

**EVIDENCE OF CHARACTER: THE BURDEN OF PROVING THE
TRUTH WITH RESPECT TO THE POLITICAL NATURE OF
IMPEACHMENT TRIALS BY MEANS OF SUBSTANTIAL
EVIDENCE***

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*If mankind were to resolve to agree in no
institution of government, until every part of it
had been adjusted to the most exact standard
of perfection, society would soon become a
general scene of anarchy, and the world a desert.*

- Alexander Hamilton,
THE FEDERALIST NO.
65.

I. INTRODUCTION: COMPLAINT & CAUSE OF ACTION

The impeachment trial and conviction of ex-Chief Justice Renato C. Corona brings to the forefront of Philippine legal and constitutional discourse the prevailing *normative* characterization of a public office in a republican system of government. Hector de Leon, the prolific legal commentator, writes of the purpose and nature of public offices: “[p]ublic offices are created for effecting the end for which government has been instituted, which is the common good, and not for the profit, honor, or private interest of any person, family, or class of persons.”¹ De Leon adds that “a public office is a public trust created in the interest and benefit for the people, and belongs to them.

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¹ HECTOR DE LEON & HECTOR DE LEON, JR., THE LAW ON PUBLIC OFFICERS AND ELECTION LAW 2 (2011), *citing* 63A AM. JUR. 2D 667.

The nature of a public office is inconsistent with either a property or contract right. It is conceived of as a responsibility and not as a right.”² Indeed, the 1987 Constitution incorporated such normative characterization when it declared in Article XI, Section 1, that a “[p]ublic office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.”

It is precisely this prevailing *normative* characterization of public offices that ultimately marked the conduct of Corona’s impeachment trial as a political process of exacting public accountability from the highest officials of the country. This normative political process is what this author would dub as the impeachment’s *crowning glory*. On impeachment specifically, De Leon comments that “[i]ts purpose is to protect the people from official delinquencies or malfeasances. It is therefore, primarily intended for the protection of the State, not for the punishment of the offender. The penalties attached to impeachment are merely incidental to the primary intention of protecting the people as a body politic.”³ Thus, impeachment trials are normatively weighed in favor of protecting the public interest and against the individual private interest of the impeached officeholder who, by definition of a public office, has no vested right to such public office.⁴

Against this characterization, however, remain the lingering questions put forward by a *protectionist* characterization of public offices. This characterization bears heavily upon the notion that despite the nature of public offices as a public trust, these offices are still accorded certain privileges entitled to some modicum of protection under the law, one of which is the provision of due process.⁵ Thus, a public office has a dual nature: it is both a trust and a privilege, and the interactions between the two are akin to the tilting of a weighing scale. This dualistic nature cannot be more evident in an impeachment trial where the Senate, acting as an Impeachment Court, aims to strike a balance between the interests of an allegedly injured public and the right of an allegedly untrustworthy public officer to remain in office.

Striking this balance is easier said than done. Two main issues first have to be resolved: the issue of proper *characterization of the proceedings*, and the

² *Id.*, citing 63A AM. JUR. 2D at 671, 667.

³ *Id.* at 494.

⁴ *Id.* at 4.

⁵ *Id.*

issue of the proper *standard of evidence to be used*. The problems with these two issues are self-evident and timeless. *First*, there is no established characterization of impeachment proceedings, and *second*, there is no prescribed standard of evidence to be used. Various suggestions for the characterization were voiced out during Corona's trial, ranging from a strictly criminal proceeding to a purely political process. As for the standard of evidence used, suggestions ranged from as high as beyond reasonable doubt to as low as substantial evidence. Still, others had the view that it was not even worth the effort to determine the proper evidentiary standard or characterization, since everything depended on the individual conscientious judgment of each Senator-Judge. How then shall these two issues be properly resolved?

II. ANSWER (PROPOSITION) & PRE-TRIAL ORDER

This paper uses the prevailing normative characterization embodied in Article XI, Section 1, as the theoretical backdrop in order to resolve the two main issues of impeachment trials, namely characterization and evidentiary standard to be used. There are four reasons for this. *First*, the normative characterization ensures that the high standards and integrity of public service are preserved, protected, and promoted. *Second*, the normative characterization tilts the balance in favor of the protection of the public and places a burden on the impeached officeholder to prove his or her fitness to remain in office. *Third*, mechanisms of public accountability, specifically impeachment, are made more participative and in keeping with democratic and republican traditions. *Fourth*, the normative characterization reaffirms the capability of the people, through the means of politics and through the agency of their representatives, to scrutinize the actions and character of their public officers.

If public offices, by their intended nature and purpose, are public trusts bestowed upon certain persons as privileges with public responsibilities to be fulfilled faithfully and with the interest, benefit, and protection of the public in mind, then the determination of a public officer's accountability necessarily involves the people. Viewed in this light, the normative characterization of public office makes an impeachment trial a *political process* which thus calls for a lower standard of evidence, that of *substantial evidence*. Such determination may not even be in a criminal proceeding because what was breached was the trust reposed by the people in the hands of the public officer. Thus, it is up to the people, as the injured party whose trust was

breached, to determine whether or not a public officer remains fit to remain in office, i.e., fit to remain as a repository of public trust.

Impeachment trials are processes whose sole beneficiaries are the people. The people, through their political representatives in Congress, exact accountability from impeached public officers through investigation, debate, and voting. Impeachment trials are not just legal proceedings wherein a court ascertains the facts and applies the law; they are political decisions involving policy considerations of the highest kind: the legitimacy of and trust in impeached officers. Indeed, the fact in issue would be the impeached officer's character, defined as "the possession by a person of certain qualities of mind or morals, distinguishing him from others."⁶ The Senate, sitting as an Impeachment Court, decides on behalf of the people as to whether or not such character is still deserving of public trust.

Necessarily, also, the standard of evidence to be used will have to be lower, with impeachment trials essentially being political processes and not just legal proceedings. Substantial evidence, the standard used in cases before administrative and quasi-judicial bodies and defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,"⁷ seems to be the appropriate standard to be used by the Senate sitting as an Impeachment Court. As a deliberative and political chamber that is most definitely not wholly composed of lawyers, and whose members are elected because of their presumably pragmatic judgment and not for their skills as jurors, any standard that is appropriate in a regular trial court will definitely not be appropriate in the Impeachment Court. Had the intention been that impeachment trials were to be handled by a regular court, the Constitution would have provided so. It is precisely the nature of the breach of public trust by impeachable officers that involves deliberation and debate, and these necessarily go beyond a mere determination of facts and application of the black letter of the law. The decision to trust further an impeached public official is thus a political question imbued with policy considerations, and not a question justiciable by an ordinary trial court.

Moreover, looking at how other public officers are disciplined in administrative cases, such as those in the civil service and in the judiciary, there

⁶ RICARDO FRANCISCO, *EVIDENCE: RULES OF COURT IN THE PHILIPPINES* (RULES 128-134) 372 (1994).

⁷ Rules of Court, Rule 133, § 5.

is no excuse as to why a different evidentiary standard should be applied to impeachable public officers. In these administrative cases, the approach is *top-down*, where higher authorities determine the right of a lower official to remain in the service by evaluating his fitness and conduct. In impeachment, the triangular direction is reversed, where the conduct of high officials, that *sui generis* class of impeachable officers, are prosecuted and judged by the people's representatives. In either approach, the standard must be the same, and this was reiterated in the impeachment trial of Corona when Senators made many a reference to the case of *Rabe v. Flores*.⁸ This case was an administrative matter before the Supreme Court wherein Delsa M. Flores, a court interpreter of Regional Trial Court Branch IV in Panabo, Davao, was dismissed from the service with prejudice to reemployment in the government, and forced to forfeit all her retirement benefits and accrued leave credits, all because she failed to declare in her Statement of Assets, Liabilities and Net worth ("SALN") that she owned a market stall. The point here is obvious— the same standard applied to a court interpreter of a Regional Trial Court must also be made to apply to the country's chief magistrate.

Of course, the characterization of impeachment trials as political processes that use substantial evidence as the standard of proof is not without its dangers. Both the predictability and unpredictability of politics bring in the problems of bias and arbitrariness. Lack of legal training and in the basic rules of trial and evidence may lead Senators to either accept excluded evidence or reject relevant evidence. However, the Constitution, a political document in itself, delegates the power to try impeachment cases to one of the chambers of one of the most political of branches of government, and for good reason. It is only through the people's political representatives, and through these representatives' pragmatic, deliberative, and candid judgment over an impeached public officer's trustworthiness, can the process of impeachment truly work. Regular courts have neither the competence nor the appropriateness to bestow either the people's imprimatur or censure upon their servants.

This paper is structured to imitate the flow of an action in court. Everything written henceforth will refer to the trial proper of this inquiry into the truth about impeachment. The next part, Part III (Factual Antecedents), deals with the historical premise of impeachment as a political process, with a

⁸ A.M. No. P-97-1247, May 14, 1997.

brief discussion of the development of impeachment in British, American, and Philippine jurisdictions. Part IV (Direct Examination) deals with the suggested characterizations and evidentiary standards of impeachment trials as enunciated in the recent trial and conviction of ex-Chief Justice Corona. Part V (Trial Memorandum of Expert Opinions) deals with the comments and opinions of various legal scholars as to the proper characterization and evidentiary standards of impeachment trials. Part VI (Judgment) spells out the conclusive and dispositive portion of this paper.

III. FACTUAL ANTECEDENTS: A POLITICAL HISTORY OF IMPEACHMENT TRIALS

Impeachment in the Name of King and Country

The eminent Professor Raoul Berger begins his seminal treatise on impeachment by noting that the process was “for the English, ‘the chief institution for the preservation of government.’”⁹ This was so because “[b]y means of impeachment Parliament, after a long and bitter struggle, made ministers chosen by the King accountable to it rather than the Crown, replacing absolutist pretensions by parliamentary supremacy.”¹⁰ However, as a process that originally “began in the fourteenth century when the Commons undertook to prosecute before the Lords the most powerful offenders and the highest officers of the Crown,”¹¹ impeachment experienced periods of disuse and petty application. During the Tudor period, it fell into disuse when the King grew in power. It was revived in the 17th century when the need came again to punish erring ministers, and this period was considered the “heyday of impeachments.”¹² This period is important because, as Berger notes, it “familiarized the [American] Founders with the high political purposes served by impeachment.”¹³ During the 17th century, impeachment was used by Parliament “to declare ministerial acts treasonable retrospectively,” and to impose “bloody sanctions” aside from removal from office.¹⁴ Two impeachment trials of the era are worthy to note: those of the Earls of

⁹ RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* 1 (1973), *citing* SIR W.S. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 383 (1922).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ *Id.* at 7.

¹⁴ *Id.*

Strafford and Clarendon. On the landmark case of Strafford, Berger has this to say:

The impeachment of Strafford is of interest not alone because of the diverse treason theories that were advanced, *but because it constitutes a great watershed in English constitutional history of which the [American] Founders were aware.* Strafford's downfall was rooted in a conflict between the view of Charles I that "the will of the Prince was the source of law" and that of Coke and his followers that law had 'an independent existence of its own, set above the King as well as above his subjects.' *His impeachment may be regarded as the opening gun in the struggle whereby the Long Parliament 'prevented the English monarchy from hardening into an absolutism of the type then becoming general in Europe.'*¹⁵ (Emphasis Supplied)

. . .

Strafford was the toughest executant of the royal policies; he would suffer no hindrance. He was resolved that the King must conquer the 'universal distemper of this age... where we are more apt wantonly to dispute the Powers which are over us.' He assured Archbishop Laud that he would not rest until he saw his 'Master's power and greatness set out of wardship and above the exposition of Sir Edward Coke and his Year Books.' At a Council meeting, it was recorded by Sir Henry Vane, *Strafford 'advised Charles he was now absolved from law' and apparently 'urged the introduction of an Irish army to compel England to obedience.'* His 'severe and unscrupulous rule' in Ireland convinced the opposition that there was no safety for them if he lived. *Still in being was an Irish army raised by Strafford, 9,000 Papists whom Charles refused to disband. Then John Pym got wind of a plot, organized with Charles's knowledge and the encouragement of the Queen, to bring the northern army to London to 'overawe the parliament.'* Little wonder that the nation rose as one, believing that Strafford had 'endeavored to destroy the excellent constitution of this kingdom.'¹⁶ (Emphasis supplied)

. . .

Menacing as the acts of Strafford were, they did not amount to treason within the common understanding because they were not in the strict sense acts committed against the authority of the king; they

¹⁵ *Id.* at 30.

¹⁶ *Id.* at 31-32.

had his tacit consent, if not encouragement. The offense, rather, was that Strafford had '*undermined the immemorial constitution of the kingdom by attacking its free institutions.*'¹⁷ (Emphasis supplied)

Although the method of prosecuting Strafford was actually converted into a bill of attainder,¹⁸ he was still convicted for treason by levying war, after the House of Lords found that "by his words and counsels and actions [he] endeavored to subvert the fundamental laws of the Kingdoms of England and Ireland, and to introduce an arbitrary power," and that "he had exercised a tyrannous and exorbitant government above and against the laws, over the lives, liberties and estates of the subjects."¹⁹

As for the Earl of Clarendon, a worse offender who was banished pursuant to the adoption by the House of Lords of a bill from the House of Commons declaring his treason, the situation was nearly the same, save for an ironic twist:

As Edward Hyde, *the Earl of Clarendon had voted for Strafford's attainder but afterwards became a prominent royalist*, went into exile with the sons of Charles I, and returned with Charles II after the Restoration to become Lord Chancellor and chief minister, while his daughter married Charles's brother, the future James II. He himself recorded that the 'late rebellion' had to be 'extirpated and pulled up by the roots,' the 'usurpation' of Parliament 'disclaimed and made odious.' *He advised Charles not to fear the power of Parliament, 'which was more or less, or nothing, as he pleased to make it,' an echo of the absolutist pretensions that had cost Charles I his head.* His fall was due I large part, said Christopher Hill, to '*his failure... to accept the fact that, in his own outraged words, the House of Commons was the fittest judge of the necessities and grievances of the people.*' *He was the moving figure in the sale of Dunkirk, conquered by Cromwell, to the French—an affront to the pride of the people.* *He had caused men to be imprisoned outside of the kingdom in order to evade the writ of habeas corpus; he solicited money from France so that the King could 'elude the control of Parliament by help of French money.'* Certainly these acts demonstrate his '*unfitness for government of a free country;*' and what with his royal son-in-law 'working in his favor,' and his own steadfast supporters, the Commons invoked high treason '*to put him away for good, to bar a return to office.*'²⁰ (Emphasis supplied)

¹⁷ *Id.* at 33.

¹⁸ *Id.* at 34.

¹⁹ *Id.* at 39.

²⁰ *Id.* at 41.

These two glaring examples of abuse of power show that impeachment was meant even then to act as a check on political abuse. Although “Parliament indulged in the fiction that the King could do no wrong but was misled by his ministers,”²¹ it is still clear that the breach or betrayal of public trust is the evil that impeachment seeks to address and punish. Sovereignty at that time was understood to reside in the monarch (hence, monarchs then were called “sovereigns”), but treason was understood to have two meanings, as was clear in the spirit behind the impeachment case against the Earl of Strafford:

For this theory there was precedent. ‘In England during the late middle ages,’ J. C. Bellamy states, ‘*there existed not one but two theories of treason side by side*. One doctrine was... the law of treason as seen through the eyes of the king and his legal advisers. The other was the theory of the barons and to a lesser extent of the people . . . *Treason was held to lie particularly in causing a division between the king and his people, thereby endangering the union which was the basis of the late medieval English state.*’ In a valuable study of the various treason theories advanced in the Strafford proceedings, Conrad Russell has pulled together early seventeenth-century instances which turned on withdrawal of the hearts of the people from the King, and has shown that the theory came to Pym stamped with the authority of Coke. In his argument for the prosecution before the Lords, Pym said, ‘*this crime of subverting the laws, and introducing an arbitrary and tyrannical government, is contrary to the pact and covenant between the King and his people... the legal union of allegiance and protection;*’ that is, the King owed protection to the people in return for their allegiance. And Pym stated, ‘*to alter the settled frame and constitution of government is treason in any state.*’ The laws whereby all other parts of a Kingdom are preserved, should be very vain and defective, if they had not a power to secure and preserve themselves.’²² (Emphasis supplied)

Treason by these officials was thus interpreted as an offense that severely curtailed the faith and trust that the people (citizens or subjects) had in their duly constituted state and its authorities. Any act that would have the effect of destroying the tie of allegiance between the state and its people, especially because of a sudden loss of confidence in its government’s processes and institutions, was the essence of every impeachment case filed against the

²¹ *Id.* at 2.

²² *Id.* at 33.

high officials and state ministers in Britain. The offense was deemed to be against both King and country— against the King because it misled him into enacting policies that threatened the basic rights of his subjects, and against the country because it damaged the people’s fealty to their sovereign.

Impeachment under the Star-Spangled Banner

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.²³

While it is true that the political nature of impeachments in Britain, especially during the 17th century, figured greatly in the minds of the Founders of the United States of America, the abuses of impeachments as defined and used then were not lost on them. Commenting on the heyday period of impeachments, Robert Stelle notes the other side of the historical account of Berger:

Another popular period for impeachments was the twenty-year period from 1690 to 1710. During this time, the English Parliament was the battleground for a political struggle between the Whigs and the Tories. The Whigs were in power and were seeking to prevent members of the Tory Party from entering Parliament. *Charges were often brought based on a defendant's "political miscalculations and mistaken policy [A]lthough the legal language always included [charges of] bribery, corruption, misuse of power, and willful neglect of duty."* In 1701, four Whig Party leaders were accused of "having misused their powers and given bad advice to the crown, misgovern[ing] in Ireland, and delay[ing] legal proceedings while in office." These officials had fallen from grace by 1700, and were easy targets for the Tories in the House of Commons. *The prosecution of these charges all resulted in acquittals (or the charges were dropped) in the House of Lords. Nonetheless, great political harm was done to those who stood accused. In fact, dismissal or acquittal was ultimately the result of most impeachments for "high crimes and misdemeanors."* The Lords only convicted 5 of 57 men charged under this provision during the period of 1626-1715.²⁴ (Emphasis supplied)

²³ U.S. CONST., art. II, § 4.

²⁴ Robert Stelle, Note: *Defining High Crimes and Misdemeanors: A Call for Stare Decisis*, 15 J. L. & POL. 309, 315 (1999).

Thus, while impeachment was incorporated into the American Constitution as a means for exacting accountability from the high officers of the federal government, the Framers thereof were wary of the potential abuses that a powerful Congress might commit when impeaching and trying members of the other coordinate branches, especially the Executive. It was then necessary to incorporate constitutional limitations over the powers of Congress with respect to the impeachment process. When it came to defining what were impeachable offenses, the 1787 Constitutional Convention had a short but noteworthy debate on September 8, 1787 on the issue of whether or not to include “maladministration” in the enumeration of the Constitution.²⁵ Delegate Col. George Mason was the main proponent, and he was adamant to include maladministration due to his shock at the supposed forgetfulness of English history by the Convention. He argued, “Why is the provision restrained to Treason and bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined—As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: [sic] the power of impeachments.”²⁶ Col. Mason eventually withdrew this proposition, due to the interpellation of Delegate James Madison that “[s]o vague a term will be equivalent to tenure during pleasure of the Senate.”²⁷ Delegate Governor Morris of Pennsylvania also commented that “it will not be put in force & [sic] can do no harm— An election of every four years will prevent maladministration.”²⁸

Professor Charles Black, Jr. interprets this “colloquy” on the exclusion of maladministration as a seeming rejection of the notion of impeachment as a process by which to exact punishment for political abuses:

It is interesting first that this passage quite definitely establishes that “maladministration” was distinctly *rejected* as a ground for impeachment. The conscious and deliberate character of this rejection is accentuated by the fact that a good many state constitutions of the time did have “maladministration” as an impeachment ground. This does not mean that a given act may not be an instance of *both* of “maladministration” *and* of “high crime” or

²⁵ CHARLES BLACK, JR., *IMPEACHMENT: A HANDBOOK* 27 (1974).

²⁶ *Id.* at 28.

²⁷ *Id.*

²⁸ *Id.*

“misdemeanor.” It does mean that not *all* acts of “maladministration” are covered by the phrase actually accepted. This follows inevitably from Madison’s ready acceptance of the phraseology now in the text; if “maladministration” was too “vague” for him, and “high Crimes and Misdemeanors” included all “maladministration,” then he would surely have objected to the phrase actually accepted, as being “vaguer” than the one rejected.²⁹

. . .

The whole colloquy just quoted seems to support the view that “high Crimes and Misdemeanors” ought to be conceived as offenses having about them some flavor of criminality. Mere “maladministration” was not to be enough for impeachment. This line may be a hard one to follow, but it is the line that the Framers quite clearly intended to draw, and we will have to try to follow it as best as we can.

Several other things are to be noted about this colloquy of September 8, 1787. Madison’s *reason* for objecting to “maladministration” as a ground was that the inclusion of this phrase would result in the president’s holding his office “during pleasure of the Senate.” In other words, if mere inefficient administration, or administration that did not accord with Congress’ view of good policy, were enough for impeachment and removal, without any flavor of criminality or distinct wrongdoing, impeachment and removal would take on the character of a British parliamentary vote of “no confidence.” The September 8 colloquy makes it very plain that this was not wanted, and certainly the phrase “high Crimes and Misdemeanors,” whatever its vagueness at the edges, seems absolutely to forbid the removal of a president on the grounds that Congress does not on the whole think his administration of public affairs is good. This distinction may not be easy to draw in every case, but there are vast areas in which it is very clear. And it is perhaps the most important distinction of all, because it tells us—and Congress—that whatever may be the grounds for impeachment and removal, dislike of a president’s policy is definitely not one of them, and ought to play *no* part in the decision on impeachment. There is every reason to think that most congressmen and senators are aware of this.³⁰ (Emphasis in the original)

²⁹ *Id.* at 29.

³⁰ *Id.* at 29-30.

Truly, “impeachment and severe punishment for giving ‘bad advice’ seems extravagant.”³¹ But with all due respect to the eminent Professor Black, the author believes that the effect of this colloquy from a day in the 1787 Constitutional Convention merely has the effect of limiting the scope of impeachment over political abuses even as it does not depart from the original intent of impeachment as a check against political abuses. The limit is evident: *only serious offenses against the integrity of the Constitution and with damaging effect upon public faith in government institutions, and those that have a direct and inimical effect upon the rights of citizens, are to be considered impeachable and punishable; mere inefficiency or subpar performance in office would not suffice, otherwise every person in government would be prejudiced by the whimsical withdrawal of confidence in them by the people and through their representatives.* Moreover, this colloquy on maladministration has a distinct focus on the Presidency, an office that is subject to periodic elections. Indeed, Stelle notes that the “constitutional provisions concerning impeachment were drafted with the removal of the President primarily in mind.”³² There is no consideration of the fact that, for example, federal magistrates are not periodically elected.

Going into the actual scope of what impeachable offenses are under the American Constitution, the vagueness of the Framers is attributed by Professor Richard Neumann, Jr. to the fact that “[t]he English impeachment precedents provide no clear guidelines, and the words were often used as rhetoric rather than to communicate actual meaning.”³³ Neumann further notes that in reality, “[t]he Constitutional delegates did not work out a definition in Philadelphia.”³⁴ However, quoting Professor Michael Gerhardt, Neumann notes a consensus among scholars to the effect that:

The phrase ‘other high Crimes and Misdemeanors’ consists of technical terms of art referring to ‘*political crimes*’ . . . [which] were not necessarily indictable crimes. Instead, “political crimes” consisted of the kinds of abuses of power or injuries to the Republic that only could be committed by public officials by virtue of the public offices or privileges they held. Although the concept ‘political crimes’ uses the term ‘crimes,’ *the phrase did not necessarily include all indictable offenses.*

³¹ BERGER, *supra* note 9, at 71.

³² Stelle, *supra* note 24, at 316, *citing* JOHN LABOVITZ, PRESIDENTIAL IMPEACHMENT 2 (1978).

³³ Richard Neumann, Jr., *The Revival of Impeachment as a Partisan Political Weapon*, 34 HASTINGS CONST. L. Q. 161, 171 (2007).

³⁴ *Id.*

*Nor were all indictable offenses considered 'political crimes.'*³⁵ (Emphasis supplied)

The esteemed statesman and American Founding Father Alexander Hamilton confirms the political characterization of impeachment trials in his short but important contribution to the Federalist Papers, a source of many important quotes that are still used by scholars to characterize impeachment:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. *They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.*

. . .

The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves.

. . .

The convention, it appears, *thought the Senate the most fit depository of this important trust. Those who can best discern the intrinsic difficulty of the thing, will be least hasty in condemning that opinion, and will be most inclined to allow due weight to the arguments which may be supposed to have produced it.*

What, it may be asked, is the true spirit of the institution itself? *Is it not designed as a method of NATIONAL INQUEST into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the nation as the representatives of the nation themselves?* It is not disputed that the power of originating the inquiry, or, in other words, of preferring the impeachment, ought to be lodged in the hands of one branch of the legislative body. Will not the reasons which indicate the propriety of this arrangement strongly plead for an admission of the other branch of that body to a share of the inquiry? (Emphasis supplied)

³⁵ *Id.* at 172, citing Michael Gerhardt, *The Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, 610 (1999).

. . .

*Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel CONFIDENCE ENOUGH IN ITS OWN SITUATION, to preserve, unawed and uninfluenced, the necessary impartiality between an INDIVIDUAL accused, and the REPRESENTATIVES OF THE PEOPLE, HIS ACCUSERS?*³⁶ (Emphasis supplied)

Hamilton, however, also noted the dangers of the politicization of impeachment trials:

The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. *In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.* (Emphasis supplied)

. . .

The difficulty of placing it rightly, in a government resting entirely on the basis of periodical elections, will as readily be perceived, when it is considered that *the most conspicuous characters in it will, from that circumstance, be too often the leaders or the tools of the most cunning or the most numerous faction, and on this account, can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.* (Emphasis supplied)

. . .

*Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had predetermined his guilt?*³⁷ (Emphasis supplied)

Hamilton astutely outlined the entire debate concerning the problems of impeachment trials as a political process. This served as a prophecy of how impeachment trials were eventually “tried” as the American Constitution and

³⁶ THE FEDERALIST NO. 65 (Alexander Hamilton).

³⁷ *Id.*

government both developed over time. Indeed, the influences of factional politics overshadowed major impeachments in America, and foremost among these were those of Justice Samuel Chase, President Andrew Johnson, and Judge Walter Nixon.

The impeachment of U.S. Supreme Court Justice Chase, “a partisan Federalist to the core,”³⁸ was due to his “conduct in two trials that had taken place in Maryland—the trials of John Fries for treason against the United States and James Callender for libel against President Adams.”³⁹ In the trial of Fries, “Chase with his own partisan views on the law of treason, refused to hear arguments from the attorneys, and actually gave his jury instruction before the beginning of the trial, obviously trying to help out the Federalist defendant [Fries].”⁴⁰ In Callender’s case, “[a]llegedly, Chase had refused to dismiss a juror who said that he had already made up his mind as to Callender’s guilt, excluded highly probative and material evidence on bogus grounds, and had generally conducted the trial with ‘manifest injustice, partiality and intemperance.’”⁴¹ Chase was impeached on the basis of eight articles that “did not allege criminal conduct, only the commission of ‘high crimes and misdemeanors.’”⁴² Citing Professor David Currie, Stelle explains that *this impeachment had a highly partisan tone but with the backfiring result that thwarted the partisan intent of Justice Chase’s political opponents*:

The question, however, was not whether he should be reversed for having misapplied the law, but “whether he was guilty of seriously abusing his position.” *According to Currie, Congress was attempting “[t]o elevate a legitimate difference of opinion into a high crime and misdemeanor.”*

³⁸ Stelle, *supra* note 24, at 326.

³⁹ *Id.* at 327. Importantly, Stelle also notes that “[a]t that time, Supreme Court Justices not only sat on the nation’s highest court, but also retained duties similar to those of federal district court judges. That is, when the Supreme Court was not in session, its justices were assigned to a district and conducted traditional judicial activities. Justice Chase’s alleged misconduct occurred during the course of these activities.” *Id.* at 326. Also, it must be noted that U.S. President John Adams was, at the time, the nominal and national leader of the Federalist Party.

⁴⁰ *Id.* at 328, *citing* WILLIAM REHNQUIST, *GRAND INQUESTS: THE HISTORIC IMPEACHMENTS* 63 (1992).

⁴¹ *Id.*, *citing* David Currie, *The Constitution in Congress: The Most Endangered Branch, 1801-1805*, 33 WAKE FOREST L. REV. 219, 251 (1998).

⁴² *Id.*

The trial in the Senate was very colorful, and lasted an entire month. At its conclusion on March 1, 1805, the vote was taken. A majority voted guilty on only two of the eight articles, but neither vote resulted in enough votes for conviction. In fact, the closest vote was 19 to 15, four votes short of the required two-thirds needed to convict.

Professor Currie writes that, if nothing else, *this result tells us that an honest disagreement over the application of the law by a member of the judiciary is not a high crime or misdemeanor*. Likewise, Chief Justice Rehnquist says that “*the acquittal of Samuel Chase by the Senate had a profound effect on the American judiciary [by assuring] the independence of federal judges from congressional oversight of [their] decisions [and by] assuring that impeachment will not be used in the future as a method to remove members of the Supreme Court for their judicial opinions.*” None of the later impeachments of federal judges were based on their judicial decisions.

Finally, this case stands for something else. Massachusetts Senator John Quincy Adams said that *this impeachment proceeding was nothing more than a partisan effort by the Republicans in Congress to get Chase because they did not agree with his politics*. He wrote that “[t]he attack upon Mr. Chase was a systematic attempt upon the independence and powers of the judicial [branch].” Adams’ lesson—not to impeach for partisan reasons—was not to be learned, however, from this process. On the other hand, Rehnquist’s lesson—not to impeach judges based on their judicial opinions—seemed to become established precedent.⁴³ (Emphasis supplied)

As for the impeachment of U.S. President Andrew Johnson, this involved his alleged violation of a statute, the Tenure of Office Act, “which essentially provided that all federal officials whose presidential appointment required confirmation by the Senate could not be removed from office by the President without the consent of Congress.”⁴⁴ Johnson vetoed the law upon passage because it was allegedly “an unconstitutional infringement of the appointment power granted to the executive branch, but his veto was easily overridden.”⁴⁵ This was against the backdrop of the Reconstruction era, during which America was starting to recover from the ravages of the Civil War:

⁴³ *Id.* at 328-330. (Citations omitted)

⁴⁴ *Id.* at 361.

⁴⁵ *Id.*

Johnson became the seventeenth president of the United States upon the assassination of President Lincoln in April 1865. He entered office with two strikes against him. First, Johnson had no true party constituency when he became president. The Democratic Party had been split during the election of 1864 between the “war” and “peace” factions. Johnson's earlier act of denouncing secession had alienated the Democrats in the former group, and his general support for the Union had alienated the latter who favored a negotiated end to the war. Second, Johnson had no regional constituency. He had remained a loyalist to the Union while his state seceded. Most of his former followers back in Tennessee considered him a traitor to their cause. These handicaps put the new President in a very weak position in perhaps the nation's most difficult time.

He was in trouble with Congress almost from the very beginning. He had begun to sympathize with the former enemy, and even granted presidential pardons to many of the leading rebels. He opposed black suffrage and the civil rights movement. He exercised his veto power to set aside much of the initial Reconstruction legislation that came out of Congress immediately after the end of the war. He further enraged his enemies in Congress by aggressively attacking many of them, both personally and professionally, in a number of public speeches. Finally, he struggled with Congress on the question of when the seceding states could be readmitted to the Union and under what conditions. The Republican-controlled Congress wanted to set the criteria, while Johnson believed that this authority fell on him as President.⁴⁶ (Emphasis supplied)

. . .

These events, while setting the stage, were merely prologue to the impeachment confrontation that ensued beginning in 1867. Early that year, Congress passed the Tenure of Office Act (“TOA”), which essentially provided that all federal officials whose presidential appointment required confirmation by the Senate could not be removed from office by the President without the consent of Congress. President Johnson vetoed this bill as an unconstitutional infringement of the appointment power granted to the executive branch, but his veto was easily overridden. The primary purpose of the congressional Republicans who favored this Act was to ensure that they, and not the President, would have control over the appointment of the military governors in the south.

⁴⁶ *Id.* at 359-360.

Secretary of War Edwin Stanton—a Lincoln appointee—had increasingly drawn the disfavor of President Johnson and his cabinet for going behind their backs and collaborating with Congress to thwart Johnson's own efforts at Reconstruction. “*By the spring and summer of 1867, it became evident that Stanton and the President were bitter enemies.* In company with [General Ulysses S.] Grant, who was anxious to protect the army from interference by the courts and to simplify the task of military Reconstruction, the war secretary was quietly sabotaging Johnson's Reconstruction policies.” In August of that year, Johnson sent a letter to Stanton encouraging him to resign. Stanton refused, so Johnson formally suspended him. Ironically, the President replaced Stanton by appointing Grant as the Interim Secretary. Congress, however, asserting its authority under the TOA, removed Grant and reinstated Stanton as the Secretary of War. This episode prompted the introduction of a second impeachment resolution in the House, but it failed to pass by a vote of 108 to 57.

In February 1868, Johnson once again fired Stanton, replacing him with Lorenzo Thomas. He sent a message to Stanton to that effect, and asked him to vacate the office immediately. Congressional leaders were made aware of this message and sent a letter of their own to Stanton telling him to stand fast. The Secretary, having received both letters, locked himself in his office and refused to leave. He remained there several days and nights, creating a public spectacle that captured the attention of the nation. *At the same time, a third resolution was introduced in the House calling for the President's impeachment. This time, it passed 126 to 47, with all Republicans voting “yes” and all Democrats voting “no.” The resolution did not outline any of the charges against Johnson—it asserted simply that he should be “impeached for high crimes and misdemeanors.”* A committee was appointed to draft the articles of impeachment, and on March 4, 1868, eleven articles were presented to the Senate.⁴⁷ (Emphasis supplied)

. . .

The trial started on March 23, 1868, and was undoubtedly the greatest political spectacle that our nation had ever seen. *Chief Justice Salmon P. Chase* took his oath as the presiding officer of the Senate, and the matter was officially under way. The trial lasted for almost two full months, consuming all of the Senate's time. In his book about the trial, Justice Rehnquist points out some of the problems with the impeachment mechanism. He wrote: “[t]hese initial proceedings

⁴⁷ *Id.* at 361-362.

demonstrated, as no amount of abstract argument could, how difficult and unwieldy it is for a body consisting of fifty-six members to rule on what are routine procedural questions in a normal trial... The senators were... by nature loquacious.” James Garfield, Congressman and future President of the United States, commented that “this trial has developed, in the most remarkable manner, the insane love of speaking among public men... [W]e have been wading knee deep in words, words, words.”

The trial concluded on May 16, after a closing argument by the House Managers that lasted three full days. The senators agreed that they would vote on Article 11 first. The roll was called, and when the smoke cleared, 35 had voted to find Johnson guilty, and 19 had voted to acquit—just one vote shy of the required two-thirds. All 12 Democrats voted not guilty, along with 7 Republicans. The Senate then voted to adjourn for ten days, and when it reconvened on May 26, a vote was taken on articles 2 and 3. Once again, the vote was 35 to 19 on both counts, with each Senator voting the same as he had on article 11. Then, by a motion of the Republican leadership, the body agreed to adjourn without voting on the other eight articles. Thus ended, somewhat anticlimactically, the first impeachment trial of an American President.⁴⁸ (Emphasis supplied)

As indicated above, the trial had its moments of political conflagration and inefficiency due to the delaying nature of doing business in deliberative bodies such as the Senate. Stelle, however, citing Chief Justice William Rehnquist, notes that the impeachment of President Johnson reaffirmed the drive behind impeachment in the American tradition, not as a vote of no confidence in an elected leader, but as a determination of a person’s fitness to remain in public office, subject to certain limitations. A balance between the assertion that impeachment was not a de-selection of an elected official by popular or representative vote and the assertion that impeachment was not warranted for simple violations of statutes was thus struck:

Rehnquist wrote that this acquittal—*when coupled with the acquittal of Justice Chase approximately sixty years earlier*—carried great significance. These cases, according to Rehnquist, established that “*impeachment would not be a referendum on the public official’s performance in office; instead, it would be a judicial type of inquiry in which specific charges were made by [the House], evidence was received before the Senate, and the senators would decide whether or not the charges were proven.*” Further, Rehnquist asserts that these cases added another requirement, “*it was not any*

⁴⁸ *Id.* at 364-365.

*technical violation of the law that would suffice [for conviction], but it was the sort of violation of the law that would in itself justify removal from office.”*⁴⁹
(Emphasis supplied)

Going down the line of American history, the impeachment of Judge Walter Nixon has its significance in “the actions taken by Judge Nixon after his conviction, and the response of the judiciary to these actions,” due to the fact that “Nixon’s impeachment trial had been essentially conducted by Committee.”⁵⁰ The groundbreaking case of *Nixon v. United States*⁵¹ “officially established a rule that had been followed unofficially throughout our history—there can be no judicial review of impeachment cases, whether the complaint is with the House’s actions in preparing the accusation, [with] the Senate’s actions in conducting the trial, or with the verdict.”⁵² Judge Nixon questioned the constitutionality of Senate Rule XI that allows the Senate to conduct an impeachment trial by committee and for such committee to simply report its findings to the Senate as a whole.⁵³

Speaking for the majority of the Court, Chief Justice Rehnquist gave several reasons why judicial review of judgments in impeachment cases was improper, such as the judiciary’s (or specifically, the U.S. Supreme Court’s) lack

⁴⁹ *Id.* at 366-367. (Citations omitted)

⁵⁰ *Id.* at 351.

⁵¹ 506 U.S. 224 (1993).

⁵² Stelle, *supra* note 24, at 353.

⁵³ Nixon, *supra* note 51, at 227. “[I]n the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.”

of competence to “be endowed with so eminent a portion of fortitude as would be called for in the execution of so difficult a task,”⁵⁴ due to the nature of impeachment trials by the Senate as an “awful discretion” that “doom[s] to honor or to infamy the most confidential and the most distinguished characters of the community.”⁵⁵ Also, Chief Justice Rehnquist noted that “the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses—the impeachment trial and a separate criminal trial.”⁵⁶ It was the Framers’ deliberate intention to separate the two trials “to avoid raising the specter of bias and to ensure independent judgments.”⁵⁷ Additionally, “[j]udicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the ‘important constitutional check’ placed on the Judiciary by the Framers.”⁵⁸ Lastly, the danger of a lingering “lack of finality” with respect to an impeachment case precisely because it was made open to judicial review would “expose the political life of the country to months, or perhaps years, of chaos.”⁵⁹ Chief Justice Rehnquist gives one important aftermath of such lack of finality lingering over the nation due to the requirement of judicial review—when “[t]he legitimacy of any successor, and hence his effectiveness, would be impaired severely, not merely while the judicial process was running its course, but during any retrial that a differently constituted Senate might conduct if its first judgment of conviction were invalidated.”⁶⁰

These impeachment cases drawn from American history all point to one thing: the impeachment trial, despite the evolution and development that gave it its current limitations, continues to be an essentially political process with a normative intent of protecting the sovereign people from the abuses of their leaders. *It is the nature of an impeachment trial as a political process that ensures its effectiveness as a check on political abuse at the highest levels, and as a counter-check upon itself, again precisely because of its political nature.* If an impeachable offense is serious enough, then Congress cannot ignore it and must act accordingly, and any member of Congress blocking it will be seen to have ulterior political motives. Conversely, if an impeachable offense is not meriting any attention at all, then

⁵⁴ *Id.* at 233.

⁵⁵ *Id.* at 234.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 235.

⁵⁹ *Id.* at 236.

⁶⁰ *Id.*

it will lack any political capital needed to sustain itself, and any member of Congress pursuing it will merely be seen as having ulterior political motives.

As will be noted later, *it is the presence of factions that ensures the relevance and competence of the impeachment process*. It is the serious debate and substantial deliberation over the evidence presented that makes the Senate, sitting as an Impeachment Court, both a unique and legitimate check against political abuse by the highest public officers of the land. Without this “due process,” doubt will be cast on the removal of these public officers who occupy sensitive positions that directly affect the sovereignty of the state. Without an act of the people through their elected representatives that reaffirms their status as the source of sovereignty,⁶¹ even if it is through a cacophonous and even chaotic process, removal of such officers cannot be said to be valid. *The validity of the removal rests from the legitimacy of the people’s voice expressed in the judgment of the Impeachment Court*. America’s rich political and constitutional history imparts that much.

Impeachment: More Fun in the Philippines

A close reading of the Record of the Philippine Constitutional Commission of 1986 will lead to the conclusion that the Framers of the currently subsisting Constitution of the Republic of the Philippines had in mind the normative characterization of public offices that ultimately characterize impeachment trials as a political process. Commissioner Rustico de los Reyes, Jr. puts into the record the use of the term “betrayal of public trust” as “a catchall phrase to include all acts which are not punishable by statutes as penal offenses, but nonetheless, render the officer unfit to continue in office. It includes,” among others, “inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute.”⁶²

Speaking of the nature of impeachment trials as not strictly criminal proceedings, Commissioner Ricardo Romulo makes it of record that in impeachment trials, the procedure is analogous to a criminal trial but it is not a

⁶¹ CONST., art. II, § 1. “The Philippines is a democratic and republican State. *Sovereignty resides in the people and all government authority emanates from them.*” (Emphasis supplied)

⁶² II REC. CONST. COMM’N. 272 (Jul. 26, 1986).

criminal prosecution *per se* since “[t]he goal of an impeachment is merely to remove the fellow from office for the crimes indicated” and is still “subject to a separate prosecution, whether civilly or criminally, for the acts that he had committed;” this is why the procedure before the Senate could be “more liberal.”⁶³ Romulo underscores that “essentially, impeachment is a political act.”⁶⁴

Commissioner Serafin Guingona, however, saw impeachment differently. Interpellating Commissioner Romulo, Guingona suggested that it would be wise “to add the word GROSS [sic] to the words ‘betrayal of trust’ to make the statement less broad” since without it, “betrayal of trust” would be “such an overreaching standard” that “may be too broad and may be subject to abuse and arbitrary exercise by the legislature.”⁶⁵ Guingona made these scathing remarks regarding the political nature of impeachment trials on the Record:

I do not have enough time, but I know of at least 15 countries where impeachment proceedings are actually adjudicated by courts and not by the legislative department. May I just read very briefly into the Record some statements made regarding this matter as contained in the 1971 Constitutional Revision Project. It says: “*Ideally, the prosecution and trial of public officials, no matter how highly placed, should be in the hands of an objective non-political and highly qualified judicial tribunal.*” Such a procedure, however, requires a strong awareness of constitutionalism and a general acceptance in the country of the rule of law over the rule of personalities.” And in support of this, they add the following: “*Under the present system, the power to impeach and to try impeachment cases is vested in public officials who are highly responsive to political and partisan influences.*”

If impeachment is a political device, we could perhaps say that it partakes also of the nature of a legal proceeding or a legal device. *It is ineffective as against political officials.* It is almost impossible to impeach a President. Finally, a pertinent observation is that *the removal on illegal grounds should be determined by a body less susceptible to political consideration such as a constitutional court of impeachment.*⁶⁶ (Emphasis supplied)

⁶³ *Id.* at 277.

⁶⁴ *Id.* at 228.

⁶⁵ *Id.* at 286. Commissioner Guingona admitted therein that he was actually quoting the 1986 proposal of the University of the Philippines Law Center.

⁶⁶ *Id.* at 287.

Commissioner Felicitas Aquino shared the same view and related the same concern to her peers albeit in a more blistering tone. Debating with Commissioner Christian Monsod, Aquino hearkens back to moments in Philippine history where impeachment as a constitutional mechanism of public accountability actually failed to hold abusive public officials accountable:

But let me call the Gentleman's attention to the Philippine experience. *In the Philippines, all of the efforts to impeach the President have been effectively frustrated by the simple reason of partisanship and political loyalties.* In fact, when there was a serious attempt to impeach President Quirino on the grounds of willful breach and deliberate violations of the Constitution, *it was overwhelmingly voted down by the House of Representatives for the simple reason that the political party in control of the House of Representatives was the same political party as that of President Quirino.*

*That experience was very instructive; in fact, it led us to the same conclusion that impeachment proceedings vested in a legislature are practically futile and inutile.*⁶⁷

The same experience was borne out in the attempt of the Batasan, the defunct Batasan, to impeach President Marcos. All of these would be instructive and indicative, and leading to a conclusion that *the very brief experiment of the Philippines with impeachment proceedings shows ample proof that decisions on impeachment proceedings are rendered on purely partisan and political reasons, totally disregarding the merits of the allegations or the accusations against the President. This is a defect that is inherent in impeachment powers vested in the legislature. Experience shows that impeachment power, which is essentially a judicial function, once vested in the legislature, is almost always unsatisfactory in realizing its vested objective which is protecting the State. Therefore, the process as it goes is impracticable. It is also cumbersome and complicated and, to say the least, grossly inadequate in terms of exacting responsibility from the public officers to the Constitution and to the State.*

I might be trailblazing here, but I am seriously considering the idea of transferring the powers of impeachment trial, after it has been initiated by the joint action of the legislative chamber to the judicial courts, the way it is being

⁶⁷ *Id.* at 352 (Jul. 28, 1986).

*adopted now in the countries of the United States and in Europe.*⁶⁸ (Emphasis supplied)

It is very important to note here that *Commissioner Aquino was somehow unaware of the overall historical premise of impeachment as a tool for exacting accountability from public officers for their political abuses. Her conclusion that impeachment trials are an inherently judicial function has no basis in both history and practice, as both are steeped in political traditions and purposes.* Indeed, Aquino was unaware of even the political history of impeachment in America (the United States Senate, in 1986 and at present, clearly has not yet been disrobed of its sole power to try impeachment cases). However, Aquino was right in noting that impeachment has its inherent difficulties and inefficiencies due to its political nature. Keeping impeachment in the Constitution as it stood then, according to her, “would be nothing more—pardon the Freudian slip but there is no better term for this—than a glorified act of political masturbation.”⁶⁹

Commissioner Monsod, parrying with Aquino, led the charge in defending the usefulness, and in fact, the necessity of impeachment:

We accepted the fact that the impeachment proceeding is primarily a political act, and we are not sure that it did not serve its purpose, for example, the last time it was used, even if it appeared that it failed. The events and the sequence of decisions after that seem to indicate that the President at the time really exerted efforts to defeat the impeachment proceeding. This, by itself, showed that it had impact. Second, this subsequent calling of snap elections may have been influenced to some extent by the fact that there was an attempt at impeachment.

*So, in terms of achieving its purpose, it being a political act, and calling the attention of the people to certain actions that would make the incumbent seek a fresh mandate from the people, keeping it in the Constitution would still serve a purpose.*⁷⁰ (Emphasis supplied)

Addressing Aquino’s assertion that impeachment is “essentially a judicial function,”⁷¹ Monsod recognized that “there is a judicial function involved in the impeachment process” but this nevertheless did not deprive

⁶⁸ *Id.* at 353.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

the process of its political character.⁷² Thereafter, Commissioner Blas Ople joined with Monsod in reminding Aquino of recent American political history. After noting that the provisions in the American Constitution on impeachment were “almost unchanged”⁷³ since 1787, Ople reminded Aquino and the rest of the Commission of the Nixon Watergate scandal:

But the reason I brought this up was to induce Commissioner Aquino to recall a more recent event related to impeachment in the United States Congress of an American President, Richard Nixon, who was facing impeachment. As a matter of fact, the charges had already been formulated in a committee of the House of Representatives and he was to be tried in the Senate in the full glare of world television. Instead of submitting to impeachment proceedings, he resigned, and later on was granted amnesty by President Ford. *The point is that impeachment is a sword in the scabbard. It is as good as a sword drawn; it certainly caused the resignation of an American President because, in the words of President Ford before he gave his amnesty to President Nixon, the Presidency of the United States probably could not withstand the rigor arising from a public trial in the Senate by impeachment of the President of the United States.*

Since this section is indubitably of American origin, I think we are justified in recalling some American examples in the contemporary period. *I do not want to share Commissioner Aquino's despair that this impeachment or trial by the Senate, through the origination of charges in the House of Representatives, is equivalent to a constitutional decoration or tinsel. It is actually a powerful check on the Presidency. It may be a sword in the scabbard but there are circumstances when a sword in the scabbard is as good as a sword drawn.*⁷⁴ (Emphasis supplied)

Ople's political “sword in the scabbard” metaphor struck a blow to Aquino's position. She eventually admitted that impeachment proceedings were indeed “essentially political acts,” albeit reiterating that it requires “the process of adjudication.”⁷⁵ Aquino's premise was in fact based on the normative characterization of public offices,⁷⁶ but her bleak opinion referred to

⁷² *Id.*

⁷³ *Id.* at 354.

⁷⁴ *Id.*

⁷⁵ *Id.* at 356.

⁷⁶ *Id.* at 354. “MS. AQUINO: I appreciate Commissioner Ople's setting the stimulus of the discussion on this line. But there may be a variance of conceptual appreciation here.

the effectiveness of the process due to its political nature, which consequently provided the basis for her view that impeachment proceedings partake of an inherently judicial character.

Despite the incorporation of the American constitutional traditions of impeachment in the 1987 Constitution, impeachment in the Philippines, admittedly, is still an emerging constitutional tradition that has been rarely utilized. Hence, such rare moments are attended with much fanfare and dramatization. A columnist of distinction, Amando Doronila, writes of the first successful *impeachment*—not conviction—in Philippine history, that of former President Joseph Estrada in 2000:

Never before had Filipinos witnessed, with the aid of television and radio, an elected and popular President whose stay in office was put in the hands of the Senate sitting in judgment as an Impeachment Tribunal presided over by the Chief Justice of the Supreme Court, with the House impeachment managers acting as prosecutors. *The trial was a theater of democracy putting life into the notion of accountability of holders of high office. As such, the trial had all the elements of high drama that commanded the attention of Filipinos and fanned their partisan passions.*⁷⁷ (Emphasis supplied)

As a “novel experience especially for the Senate,”⁷⁸ Doronila points out that the Senate “wrote a set of procedures basically adopted from the rules and precedents of the United States Senate,” and “accepted the essence of impeachment as a political, rather than a judicial, process. In that context, the rules of admission of evidence would be less rigorous than those in a criminal trial.”⁷⁹ Doronila further writes:

Impeachment is not intended to punish the offender. Impeachment is a method of national inquest to protect the State. It does not intend to prosecute; it is not intended for retributory or restitutory [sic] effects. Rather, it is in the nature of an exemplary act by which the State infuses the highest sense of responsibility to public service. (Emphasis supplied)

In other words, when the Constitution provides that the intent of an impeachment proceeding is not only to remove from office, it follows as a necessary concurrent effect the disqualification of that erring public officer from positions of trust or responsibility. *It may be true that it is a sword in the scabbard but the sword in the scabbard can rust unless it is drawn.*” (Emphasis supplied)

⁷⁷ AMANDO DORONILA, THE FALL OF JOSEPH ESTRADA: THE INSIDE STORY 111 (2001).

⁷⁸ *Id.* at 112.

⁷⁹ *Id.*

[B]ut since impeachment *was* a political trial, the question that nagged the Senators was, how much evidence was needed to convict? The test, the Rules decided, was not proof beyond reasonable doubt, as required in criminal cases. *The impeachment rules, however, left enough ambiguity to allow contentions to develop over the question of admission of evidence and of procedures. The trial was a field day both for lawyers who were exploring new grounds of jurisprudence, and for politicians who were conscious of their historic role in a drama in which they held the political life and death of a President in their hands.*⁸⁰ (Emphasis supplied)

Ultimately, the trial of Estrada never reached a proper conclusion due to the entire country being overtaken by an event known in history as the Second EDSA People Power Revolution of 2001 (“EDSA Dos”). Although the circumstances of Estrada’s resignation are still debatable,⁸¹ for all intents and purposes, the Republic of the Philippines had already sown in a new President in the person of Gloria Macapagal-Arroyo, Estrada’s then Vice President. Doronila writes of the aftermath of the entire episode on the impeachment proceeding before Congress:

In contrast to the Supreme Court, several key political institutions emerged heavily damaged from the crisis that removed Estrada from power. The most devastated were Congress, especially the Senate, and the Presidency.

*Through its partisan vote against the unsealing of an envelope—the second envelope—containing evidence of alleged Estrada bank assets, the Senate majority aborted the impeachment trial, crushing public confidence in the process, and on the other hand, frustrating Estrada’s expectations of acquittal. The vote was seen by the public as the last chance to remove Estrada by constitutional means, short of resorting to another People Power.*⁸²

. . .

The impeachment trial of Estrada highlighted the political impasse over his removal. Because of the numerical control of the Estrada coalition in both Houses of Congress, the chances for conviction appeared remote. Against the snowballing demand from the streets for his resignation, Estrada

⁸⁰ *Id.* at 112-113.

⁸¹ *See* Estrada v. Desierto, G.R. No. 146710, Mar. 2, 2001.

⁸² DORONILA, *supra* note 77, at 251.

*stonewalled, citing his popular mandate, his fixed term (six years) and the constitutional process of impeachment.*⁸³ (Emphasis supplied)

It was this first successful impeachment (note again: not conviction) in Philippine history, with all its political lessons, that set the tone for succeeding and successful attempts at impeachment. One could say that the attempted second impeachment of Chief Justice Hilario Davide, Jr. was aborted because of the unpopularity of such move, and thus a stricter delimitation of the power of the House of Representatives to initiate an impeachment complaint was brought about.⁸⁴ The threat of impeachment actually forced Chairman Benjamin Abalos, Sr. of the Commission on Elections (“COMELEC”) to resign, “amid accusations that he brokered the national broadband network contract between Chinese supplier ZTE Corp. and the Department of Transportation and Communication,”⁸⁵ known in recent history as the ZTE Broadband scandal. Another Arroyo appointee, Ombudsman Maria Merceditas Gutierrez, criticized for her alleged coddling and protection of former President Arroyo, was also forced to resign after she was impeached.⁸⁶

In these three cases, one sees the abovementioned political checks and counter-checks at work. It was politically (and in fact legally and constitutionally) impossible to successfully impeach and convict Chief Justice Davide precisely due to his popularity as the probing and independent presiding officer of the Estrada impeachment trial. This was also seen as a late act of attempted political retribution by Estrada’s allies in the House of Representatives at that time.⁸⁷ On the other hand, due to the prevailing

⁸³ *Id.* at 254.

⁸⁴ See Francisco, Jr. v. House of Representatives, G.R. Nos. 160261-263, 160277, 160292 & 160295, Nov. 10, 2003. Here, the Supreme Court declared §§ 16 and 17 of the Senate Rules of Procedure in Impeachment Proceedings approved by the House of Representatives on Nov. 28, 2001, thus barring the second impeachment complaint filed by Reps. Gilberto Teodoro Jr. and Felix William Fuentebella with the Secretary-General of the House, due to being contrary to the textually demonstrable constitutional commitment to a limitation on impeachments in the form of the one-year bar rule. (CONST., art. XI, § 3, ¶ 5)

⁸⁵ Erwin Oliva, *Abalos resigns*, PHIL. DAILY INQUIRER, Oct. 1, 2007, also available at <http://www.inquirer.net/specialreports/nbndeal/view.php?db=1&article=20071001-91762>.

⁸⁶ Leila Salaverria & Philip Tubeza, ‘I am not protecting Gloria Macapagal-Arroyo’ Gutierrez quits; ‘On with antigraft drive’—Aquino, Phil. Daily Inquirer, Apr. 30, 2011, also available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20110430-333726/I-am-not-protecting-Gloria-Macapagal-Arroyo>.

⁸⁷ Paolo Romero, *Estrada: Impeach SC justices*, Phil. Star, Jun. 3, 2003, also available at <http://www.philstar.com/headlines/208621/estrada-impeach-sc-justices>.

political clamor for the resignation of former President Arroyo after her administration was rocked by numerous scandals, including the ZTE Broadband scandal as well as the alleged cheating during the 2004 presidential elections (which allowed President Arroyo to remain in power), it was relatively easy to use even just the threat of drawing the sword of impeachment from the scabbard of Congress. This was enough for Arroyo appointees, threatened with the unsheathing of this sword, to resign, and this is in fact what happened to COMELEC Chairman Abalos. Of course, drawing the sword itself was also effective, as in the case of Ombudsman Gutierrez.

It is important to note, however, that President Arroyo herself was not successfully impeached, due to her successful maneuvering and control of Congress during her term. Despite this, the metaphor of Commissioner Ople as mentioned above still works as a potent checking tool with an enduring relevance and competence in the current Philippine constitutional setup, even before the recent trial and conviction of ex-Chief Justice Corona. This trial of trials confirmed that impeachment prevails in the general backdrop of public accountability as the ultimate check against abuse by the highest public officers, regardless of the difficulties initially experienced by the Prosecution Panel. It is this trial that confirmed the triumph of the normative over the protectionist characterization of public offices, and thus ensured that impeachment trials will stay true to their nature as a political process that utilizes standards of evidence different from regular courts. Impeachment, imperfect as it may be, seems set to be a distinctly Filipino political tradition.

IV. DIRECT EXAMINATION: THE MANY FACES OF THE CORONA TRIAL

The impeachment of ex-Chief Justice Corona was the fastest impeachment in Philippine history. On December 12, 2011, pursuant to and “after a brief presentation” at a “caucus” that was “held by the majority bloc” of the House of Representatives, a “verified complaint for impeachment” against Corona “was submitted by the leadership of the Committee on Justice” and “on the same day, the complaint was voted in session and 188 Members signed and endorsed it, way above the one-third vote required by the Constitution.”⁸⁸ The next day, “the complaint was transmitted to the Senate which convened as an impeachment court the following day, December 14,

⁸⁸ See factual antecedents of *Corona v. Senate*, G.R. No. 200242, Jul. 17, 2012, available at http://www.lawphil.net/judjuris/juri2012/jul2012/gr_200242_2012.html.

2011.”⁸⁹ From this one could say that Corona’s impeachment was the most scathing indictment of an impeachable public officer in Philippine history, with 188 out of 285 members of the House of Representatives as signatories to the verified complaint; this constituted around two-thirds of the House membership.⁹⁰ In contrast, only 115 Congressmen signed the verified impeachment complaint against Ex-President Joseph Estrada.⁹¹ A total of eight articles of impeachment were lodged against Corona, which were mostly allegations of betrayal of public trust in various forms, such as the Chief Justice’s “track record marked by partiality and subservience in cases involving the Arroyo administration,” his “failure to disclose to the public his statement of assets, liabilities and net worth as required under . . . the 1987 Constitution,” and for “failing to meet and observe the stringent standards” of judicial conduct “which caused the issuance of flip-flopping decisions in final and executory cases,” among others.⁹²

Trial at the Senate began on January 16, 2012. Characterizations as to the nature of the trial were already evident in the opening statements. Juan Ponce Enrile, then Senate President and the Presiding Officer of the Impeachment Court, seemed to embody the tug and pull of the normative and protectionist characterizations that would predominate in the trial when he made this admonition to his fellow Senators:

*While it has been often said that, by and large, the trial in an impeachment case is political in nature, nonetheless, such is neither an excuse nor a license for us to ignore and abandon our solemn and higher obligation and responsibility as body of jurors to see to it that the Bill of Rights are [sic] observed and that justice is served, and to conduct the trial with impartiality and fairness, to hear the case with a clear and open mind, to weigh carefully in the scale of evidence against the respondent, and to render him a just verdict based on no other consideration than our Constitution, and laws, the facts presented to us and our individual moral convictions.*⁹³ (Emphasis supplied)

⁸⁹ *Id.*

⁹⁰ Cynthia Balana & Gil Cabacungan, Jr., *188 solons impeach CJ Corona*, Phil. Daily Inquirer, Dec. 13, 2011, also available at <http://newsinfo.inquirer.net/109793/188-solons-impeach-cj-corona>.

⁹¹ See facts of Estrada v. Desierto, *supra* note 81.

⁹² Verified Complaint for Impeachment at 11-12, In Re: Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (Dec. 12, 2011).

⁹³ Transcript of Record at 3, In Re: Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (Jan. 16, 2012).

Enrile went on to note that “the conduct of this trial and its outcome will necessarily have a serious impact on the entire nation,” and that “[the] success or failure to achieve the purpose for which the Constitution has provided this mechanism as part of our system of checks and balances and of public accountability may spell the success or failure of our democratic institutions, the strengthening or weakening of our sense of justice as a people, our stability or disintegration as a nation, and the triumph or demise of the rule of law in our land.”⁹⁴ Without knowing it, Enrile highlighted both the normative and political character of the process he was presiding over by adding that “[t]he people’s faith in the Senate of the Republic, the image and very fabric of our nation and our democratic system are at stake.”⁹⁵

Representative Niel Tupas, Jr. of Iloilo, who was the Chairman of the House Committee on Justice and head of the House managers constituting the Prosecution Panel, affirmed the normative stance taken by those who signed Corona’s articles of impeachment. Tupas emphasized that the essential issue in the impeachment case related to then Chief Justice Corona’s *very character*, and subjecting such character to the stringent litmus tests that are the high standards of public service. “Who is Chief Justice Corona? What kind of a man is he? *Ano po ba talaga ang pagkatao ni Renato Corona? (What is Renato Corona’s true nature?)*”⁹⁶ Tupas ended his opening statement by quoting Oliver Cromwell’s address to the Long Parliament of England after he dismissed them in April 20, 1653, a nostalgic reminiscence of the heyday of impeachments in the 17th century:

Before God and country, we say, it is high time for us to put an end to your sitting in that place which you have dishonored by your contempt of all virtue and defiled by your practice of every vice. You are an enemy to good government as you have sold your country for a mess of pottage and like Judas Iscariot, betrayed your God for a few pieces of gold [sic]. Depart, I say, and let us have done with you. In the name of God, go.⁹⁷

Eduardo de los Angeles, for his part a member of Corona’s Defense Team, put in his opening statement that the impeachment trial “sends a

⁹⁴ *Id.* at 4.

⁹⁵ *Id.*

⁹⁶ *Id.* at 17.

⁹⁷ *Id.* at 18.

chilling threat to the Supreme Court to withhold the exercise of its judicial power and just let the President have his way.”⁹⁸ This was in reference to Corona’s alleged influence upon the Supreme Court that frustrated the attempts of President Benigno Simeon Aquino III’s administration to hold former President Arroyo accountable.

The normative-protectionist characterization continued even during the trial proper. On Day Two, Senator Alan Peter Cayetano made a manifestation of his regret that there was no pre-trial stage during which the Senate would have had the opportunity to determine the proper characterization of the trial and the standard of evidence to be used.⁹⁹ At a later point, Tupas took issue with Enrile’s initial characterization of the impeachment trial as “akin to a criminal case.”¹⁰⁰ Reiterating the position of the Prosecution, Tupas had to belabor the point that an “impeachment proceeding is *sui generis* or it is like no other.”¹⁰¹ Enrile then rephrased his characterization in the following manner: “An impeachment case is not a civil case nor is it a criminal case. It is *sui generis*, a class by itself. But it is closer to a criminal case than a civil case.”¹⁰² Enrile’s reasons for this “tilted” characterization were due to the fact that impeachment cases carry punitive sanctions, albeit limited in nature, and the fact that the respondent must be informed of the charges against him, that there must be a plea, despite the fact that conviction by an impeachment trial is not a bar to subsequent criminal prosecution.¹⁰³ In response to Tupas’s query as to the origin of such tilted characterization, Enrile replied that “[t]his is the product of my own mind.”¹⁰⁴

On Day Five, Senator Gregorio Honasan propounded an important question: “[A]re we still adhering to the presumption of innocence as a principle or [is this] a rule that we are applying here?”¹⁰⁵ Justice Serafin Cuevas, lead counsel of Corona’s Defense Team, replied that due to his conception of the trial as a criminal proceeding, there should still be a presumption of

⁹⁸ *Id.* at 20.

⁹⁹ Transcript of Record at 10, In Re: Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (Jan. 17, 2012).

¹⁰⁰ *Id.* at 13.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 14.

¹⁰⁴ *Id.*

¹⁰⁵ Transcript of Record at 4, In Re: Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (Jan. 24, 2012).

innocence in favor of the respondent.¹⁰⁶ A moment later, Senator Miriam Defensor-Santiago gave her view on the matter of characterization of an impeachment trial:

I would like to say something since we are already discussing the basic principles on which our impeachment proceedings begin.

First, let me say that in my humble belief, contrary to misimpression of both Counsels here and some in the media and in the public, *impeachment is neither political nor judicial. Impeachment is both quasi-judicial and quasi-political.*

The term ‘quasi’ means it is almost but not exactly like a political or a judicial proceeding. Therefore, if it is the case, in the definition of ‘impeachment,’ the Rules of Court do not apply totally to these proceedings but lie within the discretion of this Court.

We are not a Senator Court [sic]. We are the High Court of Impeachment. There may be a Supreme Court, but nonetheless, we are the sole and only High Court of presidential and chief justice’s [sic] impeachment.¹⁰⁷ (Emphasis supplied)

As to the standard of evidence to be used, Defensor-Santiago proposed the following, while at the same time asking both the Prosecution Panel and Defense Team for their suggestions:

The question is: What is the standard of proof in impeachment proceedings? In a civil case, the standard of proof is very low. It is preponderance of evidence. In a criminal case, it is very high—proof beyond reasonable doubt. In administrative case, it is clear and convincing evidence.

In the question at hand, I humbly submit that the standard of proof should be overwhelming preponderance of evidence. That is the suggestion of this humble judge.¹⁰⁸

To this query from Defensor-Santiago, Tupas replied that because “the impeachment proceeding is akin to an administrative disciplinary action wherein a [sic] penalty could be removal from office and disqualification...

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.* at 8.

The standard should be substantial evidence.”¹⁰⁹ Predictably, Cuevas replied that “[o]n the part of the Defense... it is [their] humble submission that the proof necessary for conviction in an impeachment case should be proof beyond reasonable doubt.”¹¹⁰ Due to the stiff penalty of removal and absolute disqualification to be imposed on “the highest officials in [sic] the land” who “may have spent years” in their posts, Cuevas asks: “Why will mere substantial evidence be enough to disqualify them from office?”¹¹¹ There was no resolution to the issue, as Defensor-Santiago suggested that the Senate take the matter up in a caucus.¹¹²

Thereafter, Enrile made another tilt towards the *criminalization* of the impeachment trial when he stated that “in [his] humble opinion, the humble opinion of this Presiding Chair, that only the rules on criminal procedure and the rules of evidence will be suppletory to the Rules on Impeachment adopted, published and promulgated by this Impeachment Court.”¹¹³ Tupas, on behalf of the Prosecution Panel, manifested that the proceeding was being conducted like a criminal trial, and that they felt that “the Senate [was] acting like an ordinary court” due to the “controlling” and “strict” application of the Rules of Court.¹¹⁴ According to Tupas, “the Senate is no ordinary court because it is the repository of the people’s trust.”¹¹⁵ However, upon interpellation by Enrile who asked if the Senate, sitting as an Impeachment Court, should allow “misleading questions,” “hearsay evidence,” “argumentative questions,” and “hypothetical questions,” Tupas had to reply “no.”¹¹⁶ Tupas was in reality asking for “just a little flexibility” in order “to elicit the truth,” but Enrile demanded a specification of such flexibility.¹¹⁷

Senator Alan Peter Cayetano then joined in the fray and revived the normative political characterization that some may have already forgotten in the course of the first few days of the trial. Quoting from Gerhardt, who in turn cited Professor Black, Cayetano said that “[i]t is unnecessary to make any particular rules of evidence applicable to impeachment proceedings,” because

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 9.

¹¹² *Id.*

¹¹³ *Id.* at 12.

¹¹⁴ *Id.* at 20.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 20-21.

¹¹⁷ *Id.* at 21.

“[a]n impeachment trial is not the usual kind of trial nor does it involve a typical jury, rather impeachments are extraordinary hearings administered by a sophisticated and politically savvy body, the Congress of the United States.”¹¹⁸

On Day Eight, a most unique characterization of the impeachment trial was put forward by Senator Antonio Trillanes IV:

With all due respect to all those who have stated their different opinions, *I have also researched extensively on the subject and I am convinced that it is a political process with a judicial character. It is where the public participates, through their representatives, in the formulation of public policy to resolve a policy issue of whether the conviction or acquittal of Chief Justice Renato Corona is in the best interest of our country. I agree that it is in a class of its own. But in my own personal experience, it is akin to one of the most sacred traditions of the Philippine Military Academy, which is the Honor Committee Trial. It is where a cadet who is accused of violating the tenets of the Honor Code is tried by a jury of the eight members of the Honor Committee. And only a unanimous vote of guilty can convict an accused. The only difference that I can see with this Impeachment Trial is we do not have brilliant lawyers like the ones performing before us. And it is also the reason why we do not have technicalities in our attempt to ferret out the truth.* Again, that is in a laboratory setting.¹¹⁹

... [A]s to the standard of proof, as a former soldier, Navy officer, I will not venture into defining and distinguishing what is proof beyond reasonable doubt and substantial evidence because that is well within the expertise of my more seasoned colleagues. *But what I do know and what I will apply in this impeachment Trial is the basic sense of justice that God has given every human being born on this planet.*¹²⁰ (Emphasis supplied)

Despite all these characterizations, they essentially did not matter on the day the Senate finally voted after 44 days of trial. On May 29, 2012, the Senate, sitting as an Impeachment Court and by a vote of 20-3, convicted Corona under the second article of impeachment leveled against him (failure of

¹¹⁸ *Id.* at 22, citing Michael Gerhardt, *The Constitutional Limits to Impeachment and its Alternatives*, 68 TEX. L. REV. 1, 93 (1989).

¹¹⁹ Transcript of Record at 3-4, In Re: Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (Jan. 30, 2012).

¹²⁰ *Id.* at 4.

truthful declaration in his SALN).¹²¹ *However, there was neither an agreed characterization of the trial nor a unified adoption of a standard of evidence.* Essentially, each Senator casted their vote and explained the same according to his own uniquely conceptualized standards, and indeed, according to their own conceptions of culpability. One could even dare to think that some senators voted merely according to their conscience, since they were not required to explain their votes.

For example, Senator Joker Arroyo voted to acquit Corona because to him, “[w]hat started in the House was not an impeachment, for an impeachment is an accusation accompanied by necessary formalities, attended by the appropriate solemnities, flanked by the liberties and guarantees that a genuine grand jury proceeding upholds.”¹²² If the Senate did convict Corona, Arroyo warned, this would in fact constitute a bill of attainder.¹²³

Also, Defensor-Santiago adopted the standard of overwhelming preponderance of evidence proposed by Professor Black, and thus, to her, a mis-declaration in a SALN did not meet the characterization of an impeachable offense by overwhelming preponderance of evidence.¹²⁴

Thankfully, the rest who voted for conviction had in mind the normative political characterization of impeachment trials. Cayetano emphasized that “[t]he Impeachment Court does not simply pass judgment on this specific case or on this specific CJ [sic]. The Court’s action, being far-reaching and precedent-setting, is actually rebuilding a new paradigm of transparency and accountability in public office.”¹²⁵

His sister, Senator Pia Cayetano, said that “this is not a purely legal process. The framers of the Constitution did not set the quantum of evidence nor the burden of proof required to convict. Much was left to the individual conscience and the collective wisdom of the Senate.”¹²⁶

¹²¹ Transcript of Record at 39, In Re: Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (May 29, 2012).

¹²² *Id.* at 5.

¹²³ *Id.* at 6.

¹²⁴ *Id.* at 11.

¹²⁵ *Id.* at 8.

¹²⁶ *Id.* at 9.

Senator Franklin Drilon drew on the experience of Flores in *Rabe*, saying that “[t]he Chief Justice must be held to a much higher standard. Those who dispense justice must conform to the highest standards of professional integrity and personal honesty.”¹²⁷ Drilon further noted that Corona “has lost his moral fitness to serve the people. He has betrayed the public trust. He cannot be Chief Justice a minute longer.”¹²⁸

For his part, Honasan declared that “[w]hat is clear is that based on the doubt cast on his capability to dispense justice and to do his duty, he is no longer fit to preside over the highest court in the land.”¹²⁹

Senator Loren Legarda, also citing *Rabe*, warned that “[i]f we acquit the Chief Justice, we would tragically lift the floodgate for public suspicion and widespread distrust on the highest institution of our judicial system. We also lower the bar of public accountability of government officials.”¹³⁰

Senator Sergio Osmeña III, another Senator who cited the case of *Rabe*, declared that “[t]he Senate Impeachment Court must restore the people’s faith in the judicial system,” and that “[t]he Senate must bring about a higher level of moral standards in governance.”¹³¹

Senator Aquilino Pimentel III also seemed to have the normative-political characterization in mind when he declared that “[i]mpeachment is a constitutional administrative proceeding. When there is sufficient credible evidence to prove a constitutionally recognized ground for impeachment, then the impeached high government official must be removed from office.”¹³²

Trillanes, for his part, stated that “a conviction signifies that we have considerably raised the standards for a Chief Justice of our Supreme Court. He must not only possess vast legal knowledge and wisdom necessary to interpret the law according to its spirit and intent, but more importantly, he must have unquestionable moral integrity and strength of character to render him

¹²⁷ *Id.* at 16.

¹²⁸ *Id.*

¹²⁹ *Id.* at 20.

¹³⁰ *Id.* at 23.

¹³¹ *Id.* at 26.

¹³² *Id.* at 27.

impervious to corruption and political pressure as he administers justice for our country and people.”¹³³

Lastly, Enrile proffered a summary of the sentiments of the Senate. He upheld the normative-political character of the trial that may have gone unnoticed:

Some have raised the question: Why should the Chief Justice be held accountable for an offense which many, if not most others in government are guilty of, perhaps even more guilty than he is? They say that hardly anyone declares his true net worth anyway.

Here lies what many have posited as a moral dilemma. *I believe it is our duty to resolve this “dilemma” in favor of upholding the law and sound public policy in this country.* If we were to agree with the Respondent Chief Justice of the Supreme Court that he was correct in not disclosing the value of his foreign currency deposits because they are absolutely confidential, *can we ever expect any SALN to be filed by public officials, no matter how high and no matter how low, from hereon to be more accurate and true than they are today? I do not think so.*

*I am not oblivious to the possible political repercussions of the final verdict we are called upon to render today. I am deeply concerned that the people may just so easily ignore, may forget, if not completely miss out, the hard lessons we all must learn from this episode, instead of grow and mature as citizens of a democratic nation.*¹³⁴ (Emphasis supplied)

V. TRIAL MEMORANDUM: ANALYSIS AND ADOPTION OF EXPERT OPINIONS

On Proper Characterization of the Proceedings

Proceeding to the proper characterization of impeachment trials as a normative political process, the views of Gerhardt and Jonathan Turley are relevant: *first*, the nature of impeachment precludes any characterization that intends to make the process predictable from a strictly legal point of view, and *second*, impeachment serves a higher purpose in maintaining the checks and

¹³³ *Id.* at 31.

¹³⁴ *Id.* at 38.

balances in the separation of powers in a republican system, and not just the purpose of removing erring public officers.

The historical and official records above confirm Gerhardt's conclusion that impeachment trials "virtually defy systematic analysis precisely because impeachment is by nature, structure, and design an essentially political process."¹³⁵ Gerhardt admits that "[p]olitics is at times unseemly, vicious, and even dishonest, but the Constitution remains a political document," and that "[c]onstitutional law is by its nature, structure, and inception a peculiar form of politics, however, and there is no more vivid illustration of this proposition than the impeachment clauses."¹³⁶ It is therefore "the challenge for modern commentators... to acknowledge and to justify the political elements influencing their constitutional interpretations,"¹³⁷ especially with regard to impeachment. Thus, "[r]elying in part on the republican conception of meaningful citizen participation in governmental or political decision making, the [F]ramers crafted the Constitution to provide a political process in which the various branches of the federal and state governments as well as the citizenry could engage in dialogues on the critical political issues common to democratic societies."¹³⁸

Explaining the manner of such political process, Gerhardt notes in another article on impeachment that:

By vesting the impeachment authority in the politically accountable authorities of the House and the Senate, *the framers of the Constitution deliberately chose to leave the difficult questions of impeachment and removal in the hands of officials well versed in pragmatic decision-making. Members of Congress are pragmatists who can be expected to decide or resolve issues, including the appropriate tests, by recourse to practical, rather than formalist, calculations.* In fact, members of Congress decide almost everything pragmatically, and decisions about impeachment and removal are no exception. *The vesting of impeachment authority in political branches necessarily implies the discretion to take various factors, including possible consequences, into consideration in the course of exercising such authority.*¹³⁹ (Emphasis supplied)

¹³⁵ Gerhardt, *supra* note 118, at 5.

¹³⁶ *Id.* at 6-7.

¹³⁷ *Id.* at 7.

¹³⁸ *Id.* at 6.

¹³⁹ Michael Gerhardt, *The Special Constitutional Structure of the Federal Impeachment Process*, 63 LAW & CONTEMP. PROBS. 245, 246 (2000).

This pragmatic decision-making is what characterizes “Congress as better equipped than the judiciary to deal with the difficult political issues raised in impeachments.”¹⁴⁰ Indeed, even Hamilton reached the same conclusion.¹⁴¹ Furthermore, the self-checking nature of politics is evident when one realizes that the “political legitimacy of an impeachment effort turns, in large part, on the quality and nature of the procedural choices made by the House and the Senate in the course of conducting impeachment proceedings. The more these choices appear to be expedient, partisan, or unfair, the greater the likelihood the proceedings will be tainted as biased or illegitimate.”¹⁴² Thus, for example, “[f]uture members of Congress might think twice before engaging in a relatively prolonged investigation of a President's misconduct, for fear that it might alienate the public.”¹⁴³ In the end, for the Impeachment Court and for the respondent, “[t]he final grade will be rendered in the form of the judgment of history, but it behooves us to remember that the judgment of history tends to be pragmatic.”¹⁴⁴

Professor Turley explained that an impeachment trial is necessarily political because it is a “method of resolving factional disputes over executive or judicial legitimacy.”¹⁴⁵ It is not “simply a process of removal,” but possesses “important institutional functions beyond its corrective conclusion.”¹⁴⁶ The trial before the Senate “performs a role central to the maintenance of a representative system based on true consent of the governed,” because the Senate “serves as a unique forum for resolving highly divisive questions over the legitimacy of a President or judge to continue to exercise constitutional authority.”¹⁴⁷ Turley describes the process of “how factional interests can be

¹⁴⁰ *Id.* at 256.

¹⁴¹ See the last five (5) paragraphs of THE FEDERALIST NO. 65, *supra* note 36.

¹⁴² Gerhardt, *supra* note 139, at 252.

¹⁴³ *Id.* at 253. “Consequently, it is possible that impeachment will be effective only for the kinds of misconduct that can galvanize the public to set aside its approval of a President's performance to support resignation or formal removal. Future senators might support removal only if they have direct evidence of very serious wrongdoing and unambiguous consensus in Congress and among the public on the gravity of such wrongdoing.”

¹⁴⁴ *Id.* at 256.

¹⁴⁵ Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L. J. 1, 3 (1999).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 4.

transformed under the catalytic influence of a full Senate trial¹⁴⁸ by reiterating the self-checking nature of politics:

Senate trials often appear to be constitutional dramas with central characters but no central theme. To serve a Madisonian function in resolving factional disputes, the central obligation of the Senate trial must be a faithful presentation of the allegations, evidence, and witnesses in the case. *The presentation of this evidence provides the context needed for a vital political discourse containing the underlying legitimacy issues. Such a full presentation may not always be necessary to reach a fair judicial verdict, but it is essential to fulfill the political function of the Senate trial.* (Emphasis supplied)

In reality, even political processes like impeachment trials, with all the fiery factionalism that they can evoke, are self-checking against any arbitrary abuse. The arbitrary abuse of factionalism is precisely addressed by factionalism itself. Turley points out that Madison himself felt the need to address factionalism since it posed a threat to the then infant American republic, explaining that “[u]nless factions could be anticipated and controlled in some fashion, they would remain below the surface, where they would fester and eventually appear in the streets to the collective danger of the system and all within it.”¹⁴⁹ Thus, “the causes of faction cannot be removed and that relief is only to be sought in the means of controlling its effects.”¹⁵⁰ Madison defined “faction” as “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”¹⁵¹

Factions in impeachment trials were seen to be inevitable. “Over the course of the process, however, civic virtue has often emerged to trump factional interests: even in the most factional fights over judicial impeachments, the Senate has seen critical defections from members based on principle.”¹⁵²

The impeachment process has a revelatory feature: “[i]mpeachment trials force participants to state their interests, not as naked preferences, but in

¹⁴⁸ *Id.* at 5.

¹⁴⁹ *Id.* at 110-111.

¹⁵⁰ *Id.* at 111.

¹⁵¹ *Id.*, citing THE FEDERALIST NO. 10 (James Madison).

¹⁵² *Id.*

terms of a greater civic virtue or societal need.”¹⁵³ It is “[b]y forcing the factional disputes into the open,” that “[t]he Senate trial creates a process of dialogue and redress” that resolves “factional questions of legitimacy” that may “remain below the surface, unresolved and festering.”¹⁵⁴

Indeed, “[w]ith the opening of the Senate proceedings to television, this deliberative process not only influences the views of individual representatives, but also individual citizens to an extent never contemplated by the Framers.”¹⁵⁵ Gerhardt conforms to this view; he notes that “[g]iven media scrutiny and party divisions, it is difficult to conceive how members of Congress would ever get away with violating an explicit constraint on the impeachment power, especially in an event as closely watched as a presidential impeachment.”¹⁵⁶

Thus, “[i]ronically, when such partisanship is evident, it is quickly denounced as dangerous and inimical to the constitutional system.”¹⁵⁷ Also, despite the dangers of partisanship from the majority faction in a Senate trial, “what gives the process legitimacy is how factional interests are allowed to be expressed within a political system designed to produce majoritarian conclusions.”¹⁵⁸ By an open and public trial where the views and vitriol of both majority and minority factions are vented out over the question of whether or not an impeached public officer still deserves the people’s trust, the Senate can weigh the interests of the respondent against that of the nation, and render a balanced judgment accordingly.

For Turley, “the impeachment trial should represent the greatest constitutional moment for the resolution of moral and political disputes.”¹⁵⁹ The resolution of these moral and political disputes lies in the “fundamental political decision would be made in impeachment verdicts,” which Turley describes is “[a]t the heart of the Senate trial... a question of true consent.”¹⁶⁰ Thus, “[w]hen faced with allegations of misconduct, an official must continue

¹⁵³ *Id.* at 119.

¹⁵⁴ *Id.* at 121.

¹⁵⁵ *Id.* at 119.

¹⁵⁶ Michael Gerhardt, *Rediscovering Non-Justiciability: Judicial Review of Impeachments after Nixon*, 44 DUKE L.J. 231, 275 (1994).

¹⁵⁷ *Id.* at 120.

¹⁵⁸ *Id.* at 122.

¹⁵⁹ *Id.* at 125.

¹⁶⁰ *Id.* at 128.

in office with the legitimacy of consent by the people through their representatives. This element of true consent is absent in past academic discussions of Senate trials.”¹⁶¹ This process “does not weaken the presidency or the judiciary, but rather guarantees that officials govern without lingering factional doubts about their legitimacy due to the commission of alleged high crimes and misdemeanors.”¹⁶²

Turley thus concludes that “[i]mpeachment is best understood as a legislative rather than a judicial process” because “[i]t is the most extreme and rarest form of political discord left for resolution in the legislative branch.”¹⁶³ So “[a]s with legislation, the validity of the final decision of the Senate depends on an informed and deliberative process.”¹⁶⁴

On the Proper Standard of Evidentiary Proof

Proceeding to the proper standard of evidence to be used, which is the point of contention in impeachment proceedings as well as the concrete manifestation of the normative-political characterization of impeachment trials, six arguments are put forward in support of the adoption of substantial evidence. *First*, due to the normative characterization of public offices, a lower standard is needed in order to fulfill the paramount purpose of protecting the sovereign people from the abuses of impeachable officers. *Second*, because of the political nature of impeachment trials, the adoption of a high standard akin to that used in regular court proceedings is inapplicable, as Senators are not presumed to have any legal training or familiarity with the rules of evidence. *Third*, there is a reason why the power to try impeachment cases has been vested solely in Congress and not in the courts, because of the latter’s lack of competence over political questions concerning public trust. *Fourth*, the Senate, as a political entity, will find it difficult for an adoption of a uniform standard of evidence due to the fact that there is none stated in the Constitution and the fact that Senators can change their minds. *Fifth*, there is no need for a higher standard to guard against arbitrary abuse, since the self-checking nature of politics, especially with the advent of a more scrutinizing media, solves the problem. *Sixth*, substantial evidence accommodates the tendency of some senators to vote based on individual conscience.

¹⁶¹ *Id.*

¹⁶² *Id.* at 144.

¹⁶³ *Id.* at 145.

¹⁶⁴ *Id.*

As a preliminary point, it must be stressed that Black himself notes the difficulty in finding reasonable standard applicable to impeachment trials:

Of course, we don't know the answer with any sureness; we have to work on it ourselves. As with so many constitutional questions, we have to ask what is reasonable, and the reply is here far from obvious. Removal by conviction on impeachment is a stunning penalty, the ruin of a life. Even more important, it unseats the person the people have deliberately chosen for the office. *The adoption of a lenient standard of proof could mean that this punishment, and this frustration of popular will, could occur even though substantial doubt of guilt remained. On the other hand, the high "criminal" standard of proof could mean, in practice, that a man could remain President whom every member of the Senate believed to be guilty of corruption, just because his guilt was not shown "beyond a reasonable doubt."* Neither result is good; law is often like that.¹⁶⁵ (Emphasis supplied)

A choice has to be made between the two alternative tilts, since there seems to be no middle ground, owing to the political nature of impeachment trials. Obviously, the adoption of a lower standard supports the normative characterization of a public office. The punishments of removal and disqualification, harsh as they may be, protect the high standards of public service our government institutions sorely need. If rendered with basis, impeachment will not act as a frustration of popular will, since the people, through their representatives, realize that they no longer trust such individual to remain in service. It must be reiterated that the offices these impeachable public officers occupy directly relate to the sovereign functions of government, and for their removal, a blessing of the offended sovereign people is needed. Also, it must be noted that there are impeachable officers who are not directly elected by the people, such as members of the Constitutional Commissions, the Ombudsman, and the members of the Supreme Court.

Going into the second argument, Senators, as mentioned above, are political actors known for their pragmatic judgments on policy issues. The public trust reposed in impeachable officers is one of the most important policy issues, as noted by Trillanes in his manifestation of his chosen standard of judging the evidence in the Corona trial. Adel Tamano, a known

¹⁶⁵ BLACK, *supra* note 25, at 17.

commentator on the Corona trial, wrote the following nearly a decade ago right after the impeachment of Chief Justice Davide. :

A pragmatic approach to the standard of guilt issue is that the standard of impeachment must be left to the conscience of the individual Senator involved taking due consideration that he will be answerable to the national electorate for the justness of his decision. Therefore, the repercussions against a Senator for making an unfair judgment in an impeachment case should be political as well—his accountability to the electorate in subsequent elections. In view of that, the members of the Senate, being political actors, will have to be on their guard against perceptions of partiality or unfairness in their conduct during the impeachment proceeding, which will be politically injurious, even career-ruining, to them. Accordingly, the Senator-Judge will not have untrammelled discretion to rule whimsically and capriciously in an impeachment case without due regard to some reasonable standard of evidence.¹⁶⁶ (Emphasis supplied)

Here, Tamano reiterates the self-checking nature of politics with regard to impeachment trials which inevitably ensures that Senators make reasonable pragmatic decisions when pondering their votes to either convict or acquit the public officer concerned.

Meanwhile, the third argument supports the rationale of non-reviewability by the judiciary of an impeachment judgment, in conformity with prevailing U.S. jurisprudence. Applying this *mutatis mutandis* as to why regular courts themselves are not competent to try impeachment cases, there would be no “textually demonstrable constitutional commitment of the issue” to the judiciary; there would be a “lack of discoverable and manageable standards for resolving” the issues due to the political nature of impeachment that actually defies strictly legal analysis; there is an “impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion” such as the determination of public trust in an individual; there is an “impossibility of a court’s undertaking independent resolution without expressing lack of the respect due” the Senate, or the entire Congress for that matter; there is “an unusual need for unquestioning adherence to a political decision already made,” which is the decision embedded in the Constitution to vest the Senate with the sole power to try impeachment cases; and finally there is a great

¹⁶⁶ ADEL TAMANO, HANDBOOK ON IMPEACHMENT UNDER THE 1987 CONSTITUTION 26-27 (2004).

“potentiality of embarrassment from multifarious pronouncements by various departments on one question.”¹⁶⁷

Supporting this application of the political question characterization, Gerhardt observes the important views of Justice Joseph Story:

Even as staunch a friend of judicial review as Justice Story rejected its exercise over impeachments. *He explained that the Framers viewed Congress as better equipped than the judiciary to deal with the difficult political issues raised in impeachments. He noted that the Framers rejected giving the impeachment power to the judiciary because they believed that impeachment required ‘a very large discretion (that) must unavoidably be vested in the court of impeachments.’* Justice Story explained further that the Framers understood the power of impeachment as inherently political and therefore vested the power solely with the House of Representatives, ‘where it should be, in the possession and power of the immediate representatives of the people.’ *He also regarded the sanctions available to the Senate in impeachment trials as ‘peculiarly fit(ting) for a political tribunal to administer, and as will secure the public against political injuries.’*

. . . *[I]mpeachment decisions are laced with issues incompatible with judicial review.* For example, the House and the Senate eventually must agree, usually independently of each other, on what constitutes an impeachable offense. *The Framers expected that these judgments would be guided not by indictable crimes but rather by amorphous notions of injury to the republic.* This expectation is reflected in the references of the delegates at the Constitutional Convention to impeachable offenses as ‘great’ offenses in contrast to indictable ones and of the delegates at the state ratifying conventions to the propriety of impeaching any official who ‘deviates from his duty’ or ‘dare(s) to abuse the powers vested in him by the people.’¹⁶⁸ (Emphasis supplied)

Moreover, the nature of “high crimes” as enunciated in both American and Philippine Constitutions are not in the nature of strictly indictable offenses for which criminal proceedings are warranted. It is a fact that under the two Constitutions, judgment in impeachment cases does not constitute a bar to subsequent criminal prosecution, and therefore, *the application of judicial standards of evidence, especially that of proof beyond reasonable doubt, will apply only at a time when a subsequently case is filed before the proper court having jurisdiction over the same.*

¹⁶⁷ See *Baker v. Carr*, 369 U.S. 186, 217 (1962).

¹⁶⁸ Gerhardt, *supra* note 156, at 225-256. (Citations omitted)

The sagacious and presaging wisdom of Hamilton is also noteworthy. He offers three important reasons underlying the inherent incompetence of judicial bodies to try impeachment cases: *first*, it is doubtful whether a regular court “would possess credit and authority” to carry out political judgments regarding issues of public trust; *second*, as mentioned in the previous paragraph, there would be a criminal proceeding separate and subsequent to an impeachment case; and *finally*, impeachment is also meant to be a check on the judiciary, so any assumption by the latter of the power to try the former would defeat the purpose and intent of a republican system of checks and balances.¹⁶⁹

As to the fourth argument, Gerhardt notes two problems as to why it is simply not feasible to determine a distinct standard of proof in impeachment trials. First refers to the tyranny of a majoritarian decision to adopt a certain standard; second is the necessity of unanimity in order to dispel any notions of partisanship:

There are, in fact, two practical problems with the Senate's ability to bind each individual senator in an impeachment trial to follow certain rules of evidence or a uniform burden of proof. First, to the extent that such uniform standards deprive any senators from reaching the kind of final judgments they prefer in an impeachment trial, they may undermine the constitutional requirement of a supermajority of at least two-thirds of the Senate concurring in order to convict. *This restriction sought to protect the subjects of impeachment trials from capricious abuse of impeachment authority and from the tyranny of a partisan majority; it guaranteed that convictions could occur only if a significant minority of senators did not object. Any rule adopted by a majority of the Senate that frustrates the constitutionally authorized ability of a minority—i.e., one-third—of the Senate to defeat an impeachment conviction is suspect. An attempt by the majority of the Senate, through the adoption of set evidentiary rules or a burden of proof, to deprive individual senators of the power that normally belongs to a third of the body in impeachment trials to bar convictions likely would be unconstitutional.*

Second, although a majority of the Senate has the formal power to change the procedural rules for an impeachment trial, *the Senate traditionally permits the implementation of changes in its procedural rules only if it has unanimous consent to do so.* The significance of this practice is that it is inconceivable that the full Senate ever would agree to adopt a

¹⁶⁹ THE FEDERALIST NO. 65, *supra* note 36.

uniform standard of proof or set rules of evidence. *Indeed, a basic principle recognized in every impeachment trial conducted thus far is that each senator must ultimately decide for himself on which rules of evidence or burden of proof to apply. Moreover, it is difficult to conceive how such uniform standards could ever be enforced.*¹⁷⁰ (Emphasis supplied)

With respect to arguments in favor of the political characterization of impeachment trials, the public nature and national scope of such a political process cannot escape the minds of senators. With a more scrutinizing public brought about by a more far-reaching and responsible media, senators will necessarily think twice before doing anything blatantly partisan or that would undermine the respondent's right to due process. This transparency of the process truly embodies the self-checking nature of politics and guards against the danger of an impeachment trial from becoming a mere "kangaroo" court.

Finally, as to the sixth and final argument, it is evident that substantial evidence fits perfectly if Senators are to judge impeachment cases according to their conscience. Each Senator will necessarily have to determine his own standard, whether it be proof beyond reasonable doubt, overwhelming preponderance of evidence, clear and convincing evidence, or any other standard, for his pragmatic decision on the policy question of whether or not an impeached official deserves to be trusted further. As long as the standard is reasonable, and it must be presumed that Senators are reasonable, to support a conclusion of guilt or innocence, then the verdict is valid as having the blessing of the affronted people through their elected representatives. The convicted official has no other option but to respect the will of the people embodied in the verdict, and the people will have to deal with their representatives through another political process should an evidently guilty individual is exonerated and acquitted.

VI. JUDGMENT (CONCLUSION)

Wherefore, it is respectfully submitted that impeachment continues to be a relevant and competent constitutional mechanism that ensures stability of and faith in the institutions of republican government. Its proper characterization as a political process that uses substantial evidence as the standard of proof sufficiently ensures that political offices occupied by impeachable public officers are safe from abuses.

¹⁷⁰ Gerhard, *supra* note 156, at 266-267.

While impeachment is definitely imperfect, it logically requires trust for it to work. The people must trust that their elected officials will decide the issues with open minds and render fair judgment. The senators must trust that the prosecution panels and defense teams will do their utmost to make a full presentation of the facts. More importantly, the respondent must proffer the impeachment court and the body politic with the truth he presents as his defense. Without trust in the process, there can be no true determination of trust in the individual, and the whole exercise of balancing competing interests through the checks and balances between separate governmental powers will be all for naught. There is no perfect form of government that can balance all interests, but there are paramount public interests that trump private ones, such as the integrity of public offices.

To end this paper, Tamano's fitting words are quoted below, for they envisage a bright and promising future for impeachment trials according to the Philippine constitutional setup, premised upon a collective national trust in the impeachment process and the republican system:

The Framers of the U.S. Constitution have deemed fit to repose the radical power of impeachment on the most political branch of government. Hence, *we must trust in that wisdom, that there are sufficient safeguards in place, and that our representatives will not abuse the impeachment power and instead use it to protect the nation against powerful and influential but unfit government officials.*¹⁷¹ (Emphasis supplied)

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¹⁷¹ TAMANO, *supra* note 167, at 33.

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