[19] The Court reiterated the principle that "*a public office cannot be regarded as the property of the incumbent.* ... [A] public office is *not a contract.*"[20]

The non-contractual nature of public office was reiterated in *Magana v. Agregado*,[21] where the petitioner, while holding public office, accepted with reservations a different public position with lower salary and benefits.[22] In its ruling, the Supreme Court held that "*an appointee cannot impose his own conditions for the acceptance of a public office.* He may accept or decline it."[23]

Cornejo v. Gabriel[24] provides for an illuminating ruling on the due process of law provision[25] under the Bill of Rights[26] and a public office. The Supreme Court held —

> Again, for this petition to come under the due process of law prohibition, it would be necessary to consider an office a 'property.' It is, however, well settled ... that *a public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency.*[27]

In *Imbong v. Ferrer*,[28] Section 5 of Republic Act (R.A.) No. 6132,[29] disqualified any elected delegate to the Constitutional Convention from running for any public office in any election or from assuming any appointive office or position until after final adjournment of the Constitutional Convention.[30] This provision was assailed by the petitioners

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19. *Id.* at 545.
20. *Id.* (emphases supplied).
21. Magana v. Auditor General, et al., 107 Phil. 900 (1960).
22. *Id.* at 901.
23. *Id.* at 902 (emphasis supplied).
24. Cornejo v. Gabriel and Provincial Board of Rizal, 41 Phil. 188 (1920).
25. PHIL. CONST. art. III, § 1.
26. PHIL. CONST. art. III.
27. *Cornejo*, 41 Phil. at 194 (emphasis supplied).
28. Imbong v. Ferrer, 35 SCRA 28 (1970).
29. An Act Implementing Resolution of Both Houses Numbered Two as Amended by Resolution of Both Houses Numbered Four of the Congress of the Philippines Calling for a Constitutional Convention, Providing for Proportional Representation Therein and Other Details Relating to the Election of Delegates to and the Holding of the Constitutional Convention, Repealing for the Purpose Republic Act Four Thousand Nine Hundred Fourteen, and for Other Purposes [The 1971 Constitutional Convention Act], Republic Act No. 6132, § 5 (1970).
30. *Imbong*, 35 SCRA at 36.

as an undue deprivation of liberty without due process and a denial of equal protection of law.[31]

In its ruling that uphold the constitutionality of the provision, the Supreme Court declared "[t]hat the citizen *does not have any inherent nor natural right to a public office*, is axiomatic under our constitutional system. *The State*[,] through its Constitution or legislative body, *can create an office and define the qualifications and disqualifications* therefor as well as *impose inhibitions on a public officer.*"[32] The reason for the inhibition, as observed by the Court, is to prevent situations of abuse of power and avoid delegates from taking advantage of their position as leverage for concessions through public offices during the pendency of the Convention.[33]

Meanwhile, in *De La Llana v. Alba*,[34] Batas Pambansa Blg. 129,[35] which reorganized the judicial branch and effectively abolished some inferior courts, was assailed as unconstitutional.[36] Justice Juvenal K. Guerrero, while ruling as to the constitutionality of the law as a valid exercise of legislative power, also took the occasion to state that the nature and concept of a public office is "for the purpose of effecting the ends for which government has been instituted, which are for the common good, and not the profit, honor[,] or private interest of any one man, family[,] or class of men."[37] He continued by ruling that "it is *fundamental that public office*[ ] [*is*] *public trust*, and the person to be appointed should be selected solely with a view to the public welfare. In the last analysis, *a public office is a privilege in the gift of the State.*"[38]

III. CONCEPT OF A PUBLIC OFFICER

31. *Id.*

32. *Id.* at 36-37 (emphases supplied).

33. *Id.* at 37.

34. De La Llana v. Alba, 112 SCRA 294 (1982).

35. An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and For Other Purposes [The Judiciary Reorganization Act of 1980], Batas Pambansa Blg. 129 (1981).

36. *De La Llana*, 112 SCRA at 311-12.

37. *Id.* at 360 (J. Guerrero, concurring opinion) (citing NEPTALI A. GONZALES, ADMINISTRATIVE LAW, LAW ON PUBLIC OFFICERS AND ELECTION LAW 148 (2d ed.)).

38. *De La Llana*, 112 SCRA at 360 (citing GONZALES, *supra* note 37, at 148 & 42 AM. JUR. 881) (emphases supplied).

In *People ex rel. Throop v. Langdon*,[39] Judge Thomas M. Cooley discussed the distinguishing characteristic of a public officer and a public employee by stating that the officer, by the nature of his office,

> has *a greater importance, dignity[,] and independence* ... in being required to take an official oath, and perhaps to give an official bond; in *the liability to be called to account* as a public offender for misfeasance or nonfeasance in office, and usually, though not necessarily, in the tenure of his position.[40]

The Revised Penal Code (RPC)[41] provides for a wider scope of what constitutes a public officer as opposed to administrative laws. For purposes of the application of the provisions of the RPC, a public officer pertains to

> *any person* who, by direct provision of the law, popular election[,] or appointment by competent authority, *shall take part in the performance of public functions* in the Government of the Philippine Islands, or shall *perform in said Government or in any of its branches*[,] *public duties as an employee, agent*[,] *or subordinate official*, of any rank or class[.][42]

In *Cornejo*, the *ponencia* of Justice Malcolm stated that

> the basic idea of government ... is that of a popular representative government, *the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office*, but *where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people* whom he represents.[43]

IV. PUBLIC ACCOUNTABILITY

Recognizing the difficulty to define in precise terminology the concept of accountability, Rick Stapenhurst and Mitchell O'Brien of the World Bank generally describe it as "exist[ing] when there is a relationship where an *individual or body, and the performance of tasks or functions* by that individual or body, *are subject to another's oversight, direction*[,] *or request* that they provide information or justification for their actions."[44]

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39. People ex rel. Throop v. Langdon, 40 Mich. 673 (1879) (U.S.).

40. *Id.* at 682 (emphases supplied).

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

42. *Id.* art. 203 (emphases supplied).

43. *Cornejo*, 41 Phil. at 194 (emphases supplied).

44. Rick Stapenhurst & Mitchell O'Brien, Accountability in Governance (An Unpublished Note written for the World Bank Institute) 1, *available at* http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf (last accessed Nov. 15, 2012) (emphases supplied).

It is that same struggle to adequately define "accountability" that gives rise to a myriad of characteristics of the term. Beatrice Njweng Gwena Muton says that accountability is "a major element in any decentralization process."[45] Further, it is "a mechanism for minimizing power abuses by actors."[46]

It appears that the definition of Scott Mainwaring provides for a straightforward definition of the concept —

> [He] delimit[s] the concept of political accountability to relationships that formally give some actor the *authority of oversight and/or sanction relative to public officials*. Political accountability is thus *a formalized relationship of oversight* [*or*] *sanctions of public officials by other actors*. In a relationship of political accountability, a public official *gives a reckoning of the discharge of her public duties to actors that formally (via public law) have the capacity to demand such an accounting and/or to impose sanctions* on the official. Thus, [his] understanding of political accountability *hinges on whether an actor is formally ascribed the right to demand answerability of a public official or bureaucracy*.
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> ...
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> As conceptualized [ ], 'accountability' *implies not only answerability, but also the legal obligation to answer or the institutionalized right of an agent of accountability to impose sanctions on public officials*.[47]

A. Types of Public Accountability

Katherine Isbester opines that there are three predominant types of public accountability.[48] These are vertical accountability, horizontal accountability, and social accountability.[49]

Vertical accountability connotes the traditional concept of public accountability. As pointed out by Vikas Jha, it "is the means through which

45. BEATRICE NJWENG GWENA MUTON, DECENTRALIZING FOREST MANAGEMENT IN CAMEROON: A CONCEPTUAL LOOK AT THE PERCEPTION OF PROCEDURAL JUSTICE IN COMMUNITY FOREST MANAGEMENT PROCESS 112 (2007 ed.).

46. *Id.* (citing ANNE-MARIE GOETZ & ROB JENKINS, REINVENTING ACCOUNTABILITY: MAKING DEMOCRACY WORK FOR HUMAN DEVELOPMENT (2005 ed.)).

47. Scott Mainwaring, *Introduction: Democratic Accountability in Latin America*, *in* DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA 7 (Scott Mainwaring & Christoper Welna eds., 2003) (emphases supplied).

48. KATHERINE ISBESTER, THE PARADOX OF DEMOCRACY IN LATIN AMERICA: TEN COUNTRY STUDIES OF DIVISION AND RESILIENCE 15 (2011 ed.).

49. *Id.*

citizens, mass media[,] and civil society seek to enforce standards of good performance and good conduct on officials."[50]

Meanwhile, Rob Jenkins defines vertical accountability as those channels that "link citizens directly to government ... occur[ing] when the state is held to account by non[-]state actors."[51]

On the one hand, Richard L. Sklar defines it as "signif[ying] the right of persons who are affected by the actions or decisions of officeholders or leaders to renew, rescind, or revise the mandates of those who exercise authority."[52] Aloys Prinz, Albert Eelke Steenge, and Jörg Schmidt, on the other hand, opine that the core issues of vertical accountability are hierarchy and owner orientation as it maintains some semblance of shareholder orientation.[53]

In contrast, Guillermo O'Donnell refers to horizontal accountability actions as those actions that are

> undertaken *by a state agency* with the explicit purpose of *preventing, cancelling, redressing*[,] [*or*] *punishing actions (or eventually non-actions) by another state agency* that are deemed unlawful, whether on grounds of encroachment or of corruption. [Horizontal accountability] *delimits a particular kind of interaction among state agencies, narrower than the whole set of controls and exchanges* among these agencies. In all cases of [horizontal accountability], a given state agency, directly or by means of mobilizing another agency (often a court)[,] addresses another state agency (or agencies)[ ] on the basis of legally-grounded arguments about presumably unlawful actions or inactions of the latter.[54]

Charles D. Kenney takes point of O'Donnell's definition in summarizing the following characteristics of horizontal accountability:

> Four aspects of horizontal accountability are specified in O'Donnell's definition:

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50. VIKAS JHA, DEMOCRATIC ACCOUNTABILITY IN LOCAL GOVERNANCE INSTITUTIONS: EXPERIENCES FROM SOUTH ASIA 1 (2011 ed.).

51. Rob Jenkins, *The Role of Political Institutions in Promoting Accountability*, *in* PERFORMANCE ACCOUNTABILITY AND COMBATING CORRUPTION 140 (Anwar Shah ed., 2007).

52. Richard L. Sklar, *Democracy and Constitutionalism*, *in* THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 53 (Andreas Schedler, et al. eds., 1999).

53. INNOVATION: TECHNICAL, ECONOMIC AND INSTITUTIONAL ASPECTS 71 (Aloys Prinz, et al. eds., 2006).

54. Guillermo O'Donnell, *Horizontal Accountability: The Legal Institutionalization of Mistrust*, *in* DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA 35 (Scott Mainwaring & Christopher Welna eds., 2003) (emphases supplied).

(1) As in the case with vertical accountability, the *objects* of horizontal accountability *are state agents.*

(2) *Unlike vertical accountability*, the *subjects* of horizontal accountability *are also state agents.*

(3) The *means* of horizontal accountability *include oversight, sanctions, and impeachment.*

(4) The *scope* of horizontal accountability *is limited to actions or omissions qualified as unlawful* (including violations of a country's highest law, its [C]onstitution).[55]

The subsequent discourse provided for by Kenney is enlightening in discussing the complex relationship of mutualism between horizontal accountability and checks and balances —

> *The first of these forms of governmental self-control is a condition for the other two*: without branches and agencies sufficiently distinct from one another with respect to their origin, operation, and survival, there would be little point in discussing checks and balances or horizontal accountability. As Madison put it, following Jefferson's lead, 'the accumulation of all powers legislative, executive[,] and judiciary in the same hands ... may justly be pronounced the very definition of tyranny[.]' *Likewise, legislative checks and balances and horizontal accountability are a condition for the effective separation of powers*: without such mechanisms, the diverse agencies of government would be unable to defend their autonomy against encroachment[.] The second form of governmental self-control, checks and balances, involves power-sharing by the distinct agencies of government. Legislative checks and balances refer to the means by which different parts of government are constrained in setting and enacting policy by being forced to share authority over legislation and appointment to offices with other parts of government. *Horizontal accountability entails a third dimension of governmental self-control, in which some members of a government's distinct branches and agencies are liable to being sanctioned by other state actors. Horizontal accountability is thus distinct from checks and balances*, which, though crucially important controls on power, are not exercises of accountability at all. When a president vetoes legislation or a congress refuses to confirm an appointment, no agents or agencies are being held accountable for any act. *Horizontal accountability*, therefore, *is best understood as part of a broader category of controls government places on itself, and should not be confused with the separation of powers or legislative checks and balances.*[56]

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55. Charles D. Kenney, *Horizontal Accountability: Concepts and Conflicts*, *in* DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA 57 (Scott Mainwaring & Christopher Welna eds., 2003) (emphases supplied).

56. *Id.* at 60 (citing James Madison, The Federalist No. 47: The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts, *available at* http://constitution.org/fed/federa47.htm (last accessed Nov. 15, 2012)).

The Authors subscribe to the discourse of Kenney in that, while horizontal accountability and checks and balances are key elements to achieving true separation of powers in any government, there are polar distinctions between them. The Authors note that the dynamism there is multi-faceted and the relationship is based on mutualism and neutralism, but not competition. Hence, while they are separate and distinct, horizontal accountability and checks and balances interact without any direct effect on each other (neutralism), yet achieve a communal and reciprocal benefit through cooperative work (mutualism), without any mutually detrimental interaction between them (competition).

The third form of public accountability is social accountability, adequately defined by McNeil & Malena as "the wide range of *citizen and civil society organization … actions to hold the state to account, as well as actions on the part of government, media, and other actors that promote or facilitate these efforts.*"[57]

While the Authors recognize the valid and effective role of social accountability in governments and bureaucracies, the role of some non-state actors such as the media and non-governmental organizations (NGOs) are excluded from this Article, the purpose being that the focus of this Study is on the political accountability measures provided for by existing laws for and between political agents. The role of the citizenry is discussed as part of vertical accountability mechanisms.

B. Vertical Accountability Mechanisms

The traditional concept of vertical accountability focuses on the answerability of public officials to the public in general. This coincides with the constitutional declaration that the Philippines is a democratic and republican state and, thus, sovereignty and government authority springs from the people.[58]

The Constitution provides in its Declaration of Principles the significance of the people in relation to the government. In Article II, Section 1, it states that "[*s*]*overeignty resides in the people and all government authority emanates from them.*"[59] Article II, Section 3 provides for the supremacy of civilian authority over the military by stating that "[*c*]*ivilian authority is, at all times, supreme over the military.* The armed forces of the

57. Mary McNeil & Carmen Malena, *Social Accountability in Africa: An Introduction*, *in* DEMANDING GOOD GOVERNANCE: LESSONS FROM SOCIAL ACCOUNTABILITY INITIATIVES IN AFRICA 1 (Mary McNeil & Carmen Malena eds., 2010) (emphasis supplied).

58. PHIL. CONST. art. II, § 1.

59. PHIL. CONST. art. II, § 1 (emphasis supplied).

Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory."[60]

The succeeding Constitutional provision states the relationship between the people and the government by providing that "[*t*]*he prime duty of the Government is to serve and protect the people.* The Government may call upon the people to defend the State and, in fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service."[61]

While these provisions endow the people with significant power, the framers of the Constitution intended these provisions to act merely as rules of conduct.[62] The ruling of the Supreme Court in *Tañada v. Angara*[63] elucidates this intention —

> These principles in Article II are *not intended to be self-executing principles* ready for enforcement through the courts. They are *used by the judiciary as aids or as guides in the exercise of its power of judicial review*[ ] *and by the legislature in its enactment of laws.* As held in the leading case of *Kilosbayan, Incorporated,* [*et al. v.*] *Morato*, the principles and state policies enumerated in Article II and some sections of Article XII are not 'self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They *do not embody judicially enforceable constitutional rights but guidelines for legislation.*'[64]

Following that these provisions are not self-executing, it becomes apparent that the principles embodied in them and the corresponding power of the people would be implemented in subsequent legislation.

Hence, contained in the Constitution alone, with no reference to any other legislative enactment, the sole vertical accountability mechanism where the people have direct power is through their right of suffrage and participation in elections.[65] This is recognized by Aries A. Arugay as he discussed —

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60. PHIL. CONST. art. II, § 3 (emphasis supplied).

61. PHIL. CONST. art. II, § 4 (emphasis supplied).

62. *See* 4 RECORD OF THE CONSTITUTIONAL COMMISSION 580 (1986).

63. Tañada v. Angara, 272 SCRA 18 (1997).

64. *Id.* at 54 (citing Kilosbayan, Incorporated, et al. v. Morato, 246 SCRA 540, 564 (1995)) (emphases supplied).

65. *See* Aries A. Arugay, The Accountability Deficit in the Philippines: Implications and Prospects for Democratic Consolidation, *available at* http://www.academia.edu/388183/The_Accountability_Deficit_In_the_Philippines_Challenges_and_Prospects_for_Democratic_Consolidation (last accessed Nov. 15, 2012).

> Vertical accountability implies the existence of an agent of control external to the government — the public — and is primarily exercised through elections. The basic underpinning of a democracy is that the ruled has the ultimate authority to select their rulers. This enables them to either punish them through the withdrawal of their vote or reward them through reelection. It is fairly established in democratic theory that electoral exercises, given that freely contested, widely participated, and anchored on the observance of civil and political liberties, have the ability to elicit accountability.[66]

Vertical accountability has also evolved from the traditional "people-public official relationship" to recognize the superior-subordinate aspect of accountability. Hence, the rules on liability of the superior for acts of the subordinate, and vice versa, would constitute part of the vertical accountability measures under Philippine law.

The rules on the general liability of public officers are laid down in the Revised Administrative Code.[67] In Section 38, the liability of superior officers is discussed, to wit:

> (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice[,] or gross negligence.
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> (2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.
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> (3) *A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.*[68]

Meanwhile, Section 39 discusses the liability of subordinate officers. It provides —

> *No subordinate officer or employee shall be civilly liable for acts done by him in good faith* in the performance of his duties. *However, he shall be liable for willful or negligent acts done by him*[,] *which are contrary to law, morals, public policy*[,] *and good customs even if he acted under orders or instructions of his superiors.*[69]

It is noted that the above rules impose mere *civil liability of a superior for the acts of a subordinate*, and not any criminal or administrative liability.

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66. *Id.*

67. Office of the President, Instituting the "Administrative Code of 1987," Executive Order No. 292 [ADMINISTRATIVE CODE OF 1987] (July 25, 1987).

68. *Id.* § 38 (emphasis supplied).

69. *Id.* § 39 (emphases supplied).

This rule has been applied in numerous cases where the Supreme Court upheld the civil liability against the subordinate. The Court has stated that "[a] *public official is by law not immune from damages in his personal capacity for acts done in bad faith* which, being outside the scope of his authority, are no longer protected by the mantle of immunity for official actions."[70]

Carlo Cruz states that "as a general rule, superior officers cannot be held liable for the acts of their subordinates as otherwise competent persons may not be willing to join the public service for fear of imputation to them of the shortcomings of others."[71] In saying so, Cruz cites Mechem, who said —

> It is well settled as a *general rule* that *public officers* of the government, in the *performance of their public functions*, are *not liable to third persons*, either for the misfeasances or positive wrongs, or for the non-feasances, negligences[,] or omissions of duty of their official subordinates.
>
> This *immunity rests upon obvious consideration of public policy*, the necessities of the public service[,] and the perplexities and embarrassments of a contrary doctrine.[72]

Mechem also states the following cases where a superior officer may be held liable for the acts of his subordinates, as such:

> (1) where, being charged with the duty of employing or retaining his subordinates, he negligently or willfully employs or retains unfit or improper persons;
>
> (2) where, being charged with the duty to see that they are appointed and qualified in a proper manner, he negligently or willfully fails to require of them the due conformity to the prescribed regulations;
>
> (3) where he so carelessly or negligently oversees, conducts[,] or carries on the business of his office as to furnish the opportunity for the default; [or]
>
> (4) where he has directed, authorized[,] or cooperated in the wrong.[73]

Jurisprudence provides instances where the Supreme Court has held on the issue of the liability of a superior for the acts of the subordinate. In *Arias v. Sandiganbayan*,[74] the Court ruled against holding a superior liable for the acts of his subordinates, thus —

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70. CARLO L. CRUZ, THE LAW OF PUBLIC OFFICERS 252 (2007 ed.) (citing Vidad v. RTC of Negros Br. 42, 227 SCRA 271 (1993); Meneses v. Court of Appeals, 246 SCRA 162 (1995); & City of Angeles v. Court of Appeals, 261 SCRA 90 (1996)) (emphasis supplied).

71. *Id.* at 247.

72. *Id.* (citing MECHEM, *supra* note 8, at 528-29 (emphases supplied)).

73. *Id.* at 529.

74. Arias v. Sandiganbayan, 180 SCRA 309 (1989).

> We would be *setting a bad precedent if a head of office* plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is *suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature* as the final approving authority.
>
> ...
>
> *All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.* If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. *Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.*[75]

Applying the same rule, the Supreme Court held in favor of the superior in *Pareño v. Sandiganbayan*,[76] thus —

> It is rather apparent that under the Sandiganbayan's decision, a department secretary, bureau chief, commission chairman, agency head, department head[,] or chief of office would be equally culpable for every crime arising from any transaction[ ] or held guilty of conspiracy simply because *he was the last of a long line of officials or employees who acted upon or affixed their signatures to a transaction. We cannot allow this because guilt must be premised on a more knowing personal and deliberate participation of each individual who is charged with others as part of a conspiracy. There must be more convincing proof which in this case is wanting.*[77]

And in *Albert v. Gangan*,[78] the Supreme Court held —

> The mere fact that a public officer is the *head of an agency does not necessarily mean that he is the party ultimately liable* in case of disallowance of expenses for questionable transactions of his agency. Petitioner, as head of the agency, *cannot be held personally liable for the disallowance simply because he was the final approving authority* of the transaction in question and that the officers [or] employees who processed the same were directly under his supervision. Though *not impossible, it would be improbable for him to check all*

75. *Id.* at 315-16 (emphases supplied).

76. Pareño v. Sandiganbayan, 256 SCRA 242 (1996).

77. *Id.* at 272 (emphasis supplied).

78. Albert v. Gangan, 353 SCRA 673 (2001).

> *the details and conduct physical inspection and verification of the application … considering the voluminous paperwork attendant to his office.* He has to *rely mainly on the certifications, recommendations*[,] *and memoranda of his subordinates* in approving the loan.[79]

The preceding discussion would show that the superior-subordinate aspect of vertical accountability focuses mainly on civil liabilities of superiors due to the acts of their subordinates. Outside of the military, there exists no semblance of a strict form of command responsibility in governing relations between superiors and subordinates in government service. There is, however, a pending legislation in the Senate seeking to expand the concept of command responsibility to cover all public officials and public employees and effectively rendering them liable for criminal acts of their subordinates.[80]

C. Horizontal Accountability Mechanisms

Horizontal accountability, in its purest form and severed from checks and balances, would constitute a public office with the power to demand accountability from another office.[81] Under Philippine laws, these horizontal accountability mechanisms are impeachment, the establishment of the Office of the Ombudsman, the Commission on Audit, and, to a very limited degree, the powers of the Senate Blue Ribbon Committee.

1. Impeachment

Bernas states that impeachment is essentially one form, if not the only form, of "political justice" under the Constitution.[82] He bases this description on the fact that impeachment, or the removal of some of the highest ranking officials in government, is processed through the Congress, and not through judicial procedures.[83] He cites Justice Joseph Story in stating that impeachment is "a proceeding, purely of a political nature, [which] is not so much designed to punish an offender as to secure the [S]tate against gross political misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity."[84]

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79. CRUZ, *supra* note 70, at 247 (citing *Albert*, 353 SCRA at 680–81 (2001)) (emphases supplied).

80. *See* An Act Providing A Framework for the Observance of Command Responsibility in Government Service, S.B. No. 2608, 15th Cong., 1st Reg. Sess. (2010).

81. Stapenhurst & O'Brien, *supra* note 44, at 1.

82. BERNAS, *supra* note 3, at 1149.

83. *Id.*

84. *Id.* at 1150 (citing JUSTICE JOSEPH STORY, 2 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 801 (1833)).

The very basis of impeachment is found in Article XI, Section 2 of the Constitution, which provides —

> The President, the Vice President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.[85]

It is that single provision in the Constitution that declares the limitations of impeachment as to whom and for what acts impeachment can be resorted to as a mode of removal. It categorically declares that only the President, the Vice President, Justices of the Supreme Court, Commissioners of the Civil Service, Audit, and Election Commissions, and the Ombudsman are subject to impeachment.[86] The last sentence, on the other hand, expressly removed any and all other public officers and employees from the scope of impeachability.[87]

Bernas presents the argument that impeachment is in fact "the strongest guarantee of security of tenure."[88] The strengthening of tenure of these public officials is due to the fact that the provision providing for their impeachment effectively bars any other mode of removal from office.[89] He cites the ruling of the Supreme Court in *In Re: Raul M. Gonzales*,[90] where it was held that

> [a] *public officer* who *under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office* held by him and *who may be removed from office only by impeachment, cannot be charged with disbarment* during the incumbency of such public officer. Further, such public officer, during his incumbency, *cannot be charged* criminally before the *Sandiganbayan* or any other court *with any offense which carries with it the penalty of removal from office*, or any penalty service of which would amount to removal from office.[91]

It is that ruling which presents the exclusivity of impeachment as a mode of removal from office of impeachable officials. There exists a guarantee that impeachable officials cannot be removed via other means, such as removal of constitutional qualifications to the position or charges filed in any court

85. PHIL. CONST. art. XI, § 2.

86. PHIL. CONST. art. XI, § 2.

87. BERNAS, *supra* note 3, at 1151.

88. *Id.*

89. *Id.*

90. In Re: Raul M. Gonzales, 160 SCRA 771 (1988).

91. BERNAS, *supra* note 3, at 1151 (citing *In Re: Gonzales*, 160 SCRA at 774) (emphases supplied).

which, if convicted, would likewise result to removal from the office occupied by the incumbent official.[92]

As to what acts are impeachable, the same proviso limits, however vaguely, the specific acts that place the official at risk of impeachment.[93] These are culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.[94] The vagueness lies as to what specific acts constitute "betrayal of public trust" and "other high crimes."

To shed light on this matter, Bernas resorts to the Record of the Constitutional Commission in seeking out the legislative intent in the inclusion of these grounds. He states —

> The 1973 Constitution, however, added 'graft and corruption' as another ground, and the 1987 Constitution added the broad concept of '*betrayal of public trust.*' The phrase was *intended to be a catch-all phrase to cover any violation of the oath of office.* Commissioner de los Reyes, who had been responsible for the insertion of the phrase, said that it *referred to all acts*, even if not punishable by statute as penal offenses, which would *render the officer unfit to continue in office.* He enumerated, '*betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism,* [*etcetera*] to the prejudice of public interest and which tend to bring the office into disrepute.' To which Romulo added '*obstruction of justice.*'[95]

Bernas likewise provides illumination as to what are "other high crimes" through resort to the principle of *ejusdem generis* —

> The way the full provision is worded is significant. It enumerates the grounds for impeachment as 'culpable violation of the [C]onstitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.' *The word 'other' is significant.* Under the *ejusdem generis* rule, when the law makes an enumeration of specific objects and follows it with 'other' unspecified objects, those unspecified objects must be of the same nature as those specified. *Thus, for 'graft and corruption' and 'betrayal of public trust' to be grounds for impeachment, their concrete manner of commission must be of the same severity as 'treason' and 'bribery,' offenses that strike at the very heart of the life of the nation.*[96]

A similar phrase exists in the Constitution of the U.S. in its counterpart provision on impeachment, which states that "[t]he President, Vice

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92. *See* BERNAS, *supra* note 3, at 1151.

93. BERNAS, *supra* note 3, at 1153-54.

94. *Id.*

95. *Id.* at 1153 (emphases supplied). *See also* RECORD OF THE CONSTITUTIONAL COMMISSION (1986).

96. *Id.* at 1153-54 (emphasis supplied).

President[,] and all civil officers of the [U.S.] [ ] shall be removed from [o]ffice on [i]mpeachment for, and [c]onviction of, [*t*]*reason, [b]ribery, or other high [c]rimes and misdemeanors.*"[97]

Recognizing the difficulty in adequately defining acts constituting "other high crimes" and the threat of possible *ex post facto* laws, Charles L. Black likewise resorted to *ejusdem generis* in seeking a solution. He stated —

> In the present case, however, the 'kind' to which 'treason' and 'bribery' belong is rather readily identifiable. They are offenses:
>
> (1) which are extremely serious;
>
> (2) which in some way corrupt or subvert the political and governmental process; and
>
> (3) which are plainly wrong in themselves to a person of honor, or to a good citizen, regardless of words on the statute books.[98]

Proceeding now to the horizontal nature of impeachment, the Constitution provides for the procedural processes of impeachment conducted by the legislature:

(1) The *House of Representatives shall have the exclusive power to initiate all cases of impeachment.*

(2) A *verified complaint for impeachment* may be filed by *any Member of the House of Representatives or by any citizen* upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within [10] session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within [60] session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within [10] session days from receipt thereof.

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

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

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

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97. U.S. CONST. art. II, § 4 (emphasis supplied).

98. CHARLES L. BLACK, JR., IMPEACHMENT: A HANDBOOK 37 (1974 ed.).

(6) *The Senate shall have the sole power to try and decide all cases of impeachment.* When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) *Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines*, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.[99]

From the provisions cited above, it becomes evident that impeachment is perhaps the prime example of horizontal accountability in Philippine law, whereby the highest officials of the executive and judiciary, as well as the Ombudsman and the Commissioners of the Constitutional Commissions, are held accountable by the legislature.

The entire procedure is conducted by the legislative branch, from the filing of the verified complaint for impeachment, voting of one-third of the members of the House of Representatives, to the conduct of trial by the Senate. The only non-members of the legislative that have some semblance of a role in impeachment are: (1) a citizen who files the verified complaint for impeachment;[100] and (2) the Chief Justice, who shall sit as presiding officer.[101]

Yet even these individuals have little to no power in the impeachment process. For the citizen's complaint for impeachment to progress, it must be supported by a member of the House of Representatives via endorsement or resolution.[102] The Chief Justice, while sitting as presiding officer, merely conducts the administrative procedures of the trial, and is expressly prohibited from participation by voting.[103]

The same provision provides that if convicted by the Senate, the impeached official is penalized only to the extent of removal from office and of suffering a perpetual disqualification from holding any other public office.[104] This penalty is expressly outside of the presidential power of executive clemency under Article VII, Section 19 of the Constitution —

99. PHIL. CONST. art. XI, § 3 (emphases supplied).

100. PHIL. CONST. art. XI, § 3, ¶ 2.

101. PHIL. CONST. art. XI, § 3, ¶ 6.

102. PHIL. CONST. art. XI, § 3, ¶ 2.

103. PHIL. CONST. art. XI, § 3, ¶ 6.

104. PHIL. CONST. art. XI, § 3, ¶ 7.

> *Except in cases of impeachment*, or as otherwise provided in this Constitution, *the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.*
>
> He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.[105]

It would appear, through the manner by which the provision is phrased, that the bar to clemency applies solely to the judgment by conviction in the impeachment trial, and not to the resultant convictions, if any, of the criminal cases stemming from the acts which constituted impeachable offenses. Hence, while impeachment removes and perpetually bans the convicted official from public office, it appears that if convicted criminally, the President may grant clemency as to the criminal penalty.

2. The Ombudsman

Through a reshuffling of constitutional functions, the Constitution separated the dual functions of prosecution and investigation of the former *Tanodbayan*.[106] Bernas states that the separation of the two functions "necessitated some changes in the function of the then existing *Tanodbayan*. The intention was that the *Tanodbayan* would be essentially a prosecutory arm[,] whereas the *Ombudsman would be the champion of the citizen and would not be bound by legal technicalities.*"[107]

Sections 12 and 13 of Article XI of the Constitution provide for the broad powers of the Ombudsman —

> Section 12. *The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government*, or any subdivision, agency[,] or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.
>
> Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
>
> (1) *Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office*[,] *or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.*
>
> (2) *Direct*, upon complaint or at its own instance, *any public official or employee of the Government*, or any subdivision, agency[,] or instrumentality thereof, as well as of any government-owned or [-]controlled corporation with original charter, *to perform and expedite any*

105. PHIL. CONST. art. VII, § 19 (emphases supplied).

106. BERNAS, *supra* note 3, at 1161.

107. *Id.* (emphasis supplied).

act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) *Direct the officer concerned to take appropriate action against a public official or employee at fault*, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.[108]

As a horizontal accountability mechanism, the Office of the Ombudsman is endowed with significant powers. As an investigator, it is tasked to look into any unjust, illegal, improper, or inefficient act by individual public officials or entire government agencies.[109] It likewise has coercive powers to direct public officials or government agencies to do or to stop the performance of certain acts.[110]

In *Acop v. Office of the Ombudsman*,[111] the Supreme Court took the occasion to discuss the broad powers of the Ombudsman —

> *While the intention to withhold prosecutorial powers from the Ombudsman was indeed present*, the Commission did not hesitate to recommend that the Legislature could, th[r]ough statute, prescribe such other powers, functions, and duties to the Ombudsman.[112]

108. PHIL. CONST. art. XI, §§ 12 & 13 (emphases supplied).

109. PHIL. CONST. art. XI, § 13, ¶ 1.

110. *See* PHIL. CONST. art. XI, § 13, ¶¶ 2–4.

111. Acop v. Office of the Ombudsman, 248 SCRA 566 (1995).

112. *Id.* at 575–76 (emphasis supplied).

In *Deloso v. Domingo*,[113] the Supreme Court said —

> The clause 'any illegal act or omission of any public official' is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It *does not require that the act or omission be related to or be connected with or arise from, the performance of official duty*. Since the law does not distinguish, neither should we.[114]

The Ombudsman's powers are so wide that even the Supreme Court is cautious in conducting any interference. In *Ocampo, IV v. Office of the Ombudsman*,[115] the Supreme Court held that

> *the courts cannot interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged*. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation if the complaint is, in his view, in due and proper form.[116]

This ruling was reiterated in Presidential Ad Hoc Fact Finding Committee on Behest Loans v. Desierto,[117] where the Court held —

> We said that *the prosecution of offenses committed by public officers is vested in the Ombudsman*. To insulate the Office from outside pressure and improper influence, the Constitution *as well as R.A. No. 6770 has endowed it with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive*[,] *or judicial intervention. We consistently refrained from interfering with the exercise of the Ombudsman's powers*[ ] and respected the initiative and independence inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and the preserver of the integrity of public service.[118]

3. The Commission on Audit

The Commission on Audit is one of the three Constitutional Commissions created specifically under the Constitution to be separate and distinct from the three branches of government with the goal of ensuring independence of these Commissions.[119] Among the measures to ensure independence include the prohibitions of commissioners from external activities such as holding

113. Deloso v. Domingo, 191 SCRA 545 (1990).

114. *Id.* at 550 (emphasis supplied).

115. Ocampo, IV v. Office of the Ombudsman, 225 SCRA 725 (1993).

116. *Id.* at 729-30 (emphasis supplied).

117. Presidential Ad Hoc Fact Finding Committee on Behest Loans v. Desierto, 362 SCRA 730 (2001).

118. *Id.* at 735-36 (emphases supplied).

119. BERNAS, *supra* note 3, at 1035.

any other office or employment, engaging in the practice of any profession, or being in the active management or control of any business which may be affected by the functions of his office.[120]

The broad powers of the Commission on Audit are stated in Article IX-D, Sections 2 and 3 of the Constitution, thus —

> (1) The Commission on Audit shall have the *power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government*, or any of its subdivisions, agencies, or instrumentalities, *including government-owned and controlled corporations with original charters*, and on a post-audit basis: (a) constitutional bodies, commissions[,] and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
>
> (2) The Commission shall have *exclusive authority*, subject to the limitations in this [a]rticle, *to define the scope of its audit and examination*, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.
>
> Section 3. No law shall be passed exempting any entity of the Government or its subsidiaries in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.[121]

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120. PHIL. CONST. art. IX, § 2. This Section provides —

> No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by[,] the government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.
>
> PHIL. CONST. art. IX, § 2.

Despite being the financial auditor of the entire Philippine government, the Commission on Audit is subject to a number of limitations. First, as Bernas states, "the power of the Commission to define the scope of its audit and examination and to establish the techniques it will follow is exclusive. This is intended to prevent conflict."[122]

Second, as held in *Davao Water District v. Civil Service Commission and Commission on Audit*,[123] the auditing power of the Commission over government-owned and controlled corporations is limited only to those with original charters, as opposed to those corporations created by virtue of established corporate laws, whereby the government owns shares corresponding to controlling interest.[124]

Third, the power of the Commission is only of a post-audit capacity on other autonomous constitutional bodies, commissions, and offices, autonomous state colleges and universities, other government-owned and - controlled corporations and their subsidiaries, and non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.[125] The ratio for this exemption is recognition for the other government institutions and entities which may be delayed due to pre-audit requirements.[126] Hence, as an example, the Commission exercises post-audit powers on its fellow Constitutional Commissions of the Civil Service and Elections.

Further, in recognition of the powers granted by the Constitution upon the Commission is the fact that any resort of appeal from a decision of the Commission is generally not appealable to the Supreme Court, save in cases of grave abuse of discretion amounting to lack or excess of jurisdiction, whereby resort to the Supreme Court is permitted by law under Rule 65 of the Rules of Court.[127]

4. The Senate Blue Ribbon Committee

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121. PHIL. CONST. art. IX-D, §§ 2 & 3 (emphases supplied).

122. BERNAS, *supra* note 3, at 1102.

123. Davao City Water District v. Civil Service Commission and Commission on Audit, 201 SCRA 593 (1991).

124. *Id.* at 601.

125. BERNAS, *supra* note 3, at 1102.

126. *Id.* at 1103.

127. *Id.* at 1109.

As provided for by the Constitution, the Houses of Congress or any of its committees are empowered to conduct inquiries in aid of legislation.[128] Article VI, Section 21 provides —

> *The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation* in accordance with its duly published rules of procedure. The rights of persons appearing in, or affected by, such inquiries shall be respected.[129]

One such committee is the Senate Blue Ribbon Committee, also known as the Committee on Accountability of Public Officers and Investigations.[130] Its composition and scope is provided for by the Rules of the Senate as follows —

> Section 13. After the organization of the Senate in the manner provided in Rule IX, the following permanent committees shall be formed, with the duties, powers[,] and general jurisdiction specified hereunder:
>
> ...
>
> (36) *Committee on Accountability of Public Officers and Investigations.* — [17] members. *All matters relating to, including investigation of, malfeasance, misfeasance*[,] *and nonfeasance in office by officers and employees of the government*, its branches, agencies, subdivisions[,] and instrumentalities; *implementation of the provision of the Constitution on nepotism*; and *investigation of any matter of public interest* on its own initiative or brought to its attention by any member of the Senate.[131]

The landmark decision in *Arnault v. Nazareno* [132] proves highly enlightening —

> Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, *such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change*; and where the legislative body does not itself possess the requisite information — which is not infrequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often

128. PHIL. CONST. art. VI, § 21.

129. PHIL. CONST. art. VI, § 21 (emphasis supplied).

130. Senate of the Philippines, Committee Duties, Power, and Jurisdiction, *available at* http://www.senate.gov.ph/committee/duties.asp (last accessed Nov. 15, 2012).

131. Rules of the Senate, Rule 10, § 13, ¶ 36 (emphases supplied).

132. Arnault v. Nazareno, 87 Phil. 29 (1950).

> unavailing, and also that information which is volunteered is not always accurate or complete; *so some means of compulsion is essential to obtain what is needed.*[133]

Despite the seemingly wide power of the Blue Ribbon Committee, Bernas summarizes three significant limitations to this power:

> (1) [Investigations] must be 'in aid of legislation[.]'
>
> (2) [Inquiries] must be 'in accordance with its duly published rules of procedure[.]'
>
> (3) [In the conduct of its inquiries,] '[t]he rights of persons appearing in or affected by such inquiries shall be respected.'[134]

The first and third limitations, in addition to corollary contempt and arrest powers of legislative inquiry, are usually found controversial.[135] Perhaps in a sense of public service, the Committee has been ruled overzealous in its investigations, resulting in disagreement as to the scope of its powers. In *Bengzon v. Senate Blue Ribbon Committee*,[136] the Court held —

> The *power of both* [*H*]*ouses of Congress to conduct inquiries in aid of legislation is not, therefore, absolute or unlimited.* Its exercise is circumscribed by the afore-quoted provision of the Constitution. Thus, as provided therein, the investigation must be 'in aid of legislation in accordance with its duly published rules of procedure' and that 'the rights of persons appearing in or affected by such inquiries shall be respected.' It follows then that *the rights of persons under the Bill of Rights must be respected, including the right to due process and the right not to be compelled to testify against one's self.*
>
> The power to conduct formal inquiries or investigations is specifically provided for in [Section] 1 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation. *Such inquiries may refer to the implementation or re-examination of any law or in connection with any proposed legislation or the formulation of future legislation.* They may also extend to any and all matters vested by the Constitution in Congress and/or in the Senate alone.[137]

In *Neri v. Senate Blue Ribbon Committee*,[138] the Supreme Court lengthily discussed the myriad of constitutional issues present in a situation where a member of the President's Cabinet is called by the Senate to testify on

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133. *Id.* at 45 (citing McGrain v. Daugherty, 273 U.S. 135 (1927)) (emphases supplied).

134. BERNAS, *supra* note 3, at 761.

135. *See generally* Bengzon, Jr. v. Senate Blue Ribbon Committee, 203 SCRA 767 (1991).

136. *Bengzon, Jr.*, 203 SCRA 767.

137. *Id.* at 777-78 (emphases supplied).

138. Neri v. Senate Blue Ribbon Committee, 549 SCRA 77 (2008).

executive dealings.[139] The Former Director General of the National Economic and Development Authority was summoned by the Senate to testify on matters involving the controversial National Broadband Network Project.[140] Despite having begged the indulgence of the Senate in his subsequent non-appearance and raising executive privilege as a defense against testifying, the Senate nonetheless issued an arrest warrant against Romulo Neri for contempt of the legislative inquiry.[141]

The issue was brought to the Supreme Court, which held that the Senate had committed grave abuse of discretion in issuing the contempt order.[142] It ruled that there was a legitimate claim of executive privilege and that the issuance of the contempt order was conducted arbitrarily, among other rulings.[143]

V. CONCLUSION

From the foregoing, it would thus appear that vertical accountability is lacking in the Philippine setting.

If we are to subscribe mainly to the concept that vertical accountability is focused on the checking power of the people, then indeed their mechanism is limited to participation in the elections, and perhaps referendum and recall. However, this participation, assuming it to be an effective mode of vertical accountability, is limited only to those elected officials. For the executive branch, these are limited to the president and the vice president and local government officials such as governors, vice governors, mayors, vice mayors, and *barangay* chairpersons. For the legislative branch, these are the senators, district and party list representatives, provincial board members, city councilors, and *barangay* councilors.

It is to be noted that the judicial branch, from the highest to lowest positions, are not elected by the people directly.[144] Justices and judges are appointed by the president among a short list of candidates issued by the Judicial and Bar Council (JBC).[145] The composition of the JBC, however, is less representative in the sense of popular sovereign representation, but a cross-representation of social sectors (e.g., academia), allied branches such as

139. *Id.* at 274.

140. *Id.* at 151-52.

141. *Id.*

142. *Id.* at 360.

143. *Id.* at 363.

144. *See* PHIL. CONST. art. VIII, § 7, ¶ 1.

145. PHIL. CONST. art. VIII, § 9.

the executive (e.g., secretaries), and Congress.[146] Hence, there can be no vertical accountability through elections for the judiciary.

Consider the Philippine JBC setup with systems in the U.S., Japan, and Switzerland, where some members of their respective judiciaries are elected. A New York Times article states that the trend in the U.S. has shown that 87% of all state court judges are elected while 39% of U.S. states elect some of their judges.[147] That same article briefly discusses two other countries that elect judges —

> Outside of the [U.S.], experts in comparative judicial selection say[ ] there are only two nations that have judicial elections, and then only in limited fashion. Smaller Swiss cantons elect judges, and appointed justices on the Japanese Supreme Court must sometimes face retention elections, though scholars there say those elections are a formality.[148]

The Authors merely state the fact that in few instances around the world, judges are elected. However, they are not of the opinion that this should be the practice in the Philippines. While electing officials is a direct practice of the people of vertical accountability, the nature of the judiciary in dispensing justice cannot and should not be affected by politics. If judges were to be chosen by election, then bias, partiality, and influence would be predominantly a factor in their decision-making. Those who provide campaign funds and scope of public opinions would factor in and eventually affect judges in their official capacities. So, in a way, the "vertical" check on the judiciary would be through impeachment of justices, an accountability mechanism that starts and ends in Congress, from the House's impeachment charge to the Senate's verdict. Congress is a representative body considered to be closer to the "people."

The horizontal accountability measures are arguably sufficient, on the assumption that implementation and administration are conducted efficiently. The impeachment process proved fruitful in 2012 resulting in the first impeachment trial to come up with a decision. The impeachment of former Chief Justice Renato C. Corona concluded with a conviction for betrayal of public trust and culpable violation of the Constitution for anomalies found in his statements of assets, liabilities, and net worth.[149] In an overwhelming vote of 20-3, the Senate found Corona guilty of the charge

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146. PHIL. CONST. art. VIII, § 8, ¶ 2.

147. Adam Liptak, *American Exception: Rendering Justice, with One Eye on Re-election*, N.Y. TIMES, May 25, 2008, *available at* http://www.nytimes.com/2008/05/25/us/25exception.html?pagewanted=all&_r=0 (last accessed Nov. 15, 2012).

148. *Id.*

149. *See* Shielo Mendoza, Chief Justice Renato Corona: Guilty as charged, *available at* http://ph.news.yahoo.com/verdict-is-out.html (last accessed Nov. 15, 2012).

and ordered his removal from office, with the attendant perpetual disqualification from public office.[150]

The Office of the Ombudsman was notorious for inefficiency. A study conducted by Teresa Melgar in 2001 showed that from 1993 to 1996, the Ombudsman was able to resolve and dispose of only an average of 37% of its number of cases each year.[151] An improvement was evident for the period of 1997 until 2000, where the office disposed of an average of 60% of its cases annually.[152] Melgar further states that as of year-end 2000, a total of 5,745 cases were still pending before the Ombudsman.[153]

Among the reasons for this level of inefficiency, it was observed, include understaffing and a significant lack of a proper budget.[154] Other perceived reasons for this inefficiency are rooted in politics.[155] As the Ombudsman is exempted from legislative confirmation from the Commission on Appointments, the resultant protest of the citizens is that the Ombudsman either favors or acts politically with his appointing officer, the President.[156] This sentiment was rampant in the administrations of former Ombudsmen Aniano A. Desierto and Merceditas N. Gutierrez, the latter having resigned after the House of Representatives impeached her prior to the formal impeachment trial at the Senate.[157]

The Senate Blue Ribbon Committee, the Authors would like to reiterate, was included in consideration of its horizontal accountability functions, specifically in exposing certain illegal acts of public officials. While the result of Committee inquiries does not lead to any administrative, criminal, or civil liability, the manner by which the Committee is able to discover the illegality of these acts performs, to a limited degree, some public accountability. Any discoveries made by the Committee may be the issues in other charges to be filed before the proper agencies or courts.

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150. *Id.*

151. Teresa Melgar, *The Ombudsman in the Philippines: An Assessment of its Performance and Possible Lessons for Indonesia*, *in* CONTINUING DIALOGUES TOWARDS CONSTITUTIONAL REFORM IN INDONESIA 123 (2001).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* at 125-27.

156. *Id.* at 130.

157. Melgar, *supra* note 151, at 125-28 & Kimberly Jane Tan, Ombudsman Merci resigns 10 days before Senate trial, *available at* http://www.gmanetwork.com/ news/story/ 219073/ news/ nation/ ombudsman-merci-resigns-10-days-before-senate-trial (last accessed Nov. 15, 2012).

The measures and mechanisms are already in place. It is unfortunate, however, that the efficiencies of these mechanisms are hindered by politics, lack of sufficient funding, or outright partiality and bias. Trends in accountability mechanisms focus not on establishing new agencies or constitutional bodies, but rather on creating measures for transparency in appointments to these positions and sheltering them from political pressures. One such example is to convert the Ombudsman into a collegial body, where appointees are selected from all three branches of government. A reform to that effect would significantly limit partiality and bias to a single appointing authority.

An assessment of the current vertical and horizontal accountability mechanisms would show that neither is significantly dominant. This is opposed to some states such as the Netherlands, as mentioned by Thomas Schillemans, where the parliamentary system provides for a strict vertical accountability, resulting in horizontal accountability functioning, albeit efficiently on its own, in a symbolic capacity.[158]

In the Philippines, it appears that while neither vertical nor horizontal accountability prevails, the third type, social accountability, is the main catalyst. Non-state actors such as the Catholic church, the media, and NGOs and publications have taken the lead in exposing various acts of public officials and agencies that force the hand of the accountability mechanisms to act accordingly or face further public scrutiny.

158. Thomas Schillemans, Accountability in the Shadow of Hierarchy: The Horizontal Accountability of Agencies (A Paper Assessing Horizontal Accountability Arrangements) 192, *available at* http://igitur-archive.library.uu.nl/USBO/2008-0903-201723/2008_accountability_shadow_hierarchy.pdf (last accessed Nov. 15, 2012).