EMERGING ISSUES IN PHILIPPINE IMPEACHMENT AND THE ACCOUNTABILITY CONSTITUTION*

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ABSTRACT

The unique circumstances and timing of the impeachment of Vice-President Sara Duterte by the House of Representatives expose open issues in impeachment that are not immediately answerable by the sparse text of the 1987 Constitution: May the Senate proceed with her trial during its recess? May the proceedings cross over from the 19th to the 20th Congress? Would her resignation preclude the Senate from trying her for graft and corruption, bribery, betrayal of public trust, and other high crimes? If trial pushes through, what standard of evidence should the Senate apply? And what is the extent of the power of the Supreme Court to resolve these issues?

This feature contextualizes these questions in the development of impeachment in the Philippines, congressional precedent and judicial doctrines, American practice, and the ethos of accountability, and documents an exchange of former officials and academics in the *Emerging Issues on Impeachment* forum co-organized by the University of the Philippines College of Law, the Justice George A. Malcolm Foundation, and the PHILIPPINE LAW JOURNAL in February 2025. It ends by proposing an ethical reading and a canon of accountability to guide the Senate and other decision-makers in resolving these and other constitutional questions.

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INTRODUCTION

On February 5, 2025, the Philippine House of Representatives impeached Vice-President Sara Duterte.[1] The Vice-President had been under fire for several months due to allegations of misuse of confidential funds as Vice-President and payoffs in the Department of Education, which she led as Secretary for a little over two years from 2022 to 2024.[2] And yet discounting long-circulating rumors in the Manila political scene, her impeachment came as a surprise to most observers. The various citizen-led

[1] *See generally*, Paolo S. Tamase & Athena Charanne Presto, *Impeachment a Key Weapon in the Philippines' Marcos–Duterte Divide,* EAST ASIA FORUM, Mar. 10, 2025, *at* https://eastasiaforum.org/2025/03/10/impeachment-a-key-weapon-in-the-philippines-marcos-duterte-divide/.

[2] Dominique Nicole Flores, *The Allegations against VP Sara Duterte in Impeachment Proceedings*, PHILSTAR.COM, Feb. 6, 2025, *at* https://www.philstar.com/headlines/2025/02/06/2419444/allegations-against-vp-sara-duterte-impeachment-proceedings (last visited May 25, 2025).

impeachment complaints filed against her[3] had largely been ignored by the House and the news cycle had moved on to the upcoming 2025 midyear polls. Most relevantly, the 19th Congress was just about to go on recess: in fact, it did so the very day when the House voted overwhelmingly to charge the Vice-President with graft and corruption, bribery, betrayal of public trust, and other high crimes.[4]

In the Philippines, impeachment as an accountability device of the national plenary legislative body has been in every constitution since 1935. Both constitutions of the Philippine Commonwealth[5] and that of the Marcos dictatorship[6] provided for impeachment, mirroring the sparse provisions in the U.S. Constitution.[7] Philippine impeachment under these basic laws already had notable deviations from its American origins—most significantly, it was reserved to high constitutional offices,[8] unlike that in the United States which covers a much broader set of officials.[9] Nevertheless, Philippine impeachment was assumed to track American practice and jurisprudence.[10]

The ability of administration allies to thwart impeachment attempts in the Marcos, Sr.-dominated Batasan Pambansa (National Assembly) inspired changes in the current version of impeachment. They include

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[3] Dwight de Leon, *Impeachment Complaint Filed against VP Sara Duterte*, RAPPLER, Dec. 2, 2024, *at* https://www.rappler.com/philippines/impeachment-complaint-filed-vice-president-sara-duterte-december-2024/ (last visited May 28, 2025).

[4] *In re* Duterte (Verified Compl. for Impeachment, Feb. 2025), *available at* https://web.senate.gov.ph/Impeachment/Verified%20Complaint%20for%20Impeachment.pdf (last visited May 28, 2025).

[5] CONST. (1935) art. IX, §§ 1–4. This is the Constitution adopted during the Philippine Commonwealth and approved by the President of the United States on March 25, 1935. It continued to be in force after the Philippines attained full independence from the United States on July 4, 1946.

[6] CONST. (1973) art. XIII §§ 3–4. This is the Constitution adopted during the Marcos, Sr. dictatorship via supposed "citizen assemblies." *See* Javellana v. Exec. Sec'y, G.R. No. 36142, 50 SCRA 30, Mar. 31, 1973.

[7] U.S. CONST. art. I, § 2, para. 5 & § 3, paras. 6 & 7.

[8] *See* CONST. (1935) art. IX, § 1 (limiting impeachment to the "President, the Vice-President, the Justices of the Supreme Court, and the Auditor General") & CONST. (1973) art. XIII, § 2 (limiting impeachment to the "President, the Members of the Supreme Court, and the Members of the Constitutional Commissions").

[9] U.S. CONST. art. II, § 4 (impeachment covering the "President, Vice President and all civil Officers of the United States").

[10] *See* Sotero B. Balmeceda, *Presidential Misgovernment and Some of Its Remedies*, 30 PHIL. L.J. 915, 925–26 (1955) (citing American practice in discussing impeachment in the Philippines).

unusually specific days on when each stage must commence,[11] mirroring the textually micromanaged periods for resolving questions on the declaration of martial law.[12] The 1987 Constitution's impeachment provisions[13] are thus longer and more detailed than any of its analogs, but still leave much of the procedure to Congress.[14] Although an impeachment trial comes once a decade in the Philippines, the initiation and trial of impeachment cases has also benefited from a judicial articulation via key landmark cases, the consistent practice of the House and the Senate, which has the exclusive power to try impeachment cases, and scholarship. These are discussed in various portions of this piece.

Yet significant gaps remain, many of them becoming apparent during the impeachment of Vice-President Duterte. The timing of the completion and transmittal of the Article of Impeachment—on the very last session day before the penultimate recess of the 19th Congress (February 8 to June 1, 2025)—leaves a lame-duck session of only 12 days (June 2 to 13, 2025) for the Senate to organize as an "impeachment court," try the Vice-President, and return a verdict, unless it is constitutionally authorized to conduct trial during its recess or carry over the trial to the Senate of the 20th Congress. The unique circumstances of the Duterte Impeachment thus open five questions in Philippine law:

1. *May the Senate conduct an impeachment trial even if Congress is on recess?* For the avoidance of doubt, can the President call a special session for Congress to meet when it would otherwise be on recess?

2. *May the impeachment trial carry over from the 19th Congress to the 20th Congress?* Given that the House and the Senate would be reconstituted on June 30, 2025, may the chambers of the new Congress continue the impeachment work of the previous legislature?

3. *Would the Vice-President's resignation result in the cancellation or pretermination of the trial?* In other words, may she avoid perpetual absolute disqualification from public office by resigning her office before she is convicted for an impeachable offense?

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[11] CONST. art. XI, § 3(2).
[12] CONST. art. VII, § 18.
[13] CONST. art. XI, §§ 2 & 3(1)–(8).
[14] CONST. art. XI, § 8.

4. *Is there a "standard of evidence" in impeachment trials?* Should there even be one? How then would the Senate deal with evidentiary issues that emerge during the trial?

5. *If a case is brought to raise these questions, may the Supreme Court step in?* If the Senate's inaction would delay the resolution of any of these questions, would the Supreme Court have the power to order the chamber to act? In any event, should it?

The constitutional text, by itself, does not provide for unequivocal answers to any of these questions. These gaps and their possible resolutions raise concerns not just about the ability of the Senate to complete its solemn sole mandate of trying impeachment questions, but also the effectiveness of impeachment as a device to hold high officials to account.

As can be expected with any impeachment trial, there has been an explosion of legal political discourse in and from the ivory towers of law schools, pundits on all forms of media, and the general public. To encourage an intelligent public discussion grounded on well considered and balanced views on law and politics, the University of the Philippines (U.P.) College of Law and the Justice George A. Malcolm Memorial Foundation, in cooperation with the PHILIPPINE LAW JOURNAL, organized an academic forum[15] featuring veterans of past impeachments, professors of constitutional law and evidence, and a member of the 1986 Constitutional Commission that drafted the present charter, including the provisions under dispute. These panelists include:

1. Franklin M. Drilon, former Senate President and a member of the "impeachment courts" that tried former President Joseph Estrada in 2000 and former Chief Justice Renato Corona in 2011;

2. Conchita Carpio-Morales, former Ombudsman and former Associate Justice of the Supreme Court, who penned the seminal case of *Francisco v. House of Representatives*[16]— the 2004 Supreme Court decision that barred the impeachment complaints against then Chief Justice Davide;

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[15] *Emerging Issues on Impeachment*, Feb. 19, 2025, U.P. BGC Auditorium (co-organized by the Malcolm Foundation and the U.P. College of Law, in cooperation with the PHILIPPINE LAW JOURNAL).

[16] [Hereinafter, "*Francisco*"] G.R. No. 160262, 415 SCRA 44, Nov. 10, 2003.

3. Rene V. Sarmiento, former Commissioner of the Commission on Elections (COMELEC) and a member of the 1986 Constitutional Commission;

4. Gwen Grecia De Vera, Associate Professor of Constitutional Law in the U.P. College of Law and former dean of the Manuel L. Quezon University School of Law; and

5. Theodore O. Te, Assistant Professor of Evidence in the U.P. College of Law and Director of the U.P. Office of Legal Aid.

The views presented and exchanged in that forum have been memorialized in this interview-essay, which is organized according to the five questions above. As in the forum, I supplement those views with a brief overview on the complexities of each question. When appropriate, I also annotate the statements made by the speakers, pointing to key legal materials or scholarship that support (or contradict) their views. The transcript itself has been edited for presentation and length: portions of it have been reordered, and any footnotes are supplied or added. I end this feature with a proposal to reexamine these open issues via accountability, proposing it as the character of the Philippine polity and a valid canon of interpretation.

The forum, which was part of the U.P. College of Law's efforts to keep the public informed and engaged in an issue of exceptionally high national significance,[17] has been widely covered in the media.[18] Owing much

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[17] Soon after the House impeached Vice-President Duterte, the U.P. College of Law released an *Impeachment Primer and Frequently Asked Questions* (Feb. 2025) that sought to "provide the media, the public, and officials with basic information on impeachment proceedings." *Impeachment Primer and Frequently Asked Questions* [hereinafter, "*Impeachment Primer*"], UNIV. OF THE PHIL. COLLEGE OF LAW, Feb. 7, 2025, *at* https://law.upd.edu.ph/impeachment-primer-and-frequently-asked-questions/.

The College took efforts to prepare translations of the *Primer* in three major languages—Filipino (Tagalog), Cebuano, and Ilocano. *Id.* These efforts were celebrated on media, *see, e.g.*, Giselle Ombay, *UP Law Releases Local Translations of Impeachment Primer*, GMA NEWS ONLINE, Mar. 3, 2025, https://www.gmanetwork.com/news/topstories/nation/937977/up-law-releases-local-translations-of-impeachment-primer/story/; Pot Chavez, *UP Law Launches Primer on Impeachment Proceedings*, MANILA STANDARD, Feb. 9, 2025, *at* https://manilastandard.net/news/314555608/up-law-launches-primer-on-impeachment-proceedings.html. While I believe that the *Primer* does improve access to information on impeachment, I concede that the discourse remains inaccessible to much of the population.

[18] *See, e.g.*, Llanesca T. Panti, *Carpio-Morales, Drilon Debate on Whether SC Can Touch Impeachment Matters*, GMA NEWS ONLINE, Feb. 19, 2025, *at* https://www.gmanetwork.com/

to the eagerness of the panelists, the forum was a rare articulate and extended exchange of views well-formed by decades of practice and scholarship in law, governance, and politics. But this essay hopes to document the discussion in an academic format and thus enable more scholars to ponder on the larger questions raised by the Duterte Impeachment on accountability in its various forms and the many ways the Constitution seeks to enforce it, no matter how imperfectly.

I. MAY THE SENATE CONDUCT TRIAL DURING ITS RECESS?

A. Sessions vis-a-vis Legislative and Non-Legislative Acts

The Constitution provides for basic rules on when and how Congress, in its two houses, shall sit. Unless a law provides otherwise, each Congress shall convene "once every year" on the fourth Monday of July for its regular session, which may not subsist beyond thirty (30) working days before the opening of its next regular session.[19] In practice, this has resulted in three (3) regular sessions for each Congress, each commencing on the same day as the annual State of the Nation Address[20] and ending a month and a half before the next. During each session, Congress declares legislative recesses or adjournments of varying lengths. At any point during these legislative breaks, the President may call it back for special sessions.[21] Apart from the legislative business, the Constitution also limits meetings of the Commission on Appointments, which confirms appointments made by the President, to when Congress is in session.[22] House members and Senators are likewise limitedly privileged from arrest during the same period.[23]

The text of the Constitution provides little else on what can be discussed during these regular or special sessions. This is notable since a major change from the 1935 and 1973 Constitutions is to free special sessions from the limit that Congress should only "consider such subjects or

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news/topstories/nation/936767/carpio-morales-drilon-debate-on-whether-sc-can-touch-impeachment-matters/story/; Jane Bautista & Kathleen de villa, *Convene Impeach Court Right Away, Says Con-Com Member*, INQUIRER.NET, Feb. 20, 2025, *at* https://newsinfo.inquirer.net/2036291/convene-impeach-court-right-away-says-con-com-member.

[19] CONST. art. VI, § 15.

[20] CONST. art. VII, § 23. "The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time."

[21] CONST. art. VI, § 15.

[22] CONST. art. VI, § 19.

[23] CONST. art. VI, § 11.

legislation as [the President] may designate,"[24] or the time limit that it should not "continue longer than thirty days."[25]

Congress has nevertheless acted consistently, resulting in certain traditions and practices, which can be read as its own interpretation of the foregoing textual limits.[26] The House and the Senate issue a Concurrent Resolution at the beginning of each session to set its Legislative Calendar.[27] Congress has also held special sessions on non-legislative matters,[28] and on at least one recent occasion, may have even called itself to session without the President's direction to hear the address of a foreign head of state.[29] Still, when the President calls for and when Congress convenes such special sessions, they are still typically done for limited, specified purposes, if not periods.[30] Most relevantly, outside of its sessions, the core non-legislative work of Congress continues such as when it holds legislative investigations and conducts oversight hearings.[31]

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[24] CONST. (1973) art. VIII, § 6; CONST. (1935) art. VI, § 9.

[25] CONST. (1935) art. VI, § 9.

[26] "[The] [c]oordinacy theory rests on the premise that within the constitutional system, each branch of government has an independent obligation to interpret the Constitution. This obligation is rooted on the system of separation of powers. The oath to 'support this Constitution,'—which the constitution mandates judges, legislators and executives to take—proves this independent obligation." *Francisco*, 415 SCRA 44, 209 (Puno, *J., concurring and dissenting*).

[27] *See, e.g.*, Calendar of Session, S. Con. Res. No. 20, 19th Cong., 3rd Sess. (2024). This allows Congress to comply with the constitutional rule that "[n]either House during the sessions of the Congress shall, without the consent of the other, adjourn for more than three days[.]" CONST. art. VI, § 16(5).

[28] *See, e.g.*, H. Con. Res. No. 13, 19th Cong., 1st Spec. Sess. (2023) (convening a special joint session to receive and hear the message of Kishida Fumio, Prime Minister of Japan on November 4, 2023).

[29] In relation to the address of Prime Minister Kishida on November 5, 2023, there appears to be no equivalent Presidential Proclamation issued to call Congress to a special session, even when it was on recess from September 30 to November 5, 2023. H. Con. Res. No. 11, 19th Cong., 2nd Sess. (2023).

[30] *See, e.g.*, Proc. No. 933 (2020) (calling Congress to "authorize the President to exercise powers necessary to carry out urgent measures to meet the current national emergency relating to the Coronavirus Disease (COVID-19)"); Proc. No. 1027 (2020) (calling Congress "to a special session on 13 October 2020 to 16 October 2020 in order to resume the congressional deliberations on the proposed 2021 national budget").

[31] *See, e.g.*, S. Res. No. 11, 13th Cong., 1st Sess. (2024) (authorizing all permanent committees of the Senate to hold meetings, hearings or conferences during the recess of the congress for the purpose of studying and preparing any proposed legislation or to investigate any matter or subject falling under their jurisdiction and authorizing the President of the Senate, in his discretion, to allow any special committee to hold meetings, hearings or conferences during the recess for the same purpose).

The question, then, is whether this non-legislative work includes the trial of an impeachment duly initiated by Congress? Further, and for the avoidance of doubt, may the President simply call Congress to special session to hear and try an impeachment? The concern is heightened by the fact that the penultimate recess of the 19th Congress would mean a three-month delay of the trial, followed by a brief lame duck session and adjournment *sine die*. (This, in turn, would lead to questions on whether the 20th Congress can take up the 19th Congress's unfinished impeachment work.[32])

Congressional precedent of the United States suggests that Congress may only try impeachments while it is in session. In 1876, while it was sitting for the impeachment trial of Secretary of War William W. Belknap and Congress was about to go on recess, the Senate issued an order stating that "impeachment can only proceed while Congress in Session."[33] But the Philippine Constitution's textual requirement that "trial by the Senate shall forthwith proceed" after Articles of Impeachment are approved "by at least one-third of all the Members of the House"[34] may well doctrinally justify a break from American practice.

B. Panel Discussion

The panelists were split on this issue. Commissioner Sarmiento insisted that by "forthwith proceed," the Constitution mandates the Senate to immediately conduct trial regardless of prior adjournments set by the Legislative Calendar. Senator Drilon, on the other hand, insisted that the Senate could not exercise its power as a plenary body, and thus convene and conduct business as an impeachment court, when it is not in session. Nevertheless, the President should call the Senate into special session so that it could try Vice-President Duterte. Professors De Vera and Te found the conduct of the impeachment trial during recess to be impracticable, but De Vera further pointed out that the Senate could make use of the recess for important preparatory work for the trial.

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COMM. SARMIENTO: […] Can the Senate "forthwith proceed" with the impeachment trial even during recess? *Ito po ang mainit na pinag-uusapan ngayon sa ating lipunan.* [This is the current hot topic in our society.]

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[32] *See* discussion in *infra* pt. II.

[33] *Chapter LXIII: Nature of Impeachment*, *in* III HIND'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 308–10, § 2006 (1907).

[34] CONST. art. XI, § 3(4).

"Forthwith proceed," or in the Filipino version of the 1987 Constitution, "*dapat isunod agad*,"[35] is a novel addition in the 1987 Constitution on impeachment, not found in the 1935 or the 1973 Constitution, not even in the U.S. 1787 Constitution. In ordinary meaning, as constitutionally interpreted, it means right away, it means immediately. *Walang patumpik-tumpik, walang alinlangan, gawin agad.* [No holding back, no hesitation, do it right away.]

The records of the 1986 Constitutional Commission are there. When "forthwith proceed" was introduced, it was part of the Committee Report No. 17 on Accountability of Public Officers and submitted for plenary discussion on July 26, 1986. I was the acting floor leader when this committee report, which includes "forthwith proceed," was presented on the floor.

Absent a discussion on "forthwith proceed," its immediacy and urgency can be drawn from the intent of the framers of the Constitution, from the exchanges of the members of that Commission on the time-compelling significance of impeachment. Commissioner Maambong, citing *Power of Impeachment — Guide to Congress*,[36] said that impeachment is not a personal punishment or vendetta, but primarily to maintain constitutional government. The President is "called to account for abusing powers which only he possesses […] that [have] a tendency to subvert constitutional government," and it would include other impeachable officers. Commissioner Ople stated that impeachment is a sword in its scabbard. It is as good as a sword drawn. It is not a constitutional decoration or a tinsel, but a powerful check on the presidency. The prospect of an impeachment trial, according to him, caused then U.S. President Richard Nixon to resign. Commissioner Aquino said that impeachment is in the nature of an exemplary act by which the state infuses the highest sense of responsibility to public service. Finally, Commissioner Monsod said that it is a deterrent and added that President Marcos, Sr. exerted all efforts at that time to defeat the impeachment proceedings and his subsequent calling of a snap election may have been influenced to some extent by an attempt at impeaching him.

May the president at any time call a special session? My answer is also yes. The president may at any time call a special session of Congress. The 1973 Constitution says the Prime Minister may call the National Assembly to session at any time "to consider such subjects or legislation as he may designate." The 1987 Constitution provides that "the president may call a special session at any time." The Philippine experience is that President Elpidio Quirino and President Gloria

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[35] The 1986 Constitutional Commission prepared a Filipino text of the Constitution. *See* CONST. art. XIV, § 8 ("This Constitution shall be promulgated in Filipino and English and shall be translated into major regional languages, Arabic, and Spanish.") While the 1986 Constitutional Commission desisted from adopting a controlling text, *see* V RECORD CONST. COMM'N 107, 970–75 (Oct. 10, 1986), the Supreme Court has almost completely relied on the English version.

[36] This appears to be a citation to GUIDE TO CONGRESS, currently in its 7th edition.

Macapagal-Arroyo called special sessions of Congress. Quirino called for a special session to address insurance loss concerns in the Philippines.[37] President Arroyo called a special session to address the expanded Value Added Tax (VAT) issue at the time.[38] In the United States, the president has called a special session of Congress to tackle issues related to war, economic crisis, ratification of cities, and others. It is broader in the United States when the president calls for a special session.[39]

May President Marcos, Jr. call a special session of the Senate to start the impeachment trial? The best option to me is "forthwith proceed." Reasons were already given. The second best is a special session. And the third best is the new Congress continuing the impeachment trial if it is not done before Congress adjourns *sine die*.[40]

SEN. DRILON: [T]he impeachment court can only be constituted in a proper referral when the Senate is in session. If the Senate is not in session, as it is today, this impeachment court cannot constitute itself because the reference of the impeachment complaint is to the Senate, and therefore the Senate in a formal session will have to refer this to the impeachment court. So the impeachment court has to be created during a session of the Senate.

Can the President call a special session? Yes, the power of the President to call a special session is not limited by anything.[41] The President can even call a special session so that the impeachment trial can take place. And if the President can call a special session to consider legislative measures—even the renaming of a street is a legislative measure, which we can take up in a special session—how much more an impeachment trial? In my view, an impeachment trial can be called by the President in a special session.

JUSTICE CARPIO-MORALES: The Senate is in recess with respect to its legislative functions. Impeachment is not a legislative function of Congress. The

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[37] This may be referring to Proc. No. 71 (1948). President Quirino issued several other proclamations calling for special sessions of Congress to address post-war economic legislation. *See, e.g.*, Proc. No. 196 (1950); Proc. No. 224 (1950) (to consider the Quirino-Foster Agreement).

[38] Proc. No. 881 (2005).

[39] *Compare* U.S. CONST. art. II, § 2, para. 2 ("he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper").

[40] *See* notes and panel discussion *infra* pt. II.

[41] *See* CONST. art. VI, § 15. *See also* text accompanying *supra* note 24. *But see supra* note 30 and accompanying text.

impeachment provisions fall under the Accountability provisions of the [Constitution][42] and not under the Legislative Department provisions.[43]

Given that, I believe that impeachment still cannot be constituted during recess. This does not mean that during recess, the Senate cannot call for special session, but this is proscribed by so many limitations: such sessions are called only on urgent legislative matters and impeachment is not included as among the reasons why special session can be conducted.[44] My conclusion thus is no impeachment proceedings or impeachment trial cannot be conducted during recess.

PROF. DE VERA: I tend to agree with the that while the Senate is in recess, they will not be able to constitute themselves into the impeachment court. However, there is another question which is, are there preparatory steps that may be undertaken while the Senate is in recess so that—if they do decide immediately upon resumption of session on June 2, 2025 to constitute themselves into an impeachment court—trial can proceed forthwith? I do note that in the two previous impeachment trials, shortly after the transmittal of the articles of impeachment, I think within a few days, the impeachment court was constituted and subsequently trial ensued.

PROF. TE: I share the view that the Senate cannot hold a trial during the recess simply because when the articles were transmitted, the Senate had already gone on recess without taking steps to convene the Senate as an impeachment court to draft the rules of impeachment, even if they were simply to adopt the previous rules of impeachment that had been used by the Senate before. But I also agree with Professor De Vera that during this recess, the question of whether the Senate can take certain preparatory steps towards making any trial (that may happen once the recess ends) perhaps more expeditious—whether that could happen, I think that is not foreclosed as far as the Senate is concerned.

PROF. TAMASE: There is, however, this view that delaying the impeachment to when session resumes in June 2 may frustrate both the word "forthwith" in the Constitution and also principles of accountability. Would delaying the impeachment trial actually result in that?

SEN. DRILON: To resolve that question, the President should call a special session. Even if you do not include the impeachment trial as an item in the special session, the Constitution provides that the impeachment trial shall take place "forthwith" in the Senate. So when the President calls the Senate into a special session, the first item on the agenda is consideration of the impeachment complaint filed by the House. That will be referred to the impeachment court, and then you start the impeachment trial. So I strongly believe that when the President calls for a

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[42] CONST. art. XI.

[43] CONST. art. VI.

[44] *But see* text accompanying *supra* note 24.

special session, the impeachment trial can immediately take place because of the mandate of the Constitution.

JUSTICE CARPIO-MORALES: According to Black's Law Dictionary, "forthwith" means "immediately, without delay."[45] But it also considers reasonable delay under the circumstances of the case.[46] To me, the fact that the Senate is on recess and that some of the current senators are running for re-election, these constitute circumstances that can abate a seeming non-compliance with "forthwith."

SEN. DRILON: I cannot accept the proposition that simply because the Senators will be campaigning, such an important and critical constitutional duty to constitute itself as an impeachment court and try the impeachment complaint can be deferred. Firstly, the Constitution says shall be tried "forthwith." And we give ordinary meaning to ordinary words. "Forthwith" means immediately. And it is my respectful submission that the campaign period is not a valid reason to postpone. In fact, there should be no circumstance to justify a deferment because the Constitution mandates the performance of a constitutional duty "forthwith." The only reason why we need a special session is the formal referral of the impeachment complaint to the impeachment court.

PROF. DE VERA: My understanding of the word "forthwith" is not just immediately, but also subject to a sense of reasonableness, and that it means avoidance and due delay. If the action of the Senate is not animated or motivated by imposing undue delay in commencing the proceedings, I think they would well be in compliance with the constitutional mandate to proceed with the impeachment trial "forthwith."

PROF. TE: As litigators would know, often when you go before a court and ask for time, the court will usually ask you if you are trying to delay the proceedings. The question of forthwith also goes into motivation or intent, or things that you can foresee or cannot foresee. So I would agree that while it would mean—by ordinary meaning—immediately, it also takes into account circumstances. It also takes into account reason and things that the Senate cannot control, like the recess. The objective circumstances are that the transmittal was made on the last day of the session [before the penultimate adjournment] and that the Senate had gone into recess before they had referred it to the impeachment court. That may constitute reasonable delay, even though there is a span of time that intervenes, and would not frustrate the meaning of the word "forthwith."

COMM. SARMIENTO: I see the wisdom of the responses of my co-panelists. "Forthwith" is nevertheless a very novel addition in our Constitution and our history as a people, not even found in previous constitutions and many

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[45] Forthwith, BLACK'S LAW DICTIONARY (9th ed. 2009).

[46] *Id.* "Directly; promptly; within a reasonable time under the circumstances."

constitutions of the world. Traditionally, trial might not be held during recess unless the President calls for a special session, but this provision is a novel and very unique addition to the Constitution. And in the light of the intention of the framers of the Constitution, because impeachment is a compelling and significant activity in our country, and because of accountability and checks and balances. Regardless of the recess, the impeachment trial should begin given this Constitution provision.

Further, we have in constitutional law the doctrine of constitutional supremacy. All laws, all regulations, all contracts have to yield to the supremacy of the Constitution. I think all lawyers would know that doctrine. So if recess is a legal provision, it is a provision in the Rules of the Senate, they have to yield to the command of the Constitution about "forthwith proceed."

PROF. TAMASE: I understand the addition of "forthwith proceed" may have also been in line with innovations in the 1987 Constitution to make impeachment easier, like lowering the threshold for the impeachment vote in Congress.[47] Would that play a role in how we interpret the word "forthwith" such that it is not frustrated by the typical excuses that can be brought up by Congress?

COMM. SARMIENTO: I agree. And again, the background intent is that it is an extremely ordinary remedy to preserve constitutional government, to preserve the order in our country, to avoid chaos. So to me, the lowering [of these barriers to impeachment] is very relevant to this "forthwith proceed" provision in the Constitution.

II. MAY THE TRIAL CARRY OVER TO THE NEXT CONGRESS?

The second question also arises from the most unique timing of the Duterte Impeachment: may the impeachment process, which was initiated by the House of Representatives at the tail-end of the 19th Congress, cross over to and be tried by the Senate of the 20th Congress?

A. Pragmatic, Structural, and Historical Considerations of the Senate as a Continuing Body

This difficulty recurs in Philippine constitutional law and is a product of two competing considerations. On the one hand, there is the practical reality that the work of Congress often takes years to accomplish and cannot always be completed in just days or months. On the other hand, there is a structural limitation that the entire membership of the House and

[47] *Compare* CONST. (1935) art. IX, § 2 (requiring a two-thirds vote in the House) *with* CONST. art. XI, § 3(3) & (4) (requiring only a one-third vote in the House).

half of the Senate are reelected every three years. The latter looks similar to an offshoot of British-style parliamentary supremacy, i.e., one parliament cannot bind subsequent parliaments.[48] But since the Philippines follows constitutional supremacy, it may be retheorized that every House and Senate of a new Congress is empowered by a fresh electoral mandate and hence cannot be bound by their predecessor legislative bodies.

In Philippine constitutional law, this is known as the "continuing body" debate. It has a special application to the Senate owing to its historical development. When the Senate was structured in the 1935 Constitution and its 1940 amendments,[49] its 24 members held six-year terms. However, during the biennial elections for the Senate, the people would vote for only eight senators. This meant that despite elections being held every two years, only eight out of 24 senators would be replaced. A quorum (or two-thirds) of the chamber would thus continue despite the quadrennial successions of Congress. As in the American model, the Philippine Senate's powers did not expire at the end of every Congress and it could legitimately continue with its work from the previous Congress, since more than half of it remains empowered by an electoral mandate that survives the most recently expressed political preferences. This continuing nature has made the Senate a truly senior body that rises above fast-changing political winds.[50]

In *Arnault v. Nazareno*,[51] decided after the 1940 amendments to the 1935 Constitution, the Court confirmed the Senate's nature as a continuing body, "which does not cease to exist upon the periodical dissolution of the

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[48] *See generally* Hamish R. Gray, *The Sovereignty of Parliament Today*, 10 U. TORONTO L.J. 54 (1953) (for an introduction to the principle and an example of its application).

[49] The 1935 Constitution initially provided for a unicameral national assembly. CONST. (1935) art. VI, § 1 ("The Legislative Power shall be Vested in a National Assembly.") Amendments in 1940 created a Senate, following the American model. CONST. (1935), art. VI, § 1 (amend.) ("The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives.") *See also* Comm. Act No. 517 (1940) (Submitting to the Filipino People the Amendments to the Constitution of the Philippines).

[50] *See* THE FEDERALIST No. 62 (Alexander Hamilton or James Madison). ("The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success. The remark is verified in private life, and becomes more just, as well as more important, in national transactions.")

[51] [Hereinafter, "*Arnault*"] 87 Phil. 29 (1950).

Congress or of the House of Representatives."[52] It could therefore hold a witness under contempt even beyond the lapse of the legislative session, because given its continuing nature, "[t]here is no limit as to time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted as in the present case."[53]

When Congress became unicameral under the Marcos-era 1973 Constitution, this continuing body was lost. Discussions over the continuing nature of Congress would thus emerge in the 1986 Constitutional Commission, where unicameralism and bicameralism were consciously debated. At the time that the draft still provided for a unicameral Congress, an exchange indicates that the planned National Assembly would still be a "continuing body" if only because it would continue to serve in office until noon of June 30 after an election, which is when a new National Assembly would also begin their terms:

> MR. MAAMBONG: [M]ore or less, that is a specific answer but I may be just engaging in wishful thinking if I request the Committee to formulate probably a definitive statement that whatever changes in the executive department, there should be no dissolution of a legislative body which is composed of representatives of the people. But that is not for today, probably some other time when the Committee will think about it.
>
> In line with this question that I have posed is the matter of continuity of the legislative body be it unicameral or bicameral. There is a statement to the effect that if we have an Upper House [i.e., Senate], considering the staggered terms of its members, at any time there will always be a group of available and experienced men who can be depended upon to continue the policies of the government, which is not true in the unicameral system because when it adjourns or when there is a new election, no member is left around[.]
>
> MR. DAVIDE: I thank the Commissioner for asking that question because that exactly is one of the evils in a bicameral system. It might happen that in a given election, after the expiration of one-half term of the Senate members, a new mandate from the people will actually be the outcome in the given election. For a very hypothetical situation, let us assume that one-half of the Members of the Senate belong to one particular party.

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[52] *Id.* at 62.
[53] *Id.*

> This one-half will be the one to remain because the term of the others may have expired at a given period. But at the commencement of the term of the Members of the Lower House whose term now may be coextensive with the term of the remaining Members of the Senate, we may have a Lower House elected from another political party.
>
> So we will have a National Assembly with an Upper House composed of people belonging to one party and a Lower House composed of Members belonging to another party. So how can we have unity in that legislature? It would be a chaotic legislature. That situation alone is the best argument against maintaining a bicameral system of government.
>
> MR. MAAMBONG: Actually, the question is more on the continuity of a legislative body as an argument for those who are in favor of the bicameral system where at any given moment there is still a continuing legislative body.
>
> MR. DAVIDE: Under our proposal there will always be a continuing legislative body, because the election will be on the second Monday of May and they will assume on the 30th day of June, which would also be the end of the term of the previous National Assembly. So there is a continuing body — the National Assembly.
>
> MR. MAAMBONG: That answers my question.[54]

The exchange above shows how the argument of political legitimacy vis-à-vis staggered electoral mandates were central to the unicameral-bicameral debate.

The 1986 Constitutional Commission would ultimately favor a bicameral Congress, but with a major difference from the 1940 model: this time, Senators would still be elected for terms of six-years but staggered only once. That means that every three years, half of its membership would expire and be subject to an election. With less than a quorum—a majority of all the members of the Senate—continuing in office,[55] questions emerged on whether the Senate of 1987 could still be a continuing body like the Senate of 1940.

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[54] II RECORD CONST. COMM'N 35, 66 (July 21, 1986).

[55] CONST. art. VI, § 16(1) ("A majority of each House shall constitute a quorum to do business[.]"

B. The Post-1987 Senate and American Practice

Post-1987, the Court has not ruled the House or the Senate as continuing. It held that investigations began by the House are terminated at the end of each Congress,[56] bills not passed by either chamber must be refiled in the next,[57] and each House and Senate must promulgate rules of procedure when it sits anew, even if they be identical to the previous.[58] In *Balag v. Senate*, it would abandon *Arnault* and find that

> the Senate is a continuing institution. However, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate of the Congress before it. Due to the termination of the business of the Senate during the expiration of one (1) Congress, all pending matters and proceedings, such as unpassed bills and even legislative investigations, of the Senate are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time.[59]

The same logic could easily be applied to impeachment, except that it is not an ordinary business of Congress, specifically the Senate. The rulings of the Court on the non-continuing nature of the Senate concerned both non-legislative (e.g., investigations) and legislative (e.g., bill consideration) functions but nevertheless concerned *day-to-day* business.

Impeachment on the other hand is singularly unique and rises above the hundreds of investigations and oversight hearings conducted, bills filed and deliberated, and resolutions passed by both houses of Congress. It is the only act of the Senate for which the Constitution requires a second, separate oath.[60] Lifted from the U.S. Constitution,[61] this additional oath suggests that

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[56] Balag v. Senate [hereinafter, "*Balag*"], G.R. No. 234608, 870 SCRA 343, July 3, 2018.

[57] *See* League of Cities v. COMELEC, G.R. No. 176951, 608 SCRA 636, 668–69, Dec. 21, 2009. This case acknowledges that bills must be refiled in the next Congress and that Congress is not a continuing body, but that the deliberations of unapproved bills or resolutions from past Congresses continue to be extrinsic aids in interpretation.

[58] Garcillano v. House of Representatives [hereinafter, "*Garcillano*"], G.R. No. 170338, 575 SCRA 170, Dec. 23, 2008.

[59] *Balag*, 870 SCRA at 368.

[60] CONST. art. XI, § 3(6) ("The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation.")

[61] U.S. CONST. art. I, § 3, para. 6.

in impeachment, the Senate rises to a function that is far above its usual plenary policymaking power. The development of impeachment practice supplements the paucity of Article XI, and insofar as the Senate finds it necessary to commission robes[62] and formally constitute itself as an "impeachment court"—a practice sanctioned by the Court[63]—it has doctrinally understood this task not simply to be run-of-the-mill.

Allowing impeachments to cross over congresses is consistent with American practice. Following the practice of the United Kingdom, Thomas Jefferson's *Manual of Parliamentary Practice* states than an "impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament."[64] The U.S. Congress has observed this for over 200 years, from the 1803 impeachment of Judge John Pickering to that of Judge Porteous in 2009:

> In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505, see also §592, supra). The following impeachment proceedings extended from one Congress to the next: (1) the impeachment of Judge Pickering was presented in the Senate on the last day of the Seventh Congress (III, 2320), and the Senate conducted the trial in the Eighth Congress (III, 2321); (2) the impeachment of Judge Louderback was presented in the Senate on the last day of the 72d Congress (VI, 515), and the Senate conducted the trial in the 73d Congress (VI, 516); (3) the impeachment of Judge Hastings was presented in the Senate during the second session of the 100th Congress (Aug. 3, 1988, p. 20223) and the trial in the Senate continued into the 101st Congress (Jan. 3, 1989, p. 84); (4) the impeachment of President Clinton was presented to the Senate after the Senate had adjourned sine die for the 105th Congress (Jan. 6, 1999, p. 14), and the Senate conducted the trial in the 106th Congress (Jan. 7, 1999, p. 272); (5) the impeachment inquiry of Judge Porteous was authorized in the 110th Congress (Sept. 17, 2008) and continued in the next Congress (Jan. 13, 2009). Although impeachment proceedings may continue from one

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[62] Maila Ager, *"All Sewn:" Impeachment Robes Ready for Senator-Judges*, INQUIRER.NET, Apr. 24, 2025, *at* https://newsinfo.inquirer.net/2055544/all-sewn-impeachment-robes-ready-for-senator-judges (last visited May 24, 2025).

[63] Phil. Savings Bank v. Senate Impeachment Court, G.R. No. 200238, 686 SCRA 35, Nov. 20, 2012. The Supreme Court refers to the "Impeachment Court" in its decision in lieu of the Senate. *Id.* at 38.

[64] JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE § 620, *in* RULES OF THE HOUSE OF REPRESENTATIVES (112th Congress) 320 (2011). *See also* III HIND'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 308, § 2005 (1907).

> Congress to the next, the authority of the managers appointed by the House expires at the end of a Congress; and the managers must be reappointed when a new Congress convenes (Jan. 6, 1999, p. 15).[65]

C. Panel Discussion

Some panelists were hesitant to come up with firm positions at the beginning of the conversation, but a consensus arose that the unique character of impeachment justifies the continuation of the process to another Congress if necessary. There was no consensus however on whether the Senate of the 20th Congress would be bound by what has already been set by an impeachment court constituted in the 19th Congress, or if it was required to consider the complaint as filed anew. In any case, Professor De Vera and I acknowledge the democratic legitimacy arguments that underlie this question.

As highlighted by the discussion, the uncertainty chiefly arises from the fact that the Senate (at the time of the forum) had not taken an official, firm position on this and many of the other emerging issues, which insulates them from litigation and doctrinal clarification. As Senator Drilon emphasizes, many of these issues too could have been avoided if the President had called for a special session of Congress.

* * *

COMM. SARMIENTO: Can the Senate of the 20th Congress continue the impeachment trial that has started during the Senate of the 19th Congress? My answer is yes. This has been addressed in the case of *Pimentel Jr. v. Joint Committee of Congress (JCC)*[66] to canvass the votes for the President and Vice President. Petitioner Aquilino Pimentel, Jr. asked the Supreme Court to annul the proceedings before the JCC because it has become *functus officio* because of the new Congress. But petition was denied, with the Supreme Court making a distinction between legislative function and non-legislative function. The Supreme Court said that Congress has not become a *functus officio* because its non-legislative function—meaning outside of

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[65] Annotations of John V. Sullivan, House Parliamentarian, *in* JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE, *supra* note 64, at 330 (internal citations in the original).

[66] G.R. No. 163783, slip op., June 22, 2004 (Res.). As a minute resolution, it does not produce judicial precedent (Deutsche Bank AG Manila Branch v. Comm'r of Internal Revenue, 716 Phil. 676, 687 (2013)), but it may nevertheless be seen as an indication of how a similar question would be resolved in the future.

legislation—has a continuing function. It could convene as a canvassing board.[67] Hence, it could even serve as an impeachment court.

In a separate concurring opinion,[68] Justice Carpio-Morales, citing the exchanges between Commissioners Maambong and Davide in the 1986 Constitutional Commission, repeated the legislative and non-legislative function of Congress.[69]

PROF. TAMASE: The second question is tied with the urgency of the impeachment or the sense that the Senate should proceed immediately. If the Senate does not meet now when it is on recess, there might be a frustration of the impeachment trial because another question that comes up is if the impeachment trial carry over from the 19th Congress to the 20th Congress. While the Supreme Court says in the older case of *Arnault*[70] that the Senate is a continuing body, we have this more recent case of *Balag*[71] where it now says that the Senate's business does not continue beyond the expiration of a Congress.

JUSTICE CARPIO-MORALES: I'm going to respond to the fact that in the "Hello, Garci" case,[72] the Supreme Court said that the Senate is a continuing body, it is a continuing institution. But the discharge of its day-to-day normal functions, it is separate and independent of the predecessor. In other words, it is not bound by what the preceding Congress or Senate did. So any unfinished matter can be considered as if it's set for the first time.

SEN. DRILON**:** To me, this is an open question. Can the impeachment complaint filed in the previous Congress be continued when the new Congress comes in and the new impeachment court comes in? A lot of questions have heretofore not been answered. Yes, there is a view that the Senate is a continuing body and therefore can continue to hear the impeachment complaint. There are a lot of opposite arguments that can be raised as this is not in the nature of a legislative investigation by Congress,[73] but the trial of the impeachable offenses allegedly committed by the Vice-President. And therefore, the question is, can the [impeachment trial proceed] when the mandate of the present Congress expires? So this is an issue which I do not pretend to be able to answer right off the bat.

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[67] *Pimentel*, G.R. No. 163783, slip op.
[68] An official or publicly verifiable copy of this opinion is not available.
[69] *See* text accompanying *supra* note 54.
[70] *Arnault*, 87 Phil. at 61.
[71] *Balag*, 870 SCRA at 368.
[72] *Garcillano*, 575 SCRA 170.
[73] CONST. art. VI, § 21.

COMM. SARMIENTO: So far as that question is concerned, you have the concurring and dissenting opinion of Justice Carpio that was cited in *Garcillano*.[74] In so far as all other matters and unpassed bills are concerned, they are deemed terminated [upon the final adjournment of Congress]. And he was referring to legislation so that with respect to non-legislation, *Pimentel v. Joint Committee*[75] will come in. Impeachment is non-legislation. So therefore, if [trial] has been started in June 2, 2025, it has to continue when the 20th Congress resumes or opens its session.

PROF. TAMASE: Perhaps to add a little more context to this question, and to be the devil's advocate: the position of some is that the Senate terminates on June 30, not just from a constitutional standpoint, but also from a democratic standpoint. By that time you have people selecting a new Senate with probably different priorities or policies. Does that change any answer that you may have with regard to this question? Or how would you respond to this question about impeachment crossing over from the 19th to the 20th Congress?

PROF. DE VERA: As Senate President Drilon mentioned, this is an open question. We do not want to prejudice a consideration of that question should it reach the Supreme Court. But at the moment, I think we have three theories on this point. The first is that it may continue into the 20th Congress for the reason that Commissioner Sarmiento had mentioned. The second is that it may continue into the 20th, but it will be up to the 20th Congress, specifically the Senate, on whether they will take it up from where the 19th Congress had concluded its work or if they will restart. And the third, of course, is that it simply does not continue into the 20th Congress for the reason which you stated. If we look at members of the Senate and members of the House as duly-elected representatives of the people, then certainly we must respect the views that may be brought into the question by those who will be duly elected in the 20th Congress.

Of course, it is not just a change in the composition. I heard on news programs the view that [the elections will only produce] a simple change in composition which should not affect the continuous conduct of the trial, in the same way that the Supreme Court does not conclude a consideration of any case just because there has been a vacancy that has been filled with a new member. But I think it is very different from a legislative body, which is a representative body. And we should respect that elections are coming and we need to respect the vote that each one of us will be making on that day. That may certainly include a vote on which representative I wish to elect and his view on this particular question [e.g., impeachment].

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[74] This refers to the separate opinion of Justice Antonio T. Carpio in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, 549 SCRA 77, 297–98, Mar. 25, 2008 (Carpio, *J.*, *dissenting and concurring*), *cited in Garcillano*, 575 SCRA at 192.

[75] *Pimentel*, G.R. No. 163783, slip op.

I think those are the three theories that we have here. From a strictly legal perspective, if we put together what we have based on Supreme Court decisions, it looks like it can continue into the 20th Congress. But the 20th Congress, particularly the Senate, will then have to consider whether it will continue or if it will start anew, which would mean constituting itself again as an impeachment court and reconsidering the rules for the impeachment trial because none of the work of the previous Congress has any conclusive effect on the succeeding one.

SEN. DRILON: Let us remember that the impeachment court is not the Senate. The Senate is completely a legislative body. The "impeachment court," as we call it, is *sui generis*, a class of its own. So these are questions which are not easily resolved.

Just like the appellate courts, it can continue to function [even if it changes its membership]. You could also make an argument, against this proposition, that this is not a court. This is not a body which is constituted by law but it is constituted by a complaint of the House of Representatives whose mandate, by the way, would have also expired when this Congress expires. If that is the case, does the impeachment complaint [that initiated the Duterte Impeachment] continue to be valid? The authors would have also lost their mandate because their terms have expired. *Marami po ang hindi masagot dito.* [A lot cannot be answered here.]

PROF. TAMASE: Professor Te, before you answer, I understand the hesitation to take up a position in a very difficult open question. I think for lawyers, the difficulty also comes from the fact that impeachment is not really a strictly legal proceeding, and the idea that law can rise above politics might not be as strong as the concern about democratic accountability or legitimacy, which are major considerations in impeachment. So if I can tease you a bit into taking a position—since all difficult questions that the Court decides are open questions before they get to it—where would you stand?

PROF. TE: I was about to make the analogy that Senate President Drilon made that when the impeachment court has been constituted, it is not the Senate. In the same way that the Presidential Electoral Tribunal once constituted is not the Supreme Court. Even though it is composed of all the members of the Supreme Court, it acts as the Presidential Electoral Tribunal with a different set of rules and a specific mandate.[76] Therefore, as far as the regularity of the schedule is concerned, the Senate acting as an impeachment court may not actually be bound by that calendar of sessions, adjournments, and recesses that definitely applies to legislative work.

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[76] *But see* Macalintal v. Pres. Elect. Trib., G.R. No. 191618, 635 SCRA 783, Nov. 23, 2010. ("By the same token, the PET is not a separate and distinct entity from the Supreme Court, albeit it has functions peculiar only to the Tribunal.")

Since you teased me into taking a position, I would probably say that—if the Senate had been constituted as an impeachment court while the 19th Congress is in session and once the 20th Congress comes in—the impeachment court will still stand having been constituted already because it is not the Senate acting as a legislative body. Still, the question now is difficult because practically half the Senate will have their terms ended. There will be new senators coming in.

PROF. TAMASE: It is also worth noting that while the term "impeachment court" does not really appear in the text of the 1987 Constitution, the practice of the Senate in the last two impeachment trials suggests that it is sort of an independent creation or body. Congressional precedent is one of the ways we understand the Constitution,[77] and so the tradition that senators take a separate oath before taking the trial[78] and their practice of wearing judicial robes that are very different from their business attire may suggest that the Senate transcends to a higher political body than just the typical legislature.

COMM. SARMIENTO**:** May I just go back to the open question of whether the Senate is a continuing body or not? Well, originally this idea of impeachment was drawn from the Greek experience, borrowed by the English system and perfected by the United States, and then borrowed by us from the United States. That means the U.S. experience has persuasive impact on rulings of the Supreme Court and our legal and judicial experience. Now, in the case of the impeachment of Judge John Pickering, the impeachment articles were submitted on the last day of the 7th Congress. The 8th Congress continued the trial. Learning from that experience, it is possible to continue in the new Congress the one that started under the old Congress.[79]

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[77] *See* Philip Bobbitt, *Constitutional Law and Interpretation*, *in* A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 132, 140 (Dennis Patterson, ed., 2010). ("With regard to decisions by judges, doctrine is created out of judicial opinions – precedents. But all official deciders are guided to some extent by precedent, and there is much constitutional doctrine in the prior practices of Congress and the President that is little commented on by scholars, but which may serve as the basis for doctrinal argument.") *See also Francisco*, 415 SCRA 44, 209 (Puno, *J., concurring and dissenting*) (on the coordinacy theory).

[78] CONST. art. XI, § 3(6).

[79] See *Chapter LXXI: The Impeachment and Trial of John Pickering, in* III HIND'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 682 (1907). *See also* William F. Swindler, High Court of Congress: Impeachment Trials, 1797-1936, 60 AM. BAR ASS'N J. 420, 422 (1974). ("This being the last day of the Seventh Congress, the matter was continued to the opening of the Eighth the following October. Another select committee to prepare articles was appointed by the House, the articles were approved by the House as a committee of the whole on December 30, and on January 4, 1804, the Senate resolved itself into a court of impeachment.")

Despite the supposed "cut[ting] of the umbilical court," *see Francisco*, 414 SCRA at 130, the deliberations of the 1986 Constitutional Commission confirm that the crafting of the impeachment provisions of the 1987 Constitution relied on American practice and precedent. *See, e.g.*, II RECORD CONST. COMM'N 41 (July 28, 1986) & 42 (July 28, 1986).

JUSTICE CARPIO-MORALES: Yes, why not? The next Congress can take over and continue. But as I said, it can also be understood to mean that it is as if the matter has been presented to it for the first time.

PROF. DE VERA: So many of these questions are really addressed to Senate because the language of the Constitution is it has the "sole power to try and decide all cases of impeachment."[80] Observing that constitutional language means the Senate has to consider very carefully how it will proceed, because it is also not bound by any step that it had taken in the previous impeachment trials.

Another point is, as Prof. Tamase observed, the 1987 Constitution does not carry the words "impeachment court." In fact, the specific provision addresses itself to senators. It says that the Senate has the sole power to try impeachment cases. And when the Senate sits for that purpose, it is the senators who take the oath or affirmation. That is basically the constitutional requirement as far as the Senate is concerned. That is why I think there is a wide discretion on the part of the Senate with respect to the actual trial of an impeachment case.

PROF. TAMASE: Taking with what Justice Carpio-Morales said—the Senate acting on this is as a political question[81]—unlike the typical case where we have the Supreme Court informing us of how to conclusively read the Constitution, the Senate might actually weigh in more heavily on this point, i.e., whether it will decide to continue the impeachment trial.

SEN. DRILON: That is why my proposed solution was a special session: the impeachment court is constituted. The trial takes place and finishes it before the term of this Congress expires. So all these questions will not come to the fore because it will become academic with the Senate's decision, which I am sure could be rendered before Congress expires.

JUSTICE CARPIO-MORALES**:** That calls for the conduct of full trial up to its conclusion under the 19th Senate, on the assumption that there would be no difficulty presenting evidence on the part of the prosecution and on the part of the defense.

PROF. TAMASE: That is right, because the last impeachment trial (of Chief Justice Corona) also took around five months before it finished.[82]

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[80] CONST. art. XI, § 3(6).

[81] The relevant portion has been transposed to the fifth issue, *infra* pt. V, for a clearer presentation.

[82] The impeachment trial of Chief Justice Renato Corona lasted from the opening formalities of the Senate on December 14, 2011 up to the May 29, 2012, inclusive of holidays and recesses. *See* Kimberly Jane Tan, *Senate Convenes as Impeachment Court*, GMA NEWS ONLINE, Dec. 14, 2011, *at* https://www.gmanetwork.com/news/topstories/nation/241656/senate-convenes-as-impeachment-court/story/ (on the opening formalities); Maila

SEN. DRILON**:** It [can] be finished. I have gone through it. It [can] be finished. Because the senators would not want to be bucked down there. They would want to decide it expediently. There is nothing that prevents the impeachment court or the Senate from meeting from 8 o'clock in the morning to 8 o'clock in the evening. And, you know, we have gone through it. We would hold sessions, impeachment trials for hours—10 hours sometimes.

PROF. DE VERA: That would be the neatest—if the entire proceeding could be completed within the 19th Congress.

III. DOES RESIGNATION PRECLUDE TRIAL?

A. The Disqualification Clause and its Implications

The constitutional text does not prescribe the consequences of an impeached official leaving office before or during the trial. The fairly consistent practice is to forego or terminate the proceedings before the Senate. After Ombudsman Merceditas Gutierrez resigned following her impeachment in 2011,[83] the Senate no longer proceeded with the impeachment trial and "archived" the case.[84] In a more dramatic fashion, the Senate terminated the trial of President Joseph Estrada after his resignation in January 20, 2001. Before the Senate declared the Impeachment Court as functus officio,[85] Senator Drilon and colleagues Senators Loren Legarda-Leviste, Renato Cayetano, Teofisto Guingona, Jr.,[86] and Juan Flavier were reported as saying that there was "no need to reconvene" the impeachment court (following the interruption of the trial during the EDSA II protests) "because the purpose of the impeachment trial—which was to remove the President—had been achieved."[87]

Ager, *Senate Votes 20-3 to Convict Corona*, INQUIRER.NET, May 29, 2012, *at* https://newsinfo.inquirer.net/202929/senate-convicts-corona (on the vote).

[83] H. Res. No. 105, 15th Cong., 1st Sess. (2011). Impeaching Ombudsman Ma. Merceditas Navarro-Gutierrez for Betrayal of Public Trust.

[84] Press Release, *Enrile: Senate Ready to Buckle down to Work*, SENATE WEBSITE, May 9, 2011, *at* https://web.senate.gov.ph/press_release/2011/0509_enrile1.asp.

[85] S. Res. No. 83, 12th Cong., 3rd Sess. (2001). Recognizing the Impeachment Court is Functus Officio.

[86] Sen. Guingona would subsequently be appointed as Vice-President on February 6, 2001. Marichu A. Villanueva & Efren Danao, *Guingona Named VP*, PHILSTAR.COM, May 7, 2001, *at* https://www.philstar.com/headlines/2001/02/07/89671/guingona-named-vp.

[87] Juliet L. Javellana, *Davide to Reconvene Impeachment Court*, PHIL. DAILY INQUIRER, Jan. 23, 2001, at A5.

The text, however, provides more than just removal from office as a consequence. Article XI, Section 3(7) of the Constitution includes a "disqualification clause," which reads:

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

The almost identical clause of the U.S. Constitution[88] was interpreted by the U.S. Senate in 2021 to sanction the second impeachment of President Donald J. Trump even after he had left office. When the U.S. Senate convened on January 26, 2021 for the second Trump impeachment following the U.S. Capitol insurrection, Senator Rand Paul (R-Kentucky) raised a point of order on whether the "proceeding, which would try a private citizen and not a President, a Vice President, or civil officer, violates the Constitution and is not in order."[89] In response, Senate Majority Leader Chuck Schumer (D-New York) said:

> Mr. President, the theory that the impeachment of a former official is unconstitutional is flat-out wrong by every frame of analysis: constitutional text, historical practice, precedent, and basic common sense. It has been completely debunked by constitutional scholars from all across the political spectrum.
>
> Now, the junior Senator from Kentucky read one clause from the Constitution about the Senate's impeachment powers. He left out another from article I, section 3: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States[."]
>
> If the Framers intended impeachment to merely be a vehicle to remove sitting officials from their office, they would not have included that additional provision: disqualification from future office. The Constitution also gives the Senate the "sole power" to try all impeachments.

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[88] U.S. CONST. art. I, § 3, para. 7. ("Judgment in cases of impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.")

[89] 167 CONG. REC. S142 (daily ed., Jan. 26, 2021) (point of order of Sen. Rand Paul).

> So what did past Senates decide on this question? In 1876, President Grant's Secretary of War, William Belknap, literally raced to the White House to tender his resignation before the House was set to vote on his impeachment. Not only did the House move forward with the impeachment, but the Senate convened a trial and voted as a Chamber that Mr. Belknap could be tried "for acts done as Secretary of War, notwithstanding his resignation of said office."
>
> The language is crystal clear, without any ambiguity. The history and precedent is clear. The Senate has the power to try former officials, and the reasons for that are basic common sense. It makes no sense whatsoever that a President or any official could commit a heinous crime against our country and then defeat Congress's impeachment powers and avoid disqualification by simply resigning or by waiting to commit that offense until their last few weeks in office.
>
> The theory that the Senate can't try former officials would amount to a constitutional get-out-of-jail-free card for any President who commits an impeachable offense.
>
> Ironically, the Senator from Kentucky's motion would do an injury to the Constitution by rendering the disqualification clause effectively moot. So, again, by constitutional text, precedent, and common basic sense, it is clearly and certainly constitutional to hold a trial for a former official. Former President Trump committed, in the view of many, including myself, the gravest offense ever committed by a President of the United States.
>
> The Senate will conduct a trial of the former President, and Senators will render judgment on his conduct."[90]

The U.S. Senate then voted on a motion to table Senator Paul's point of order, which was approved 55-45, slightly crossing partisan lines.[91]

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[90] *Id.* (statement of Sen. Chuck Schumer).

[91] A similar decision was reached in the impeachment of Secretary of War Belknap in 1876. *See Chapter LXIII: Nature of Impeachment*, *in* III HIND'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES 310–21, § 2007 (1907) (on the Senate's decision to proceed with trial "notwithstanding his resignation of the office before his impeachment for acts therein").

B. Panel Discussion

The disqualification clause in Article XI motivated all panelists to conclude that the resignation of Vice-President Duterte would not result in the non-continuation or termination of the trial. From a textual point, the panelists highlighted that the above provision must be read alongside the "sole power" of the Senate to try and decide all cases of impeachment,[92] which includes the prerogative to decide if and when to terminate the trial. In that light, Senator Drilon said that the decision of the Senate to terminate the Estrada impeachment trial was founded upon its political evaluation that national unity mattered more.

The panelists also raised alignment with American practice, analogies with rules on administrative cases, the unique character of disqualification as a principal (versus accessory) and non-pardonable[93] penalty, and concerns about pre-termination as frustrating accountability. There were slight disagreements on the reach of the disqualification clause—specifically, whether it allows the Senate to conduct trial if resignation occurred before the impeachment court is convened—but all were on the same page that resignation per se would not preempt the Senate from ruling on the impeached official's fitness for future public office.

* * *

PROF. TAMASE: There have been views that the Vice President's resignation will result in the cancelation or pre-termination of the impeachment trial. And I think those views are informed by past impeachment practice. But we also have the recent practice from the United States where, because of the disqualification clause, their Senate decided purposefully to push through with trial—even if President Trump had already resigned by that time—to deal with the question of whether he should be barred from future public office.

SEN. DRILON: This one is clearer [than the second question]. There are two issues which the impeachment court will resolve. First, the issue of dismissal from office. And second, perpetual disqualification from holding public office. The resignation will make the first question academic. But the second issue, perpetual disqualification from holding office, remains valid and will justify or provide basis for the continued trial in order that a decision can be rendered thereon.

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[92] CONST. art. XI, § 3(6).

[93] "Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment." CONST. art. VII, 19.

This issue [of continuing with the trial], however, would have to be addressed to the impeachment court. In other words, it becomes a political issue or question of whether or not the impeachment court will continue to hear the case in order to rule on the second issue. In the past, the impeachment court simply said, enough—*ayaw na namin, uwi na kami, so wala na* [we do not want to anymore, we will go home, so no more]. Yet theoretically, the impeachment court can continue and decide on the second issue. But that is in theory.

PROF. TAMASE: Senate President Drilon, before I go to the other panelists, I think your experience here would be very valuable since you are the only one here who sat on an impeachment court, especially the one in 2001 where the Senate decided to terminate the trial once President Estrada stepped down from office. Would you be able to share to us why the Senate decided to pre-terminate the trial instead of continuing to that question of disqualification?

SEN. DRILON: Well, EDSA II made it academic.[94] Theoretically, we could have continued with the impeachment trial. But given the political situation at the time, I do not think it made sense for us to continue the impeachment court. We could have argued that the impeachment court should continue to exist to tackle the second issue. But under the circumstances then, we said no more. Enough.[95]

PROF. TAMASE: Also highlighting the very political character of the exercise.

COMM. SARMIENTO: I do not think the resignation or a preemptive move on the part of the impeached officer will affect the impeachment trial. Remember that under the Constitution, the Senate has the sole power to try and decide.[96] In other words, it is up to the Senate. It is a political question. And one Supreme Court decision said, because of that sole power, it is hands off for us to interfere.[97] It is purely a political question on the part of the Senate.

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[94] Massive protests in Metro Manila and major cities from the late evening of January 15 to January 20, 2001, known as "EDSA II," followed a late-night procedural vote in the Senate to bar the disclosure of the supposed bank records of President Estrada. Protesters viewed legalities as preventing the full disclosure of the alleged graft and corruption of a sitting president. *See generally* Juliet L. Javellana & Martin P. Marfil, *Senate Votes to Reject P3-B Bank Evidence*, PHIL. DAILY INQUIRER, Jan. 17, 2001, at A1, A16; *People Power Launched: Sin, Aquino Lead Thousands at EDSA; Noise Barrages Erupt*, PHIL. DAILY INQUIRER, Jan. 17, 2001, at A1, A15. For a more critical view, *see* Seth Mydans, *"People Power II" Doesn't Give Filipinos the Same Glow*, N.Y. TIMES, Feb. 5, 2001, at A10.

[95] This aligns with the view of other Senators opposed to Estrada. *See* text accompanying *supra* note 87.

[96] CONST. art. XI, § 3(6).

[97] *But see* Republic v. Sereno, 831 Phil. 271, 422 (2018) ("The exercise of judicial restraint on the ground that the Senate, sitting as an impeachment court, has the sole power to try and decide all cases of impeachment, is thus misplaced.") Since *Francisco*, 415 SCRA at 157, the Court has insisted that "the power of judicial review includes the power of review

SEN. DRILON: In other words, the Supreme Court cannot compel the impeachment court to continue being in session and try the second issue, which is perpetual disqualification.

JUSTICE CARPIO-MORALES: The question presumes that the resignation is made when trial has already started. Because if not, like the case of Andres Bautista[98] and Mercedes Gutierrez,[99] they were scot-free. I share the consensus that resignation when trial has started would not necessarily call for the dismissal of the articles of impeachment. Impeachment is not for the protection of the respondent. It is for the prevention of continuous abuses and for the protection of the public from being the subject of corruption, bribery, high crimes, and other impeachable offenses.

PROF. DE VERA: That particular question is again addressed to the Senate. So the Senate may decide to continue with the trial even though the impeachable officer has already resigned, so long as trial has already commenced. By analogy, even for other public officials and employees, if there is an administrative case that is already pending, it will not be dropped just as a result of a resignation.[100]

JUSTICE CARPIO-MORALES: An employee or official may resign if he or she wishes to, but if the employee or official resigns to jump the gun—aware of

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over justiciable issues in impeachment proceedings," albeit not foreclosing questions that are truly political in character or beyond the Court's reach, *see* Corona v. Senate, G.R. No. 200242, 676 SCRA 563, July 17, 2012 (dismissed on mootness and for lack of a justiciable controversy).

[98] COMELEC Chairman Andres Bautista was technically not impeached. The House Committee on Justice found the complaint against Chairman Bautista as insufficient in form due to a defective verification. H. Rpt. No. 429, 17th Cong., 2nd Sess. (Comm. on Just.) (Dismissing the Impeachment Complaint by Jacinto V. Paras and Ferdinand S. Topacio against Commission on Elections Chairman Andres D. Bautista). The House plenary, however, voted to overturn this dismissal and directed the Committee on Justice to prepare the Articles of Impeachment. H. Journal 36, 17th Cong., 2nd Sess. (Oct. 11, 2017).

Before these Articles could be voted upon by the House plenary and transmitted to the Senate, Chairman Bautista resigned. *House Body Declares Bautista Impeachment 'Moot and Academic,'* PHIL. NEWS AGENCY, *at* https://www.pna.gov.ph/articles/1013694 (last visited May 25, 2025).

[99] *See* text accompanying *supra* notes 83–85.

[100] Baquerfo v. Sanchez, A.M. No. P-05-1974, 455 SCRA 13, 19, Apr. 6, 2005. ("Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.")

the impending filing of administrative case, even if an administrative case has not been filed—he can still be within the administrative jurisdiction of whoever is in charge of him or her.[101]

SEN. DRILON: In my view, even if the respondent resigns before the impeachment court is constituted, the impeachment court can still be convened for the purpose of the second issue, i.e., perpetual disqualification. That question is within the power of the impeachment court, and therefore it is not made academic by resignation of the respondent before or during or after the trial.

PROF. TAMASE: This question has been asked in media quite often. Can the Vice-President avoid disqualification if she just resigns, because the impeachment trial would not proceed anymore? There appears to be some consensus here that there is a second consequence to impeachment, which is not just removal but also disqualification from office.

In this light, a unique feature of impeachment is that, unlike other penalties in law, the disqualification from office proceeding from an impeachment conviction is actually not pardonable.[102] It is a very high consequence that the Senate can impose as popularly elected representatives.

PROF. TE: I am glad that we are using "consequence" rather than "penalty." In criminal law, a perpetual disqualification is an accessory penalty. But in impeachment, it is not considered as accessory—it is a main consequence of a conviction.

As Senate President Drilon has pointed out, there are two consequences, removal and disqualification. So while the resignation may actually preempt the removal, should the conviction happen, the perpetual disqualification remains a live and pending issue. Should that happen, disqualification should not be treated simply as an accessory to the main penalty or consequence. That is why I do not want to use the word penalty. Unfortunately, we use the word "conviction," which tends to mislead because if we are thinking criminal law terms, conviction carries a main penalty with disqualification only as one of the accessories.

The second point is that carrying out the trial despite the resignation of an impeached public official, just to determine the disqualification, is consistent with the purpose of impeachment to ensure accountability. Otherwise, mootness will just

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[101] Off. of Ombudsman v. Hemosura, 920 Phil. 1 (2022). The respondent here voluntarily retired even before the administrative case was filed. The Court held, "Certainly, the respondent's voluntary severance from the government service is not a bar to the filing of an administrative case against her given that the surrounding circumstances of her optional retirement reveal that it was availed of to avert impending administrative charges concerning her unfulfilled obligation." *Id.* at 9–10.

[102] CONST. art. VII, § 19.

simply kick the can down the road. It would remove every attempt to make a public official accountable. The public official would evade the removal and also evade the disqualification, even when impeachment really is the constitutional last resort as far as these officials are concerned.

The offenses are so grave as to merit impeachment as a way of removing them. We cannot just simply say that resignation would render moot and sweep away even the question of whether this person could ever be allowed to hold public office again. We really should disabuse the public of this perceived mootness. Disqualification is not simply an accessory to removal; they are two separate consequences.

IV. IS THERE AN EVIDENTIARY STANDARD FOR IMPEACHMENT?

A. Judicializing the Political

The issue of whether there is a standard of evidence in impeachment trials is a recurring one and discussed extensively in the 2012 impeachment trial of Chief Justice Renato Corona before the 15th Congress. Paolo Celeridad documents these debates (and juxtaposes them with their American and British analogs),[103] where the standard of evidence ranged depending on the characterization of impeachment, "ranging from a strictly criminal proceeding to a purely political process."[104]

Restating the debate, if the proceeding were purely criminal, then the applicable standard would be proof beyond reasonable doubt[105]—one defined as

> proof "to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and

[103] Paolo O. Celeridad, *Evidence of Character: The Burden of Proving the Truth with Respect to the Political Nature of Impeachment Trials by Means of Substantial Evidence*, 87 PHIL. L.J. 985, 1015 et seq. (2012).

[104] *Id.* at 987.

[105] RULES OF COURT, Rule 133, § 2.

> moral certainty - a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it."[106]

On the other hand, a purely political process would not need a standard of evidence. Ultimately, the Corona impeachment court left this standard unresolved,[107] although as I discuss below, the tenor of their explanations for their votes indicates a possible way to appreciate these factual questions.

Celeridad himself argues for the adoption of a "substantial evidence" standard,[108] which is applied to administrative and disciplinary cases. Under that paradigm, "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"[109] would also be enough to convict an official under an impeachment trial. For Celeridad, the standard "ensures that political offices occupied by impeachable public officers are safe from abuses."[110] This is the same standard of evidence that the House managers of the Corona impeachment suggested, reasoning that "'"the impeachment proceeding is akin to an administrative disciplinary action wherein a [sic] penalty could be removal from office and disqualification[.]"[111]

One additional insight from Celeridad's documentation is that the tilt towards a more judicial-like, almost-criminal proceeding is driven by the views of Senators who are lawyers. Senate President and presiding officer Juan Ponce Enrile was noted to have said "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."[112] Meanwhile, Senator Miriam-Defensor Santiago "adopted the standard of overwhelming preponderance of evidence proposed by Professor Black" concerning the misdeclaration of Chief Justice Corona in his Statement of Assets, Liabilities and Net Worth ("SALN").[113]

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[106] People v. Ng y Doane, G.R. No. 71117, 142 SCRA 615, 622, 10 July 1986. (Citation omitted.)

[107] Celeridad, *supra* note 103, at 1022.

[108] *Id.* at 1029–34.

[109] RULES OF COURT, r. 133, § 6.

[110] Celeridad, *supra* note 103, at 1034.

[111] Transcript of Record at 8, *In re* Impeachment Trial of Hon. Chief Justice Renato C. Corona, Senate Impeachment Case No. 002-2011 (Jan. 24, 2012), *cited in* Celeridad, *supra* note 103, at 1019.

[112] Celeridad, *supra* note 103, at 1018.

[113] *Id.* at 1022.

This actually highlights the danger in proposing an evidentiary standard in impeachment trials, especially those patterned after those applied by courts and quasi-judicial bodies. Considering the political character and office of impeachment, the search for a standard of proof to convict an impeached official risks judicializing the proceeding. That may provide cover for members of the Senate who are called not to adjudge legal liability, but to morally determine fitness to continue serving in high public office (or from serving in any other public office ever again)—a political judgment, for which each Senator is only politically accountable. Choosing a standard of evidence may also open a crack to judicial reversal, making it much easier for an overeager Court to kick the door and blast in under the guise of correcting a "grave abuse of discretion," as it already has for other aspects of impeachment.[114] And given the accountability ethos that permeates impeachment, discussions on the standard of evidence may ultimately open a pandora's box of legalese and judicial precedent. That risks not just alienating non-lawyer senators and the public from the conversation, but also more perilously frustrating the truth-telling function[115] that impeachment in the Philippines has come to serve.

In lieu of one of the judicial standards of proof, a "moral" standard of judgment appears to have ultimately driven the votes of members of the Corona impeachment court. Celeridad helpfully summarizes the explanations of the senators, with Senator Alan Peter Cayetano referring to the need to "rebuild a new paradigm of transparency and accountability," Senator Pia Cayetano invoking "the individual conscience and the collective wisdom of the Senate," and Senator Drilon basing his judgment on the "highest standards of professional integrity and personal honesty."[116] All three are lawyers themselves: none of their reasons would meet substantial evidence, yet none of them have been seriously criticized as illegitimate either.

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[114] *See Francisco*, 415 SCRA at 130–31. ("The major difference between the judicial power of the Philippine Supreme Court and that of the U.S. Supreme Court is that while the power of judicial review is only impliedly granted to the U.S. Supreme Court and is discretionary in nature, that granted to the Philippine Supreme Court and lower courts, as expressly provided for in the Constitution, is not just a power but also a duty, and it was given an expanded definition to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality." (Emphasis removed.))

[115] *See* views of Prof. Te, *infra.*

[116] *Id.* at 1022–23.

B. Panel Discussion

These views were echoed by the panelists, although they did not agree on whether there should be a standard of evidence in the first place. Professor Te was emphatic that it would be a step in the wrong direction for the Senate to choose any of the established legal standards, preferring a situation where the vote to convict or acquit would be determined by the moral conscience of each "senator-judge." There was consensus that, at the very least, proof beyond reasonable doubt should not be it.

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PROF. TAMASE: Is there a standard of evidence in impeachment trials? Should there even be? During the Corona impeachment in 2012, one of the key issues raised by then Senator Defensor-Santiago was what would be the standard of evidence. Is that question at all relevant? Does it risk over-legalizing impeachment, and what would be the consequences of that?

COMM. SARMIENTO: If I recall right, it was an issue during the impeachment of President Estrada. And again, an issue during the impeachment of Chief Justice Corona. What is the quantum of evidence? Should it be proof beyond reasonable doubt or sufficient evidence? Again, to the best of my recollection, it was not proof beyond reasonable doubt. That is just too difficult. I think "sufficient evidence"[117] would be enough as guide for the senators in convicting or acquitting the respondent.

JUSTICE CARPIO-MORALES: Well, I do not think proof beyond reasonable doubt is the standard. That is only for crimes. […] It is the Senate which is given the sole power to come up with its rules. We respect whatever standard of proof the Senate will exact from the parties, but certainly not proof beyond reasonable doubt.

SEN. DRILON: Remember that the senator-judges are not lawyers. Maybe some are lawyers, some are not. But having said that, there is simply no standard of evidence that is required. Each senator judge would make a judgment on the basis of his or her appreciation. There is no standard that is imposed because it is simply not possible to impose that kind of standard in the first place.

We say that the impeachment court is a class of its own. From that alone you can have many consequences. And it is difficult—really difficult—to impose any standard because the members of the court are simply politicians. They are not

[117] This is not among the legal standards of evidence. It is possible that Commissioner Sarmiento may be referring to substantial evidence, discussed *infra*.

lawyers in every instance. So how they would perceive the evidence presented is addressed to their conscience.

PROF. TAMASE: Is the question tied to the larger issue about the way that law and politics interact in impeachment? It does look and feel like a legal proceeding. We call the senators, "senator-judges." There is a prosecution team. There is a defense team. But in the final analysis, a lot of the rules that we would apply to courts actually do not apply to the Senate. What would that mean for questions like evidence or burden of proof?

PROF. TE: The very first rule under the Rules of Court regarding evidence says that it applies only to judicial proceedings.[118] When we talk about evidence, unless the Senate expressly adopts the rules on evidence—which I do not think it should because as Senate President Drilon pointed out, they are not all lawyers—the complicated, technical, nuanced appreciation may not work for all of the senators who are not lawyers. They are not trained in those rules, and therefore it should not bind them technically.

Because of the political nature of impeachment, I think the standard—and I would not say standard of evidence—from which any evidence is appreciated by the senators should be what they need to be convinced of to remove this elected official from office and bar this official from ever being able to assume office. Whatever that standard is, that should be how each senator views the evidence. Again, you cannot use preponderance [of evidence].[119] You cannot use reasonable doubt. You cannot use substantial evidence which is so low a bar in terms of administrative proceedings. And because it is *sui generis*, as Senate President Drilon points out, I think the point of view of a senator should be, "hearing everything that I have heard, does it convince me—does it answer this question for me—that this impeached official should then be removed from office and should be barred from ever assuming office?"

That is a very heavy burden, a very difficult question, because you are contending with an elected official who has been put into office by the will of the people. A vote for conviction is a vote essentially to override that decision of the people to put that person into office, for whatever offenses this person has done and that have been proven. So I do not think the standard should be the legal standard that we lawyers are used to.

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[118] RULES OF COURT, Rule 128, § 2. ("The rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules.")

[119] "Preponderance of evidence is the evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence." Sps. Ponce v. Aldanese, 909 Phil. 579, 585 (2021). This is the standard for civil cases. RULES OF COURT, Rule 133, § 1,

I think it was Senator Lapid in the Corona impeachment whose explanation of vote was so simple from the point of view of an ordinary person.[120] You may agree or disagree with his explanation of vote, but that was how he perceived the issue. And so I think from the point of view of the senators, when they are viewing the evidence, they should be viewing it with the end in mind of answering that question. *What would convince me that this person should be removed from office, overriding the vote that this person got, and perpetually barred from ever holding any office?* Those are two very difficult questions to answer.

In relation to the use of evidence, over-judicializing the proceedings may also get in the way of impeachment as a mode of truth-telling—of finding out the truth regarding certain transactions and grounds. Litigators know that one way to get the judgment in your favor is to make sure that the evidence never gets in. So hearsay objections, all of those things, right? But if, for example, the Senate takes on an overly judicial approach towards receiving evidence, and therefore there are hearsay objections all around, essentially you will not get to hear what is behind the accusations. Maybe there should be a shift in the mode from adversarial—which we are used to in court, people versus X and Y, A versus B—to inquisitorial, where the Senate, acting as inquisitors, basically try to find out if something is true. And even if it would be hearsay, as long as it is supported by enough corroboration, perhaps the Senate can go beyond those technical objections. I say that because of the

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[120] The relevant portion of Senator Lapid's explanation says: "Bilang high school graduate po, sa ating mga kababayan, anong sasabihin ni Lito Lapid na hindi marunong mag-Ingles, na hindi kaalaman sa batas, ano kaya ang magiging desisyon? Didisisyunan po ng katas-taasang hukom na isang high school graduate lang at taga probinsya ng Pampanga. […] Ngayon, naaayon po, lalung lalo na si Cong. Fariñas yung pong prinisenta niya kahapon dito, para sa akin po malinaw na malinaw na si CJ Corona ay lumabag sa batas. Siya mismo inamin niya na may $2.4 million at P80 million na bank account. Yun po siguro hindi na kasinungalin yun, yun po ay totoo na. Nagpiprisinta po ako dito hindi bilang abugasya, hindi po ako pwedeng magsalita ng Republic Act dahil hindi maniniwala ang tao sa akin. Hindi po ako nagmamarunong marunong dito. Ang ginagamit ko lang po konsensya, representante ng masa na hindi nakapag-aral, hindi marunong mag-Ingles, ni walang alam sa batas. […] Pasensiya na po. Pasensiya na po. Pasensya na po. Ang hatol ko sa inyo, guilty."

[As a high school graduate, to my countrymen, how would Lito Lapid—who does not know English, who is not learned in the law—decide? A high school graduate from the Province of Pampanga will judge the highest magistrate. […] Now, for me, especially after Cong. Fariñas's presentation yesterday, it is clear that Chief Justice Corona violated the law. He himself admitted that he has a $2.4 million and P80 million bank account. That is probably no longer a lie, that is the truth. I am here not as a lawyer—I cannot talk about Republic Acts because the people will not believe me. I am not here pretending that I know better. What I only use is my conscience, representative of the masses who did not go to school, do not know English, or know nothing about the law. […] My apologies. My apologies. My apologies. My verdict for you is guilty.]

Text of Senator Lapid's Vote and Explanation, VERA FILES, May 29, 2012, *at* https://verafiles.org/articles/text-of-senator-lapids-vote-and-explanation (last visited May 25, 2025).

qualification that the rules of evidence are really for judicial proceedings. They are not really for other types of proceedings.

SEN. DRILON: But the Rules of Evidence are suppletory to the rules of the impeachment court.[121] And if, let us say, an objection is raised that the evidence is hearsay, that can be decided by non -lawyers because objections are put to a vote in the impeachment court.[122] So in that sense, the Rules of Evidence have a suppletory application.

PROF. TE: What I am simply pointing out is that we should not overly judicialize the proceedings, because I think the other function of impeachment—which sometimes gets overlooked because of the adversarial nature—is the fact-finding, the truth-telling aspect.

PROF. TAMASE: This seems consistent with how impeachment is actually not so much legal accountability, but political accountability.[123] Hence the morally coded words of the Constitution on impeachment.[124]

PROF. DE VERA: I agree that the Constitution does not itself require any standard of proof, nor any quantum of proof in the impeachment trial. And from a practical perspective, I think it would be difficult to impose such a standard because

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[121] Rules of Procedure on Impeachment Trials [hereinafter "Senate Impeachment Rules"], § VI, S. Res. No. 39, 15th Cong., 1st Sess. (adopting the rules of procedure on impeachment trials). The Senate of the 19th Congress has yet to adopt its rules of procedure for impeachment trials as of this writing.

[122] Senate Impeachment Rules, § VI ("The President of the Senate or the Chief Justice when presiding on the trial may rule on all questions of evidence including, but not limited to, questions of materiality, relevancy, competency or admissibility of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless a Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision after one contrary view is expressed; or the Presiding Officer may at his/her option, in the first instance, submit any such question to a vote of the Members of the Senate […]").

[123] *See* Miroslava Scholten, *Independence vs. Accountability: Proving the Negative Correlation*, 21 MAASTRICHT J. EUR. & COMP. L. 197 (2014) (on various forms of accountability vis-à-vis independent regulatory agencies).

Impeachment is less about legal accountability because judgments in impeachment do "not extend further than removal from office and disqualification." Prosecution, trial, and punishment for any crimes broken follows only after impeachment and according to law, i.e., in an independent proceeding. CONST. art. XI, § 3(7).

[124] In the textual ordering of the Article XI of the Constitution, the grounds for impeachment—"culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust," CONST. art. XI, § 2—immediately follow the central tenet for public officers, i.e., "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." CONST. art. XI, § 1.

the determination of whether the impeached official's conduct rises to the level of an impeachable offense is addressed to each senator-judge. At the end of the day, the conviction or the acquittal in an impeachment trial is a matter of their votes. So that question is really addressed to each senator-judge. And as Senate President Drilon mentioned, not all of them are lawyers.

While we are discussing burden of proof, I think there are two important strands that the Senate should pay attention to. One is their crafting of their rules for the impeachment trial. In the past, I understand that they have adopted the Rules of Evidence in a suppletory manner.[125] We do not know whether that has affected in any way the capability of a non-lawyer senator-judge to receive information, the capability of parties—for example, the House managers or the House prosecution panel, and the defense—to present information to the Senate for purposes of each senator-judge being able to make a decision, or the role of the presiding judge.

As to this last consideration, the presiding officers of the last two impeachment trials were lawyers, i.e., Chief Justice Hilario G. Davide, Jr. and Senate President Juan Ponce Enrile. And you will see how their training affects the way they managed the trials. I do not want to say judicialization, but you will see on one hand how previous experience in running adversarial proceedings has helped expedite the trial and how quickly they decide on motions. At the same time, we do not know whether that has in any way disadvantaged those who are senator-judges without similar experience.

So apart from quantum of proof, and again, I think there really is not one that we can impose, we should look at the role of the presiding judge and also the manner by which the rules for the trial will be crafted by the Senate.

PROF. TAMASE: Ultimately, if we go by the language of the Corona and Estrada Impeachments, the arguments and votes often pertained to conscience—whether the conscience of the senator-judges would be satisfied by the vote they would have ended up taking.[126]

V. CAN AND SHOULD THE COURT STEP IN?

A. The Court and the Political Character of Impeachment

The final emerging question is one that has come up for every significant impeachment attempt that has reached an advanced stage: does the Court have the power to review the acts of either the House of Representative or the Senate?

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[125] *See supra* notes 121 & 122 and accompanying text.

[126] *See supra* note 120. *See also supra* note 116 and accompanying text.

The Court's pre-1987 impeachment practice upheld the quintessentially political character of impeachment as a high prerogative of the people's democratically elected representatives. Shortly before the EDSA Revolution, the Court heard *Romulo v. Yñiguez*,[127] a petition questioning the Batasan Pambansa's archival of an impeachment complaint filed in 1985 against President Ferdinand Marcos, Sr.

Among the principal grounds of the petitioners was the unconstitutionality of the national assembly's Rules of Impeachment Procedure in Impeachment cases. This allegation would technically allow the Court to intervene in an otherwise purely political question,[128] which led the Court to actually hear this case as opposed to a similar one it dismissed in 1985,[129] where it had held:

> It is up to the Batasan to enact its own rules of procedure in said impeachment proceedings, which it had already done. The interpretation and application of said rules are beyond the powers of the Court to review. The powers of the Batasan to dismiss a petition for impeachment which in its judgment it finds not meritorious or defective in form and substance are discretionary in nature and, therefore, not subject to judicial compulsion.[130]

Supposedly in contrast, granting the petition in *Romulo* would necessarily require the Court to order the Batasan Pambansa to proceed to try the impeachment proceedings. Because of that, the Court prudentially found that any ruling would be a "empty and meaningless gesture." While avoiding the term "political question"—perhaps because it had become associated with the capitulation of the Court to the dictator Marcos—the Court nevertheless said that the rules of the Batasan Pambansa are "procedural and not substantive. They may be waived or disregarded by the Batasan and with their observance, the Courts have no concern."[131] The question was political, in so many words.

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[127] G.R. No. 71908, 141 SCRA 263, Feb. 4, 1986.

[128] *See* Gonzales v. COMELEC, G.R. No. 28196, 21 SCRA 774, Nov. 9, 1967 (on the justiciability of proposed amendments to the Constitution for allegedly violating textual standards).

[129] De Castro v. Comm. on Just., G.R. No. 71688, Sept. 3, 1985 (Res.) (unpublished), *cited in Francisco*, 415 SCRA at 326–27 (Tinga, *J.*, *concurring*).

[130] De Castro v. Committee on Justice, G.R. No. 71688, Sept. 3, 1985 (Res.) (unpublished), *quoted in* Romulo v. Yñiguez, 141 SCRA at 278.

[131] Romulo v. Yñiquez, 141 SCRA at 276.

While it does not appear that the Estrada impeachment was questioned, the Court would take a different stance in *Francisco v. House of Representatives*.[132] In that case, which concerned the impeachment of its Chief Justice Hilario G. Davide, Jr., the Court was confronted with the House of Representative's (and the Senate's) argument that the questions brought by the petitioners were political and beyond its jurisdiction. The Speaker of the House asserted that "impeachment is a political action which cannot assume a judicial character. Hence, any question, issue or incident arising at any stage of the impeachment proceeding is beyond the reach of judicial review."[133] Meanwhile, Senator Pimentel, in intervention, contended that the "Senate's 'sole power to try'[134] impeachment cases (1) entirely excludes the application of judicial review over it; and (2) necessarily includes the Senate's power to determine constitutional questions relative to impeachment proceedings."[135]

The Court asserted its power of judicial review. Invoking its "expanded certiorari jurisdiction" under Article VIII, Section 1 of the Constitution, and citing the text[136] and the deliberations of the 1986 Constitutional Commission, the Court found that "judicial power is not only a power; it is also a duty, a duty which cannot be abdicated by the mere specter of this creature called the political question doctrine."[137]

The Court would then invoke *Francisco* in every impeachment issue that would be raised before it.[138] Even when it would prudentially rule to dismiss a case, as it prominently did in *Corona v. Senate*[139]—alleging grave abuse of discretion on the part of the Corona Impeachment Court, which

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[132] *Francisco*, 415 SCRA at 129.

[133] *Id.* at 129.

[134] CONST. art. XI, § 3(6).

[135] *Francisco*, 415 SCRA at 129. Interestingly, Senator Pimentel's intervention would be consistent with subsequent American practice, where the U.S. Senate dismissed the impeachment case against Secretary of Homeland Security Alejandro Mayorkas on constitutional grounds. Essentially, the articles against Secretary Mayorkas were dismissed on points of order that they did not allege conduct that rose to the level of high crimes and misdemeanors as required in Article II, Section 4. *See* 170 CONG. REC. S2804-05 (daily ed., Apr. 17, 2024).

[136] "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." CONST. art. VIII, § 1, para. 2.

[137] *Francisco*, 415 SCRA at 149.

[138] *See, e.g.*, Gutierrez v. House of Representatives, G.R. No. 193459, 643 SCRA 198, Feb. 15, 2011; *Garcillano,* 575 SCRA 170.

[139] G.R. No. 200242, 676 SCRA 563, July 17, 2012.

petition the Supreme Court would dismiss for mootness—the Court would at least assert a power to review.[140]

This changes the complexion of impeachment from a political process into an exercise that blends law and politics.[141] Yet by its nature and by pragmatically making the Court the ultimate forum for issues relating to impeachment, judicial review asserts a primacy of law over politics and relegates to history the character of impeachment as the last democratic, political check on high public officers.[142]

B. Panel Discussion

At the time of the forum, petitions had been filed with the Supreme Court to either compel the Senate to proceed forthwith with trying the Duterte Impeachment[143] or nullify the Articles of Impeachment and enjoin further proceedings.[144] As of this writing, the Court has not issued any preliminary or permanent relief, although the Senate appears to have manifested that it "has the sole power to try and decide all cases of impeachment under the Constitution, cannot therefore possibly make a comment on the Petition and thus, asks the Honorable Court that it be excused from submitting the comment."[145]

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[140] *Id.* at 577 ("In the first impeachment case decided by this Court, [*Francisco v. House of Representatives*], we ruled that the power of judicial review in this jurisdiction includes the power of review over justiciable issues in impeachment proceedings. Subsequently, in *Gutierrez v. House of Representatives Comm. on Just.*, the Court resolved the question of the validity of the simultaneous referral of two impeachment complaints against petitioner Ombudsman which was allegedly a violation of the due process clause and of the one-year bar provision.")

[141] *See generally* Skarlit C. Labastilla, *Dealing with Mutant Judicial Power: The Supreme Court and Its Political Jurisdiction*, 84 PHIL. L.J. 2 (2009) (on the historical development of the political question doctrine vis-à-vis the Court's judicial power).

[142] Early Philippine writings on impeachment in fact sought a less political process and preferred courts to try impeachment cases. *See* Balmaceda, *supra* note 10, at 925 (*citing* VICENTE G. SINCO, PHILIPPINE POLITICAL LAW 388 (10th ed. 1954) ("This Incident revealed the futility of the Impeachment process as provided in the Constitution. It simply goes to show that a Judicial function, such as impeachment, cannot be satisfactorily vested in a purely political and partisan body such as the legislature.")

[143] Generillo v. Senate, G.R. No. 278311 (Pet. Manda., Feb. 13, 2025).

[144] Duterte v. House of Representatives, G.R. No. 278353 (Pet. Cert. & Prohib., Feb. 7, 2025); Torreon v. House of Representatives, G.R. No. 278359 (Pet. Cert. Prohib., Feb. 17, 2025).

[145] Press Release, *Senate Files Manifestation on VP Duterte's SC Petition*, SENATE WEBSITE, Mar. 6, 2025, *at* https://web.senate.gov.ph/press_release/2025/0306_escudero2.asp (last visited May 26, 2025).

There is much to be said about the undue restrictiveness of the Court's *sub judice* rule, which is even more restrictive on lawyers,[146] and how it inhibits a free and informed public discussion of the most important constitutional issues of the day. Despite the Court's doctrinal clarification in *ABS-CBN v. Ampatuan*,[147] the Court's inconsistent application and its prior evisceration of academic criticism[148] may have had an impact on the panelists, who avoided expressing strong views on the above petitions.

Most of the panelists concede that the Court has the power to decide these petitions, with the exception of Senator Drilon, who asserted the more traditional view that the Senate's sole power to try these cases and issues effectively precludes the Court's intervention. In any event, the panelists agreed that it would serve the Court to be more prudent in hearing the petitions or striking the acts of Congress, owing to the political character of impeachment and the difficulty of enforcing a potential judicial decision.

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PROF. TAMASE: If a case is brought to raise these questions, may the Supreme Court step in? And there is a difference between whether the court can step in and whether the court should step in.

COMM. SARMIENTO: As of today, the Senate has not been constituted as an impeachment court. So [it does not yet exercise] the sole power to try and decide this case. May the Supreme Court step in? Now there is this provision, "forthwith proceed." That is why a petition has been filed for the Senate to observe to follow this command.[149] Up to this point, as it is not yet an impeachment court, whether the Senate has complied is not a political question. I think the constitutional duty has to be addressed by the Supreme Court.

Now on the issue of the second petition that was filed with the Supreme Court yesterday,[150] questioning the whole process that was followed in the House of Representatives—again, there is a provision in the Constitution that is to be followed. I think the Supreme Court can step in and come in and resolve this petition.

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[146] ABS-CBN v. Ampatuan, 941 Phil. 182, 261 (2023).

[147] *Id.*

[148] *See generally* Paolo S. Tamase, Essay, *The Long Shadow of Vinuya in the Time of Artificial Intelligence: Reflections on Ethical Issues in Legal Research*, 96 PHIL. L.J. 850 (2023) (on the Court's discipline of the U.P. Law Faculty).

[149] Generillo v. Senate, G.R. No. 278311 (Pet. Manda., Feb. 13, 2025).

[150] Torreon v. House of Representatives, G.R. No. 278359 (Pet. Cert. Prohib., Feb. 17, 2025).

SEN. DRILON: The basic rule is found in the Constitution. The impeachment court shall decide all impeachment cases.[151] Questions of jurisdiction, therefore, should be decided—according to the Constitution—by the impeachment court. To me, the better attitude that the Supreme Court can follow is not to interfere. Let this be treated as a political question, leaving it to the judgment of the Senate acting as an impeachment court to decide on this, including questions of jurisdiction.

JUSTICE CARPIO-MORALES: Under the expanded jurisdiction of the Supreme Court, it can take jurisdiction in actual cases—actual controversies that involve the demandable rights of the people—and when there is grave abuse of discretion.[152] As long as the question is not political, but there is grave abuse of discretion on the part of the respondent, and/or there is an actual controversy that involves demandable rights, the Supreme Court can step in.

SEN. DRILON: In other words, the decision of the impeachment court can be appealed to the Supreme Court?

JUSTICE CARPIO-MORALES: Why? Was there an abuse of discretion?

SEN. DRILON: That is exactly my point, that under the Constitution, the Senate shall have the sole power to try and decide all cases of impeachment. This is precisely a clear rule that the Supreme Court should leave the Senate alone.

JUSTICE CARPIO-MORALES: Precisely, I premise my answer in that there is the expanded jurisdiction of the Supreme Court. As afforded by the 1987 Constitution, the Court comes in if there is an actual case, and it involves demandable rights, and or there is grave abuse of discretion. If the impeachment court gravely abused its discretion, why should the Supreme Court not step in?

SEN. DRILON**:** Because the remedy is not to re-elect the senators that rendered such an unjust judgment.

JUSTICE CARPIO-MORALES: You tell that to the people who keep electing and re-electing [the senators].[153]

PROF. TAMASE: Just to provide context: before the 1987 Constitution, most questions regarding impeachment were beyond the intervention of the judiciary.[154] But the Court's position post-1987 is that there are some questions in

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[151] CONST. art. XI, § 3(6).

[152] CONST. art. VIII, § 1.

[153] The transcript does not reflect the most convivial tone of this discussion between two former senior members of government who were only one year apart in law school.

[154] *See* text accompanying *supra* note 127.

impeachment that are now fair game for judicial review. Senate President Drilon is on the side of the traditional idea that impeachment is a political process and the court should thus step back. Justice Carpio-Morales leans more towards the expanded jurisdiction of the Court.

PROF. DE VERA: I agree with Justice Carpio-Morales. As the Supreme Court has done before, there are questions related to impeachment which the Court has considered to be justiciable, i.e., those where standards for adjudication are present in the Constitution.[155] Consider *Nixon v. United States*.[156] For this impeachment, what the U.S. Senate had done was to actually constitute a committee for purposes of taking in evidence, and that committee would render a report to the Senate as a whole so that the senators can continue with their legislative work in the meantime.[157]

Of course, in that particular case, the U.S. Supreme Court refused to rule on whether that procedure was unconstitutional because they considered it as a non-justiciable question.[158] In our own jurisdiction, we have resisted adopting that view that had been taken by the U.S. Supreme Court,[159] and our decisions say that there are questions related to impeachment that may be considered as justiciable, particularly if there are standards that are provided in the Constitution against which the validity of a particular conduct can be assessed by the Supreme Court.

Having said that, I understand the question to mean if any of the issues we have discussed today could be subject to judicial review. On that point, I agree with Senate President Drilon. I think this is an opportunity for the Senate to definitely rule on the issues in this Forum because the Articles of Impeachment have already been transmitted to it. We should give the Senate the opportunity to take on the role that it has been constitutionally granted so that its action will inform how these provisions are enlivened, rather than letting courts by default decide questions that have been addressed by the Constitution to the Senate.

PROF. TE: There is a balance that is struck by the Constitution among the three branches. That balance is implicated whenever impeachment comes in. There

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[155] *Francisco*, 415 SCRA at 131.

[156] 506 U.S. 224 (1993).

[157] *Id.* at 227.

[158] *Id.* at 233 ("The parties do not offer evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment.") & 235 ("Judicial 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.")

[159] *Francisco*, 415 SCRA at 131. ("There are also glaring distinctions between the U.S. Constitution and the Philippine Constitution with respect to the power of the House of Representatives over impeachment proceedings[.]"). *See also supra* note 114.

are two branches of government currently involved with the impeachment of the Vice President, i.e., the Executive and Congress. You are now bringing in the third branch to mediate between these two branches.

Knowing the Court to also be a practical court, it will also be concerned as to whether its action will actually do anything in order to help the situation or not exacerbate it. While I agree that, yes, the Court has jurisdiction to entertain petitions that fall within Article VIII, Section 1, paragraph 2 parameters, the question of whether it should is a more difficult one simply because of that balance. On a practical matter—for example, in one of the petitions which asks that the Senate "forthwith proceed"—imagine if the Court acts favorably. That would mean that the Court would be setting the timetable basically for Congress to do certain things when objectively the conditions therefor may not exist.

I think that would be within the mind of the Court: can we actually grant this relief considering the objective conditions do not exist? The Senate has not been constituted yet as an impeachment court. If we do grant this, how will the Senate proceed? […]

The Court will have to look at the practical side of its decisions. Yes, the jurisdiction is there. But I think the question would be *should* it exercise its jurisdiction at this point, instead of a future time when the issues have become more crystallized. I hope I do not get cited for sub judice for that. But that is my opinion.

PROF. TAMASE: That is the issue of ripeness—whether the facts are already there for a court to make an informed decision.

SEN. DRILON: An impeachment court is not an ordinary government agency. Suppose the politicians which constitute the impeachment court would make a political decision and say, "we will not follow what the Supreme Court says." Can somebody tell me if you can declare them in contempt? Again, the impeachment court is not an ordinary government agency. It is a court created by virtue of an impeachment complaint filed by Congress. We say that the impeachment court is different from the Senate. So can the impeachment court refuse to follow the ruling of the Supreme Court? And if it does, what will happen?

PROF. TAMASE: I think that is supported also by the practice of the last impeachment trial where the Supreme Court did prohibit the disclosure of the bank accounts of Chief Justice Corona.[160] It seems that the Senate did not proceed with the disclosure not because the Court said stopped it, but only after it voted on

[160] Jerome Aning & TJ Burgonio, *Supreme Court Issues TRO on Corona Dollars*, INQUIRER.NET, Feb. 10, 2012, *at* https://newsinfo.inquirer.net/142717/supreme-court-issues-tro-on-corona-dollars-2 (last visited May 26, 2025).

whether to comply, highlighting its voluntary nature.[161] That may have been a signal on the part of the Senate that it will assert control over the process [regardless of what the Supreme Court says.]

THE ACCOUNTABILITY CONSTITUTION

The exchanges on these five emerging issues reveal much about what the official class—government officials, lawyers, and other persons who interact regularly with the law—think is part of the Constitution. Yet even when supplemented by Supreme Court decisions or the practice of the Senate, they show a disagreement with how exactly certain terms in the Constitution should be understood. In ending this feature, I explain the inadequacy of the conventional modes of legal reasoning chiefly articulated by the Supreme Court. I then introduce the "ethical reading" alternative, adopted from Philip Bobbitt's seminal work on the interpretation of the U.S. Constitution. I derive an ethos of accountability in the Philippine system and briefly apply it to each of the emerging questions, and conclude this feature with ethos presenting a way out of our conflicting interpretations of impeachment law.

A. The Limits of the Text and Conventional Interpretation

As articulated by the Court, Philippine constitutional interpretation relies on three basic rules. The first, *verba legis*, commands that "wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed."[162] The second, *ratio legis est anima*, states that "where there is ambiguity," the "words of the Constitution should be interpreted in accordance with the intent of its framers."[163] The third, *ut magis valeat quam pereat*, requires a holistic interpretation of the Constitution, such that "no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument."[164] The Court does not limit interpretation to these devices and

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[161] Kimberly Jane Tan, *Senate Votes 13-10 to Heed SC TRO on Corona Dollar Accounts*, GMA NEWS ONLINE, Feb. 13, 2012, *at* https://www.gmanetwork.com/news/topstories/nation/247826/senate-votes-13-10-to-heed-sc-tro-on-corona-dollar-accounts/story/ (last visited May 26, 2025).

[162] *Francisco*, 415 SCRA at 126.

[163] *Id.* at 126–27.

[164] *Id.* at 127–28.

recognizes resort to other aids, including the Constitution's preparatory debates.[165]

The above suggests that *verba legis* is the primary tool of interpretation, but the others are not particularly ordered. Conformably, the starting premise of every discussion during the Forum was what the constitutional text provided. But the silence of the text on most of these issues shows the peril of such a limited view of the Constitution. Even when the text does say something, it is susceptible to multiple and likely conflicting interpretations, especially when it interacts with the traditional rules of constitutional construction in the Philippines.[166] Ambiguity, or lack thereof, is often in the eye of the interpreter.

Take for example "forthwith proceed" and the issue of whether the Senate can conduct trial during a previously declared recess. A *verba legis* reading produces several plausible interpretations because of the phrase's multiple ordinary meanings. As recounted above, Commissioner Sarmiento's view is that the Senate should proceed despite its interim adjournment. Both Justice Carpio-Morales and Professor De Vera subject the urgency communicated by the phrase to reasonable delays, but Justice Carpio-Morales and Senator Drilon are split on whether midterm elections would justify the Senate's inaction in the meantime. None of these readings is extraordinary, and the plain text of Article XI, Section 3(4) of the Constitution can justify either view.

A resort to other the conventional modes of judicial reasoning in the Philippines would produce inadequate results too. As the 1986 Constitutional Commission did not contemplate the question of trials during adjournment and thus did not discuss it, must the silence following *ratio legis est anima* be read as an absolutist requirement to "forthwith proceed" or one that accounts for special cases? And when using *ut magis valeat quam pereat*, do we read "forthwith proceed" in relation to the provisions on the Legislative Calendar and the limits on non-sessional work and privileges,[167] or conversely, those that set short timelines in impeachment?[168]

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[165] *Id.* at 128.

[166] Apart from *verba legis*, the other two are *ratio legis est anima* (the "words of the Constitution should be interpreted in accordance with the intent of its framers") and *ut magis valeat quam pereat* (the "Constitution is to be interpreted as a whole"). *Francisco*, 415 SCRA at 126-28.

[167] *See* text accompanying notes 22 & 23.

[168] *See* CONST. art. XI, § 3(1).

In the United States, the legal interpretative toolkit for the constitution also includes readings according to structure (i.e., the preservation of the balance of powers derivable from the constitutional text and intended among the branches and levels of government) and doctrine (i.e., the decisions of the courts and the past practices of other officials).[169] A more pragmatic reading based on costs and benefits is also sanctioned by judicial practice, often implemented by a court's prudential move of not disturbing the calculations of the political branches.[170] However, transposing these to Philippine constitutional interpretation on the first question still does not yield clear results: Is the constitutional structure better preserved by the Senate respecting the sessional limits on its plenary power or its checking of the Vice-President as a high constitutional officer? As shown earlier, there are no squarely applicable judicial decisions on this question. The past practice of the Senate is likewise too sparse and inconclusive: while it did suspend trial during the interim recesses coinciding with the Corona impeachment,[171] the Senate nevertheless started trial right away with opening formalities on December 14, 2011, just two days after Chief Justice Corona was impeached on December 12, 2011. (Opening statements and the presentation of the cases would start on January 14, 2014.)[172] It is also unclear whether the Senate of that 15th Congress would have followed the same timelines if faced with a timing similar to Vice-President Duterte's impeachment. And as to prudentialism, what indeed would be the reading of the Constitution that would yield a net social benefit?

B. Reading According to Ethos

Bobbitt presents a sixth mode of constitutional interpretation or what he calls the "ethical" reading, or interpretation according to *ethos*. He writes:

> By ethical argument I mean constitutional argument whose force relies on a characterization of American institutions and the role within them of the American people. It is the character, or ethos,

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[169] *See generally* Bobbitt, *supra* note 77, at 137 & 139.

[170] *See id.* at 138.

[171] *Impeachment Primer*, *supra* note 17, ¶ 27.

[172] *Philippines Chief Justice Impeached by Congress*, BBC NEWS, Dec. 12, 2011, *at* https://www.bbc.com/news/world-asia-16144786; Tan, *supra* note 82; *Timeline: Impeachment Trial of Chief Justice Renato Corona*, PHILSTAR.COM, May 7, 2012, *at* https://www.philstar.com/headlines/2012/05/07/804139/timeline-impeachment-trial-chief-justice-renato-corona (last visited May 28, 2025).

> of the American polity that is advanced in ethical argument as the source from which particular decisions derive.[173]

In the American paradigm, Bobbitt concludes that this argument is defined by its "appeal to those rights of individual choice that are beyond the power of government to compel."[174] This ethos of limited government is thus apparent in U.S. court decisions that make "inferences from the very nature of republican government,"[175] such as when the U.S. Supreme Court found that Virginia could not revoke land grants it previously made in favor of the Episcopal Church in an *ex post facto* manner or without just compensation because it goes against the "right of the citizens to the free enjoyment of their property legally acquired."[176] Bobbitt's theory is that U.S. courts legitimately apply "infer[red] rules from the powers retained by the people and thus denied to the government." His theory has attracted legitimate criticism,[177] and Bobbitt's own theory of interpretation has evolved over decades.[178] Still, his assertion that the "habits and character" of the American polity[179] influences constitutional argument is backed by the examples he cites in his work.

What about Philippine courts? Like the United States, there are also relationships between the people and their government which have become the definite bases for the Court's constitutional jurisprudence. For example,

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[173] PHILIPP BOBBITT, CONSTITUTIONAL FATE 94 (1982) [hereinafter "CONSTITUTIONAL FATE"]. Ethical arguments in Bobbitt's typology are not "moral" arguments. "Ethical constitutional arguments do not claim that a particular solution is right or wrong in any sense larger than that the solution comports with the sot of people we are and the means we have chosen to solve political and customary constitutional problems." Bobbitt's use of "ethos" or the "ethical" reading is based on its Greek origins. *Id.* at 94–95.

[174] Bobbitt, *supra* note 77, at 141.

[175] CONSTITUTIONAL FATE, *supra* note 173, at 107 (*citing* Terrett v. Taylor, 1 3 U.S. (9 Cranch) 43 (1815)).

[176] *Id.* This was before these principles of the U.S. Constitution were incorporated in the states via the Fourteenth Amendment. U.S. CONST. amend. XIV, § 1 (incorporation clause).

[177] *See* Colin Starger, *Constitutional Law and Rhetoric*, 18 U. PA. J. CONST. L. 1347, 1363–65 (2015).

[178] *Compare, e.g.,* CONSTITUTIONAL FATE, *supra* note 173, at 8 ("My typology of constitutional arguments is not a complete list, nor a list of wholly discrete items, nor the only plausible division of constitutional arguments") *and* PHILIP BOBBIT, CONSTITUTIONAL INTERPRETATION 22 (1991) ("There is no constitutional legal argument outside these modalities. Outside these forms, a proposition about the US constitution can be a fact, or be elegant, or be amusing or even poetic, and although such assessments exist as legal statements in some possible legal world, they are not actualized in our legal world.")

[179] CONSTITUTIONAL FATE, *supra* note 173, at 94–95.

in *Macalintal v. COMELEC*,[180] the Court heard a petition challenging the constitutionality of Republic Act No. 11935, which would postpone the December 2022 Barangay and Sangguniang Kabataan Elections. In essence, the petition alleged that the multiple and successive postponements of these local council elections frustrated the right of suffrage. But the key hurdle of the petition was two-fold. For one, the right of suffrage in Article V only concerns access to elections and not their regularity.[181] More significantly, the Constitution contains an unrestrained textual commitment for Congress to decide when these local council elections should be held, i.e., "The term of office of […] barangay officials […] shall be determined by law[.]"[182]

The Court granted the petition. The opinion ran the gamut of plausible legal bases from Article V on suffrage, to the relationship between suffrage and the freedom of expression, international law and its domestic incorporation, and the transfer of appropriations limits in the Constitution, among many others, and yet none of them could successfully take the Court past the two-fold hurdle, above. What did respond to the textual difficulties created by the Constitution was the core reasoning in *Macalintal*, i.e., that the statute was unconstitutional "for (i) violating the right to due process of law, and accordingly, infringing the constitutional right of the Filipino people to suffrage, and (ii) having been enacted in patent grave abuse of discretion."[183]

This core reasoning confirms the Court's use of an ethical reading. A closer look at the discussion of the Court shows that it attempted a substantive due process analysis.[184] As Bobbitt writes, "ethical arguments are

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[180] [Hereinafter "*Macalintal*"] 943 Phil. 212 (2023).

[181] CONST. art. V. The two sections of this article read:

> Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.
>
> Section 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.
>
> The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

[182] CONST. art. X, § 3.

[183] *Macalintal*, 943 Phil. at 318.

[184] *Id.* at 282 *et seq*.

also sometimes called arguments of substantive due process, because they attempt to give substantive, rather than procedural, content to the due process clauses of the constitution."[185] Unfortunately, the Court conflated substantive due process analysis with the constitutional prohibition on the transfer of appropriations,[186] which is a more structural and less ethical reason for striking down the statute.

But the ethical argument in *Macalintal* shines when the Court talks about the right of suffrage:

> Unquestionably, thus, the right of suffrage is a treasured right in a republican democratic society: the right to voice one's choice in the election of those who make the laws and those who implement them is indispensable in a free country that its absence will render illusory other rights, even the most basic.[187] […]
>
> Verily, by its very nature, the right of suffrage stands on a higher—if not distinct—plane such that it is accorded its own Article under the Constitution, separate from the other fundamental rights.[188]
>
> * * *
>
> In addition to genuine reasons [for a postponement], the State must also demonstrate that despite the postponement, the electorate is still guaranteed an effective opportunity to enjoy their right to vote without unreasonable restrictions. An important factor that may be considered in determining the effectiveness of the opportunity to vote and reasonableness of the restriction is the length of the postponement and periodicity of the elections, despite the postponement.
>
> Periodic is defined as "happening regularly over a period of time" or something that is "occurring, appearing, or recurring at regular intervals." Elections that occur at periodic intervals signifies regularity of the frequency and schedule thereof such that the people can justifiably expect its next occurrence. To overcome constitutional challenge, therefore, the state measure must guarantee the holding of elections at regular periodic intervals that are not unduly long, and which will ensure that the authority of

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[185] Bobbitt, *supra* note 77, at 141.

[186] *See Macalintal*, 943 Phil. at 295 (discussing substantive due process vis-à-vis the constitutional prohibition on the transfer of appropriations, CONST. art. VI, § 25(3)).

[187] *Macalintal*, 943 Phil. at 226.

[188] *Id.* at 227.

> the government continues to be based on the free expression of the will of the electors.[189]

This does not flow from conventional modes of interpretation. *Macalintal* did not find any textual anchor for this new "periodic" requirement on Article V, which only guarantees who may vote and access to the polls. Neither could the Court base its reasoning on precedent (the Court had not dealt with the question before, nor have the other branches to a satisfactorily constitutional degree), structure (it did not concern the balance of powers in government), history (in addition to the lack of a textual anchor, the framers did not contemplate the endless postponement of elections), or prudence (the Court found "election fatigue" to be essentially pretextual[190]). With its conventional interpretive toolkit spent, the Court resorted to this: the need to "ensure that the authority of the government continues to be based on the free expression of the will of the electors"[191]—evidently founded on a non-textual principle that in "a republic undergirded by a social contract, the threshold consent of equal people to form a government that will rule them is renewed in every election."[192]

Macalintal also reveals that, unlike what Bobbitt has suggested for the United States, limited government is not the ethos, at least for the Philippine polity. There are two strong candidates: social justice[193] and accountability.[194]

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[189] *Id.* at 316.

[190] *Id.* at 314.

[191] *Id.* at 316.

[192] *Id.* at 428 (Singh, *J.*, *separate*, *citing* Tolentino v. COMELEC, 465 Phil. 385 (2004) (Puno, *J., dissenting*)).

[193] Calalang v. Williams, 70 Phil. 726, 734–35 (1940) (defining social justice as "the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extraconstitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*).

The first favorable mention of social justice, albeit unarticulated, appears to be in Int'l Banking Corp. v. Yared, 59 Phil. 72, 91 (1933) ("It is, therefore, in accordance with reason and the principles of social justice, that a litigant, who finds it necessary to avail himself of the testimony of his adversary in order to prove his rights, be permitted to impugn such testimony when it fails to state the truth.") Before the Commonwealth, the ethos of social justice is more apparent in non-judicial acts.

[194] Phil. Nat'l Bank v. Gancayco, 122 Phil. 503, 508 (1965) (upholding the exception in the Anti-Graft and Corrupt Practices Act that allows for the disclosure of bank records

Both of these principles, reiterated in hundreds of Supreme Court decisions that have since disguised them as precedent, highlight the master-servant relationship between the government and the people, supported by the people's democratic traditions (e.g., mass protests as justifying breaks in Supreme Court doctrine, or even the removal of a president and intra-constitutional succession.[195])

I reserve more extensive comments on these, but for now, there is no reason to limit the Philippine reading to one ethos, although it is certainly possible that social justice and accountability are branches of just one larger principle founded on the people as sovereign.[196] Moreover, the subsequent textual engraftment of social justice[197] and accountability[198] in the various Philippine constitutions does not preclude an ethical reading. Instead, it confirms it, especially as the codification of these in the Constitution does not really produce specific rules but only statements of general principles.

C. Accountability as Ethos and Canon

It is thus possible to reimagine constitutional interpretation as one geared towards accountability as the Philippine ethos. The idea of an "Accountability Constitution" per se is not novel but remains niche. Foreign authors have written on the concept in the context of structure.[199] In the Philippines, Robert M. Sanders, Jr. has cast the 1987 Constitution as an Accountability Constitution and writes:

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of public officers, on the "notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.")

[195] *See* Belgica v. Ochoa, 721 Phil. 416 (2013) (overturning various precedents and striking down the pork barrel system); Estrada v. Desierto, 406 Phil. 1 (2001) (effectively upholding the succession to the presidency after President Estrada's implied resignation). For the interactions with popular sovereignty, *see generally* Bryan Dennis G. Tiojanco & Paolo S. Tamase, *Parrying Amendments: The Philippines' Multitiered System of Constitutional Change, in* ASIAN COMPARATIVE CONSTITUTIONAL LAW, VOL. 2: CONSTITUTIONAL AMENDMENTS 235 (Ngoc Son Bui & Mara Malagodi, eds., 2024).

[196] CONST. art. II, § 1.

[197] CONST. (1935) art. II, § 5; CONST. (1973) art. II, § 6; CONST. art. XIII (Social Justice and Human Rights).

[198] CONST. (1973) art. XIII (Accountability of Public Officers); CONST. art. XI (Accountability of Public Officers).

[199] Rebecca L. Brown, *Accountability, Liberty, and the Constitution*, 98 COLUM. L. REV. 531, 536 (1998) (exacting accountability through judicial review by "an independent judiciary that vigorously protects rights from government encroachment could not survive.").

> When seen as a whole, these points imply that the 1987 Constitution is an Accountability Constitution. The said principle is a key virtue in the charter's subtext and objectives, and a unifying logic for how it calibrates the many facets of governmental power. As a virtue, accountability serves as a foundation for envisioning how the government is supposed to run and how its officers are supposed to act. Several accountability mechanisms are also found in the Constitution, placed there to bring virtue to life. The clear thread of political agency between the people, the government, and their representatives, and the intricate system of checks and balances not only guard against abuses of power but also provide remedies should they arise.[200]

Sanders thus finds that Congress's repeated breach of the budget ceiling is a "symptom of accountability erosion in the power of the purse."[201]

Earlier, in the context of the Corona Impeachment, Diane A. Desierto wrote that the "1987 postcolonial and post-dictatorship Constitution entrenched accountability within our constitutional values and democratic lexicon." Moreover, accountability can be reached not just when institutions "exercise careful restraint alongside judicious decision-making," but also "when citizens discharge their citizenship responsibilities fully to be informed and express informed opinions, and to peaceably participate in the constitutional process, inasmuch as they assert their rights to be heard and to exact justice and demand accountability from their leaders."[202]

I share Sanders's and Desierto's views and particularly defer to Sanders's exposition of the development of the Constitution in relation to political accountability[203] and his explanation of accountability in its various modes—political, legal, public, and non-political governmental.[204] But I go further and suggest that accountability, built on the notion that public office is a public trust,[205] is not only a constitutional aspiration or virtue, or just a limit on structure. Accountability can instead be a broader a tool for constitutional interpretation when we ask how the text of the Constitution

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[200] Robert M. Sanders, Jr., *Unprogrammed Appropriations, the Budget Ceiling, and the Accountability Constitution*, 98 PHIL. L.J. 1, 29 (2024).

[201] *Id.* at 70.

[202] Diane A. Desierto, *Our 1987 'Accountability' Constitution*, GMA NEWS ONLINE, Jun. 1, 2012, *at* https://www.gmanetwork.com/news/opinion/content/260253/our-1987-accountability-constitution/story/.

[203] Sanders, *supra* note 200, at 15–21.

[204] *Id.* at 21–28.

[205] CONST. art. XI, § 1.

can be read, or how a constitutional question can be resolved, to further a government that is answerable to the people. The first aspect blends the ethos of accountability with traditional modes of legal interpretation and utilizes accountability as a canon of construction. The second is most useful when the modes of legal interpretation have run out and is truly using accountability as ethos.

The utility of accountability as ethos and canon can be seen when answering the five emerging questions. Given the conflicting plausible interpretations using conventional modes, how can each question be resolved to further accountability? As I note here, the reasoning of the panelists uses accountability as ethos and canon, even when they do not explicitly label it.

The central premise is that impeachment is a form of political accountability that exists outside of an electoral context. It is a device for which the highest officials of the land are held to account, by the people's directly elected representatives, for allegations of culpable violation of the Constitution, treason, graft and corruption, bribery, and high crimes—not as criminal acts per se or for the purpose of exacting civil and criminal liability, but for answering the core question of whether they have betrayed the public trust and should thus still be entrusted with it. As Professor Te notes, it is also a truth-telling proceeding, where allegations of serious misdeeds are threshed out before the public.[206] Notably, historical public participation and high interest in impeachment is reflected in the extent of the past media coverage of the Estrada[207] and Corona impeachment trials.[208]

Hence, as to whether the Senate can conduct the impeachment trial when it is in legislative recess, accountability suggests that it should be able to do so. The function of the Senate in trying cases of impeachment is beyond the legislative and non-legislative dichotomy, but is pursuant to a special oath mandated by the Accountability of Public Officers provision of the Constitution in Article XI, Section 3(6)—historically, one that has

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[206] *See* views of Prof. Te, *supra* Part IV.

[207] Sheila S. Coronel, *New Media Played a Role in the People's Uprising*, NIEMAN REPORTS, Jun. 15, 2002, *at* https://niemanreports.org/new-media-played-a-role-in-the-peoples-uprising/.

[208] Junesse d.R. Crisostomo, *In Court, On Air, On Trial: The Impeachment of Supreme Court Chief Justice Renato Corona as Social Drama*, 15(2) HUM. DILIMAN 1, 19 (2018) ("Corona's impeachment trial lasted from December 2011 to May 2012. It was held at the Philippine Senate and was televised by almost all television networks in the Philippines.")

included political neutrality.[209] It is thus not tied to when the Senate can exercise plenary legislative power, i.e., when it is sitting in session. A contrary reading, i.e., that the Senate may not hold trial when in recess, threatens accountability and subjects its urgency to the arbitrariness of interim legislative adjournments and resumptions, for which the Constitution leaves full (unaccountable) discretion to the Senate and the House. In that light, accountability also means reading urgency into the trial because of the power of those high public officers to suppress and destroy evidence against them.

As to whether the Senate of the 20th Congress can continue where the 19th Congress has left off, accountability also suggests that it can. The election and sitting of a new Senate, untethered by the previous, cannot frustrate impeachment as an accountability mechanism. Finding that impeachment must cease when the Congress that initiated it (or initially tried it) also ceases is more consistent with parliamentary sovereignty[210] and less with impeachment as a mechanism of political accountability. In any event, the people's political preferences as expressed in the intervening election would be reflected in the new House (which will manage the prosecution) and the Senate (which will manage the trial), ensuring political and democratic legitimacy without abandoning the accountability mechanism.

On whether the Vice-President's resignation will preempt further trial, accountability is also better served by the view that the Senate must be allowed to rule on her disqualification. There is of course the argument that political accountability is better upheld by leaving this question to future electorates. But precluding the truth-telling aspect of impeachment by a strategic resignation does not align with its accountability function. In any event, and as with the second question, the composition of the new Senate vis-à-vis the high threshold for conviction (i.e., two-thirds of all its members) lowers the likelihood that disqualification will be abused to take out an innocent but politically popular impeachable officer.

On the question of an evidentiary standard, impeachment as political accountability compels the Senate to stay clear from articulating a standard of proof or promulgating or adopting specific evidentiary rules that are more appropriate for legal accountability (i.e., the accountability of political actors before the courts) or criminal liability. As Professor Te emphasizes, impeachment as a truth-telling procedure[211] may be frustrated by the legal

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[209] Senate Impeachment Rules, § 86.

[210] *See* text accompanying *supra* note 48.

[211] *See* views of Prof. Te, *supra* Part IV.

objections that lawyers can raise in the presentation of evidence. The demand for accountability transcends these typical objections, as seen in the Estrada impeachment trial, where the Senate's refusal to open the "second envelope" was the catalyst for the mass protests that ultimately drove him out of Malacañang.[212] To the legal observer, the defense's objection that the second envelope (supposedly containing bank records that were damaging to President Estrada) was neither relevant nor material is perfectly sound and grounded on law.[213] To the average citizen however, it was suppression of the truth and accountability by legal technicalities.[214]

Finally, on judicial intervention, reading accountability into the Court's expanded judicial review in Article VIII, Section 1 of the Constitution leads to the conclusion that it must stay clear of the process for as long as possible, especially when the Senate has yet to act. Impeachment as accountability has been entrusted by the people to their elected representatives, not to the courts. And while other forms of accountability do exist that are more appropriate for judicial bodies (e.g., legal accountability), political accountability via impeachment is not one of them, especially due to a latent conflict-of-interest. The Court itself, given its unelected nature, is only politically accountable through impeachment. Accountability thus requires that it use its judicial power sparingly, as its decision will also affect the only mechanism that can keep them in check.

D. Conclusion

Using accountability as ethos (and even as canon) may make Philippine judges uncomfortable because of how different it is from the conventional forms of legal argument. Strict constructionist interpretations based on text, either in its original or contemporary ordinary meaning, and even structure (e.g., based on the separation of powers implied by the division of departments in the Constitution) have a clear codified reference and are well suited to the civil law-trained legal class, despite our deep disagreements about what the reference actually means. Judicial rulings based on precedent, whether by the courts or that of the other branches, are baked into our common-law style adjudication that gravitates towards

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[212] *See* discussion in *supra* note 94.

[213] *Compare* RULES OF COURT, Rule 133, § 3 ("Evidence is admissible when it is relevant to the issue and not excluded by the Constitution, the law or these Rules.") *See* Javellana & Marfil, *supra* note 94, at A1, A16 (Estrada's allies "agreed with the contention of the President's defense lawyers that the evidence in the envelope was immaterial and irrelevant to the Articles of Impeachment").

[214] *Suppression Sparks Outrage*, PHIL. DAILY INQUIRER, Jan. 17, 2001, at A1.

consistency as a guarantor of neutrality. Pragmatic approaches, even if doubted as "judicial legislation," are at least easily recognized.

But constitutional interpretations according to *ethos*—the character of Philippine polity and society—are not only vague but also seem to give too much discretion to the interpreter. And yet as the emerging questions show, indeterminacy is a feature of all of these modalities of interpretation. The discomfort with an ethical reading may thus come from a broader dissonance in the idea of law being certain when, reduced to the written word, uncertainty is often and in the most critical contexts part of the law's very nature. An ethos of accountability does not make constitutional interpretation more uncertain than it is. On the contrary, it constrains the interpreter to move towards a politically uncontroversial goal of making officials more answerable to the people.

Moreover, as I hope to have shown, the Court has already employed ethical arguments in the past. The Senate has as well, especially in the context of impeachment. During the Corona trial, in voting on the charge of "betrayal of public trust"—one without any authoritative definition[215]—the Senators referred repeatedly to "public accountability"[216] not because it is textually engrafted in Article XI of the Constitution, but because of the larger idea that the people deserve the best from their highest officials.[217] The latter are thus held to the highest standard, including "moral integrity and strength of character"[218] even in a routine filing like a SALN.

To conclude, this feature should not be read as privileging ethos, particularly accountability, over every other way of reading the Constitution. A central point that Bobbitt makes is that

> [T]he choice of a particular mode of approach and argument is not the product of an "objective" fact. There is not only nothing in the Constitution which dictates, for example, the use of historical argument, but even if there were, our application of such a provision would be made in light of how we apply textual provisions generally. […] I derive from [the debates of the U.S.

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[215] *Francisco*, 415 SCRA at 152 ("In fact, an examination of the records of the 1986 Constitutional Commission shows that the framers could find no better way to approximate the boundaries of betrayal of public trust and other high crimes than by alluding to both positive and negative examples of both, without arriving at their clear[-]cut definition or even a standard therefor.")

[216] Celeridad, *supra* note 103, at 1022–23 (*citing* Senators Drilon and Legarda).

[217] *Id.* at 1023 (*citing* Senator Trillanes).

[218] *Id.*

> Constitution's framers] the principle of constitutional construction that none of these modes can be shown to be necessarily illegitimate.[219]

In fact, the strength of accountability as ethos and canon is greatest when it is consistent with the conventional modes of legal interpretation.[220] The above application of accountability to each of the emerging questions is consistent with at least one other conventional mode, as shown in the exchanges of the panelists. Whenever those modes produce conflicting results, accountability as ethos can serve as the arbiter. Especially in the context of impeachment, the interpretation that best results in preserving its truth-telling function is most consistent with the traditions of the sovereign Filipino people.

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[219] CONSTITUTIONAL FATE, *supra* note 173, at 138–39.

[220] *See id.* at 8 ("My typology of constitutional arguments is not a complete list, nor a list of wholly discrete items, nor the only plausible division of constitutional arguments. The various arguments illustrated often work in combination.")