

# Intricacies of the Impeachment Process

JANICE G. AYSON\*

Developments in our recent history, particularly the impeachment of the former President Joseph Estrada in November of 2000 and more recently the failed twin attempts to impeach Chief Justice Hilario Davide, Jr. on June 2, 2003 and October 23, 2003, have awakened our political consciousness as a nation.

In the impeachment trial against former President, the people went to the streets to air their grievances, dismay and disillusionment over the refusal of the majority of the then Senator-Judges to open the second envelope which allegedly contained evidence linking the former President to the fictitious Jose Velarde bank account. This eventually led to the so-called EDSA People Power II which deposed the former President, halting the impeachment process. These events awakened the slumbering "political activism" in the hearts of each and every one of us ... and from then on, we have identified ourselves either as "Pro-Erap" or "Anti-Erap."

In the Senatorial elections that followed shortly after the said impeachment trial, our candidates divided themselves into two major political coalitions. Once again, the country was made to choose between candidates who were sympathetic to the plight of the former President and those who were aching to see him jailed - we were made to choose between candidates who were "Pro-Erap" and those who were "Anti-Erap."

Two years had passed and the same political atmosphere looms over our heads - an atmosphere of political divisiveness that has

\* '04 LL.B., Candidate, Executive Editor, *USF Law Review*. BS HRM, UST, 1999.

frustrated our hopes of recovery as a nation.

On June 2, 2003, it was former President Joseph Estrada's turn to hurl the stone, so to speak, against Chief Justice Hilario Davide, Jr. and seven other Associate Justices of the Supreme Court, by filing an impeachment complaint against them for culpable violation of the Constitution, betrayal of public trust and other high crimes. Then on October 23, 2003, another impeachment complaint (second impeachment complaint) was filed by Representatives Gilberto Teodoro, Jr. and Felix William Fuentebella founded on the alleged results of the legislative inquiry initiated by a House Resolution.<sup>1</sup> This second impeachment complaint was accompanied by a "Resolution of Endorsement/Impeachment" signed by at least one-third (1/3) of all the members of the House of Representatives. Thereafter, several petitions against the House of Representative were filed with the Supreme Court challenging the unconstitutionality of the second impeachment complaint. The petitioners invoked Section 5 of Article XI of the Constitution which states that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year." The respondents, on the other hand, contended that the Supreme Court was without jurisdiction over the controversy. This again stirred the consciousness of our people. Once more, we were made to identify ourselves either as "Pro-Davide" or "Anti-Davide."

As we look closely into our past, we will discover that the impeachment trial against former President Joseph Estrada divided the country into "Pro-Erap" and "Anti-Erap." On the other hand, the 'attempts to impeach Chief Justice Hilario Davide, Jr. divided us into "Pro-Davide" and "Anti-Davide."

Truly, impeachment has become a new way to divide a nation. It thus becomes imperative for all of us to make a closer study of what impeachment is so that we may better understand this Constitutional creation that beleaguered our nation and divided our people.

<sup>1</sup> House Resolution No. 260.

## IMPEACHMENT, ITS DEFINITION AND NATURE

As understood the world over, impeachment refers to the process by which a legislative body formally levels charges against a high official of the government. Impeachment does not necessarily mean removal from office. It is only a formal statement of charges which is akin to an indictment in criminal law. It is, therefore, only the first step towards removal from office.<sup>2</sup> The word "impeach" is derived from the Middle English term "empechen" which means "to impede" or "to accuse." It also comes from the Latin word "impedicare" which means "to entangle" or "to put in fetters." From these, it can, therefore, be inferred that the "person impeached is not necessarily adjudged guilty as impeachment only means that he has been formally charged of an impeachable offense.

"<sup>3</sup>

Once a public official is impeached, he or she must then face the possibility of conviction by means of a legislative vote. In case of conviction, he or she is then removed from office.

Because impeachment of officials and their eventual removal from office involve an overturning of normal constitutional procedures by which an individual may achieve high office, like election or appointment, and because it generally requires a supermajority (2/3 vote in order to sustain a conviction), it is usually only reserved for those who are deemed to have committed serious abuses of their office. In the United States, for example, impeachment at the Federal level is reserved for those who may have committed "high crimes and misdemeanors."<sup>4</sup>

The offenses that are grounds for impeachment are, in nature, political offenses as differentiated from criminal offenses. The subject of impeachment are "those which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety

<sup>2</sup> "Impeachment." <http://en.wikipedia.org/wiki/Impeachment>.

<sup>3</sup> Carmelo V. Sison and Florin T. Hilbay, *Impeachment Q & A* (Quezon City, Philippines: University of the Philippines Law Complex, 2000), 1.

<sup>4</sup> "Impeachment." <http://en.wikipedia.org/wiki/Impeachment>.

be denominated *political*, as they relate chiefly to injuries done immediately to the society itself.<sup>115</sup>

However, impeachment is not available against every official in the government. Impeachment is available only against officials who are accorded great responsibilities by virtue of their office. In the Philippines, for example, impeachment is available only against the President, Vice-President, Justices of the Supreme Court, Members of the Constitutional Commissions and the Ombudsman.<sup>6</sup> Other public officers may be removed from office through other means: recall, in case of elective local officials; expulsion, in case of members of Congress; and criminal or administrative disciplinary proceedings, in case of public officers in general.<sup>7</sup>

The occasion of impeachment is left to the discretion of Congress. But the removal of an impeachable officer is, in its nature, an extraordinary measure which must be invoked only in the last extremity. If, for example, mere difference with the majority in Congress would justify the impeachment of the President, then impeachment becomes an ordinary party measure. Then, the independence of the Executive Branch of the Government as contemplated by the Constitution will be destroyed, the Legislature will become supreme over the other two branches and the balance of the whole system will come to an end.<sup>8</sup>

The power to impeach is a Constitutional grant to Congress and it represents the most powerful check and balance granted to the Legislative Branch.<sup>9</sup> As such, impeachment is regarded as a political

<sup>5</sup> Antonio R. Tupaz and A. Edsel C.F. Tupaz, *Fundamentals on Impeachment* (Metro Manila, Philippines: Central Lawbook Publishing Co., Inc., 2001), quoting Alexander Hamilton (emphasis in the original), 6.

<sup>6</sup> Article XI, Section 2, 1987 Constitution.

<sup>7</sup> Carmelo V. Sison and Florin T. Hilbay, *Impeachment Q & A* (Quezon City, Philippines: University of the Philippines Law Complex, 2000), 1.

<sup>8</sup> "The Impeachment of Andrew Johnson." <http://www.impeach-andrewjohnson.com/07MilitaryReconstruction/iv-2.htm>.

<sup>9</sup> "LII Backgrounder on Impeachment." <http://www.law.comell.edu/background/impeach/impeach.htm>.

weapon against executive tyranny.<sup>10</sup>

The power to impeach is lodged in the Legislature. The reason behind this is that it is the immediate representative of the public will, the members thereof having been elected by the people as their representatives. The authority confided to it of impeaching the President and other impeachable officers gives Congress, under certain stringent conditions, the supreme power. But this power is not to be exercised whimsically. It is limited not only by express constitutional provisions but by moral considerations which can not be safely disregarded.<sup>11</sup>

Impeachment proceedings are neither criminal nor civil in nature. They are *sui generis*, meaning "of a class of its own" but with a political flavor. For this reason, neither the Rules on Civil Procedure nor the Rules on Criminal Procedure find absolute application in these sorts of proceedings even though certain rights, like those to due process and against self-incrimination, are guaranteed. Consequently, Congress is constitutionally mandated to promulgate its rules on impeachment in order to effectively carry out the Constitutional provisions on the matter.

<sup>12</sup>

#### BRIEF HISTORY; ENGLAND AND UNITED STATES

"[T]he modern concept of impeachment is part of the British legacy to the world, especially to the United States. It was originally conceived as a checking mechanism on executive excesses. ' It was then the only way to hold royal officials accountable. The records reveal that the first English impeachments took place in the reign of Edward III (1327-1377). It was during his kingship that the two houses of Lords and Commons acquired some legislative powers. But it was

<sup>10</sup> Antonio R. Tupaz and A. Edsel Cop. Tupaz, *Fundamentals on Impeachment* (Metro Manila, Philippines: Central Lawbook Publishing Co., Inc., 2001), quoting Alexander Hamilton (emphasis in the original), 4.

<sup>11</sup> "The Impeachment of Andrew Johnson." <http://www.impeach-andrewjohnson.com/07MilitaryReconstruction/iv-2.htm>.

<sup>12</sup> Article XI, Section 3 (8), 1987 Constitution."

during the reign of Henry IV (1399-1413) that the procedure was firmly established whereby the House/of Commons initiated impeachment proceedings while the House of Lords tried the impeachment cases. Impeachment in England covered not only public officials but private individuals as well. There was hardly any limitation in the imposable punishment.

Impeachment in England skyrocketed during the periods of institutional strifes and was most intense prior to the Protestant Revolution. Its use declined when political reforms were instituted. Legal scholars are united in the view that English impeachment partakes of a political proceeding and impeachable offenses are political crimes." 13

"The history' of impeachment in colonial America is scant and hardly instructive. x x x In each state, the Constitution provided for a Chief Executive, a legislature and a judiciary. Almost all of the Constitutions provided for impeachment. xxx In most states, the lower house of the legislature was empowered to initiate the impeachment proceedings. In some states, the trial of impeachment cases was given to the upper house of the legislature: in others, it was entrusted to a combination of these fora. xxx Then came th~ Philadelphia Constitutional Convention of 1787. In crafting the provisions on impeachment, the delegates were again guided by their colonial heritage, the early state constitutions, and common law traditions, especially the British legacy. "14

In the said convention, James Madison insisted that the Supreme Court, and not the Senate, should be the impeachment court. However, his proposal was decisively rejected. Thus, "[i]t is beyond doubt that the metamorphosis which the British concept of impeachment underwent in the Philadelphia Constitutional Convention of 1789 did not change its political nature." 15

13 Concurring and Dissenting Opininion of Associate Justice Reynato Puno in the case of *Francisco, Jr, vs, House of Representatives*, November 10, 2003, (citations omitted),

14 *Ibid*" (citations omitted),

15 *Ibid*" (citations omitted),

"In fine, impeachment is dominantly political in character both in England and in the United States."<sup>16</sup>

#### DEVELOPMENT IN THE PHILIPPINES

Even before the American flag was flown over the Philippines, leaders in the country were already devoting much serious study and discussion of the form which an independent Philippine Republic should take. Thus, the formulation of the Biak-na-bato Constitution. The process of removal of officials under the Biak-na-Bato Constitution was hardly akin to impeachment as provided for under the present Constitution. It was silent regarding the formulation of charges against the accused, the trial and the effects of conviction. Neither did it define the offenses for which an official may be removed. It goes no farther than stating that removal may be for "justifiable, legitimate and sufficient" cause. Under the circumstances prevailing at that time, however, it may be assumed that any conduct which is prejudicial to the success of the revolution would constitute a ground for removal of the President or any member of his revolutionary cabinet.<sup>17</sup>

At the time when Filipino revolutionary leaders were exiled in Hongkong, General Aguinaldo commissioned Mariano Ponce to draft a provisional Constitution for the Republic. "Article 7 of Ponce's draft provides for impeachment by any citizen in charges filed before the Legislature against the Executive President, the Military Commander and legislators. The courts hold the power to try impeachments. Ponce did not mention the grounds for impeachment, probably having left it to the law-makers to define."<sup>18</sup>

On June 6, 1898 Apolinario Mabini submitted a lengthy draft of a projected constitution for the Republic to the revolutionary government in Cavite. Mabini favored the enjoyment of unimpeachability by the President but provided for his trial by the Supreme Court to be held after his term of office had expired. xxx

<sup>16</sup> *Ibid.*

<sup>17</sup> Enrique C. Galang, "A Critical Study of Impeachment in the Philippines," (diss., liST, 1965), 54-57.

<sup>18</sup> *Ibid.*, 57-58.

That was the gentle Mabini's idealism expressing itself in a vision of an almost angelic leader of the Filipino people who therefore must be beyond the reach of degrading accusations of official unworthiness. x x x In accordance with Mabini's scheme, only the President [is] held to account for his conduct after he had completed his term of office. The department secretaries, representatives, senators, justices, superior prosecutors and provincial chief executives can be held to account for their conduct during their incumbency in what may be called impeachment proceedings. xxx Here, the congress, as it were, has the power of impeachment while the highest tribunal of the land, sitting in division, has the power to try impeachments. x x x A significant feature of Mabinifs scheme of impeachment is that he recognized the power to try impeachment to be judicial in nature. Even in the case of post-tenure trial of the President, it is the Supreme Court sitting en banc which tries the case." 19

The Malolos Constitution provided for the continuity of the work of the Assembly or legislative body with the mandatory creation of a Permanent Commission of seven (7) legislators to function during the interval between one session of the Assembly and another. Here, "[t]he power of impeachment [was] reposed on the Assembly, or in case it was not in session, on the Permanent Commission, and furthermore, on the President upon recommendation of the Government Councilor the Solicitor General. The power to try impeachment rested on the Assembly constituted as a special Tribunal of Justice. The procedure of prosecution and trial was left for special laws to determine." 20 The only impeachable officers were the President, members of the Government Councilor cabinet, the Chief Justice and the Solicitor General. The offenses for which they may be impeached are crimes against the security of the state except for the President who may be accused and tried only for high treason. Under the Malolos Constitution, the Assembly may find itself playing the roles of prosecutor and judge at the same time.

<sup>19</sup> *Ibid.*, 58-61.

<sup>20</sup> *Ibid.*, 61-64.

"The original 1935 Constitution contemplated a unicameral legislature called National Assembly but, nevertheless, employed a two-tiered impeachment process. The " sole power of 'impeachment' was reposed on the Commission on Impeachment of the National Assembly, composed of twenty-one members of the Assembly, and the 'sole power to try all impeachments,' on the National Assembly as a body, less those who belong to the Commission on Impeachment. "21

"The 1935 Constitution was amended in 1940. The 1940 amendment transferred the legislature from a unicameral to a bicameral body composed of a Senate and a House of Representatives. Like the U.S. Constitution, the 1935 Constitution, as amended, lodged the "power of impeachment" in the House of Representatives. This was a simple but a complete grant of power. Just as simple and complete was the power to "try and decide" which rested in the Senate. "22

"Under the 1973 Constitution, the country reverted to a unicameral legislature; hence, the need to spell out the specific phases of impeachment, I.e., "to initiate, try and decide," all of which were vested in the Batasang Pambansa. "23

#### OUR PRESENT LAW ON IMPEACHMENT (THE 1987 CONSTITUTION OF THE PHILIPPINES)

At present, the source of Philippine law on impeachment is Article XI of the 1987 Constitution titled "Accountability' of Public Officers," particularly sections two and three thereof.<sup>24</sup>

<sup>21</sup> Separate Opinion of Associate Justice Tinga in the case of *Francisco, jr. vs. House of Representatives*, November 10, 2003, (citations omitted).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Article XI, Section 2, 1987 Constitution provides that "[t]he President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment." On the other hand, Section 3 of the same article contains the following provisions:

Notwithstanding the fact that the power of impeachment is vested in the legislative branch of government, the Constitutional provisions on impeachment were not incorporated under Article VI of the present Constitution. Instead, they were integrated with the provisions on "Accountability of Public Officers." The reason behind this is easy to find. "As a process, impeachment is a formal inquiry aimed ultimately at making public officers accountable to the people based on the principle that public office is a public trust."<sup>25</sup>

Under the present Constitution, the only impeachable officials are the following: (1) the President; (2) the Vice President; (3) the Justices of the 'Supreme Court; (4) the Members of the Constitutional Commissions; and (5) the Ombudsman.<sup>26</sup> All other public officers

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

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

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

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

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

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

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

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

<sup>25</sup> Carmelo V. Sison and Florin T. Hilbay, *Impeachment Q & A* (Quezon City, Philippines: University of the Philippines Law Complex, 2000), 1.

<sup>26</sup> Article XI, Section 2, 1987 Constitution.

and employees may be removed from office as provided by law but not by impeachment.

Under the same Constitution, the grounds for impeachment are limited to the following offenses: (1) culpable violation of the Constitution; (2) treason; (3) bribery; (4) graft and corruption; (5) other high crimes; and (6) betrayal of public trust.<sup>27</sup>

Culpable violation of the Constitution means a deliberate and willful violation of the Constitution. Acts that arise from honest mistakes and unintentional acts are not considered culpable violations of the Constitution.

Treason should be understood in accordance with the definition provided by the Revised Penal Code. Treason is committed only in times of war by levying war against the Philippines or adhering to the enemy, giving them aid and comfort.

Bribery should likewise be understood in light of the definition given it by the Revised Penal Code. According to the said Code, bribery is committed by a public officer who should commit any of the following acts: (1) receiving a gift in connection with the performance of his official duties in order to perform an act whether constituting a crime or not; (2) accepting gifts offered to him by reason of his office; or (3) being a public officer entrusted with law enforcement, refraining from arresting or prosecuting an offender who has committed a crime punishable by life imprisonment or death, in consideration of a gift or present.

"Graft and corruption refers to those acts mentioned in the Anti-Graft and Corrupt Practices Act which includes receiving any gift in connection with any transaction wherein the public officer in his official capacity has to intervene under the law, or giving any private party any unwarranted benefits through manifest partiality, evident bad faith or gross inexcusable negligence."<sup>28</sup>

<sup>27</sup> *Ibid.*

<sup>28</sup> Antonio R. Tupaz and A. Edsel C.F. Tupaz, *Fundamentals on Impeachment* (Metro Manila, Philippines: Central Lawbook Publishing Co., Inc., 2001),13.

The terms "other high crimes" and "betrayal of public trust" are "legal catch basins which neither statute nor jurisprudence has definitely defined or even at least traversed."<sup>29</sup>

"The impeachment process consists of two steps. The first is the accusatory process or impeachment proper exclusively exercised by the House of Representatives. The second is the impeachment trial exercised by the Senate sitting as a court or tribunal."<sup>30</sup> The moment that the accusatory process has been completed, the official concerned is, technically speaking, already impeached. This is what happened in the case of the former President Joseph Estrada.

Impeachment proceedings are initiated by means of a verified complaint for impeachment which may be filed either by any member of the House of Representatives or by any citizen upon a resolution of endorsement of any member of the House of Representatives. Under the Rules of Procedure in Impeachment Proceedings promulgated by the House of Representatives, the verified complaint shall be filed before the Office of the Secretary General who must immediately refer the same to the Speaker. Upon receipt thereof, the Speaker shall have the same included in the order of business within 10 session days. It shall then be referred to the House Committee on Justice. The said Committee shall immediately determine whether the complaint is sufficient in form and substance. If the Committee finds the complaint to be sufficient in form, it shall then proceed to determine whether it is sufficient in substance. Should it find the same to be not sufficient in substance, it shall dismiss the complaint. Otherwise, it shall immediately furnish the respondent with a copy of the resolution and/ or verified complaint, as the case may be. After the receipt of the pleadings and other relevant documents, the Committee shall then determine whether the complaint alleges sufficient grounds for impeachment. If it finds that sufficient grounds for impeachment do not exist, it shall dismiss the complaint. On the other hand, should it find that there are sufficient grounds for impeachment, it will conduct a hearing. If, after hearing, the Committee should determine, via a

<sup>29</sup> *Ibid.*, 14.

<sup>30</sup> *Ibid.*

majority vote of all its members, that probable cause exists, it shall submit with its report to the House a resolution setting forth the Articles of Impeachment on the basis of the evidence adduced before the Committee. If the resolution is approved by a vote of at least one-third of all Members of the House, the official concerned shall be deemed impeached and the resolution shall then be indorsed to the Senate for trial. If the one-third vote is not obtained, the complaint is deemed dismissed. Even if the report of the Committee on Justice dismisses the complaint, such resolution for dismissal may be overridden by the House via a vote of at least one-third of all its Members, in which case, the House shall direct the Committee to forthwith prepare the Articles of Impeachment. Also, if the verified complaint for impeachment is filed by at least one-third of all Members of the House, the same shall constitute the Articles of Impeachment and it shall then be indorsed to the Senate.<sup>31</sup>By indorsing the Articles of Impeachment to the Senate, the House of Representatives has exercised its" exclusive power to initiate all cases of impeachment." <sup>32</sup>

The Senate shall have the sole power to try and decide all cases of impeachment. <sup>33</sup> If it is the President who is on trial, the Chief Justice of the Supreme Court shall preside but shall not vote although he has the power to rule on questions relating to evidence presented including, but not limited to, materiality, relevancy, competency or admissibility. When impeachable officials other than the President are tried, it is the Senate President who presides over the trial. <sup>34</sup> In either, case, the Senators shall act as Judges, hence the term "Senator-Judges." The concurrence of two-thirds of all Members of the Senate is required in order to sustain a conviction. <sup>35</sup> As to how the two-thirds is computed, there are two views. "The first is that two-thirds shall be ascertained on the basis of the actual number of senators in the Senate. The second is that the basis should be the number of seats allotted for senators

<sup>31</sup> Rules of Procedure in Impeachment Proceedings promulgated by the House of Representatives.

<sup>32</sup> Article XI, Section 3(2), 1987 Constitution. <sup>33</sup>

Article XI, Section 3 (6), 1987 Constitution. <sup>34</sup>

*Ibid.*

<sup>35</sup> *Ibid.*

regardless of whether those seats are occupied. "36 In case of conviction, the official concerned shall be removed from office and disqualified to hold any office under the Republic of the Philippines. Further, the convicted official may later be prosecuted in an ordinary criminal case.<sup>37</sup> An official who resigns after he has been impeached may, nevertheless, be tried by the Senate. "[T]he reason being that the punishment for a convicted impeached official includes disqualification from any public office under the Republic of the Philippines. His resignation has the effect of removal. His disqualification to hold any public office in the future may still be subjected to judgment. "38 Conviction by the Senate is not curable by pardon. The Constitution<sup>39</sup> "specifically states that impeachment conviction may not be subject to pardon. However, conviction of the impeached official in ordinary criminal action may be subject to pardon, reprieve, commutation and remission of fines and forfeiture. "40 The Constitution has provided for a limitation in the power to impeach. Under Article XI, Section 3(5) thereof, "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year."

#### LEGISLATIVE POWER OF IMPEACHMENT AND JUDICIAL POWER OF REVIEW

In the recent pronouncement of the Supreme Court concerning the consolidated petitions for *certiorari* filed against the House of Representatives, among others, it was settled that while the power of impeachment has been lodged by the Constitution on the Legislative Branch of Government, it does not mean that all acts that the Legislature may take in connection with impeachment are beyond judicial scrutiny by virtue of the so-called political question doctrine.

36 Antonio R. Tupaz and A. Edsel C.F. Tupaz, *Fundamentals on Impeachment* (Metro Manila, Philippines: Central Lawbook Publishing Co., Inc., 2001), 28.

37 Article XL Section 3(7), 1987 Constitution.

38 Antonio R. Tupaz and A. Edsel C.F. Tupaz, *Op. cit.*, 18. 39

Article VII, Section 19, 1987 Constitution.

40 Antonio R. Tupaz and A. Edsel C.F. Tupaz, *Op. cit.*, 18.

As ruled by the Supreme Court, the grant of the power to impeach upon the Legislature by the Constitution is not without limitations. For instance, its power to promulgate its rules on impeachment is limited by the phrase "to effectively carry out the purpose of this section." Therefore, the rules promulgated by the Legislature cannot contravene the very purpose of the Constitution which said rules were intended to effectively carry out and when they do, they begin to fall within the ambit of the expanded concept of judicial review as embodied in the 1987 Constitution and hence, the Supreme Court may look into their legality.<sup>41</sup>

"Thus, where the House of Representatives, through its conduct or through the rules it promulgates, transgresses, in any way, the detailed procedure prescribed in the Constitution, the issue is far removed from the sphere of a "political question," which arises with the exercise of a conferred discretion, and transformed into a constitutional issue falling squarely within the jurisdictional ambit of the Supreme Court as being the interpreter of the fundamental law."<sup>42</sup>

In the recent case concerning the validity of the second impeachment complaint against Chief Justice Hilario Davide, Jr., the petitioners therein argued, among others, that since an impeachment complaint has been previously filed against Chief Justice Hilario Davide, Jr. and seven other Associate Justices of the Supreme Court on June 2, 2003, the second impeachment complaint filed against him on October 23, 2003 is no longer allowed by the 1987 Constitution since Article XI, Section 3(5) thereof provides that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year." The respondents, on the other hand, contended that pursuant to the House Impeachment Rules, no impeachment proceedings have yet been initiated prior to the filing

<sup>41</sup> Article VIII, Section 1: "x x x 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.*" (emphasis supplied)

<sup>42</sup> Separate Opinion of Justice Vitug in the case of *Francisco, Jr. vs. House of Representatives*, November 10, 2003.

of the second impeachment complaint. The controversy, therefore, rested on the interpretation of the word "initiated" found in Article XI, Section 3(5) of the 1987 Constitution. The Supreme Court proceeded to deliberate on the issue and held that "from the records of the Constitutional Commission x x x it is without a doubt that *the term 'to initiate' refers to the filing of the impeachment complaint coupled with Congress taking initial action of said complaint.*"<sup>43</sup>

"Having concluded that the initiation takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third of the members of the House of Representatives with the Secretary General of the House, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated, another impeachment complaint may not be filed against the same official within a one year period."<sup>44</sup>

"Under Sections 16 and 17 of Rule V of the House Impeachment Rules, impeachment proceedings are *deemed initiated* (1) if there is a finding by the House Committee on Justice that the verified complaint and/or resolution is sufficient in substance, or (2) once the House itself affirms or overturns the finding of the Committee on Justice that the verified complaint and/or resolution is not sufficient in substance or (3) by the filing or endorsement before the Secretary General of the House of Representatives of a verified complaint or resolution of impeachment by at least 1/3 of the members of the House. These rules clearly contravene Section 3 (5) of Article XI since the rules give the term "initiate" a meaning different from filing and referral."<sup>45</sup>

"In fine, considering that the first impeachment complaint, was filed by former President Estrada against Chief Justice Hilario G. Davide, Jr., along with seven associate justices of this Court, on June 2, 2003 and referred to the House Committee on Justice on August 5,

<sup>43</sup> Main Decision by Justice Carpio Morales in the case of *Francisco, Jr. vs. House of Representatives*, November 10, 2003 (emphasis supplied).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid* (emphasis on the original).

2003, the second impeachment complaint filed by Representatives Gilberto C. Teodoro, Jr. and Felix William Fuentebella against the Chief Justice on October 23, 2003 violates the constitutional prohibition against the initiation of impeachment proceedings against the same impeachable officer within a one-year period. <sup>46</sup>

With these pronouncements, the Supreme Court emphasized that even as impeachment proceedings are within the realm of Congress' power and essentially political in character, the same is not removed from the ambit of judicial power - as when there is a violation of the Constitution.

## CONCLUSION

Impeachment is a tool of democracy. It is by this means that the people, through their representatives, remove from office an official who has betrayed the trust they have conferred upon him. Through this, the people arrest the evolution of a potential tyrant. As revealed by recent political developments, however, the process of impeachment can also be utilized to divide a nation. It can be used to advance selfish desires at the expense of national concerns. It is a blessing that the framers of our Constitution had anticipated the dangers that could arise had the powers of impeachment been unlimited. Had they not foreseen the dangerous tendencies of the people in Congress, we could have been a more divided nation than we are now.

<sup>46</sup> *Ibid.*