

JUDGING CONGRESS*

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Time and again, the Supreme Court has been the last resort for any legislator whose interpretation of the Constitution, a law or a rule is not sustained in his own chamber. The Court has treated many of these last resorts to judicial interpretation as reviews of Congress' internal rules.

The power of internal regulation and discipline is inherent in any legislative body. Thus, the Constitution empowers Congress to determine the rules regarding its own proceedings,¹ the rules on impeachment when it exercises its constitutional duty to impeach certain officers,² and the rules for canvassing the votes cast for President and Vice President.³ What stands out from well-entrenched jurisprudence on this subject is that, except for minimal limitations of detail found in the Constitution itself, there is a clear recognition of the legislature's overall autonomy both in the formulation and in the application of its rules. Clearly, the power to make rules is not one which is exhausted once exercised. It is a continuous power, always to be exercised by the House within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.⁴

We observe, however, that the Supreme Court steps in when parties outside Congress or public rights are involved. When it intervenes, it does so with great deference to the co-equal political branches, but it nevertheless reserves the power to make the final, binding judgment to itself. While it has upheld such internal rules and other acts on many occasions, it has never enunciated an explicit duty of Constitutional interpretation on the parts of both Congress and the President.

The phrase "loyalty to the Constitution" is heard every time a supposed Constitutional crisis is about to break out, but one wonders what it precisely means for each speaker. While Congress is by nature a body where partisan interests are pronounced, individual legislators in many instances transcend these out of a deeper

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¹ CONST. art. VI, § 16(3).

² CONST. art. VI, § 3(8).

³ CONST. art. VI, § 7(4).

⁴ Comment of the Senate filed before the Supreme Court in *Lopez v. Senate of the Philippines*. G.R. No. 163556, June 8, 2004.

respect for the Rule of Law. For example, I can attest that during the Impeachment Trial of former President Joseph Estrada, the non-lawyer senators at that time took it upon themselves to learn the relevant legal doctrines. And legislators to a man profess the utmost respect for the Court, as evidenced, for example, by the abrupt halt of all debate on the impeachment case filed against Chief Justice Hilario Davide after *Francisco v. House of Representatives*⁵ was handed down by the Court. However, it is a powerful concept for a legislator to be conscious that he is actually responsible for the meaning of the Constitution he claims loyalty to, and that the Rule of Law may be served as faithfully by proposing alternative interpretations of the fundamental document.

The separation of powers exists for more than just the check of abuse. When a court tackles an issue, for example, it has to take a very immediate view. Concern for precedent aside, it is inherent in judicial power to render justice to two adverse parties. Now, when the President tackles an issue, she likewise takes a very immediate view. Executive power is precisely consolidated in the Chief Executive to allow swift action to meet the exigencies of the moment, to deal with the problems of the present.

Congress, however, is duty bound to take a much broader view in both senses. Its every action binds eighty million Filipinos, and binds them for decades until a future Congress decides otherwise. Thus, its every action necessarily involves negotiation and compromise. The restraints on legislators are inherent in representative democracy. We strive to lead in consensus-building, and cannot simply impose our wills on those who voted for us.

Given this, it is empowering to realize that answers to difficult constitutional questions may arise from this perpetual search for common ground. It is even more empowering to realize that Congress may even be the branch most appropriate to draw out many of these answers. One takes pride in the proposition that an institutional competence in feeling the pulse of the people may prove more effective than intellect on many occasions. Law, after all, must mirror culture.

As Senate President, I will be the first to admit that Congress may have been a source of impatience, frustration and disappointment on several occasions. I will even concede that some of our countrymen view the Presidency and Congress as “damaged institutions.” However, political maturity cannot come from just any one branch; it must characterize the entire government, as well as the electorate. At heart, every legislator wants to effect some good for his constituents during his term, and the idea that he has a direct role in the constitution’s evolution sets this intent against a larger background.

Oscar Franklin Tan’s thesis in his editorial examination submission is all the more important in this first year of President Gloria Macapagal Arroyo’s fresh

⁵ G.R. No. 160261, November 10, 2003.

term. We have to determine our foreign policy, our direction with respect to globalization, and our macroeconomic, investment, energy, and taxation policies. Congress has a direct role in all these, and must lead society towards a difficult consensus to hurdle the challenges the country presently faces. However, against the constitutional backdrop, there is the equally important challenge of reconciling the policies formed with the many vision statements of the 1987 Constitution. When we bring these challenges before the people, we certainly have to bring the Constitution to them as well. Already, for example, we are seeing the beginning of a healthy debate between the executive and the judiciary regarding economic policy.

I wish Chair Oscar Franklin Tan, Vice-Chair Gerard Chan, and the new student editorial board all the best for Volume 79 of the PHILIPPINE LAW JOURNAL. I certainly hope the lessons they drew from the 2004 Canvass seep into the consciousness of our legislators, that we may do our share as the Court's partners in developing our constitutional tradition.

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