

The Davide Impeachment Case: Restating Judicial Supremacy over Constitutional Questions

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I. INTRODUCTION

Never before in the 102-year existence of the Supreme Court has there been an issue as transcendental as the one before us. For the first time, a Chief Justice is subjected to an impeachment proceeding. The controversy caused people, for and against him, to organize and join rallies and demonstrations in various parts of the country. Indeed, the nation is divided which led Justice Jose C. Vitug to declare during the oral arguments in these cases, "God save our country!"¹

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Cite as: 48 ATENEO L.J. 806 (2004).

1. *Francisco v. House of Representatives*, G.R. No. 160261, Nov. 10, 2003 (Sandoval-Gutierrez, J., separate and concurring opinion).

In the face of what was perceived as a looming constitutional crisis at the height of Chief Justice Hilario Davide's impeachment, different parties pursued various options to break the impasse between the Legislature and the Judiciary. Lawmakers and politicians believed that a political solution was the most appropriate.² The Executive and the political parties also stepped into the fray and pursued informal talks in support of a "win-win" solution.³ However, asserting that they possess standing to sue as citizens, taxpayers,⁴ members of the Integrated Bar,⁵ members of the House of Representatives⁶ and that the issues of the case were of transcendental importance,⁷ several parties chose to submit the controversy for judicial determination. Premised upon a belief that an authoritative and substantial decision from the Court would resolve the issues with finality, such judicial option was invoked. This act of seeking a resolution within the legal framework rather than a political compromise affirms the belief in the supremacy of the Constitution and the law over politics and personalities.

II. THE LEGAL PRECEDENTS OF THE CASE

A. *The Myth and Reality of Judicial Supremacy*

The Constitution exclusively vests upon the Supreme Court the power of judicial review as part of its judicial powers.⁸ It is only the Judiciary which has been given the express mandate to declare an act unconstitutional. During his sponsorship speech in the 1986 Constitutional Convention, Commissioner Roberto Concepcion, former Chief Justice of the Supreme Court, elucidated that the Judiciary, as the final arbiter on questions of constitutionality, exercises

2. Carlito Pablo & Gil Cabacungan, *Solution to Crisis at Hand—De Venecia*, THE PHILIPPINE DAILY INQUIRER, Oct. 27, 2003, at 1.

3. Marichu Villanueva, *GMA Sees Win-Win Solution*, THE PHILIPPINE STAR, Nov. 4, 2003, at 1.

4. In G.R. No. 160262, petitioners Sedfrey M. Candelaria, et al., sued as citizens and taxpayers. In G.R. No. 160263, petitioners Arturo M. de Castro and Soledad Cagampang, invoked their capacities as citizens and taxpayers.

5. In G.R. No. 160261, petitioner Atty. Ernesto B. Francisco, Jr., alleged that he has a duty as a member of the Integrated Bar of the Philippines to use all available legal remedies to stop an unconstitutional impeachment. In G.R. No. 160292, petitioners Atty. Harry L. Roque, et al., sued as members of the legal profession.

6. In G.R. No. 160295, petitioners Representatives Salacnib F. Baterina and Deputy Speaker Raul M. Gonzalez, came before the Court as members of the House of Representatives.

7. In G.R. No. 160262, petitioners Candelaria, et al., alleged that the issues of the case are of transcendental importance.

8. PHIL. CONST. art.VIII §§1, 5.

a duty which cannot be evaded through invocation that such matters constitute a political question.⁹

This constitutional mandate traces its development from the leading case of *Angara v. Electoral Commission*¹⁰ where the Court was called upon to assert jurisdiction over the Electoral Commission, a constitutional body. Petitioner asked for the issuance of a writ of prohibition to restrain and prohibit the Commission from taking further cognizance of the protest filed by respondent, against the election of petitioner as member of the National Assembly. The Commission claimed that it acted in the legitimate exercise of its quasi-judicial functions as an instrumentality of the legislature of the Commonwealth Government. Hence, its action is beyond the judicial cognizance or control of the Court.

As regards the issue of jurisdiction, the Court ruled in the petitioner's favor. Even in the absence of a specific provision in the 1935 Constitution exhaustively defining the court's powers, Justice Jose Laurel classified the judicial department as the only constitutional organ mandated to determine the proper allocation of powers between the several departments and among the inferior or constituent units of the government. This allocation of constitutional boundaries was recognized as an exercise of a duty under the Constitution rather than of judicial supremacy over the other branches of the government.¹¹ The principle laid down in *Angara* was reiterated in *Vera v. Avelino*¹² and *Tolentino v. COMELEC*,¹³ also decided under the 1935 Constitution.

9. I RECORD OF THE CONSTITUTIONAL COMMISSION 434-36 (1986)

10. 63 Phil. 139 (1936).

11. *Id.* at 157.

12. 77 Phil. 365 (1946). The Court stated in particular:

The facts and legal issues in *Angara v. Electoral Commission* (63 Phil. 139), are in exact parallel with those in the case at bar. Since the decision in that case has been written, the question as to the Supreme Court's jurisdiction to take cognizance and decide controversies such as the present one and to grant redress for or against parties like those included in this litigation, has been unmistakably and definitely settled in this jurisdiction.

13. 41 SCRA 702 (1971). Specifically citing *Angara*, the Court noted:

It goes without saying that We do this not because the Court is superior to the Convention or that the Convention is subject to the control of the Court, but simply because both the Convention and the Court are subject to the Constitution and the rule of law, and "upon principle, reason and authority," per Justice Laurel, *supra*, it is within the power, as it is the solemn duty of the Court, under the existing Constitution to resolve the issues in which petitioner, respondents and intervenors have joined in this case.

In *Avelino v. Cuenco*,¹⁴ the Court cautiously tackled the scope of its power of judicial review. The Court initially declined to resolve the question of who was the rightful Senate President, since it was deemed a political controversy falling exclusively within the domain of the Senate. Upon a motion for reconsideration, however, the Court ultimately assumed jurisdiction because the resolution of the issue hinged on the interpretation of the constitutional provision on the presence of a quorum to hold a session and elect a Senate President. Justice Jose Feria, concurring with the majority,¹⁵ even asserted that the Court has jurisdiction over cases of such nature so as to "establish judicial supremacy" to deter any government branch or agency from going beyond the mandate of the Constitution, be it justiciable or political.

Albeit in a concurring opinion, an exception to judicial supremacy was discussed in *Guerrero v. Dingalasan*,¹⁶ where the President's exercise of emergency powers under Commonwealth Act No. 671 was questioned. One of the assailed acts of the President was the issuance of Executive Order No. 225 on general appropriation. The majority declared such Order as null and void for having been decreed beyond the period of the validity of the emergency powers under the Constitution.

Concurring in part, Chief Justice Manuel Moran¹⁷ refused to abide by the majority as regards the nullity of the appropriation measure. In his view, the Court could not declare the acts of the President as null and void until Congress has had an opportunity to provide a substitute measure for the sustenance of the government. The basic principles of preservation of government and of national survival, which in the last analysis, are the very reasons for the existence of a Constitution, must prevail. He emphasized the necessity of exercising judicial statesmanship rather than judicial supremacy.

In a resolution¹⁸ for a motion for reconsideration, Chief Justice Moran, now writing for the majority, abandoned his assertion of judicial statesmanship. He found the holding of a special session of Congress for the purpose of remedying the nullity of the executive order in question as remote and uncertain as this would legitimize a prolonged or permanent evasion of the organic law. To assert otherwise would give executive orders repugnant to the Constitution a permanent life, which may undermine the constitutional structure. Impliedly invoking judicial supremacy, he opined that democracy would emerge as victorious if each of the branches of the Government, within

14. 83 Phil. 17 (1949).

15. *Id.* (Feria, J., concurring).

16. 84 Phil. 368 (1949).

17. *Id.* (Moran, C.J., concurring in part).

18. *Guerrero v. Dingalasan*, 84 Phil. 368 (1949).

its own allocated sphere, complies with its own constitutional duty, without compromise and regardless of difficulties. Thus, the appropriation measure was declared unconstitutional.

In this jurisdiction, it is therefore settled that the Court is charged with the duty as the final arbiter on questions of constitutionality. It bears emphasis to note, however, that this same Court is also subject to the Constitution.¹⁹ Thus, in discharging its duty, the Court had several occasions to rule upon cases where it was indirectly interested.

In *Perfecto v. Meer*,²⁰ the Court had to decide on the question brought by Justice Gregorio Perfecto on the constitutionality of the imposition of taxes on the salary of judges. The Court ruled that the undiminishable character of judicial salaries is not a mere privilege of judges — personal and therefore waivable — but a basic limitation upon legislative or executive action imposed based on public interest. Interestingly, the Court recognized the awkward situation it found itself in. In fact, in Justice Ozaeta's dissenting opinion, he opined that it was indeed embarrassing that the case was initiated by a member of the Court upon which devolved the duty to decide it finally. He said:

The question of whether the salaries of the judges, the members of the Commission on Elections, the Auditor General, and the President of the Philippines are immune from taxation, might have been raised by any interested party other than a justice of the Supreme Court with less embarrassment to the latter.²¹

In recognizing that it was indirectly interested in the issue, the Supreme Court admitted that consideration of the matter was not without its vexing feature.²² Despite this, however, the Court felt that it could not decline to adjudicate on the matter, reasoning that jurisdiction may not be renounced for there is no other tribunal to which the controversy may be referred.

This very same issue in *Perfecto* was raised in the case of *Endencia v. David*.²³ In reiterating the Court's ruling in *Perfecto*,²⁴ the Court highlighted the importance of separation of powers and the fact that the interpretation of laws was a judicial function. It thus ruled that the legislature's act of interpreting the Constitution or any part thereof is an invasion of the well-defined and established province and jurisdiction of the Judiciary.

19. PHIL. CONST. art. VIII §§ 1, 5. The Supreme Court is a constitutional creation and its powers are defined also by the Constitution.

20. 85 Phil. 553 (1950).

21. *Id.* at 567.

22. *Id.* at 553.

23. 93 Phil. 696 (1953).

24. 85 Phil. 553 (1950).

The doctrine pronounced in the two foregoing cases was discarded in the case of *Nitafan v. Commissioner of Internal Revenue*.²⁵ However, the reversal did not involve a divestment of the Court's jurisdiction. The Court continued to exercise its duty in interpreting the Constitution even if it meant a diminution of the salaries of the members of the Judiciary. In ruling on the taxability of the salary of judges, the Court stated that the framers of the fundamental law, as the alter ego of the people, have expressed in clear and unmistakable terms the meaning and import of the Constitution. It accorded due respect to the intent of the people, through the discussions and deliberations of their representatives, in the spirit that all citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably. In effect, the decision diminished a portion of the salaries of the Justices.

The case of *Estrada v. Desierto*²⁶ did not squarely fall in the same category as the *Perfecto* string of decisions. The principal issue in *Estrada* was the interpretation of President Joseph Estrada's letter of resignation. However, the Court had to decide on the prayer for inhibition of the members of the Court who were present at EDSA during the oath taking ceremony of Gloria Macapagal-Arroyo. The *Perfecto* strain did not expressly tackle the issue of inhibition in view of the indirect involvement of the Judiciary to the questions before the Court. This specific issue brings forth *Estrada* in the same light as *Perfecto*. In rejecting Petitioner's prayer, the Court reasoned that

[t]o disqualify any of the members of the Court, particularly a majority of them, is nothing short of *pro tanto* depriving the Court itself of its jurisdiction as established by the fundamental law. Disqualification of a judge is a deprivation of his judicial power. And if that judge is the one designated by the Constitution to exercise the jurisdiction of his court, as is the case with the Justices of this Court, the deprivation of his or their judicial power is equivalent to the deprivation of the judicial power of the court itself. It affects the very heart of judicial independence. The proposed mass disqualification, if sanctioned and ordered, would leave the Court no alternative but to abandon a duty which it cannot lawfully discharge if shorn of the participation of its entire membership of Justices.²⁷

B. The Political Question Doctrine and the Exercise of Judicial Restraint

Prescinding in reality from *Angara*, *Estrada* affirms the constitutional duty of the Court to settle justiciable questions. Further, the Court is simply not prepared to shirk this duty where it would cause an abdication of the constitutionally-mandated judicial power. The power of judicial review is,

25. 152 SCRA 284 (1987).

26. 356 SCRA 108 (2001).

27. *Id.* at 155-56.

however, not absolute. Even amidst assertions that the Court should not decline from exercising this constitutional duty by invoking the political question doctrine, this doctrine remains *apropos* to the resolution of any dispute. It would not be amiss to point out that during the 1986 Constitutional Convention, Commissioner Fr. Joaquin Bernas, S.J. clarified whether the proposal on the inclusion of a provision on judicial power abandons such doctrine. Commissioner Concepcion replied in the negative.²⁸

Political questions are widely accepted to concern matters to which branches of the government other than the courts, or the electorate as a whole, must have the final say.²⁹ As opposed to a definitive statement in American jurisprudence in *Baker v. Carr*,³⁰ the continuous vacillation of Philippine jurisprudence contributes to the unstable nature of the political question doctrine in this jurisdiction.

The definite statement of the political question doctrine contains at least three diverse theories of the Court's role in relation to the Legislature and Executive.³¹ The classical view, a rigid interpretation of the Court's ruling in *Marbury v. Madison*,³² imposes upon the Court the duty to decide all cases brought before it unless there is a clear constitutional justification committing the determination of the issue to the discretion of another branch or instrumentality of the government. A prudential view considers the doctrine as a means of avoiding the determination of the case on its merits when doing so would force the Court to undermine a fundamental principle or its authority. As distinguished from the classical and prudential view, a functional approach to the Court's role would have it consider certain factors such as difficulties in gaining judicial access to information, uniformity of decisions, and the responsibilities of the other branches of government.³³

The conventional view of the doctrine revolves around the assumption that certain areas of government action are constitutional but nonetheless non-justiciable. Does this mean that there are some parts of the Constitution to which the Judiciary is impotent?³⁴ *Marbury* clearly established that the

28. I RECORD, *supra* note 6, at 439-443.

29. LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 97 (1988).

30. 369 U.S. 186 (1962).

31. TRIBE, *supra* note 29, at 96.

32. 5 U.S. 137 (1803).

33. Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959); Tribe, *supra* note 29, at 96 (citing Scharpf, *Judicial Review and the Political Question: A Functional Analysis*, 75 YALE L.J. 517 (1966)).

34. TRIBE, *supra* note, at 97; See Louis Henkin, *Is there a 'Political Question' Doctrine?*, 85 YALE L.J. 597 (1976).

Constitution is judicially declarable law³⁵ and thus within the purview of judicial review. In affirming the political question doctrine, it is not necessary to suggest that the Courts must refrain from acting upon certain constitutional issues – the Court does not surrender its power of judicial review. While granting that the Constitution invests the Legislature or the Executive with the authority to act, in applying the political question doctrine, the Court nevertheless holds that such act “is not susceptible of an interpretation which would yield judicially enforceable rights, rights whose enforcement would either constrain... action or alternatively provide the basis for the exercise of judicial power parallel to the action of the political branches.”³⁶ Yet, as the primarily focus of the doctrine is the limitation of judicial power, it remains part of the justiciable doctrine in its entirety.³⁷

In theory, it is relatively easy to define a political question. In *Baker v. Carr*, the American Supreme Court attempted to formulate standards for determining whether a question is a political question:

Prominent on the surface of any case held to involve a political question is found either: (a) a textually demonstrable constitutional commitment to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; (4) the impossibility of the court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; (5) an unusual need for questioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.³⁸

The Philippine Supreme Court in the case of *Tañada v. Cuenca*,³⁹ defined a political question to be “those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.”⁴⁰

Mindful of the separation of powers between the branches of the government, the Court remains wary of unnecessary incursion to the exclusive domain of the Legislature and Executive. One area of political question the Court refuses to involve itself with is the disciplinary power of the Legislature

35. *Marbury v. Madison*, 5 U.S. at 137.

36. TRIBE, *supra* note 29, at 97.

37. *Id.* at 98.

38. *Id.* at 217.

39. 103 Phil. 1051 (1957).

40. *Id.* at 1067.

over its members.⁴¹ In the case of *Osmeña v. Pendatun*,⁴² the Court refused to interpret the meaning of "disorderly behavior" stating that in as much as the Constitution did not define such ground, the matter belongs to the exclusive discretion of the Legislature. In *Alejandro v. Quezon*,⁴³ while the Court found the suspension unconstitutional, it refused to intervene with the suspension of a senator.⁴⁴ Suspension of a senator involves the performance of non-ministerial acts and does not concern the exercise of the power of judicial review.

In cases where the Legislature was alleged to have violated congressional rules not specifically provided by the Constitution, the Court refused to exercise jurisdiction as the matter of formulating and implementing rules have been textually conferred by the Constitution upon Congress. Provided that no constitutional provision is violated or private right prejudiced, the Court would not intervene.⁴⁵ In the same manner, the Court refused to intervene in a dispute involving the selection of the Senate Minority Leader.⁴⁶

Despite this application of the political question doctrine on the acts of the legislative and the executive branches, the Court, in several instances, refused to divest itself of jurisdiction where the issues presented involved interpretations of constitutional provisions. Thus, the Court has delineated the powers of the Congress' electoral tribunals⁴⁷ and the President's executive powers.⁴⁸

III. FRANCISCO V. HOUSE OF REPRESENTATIVES: THE FACTS OF THE CASE

On 2 June 2003, deposed President Joseph Estrada filed with the House of Representatives an impeachment complaint against eight Justices of the Supreme Court, including Chief Justice Hilario Davide, alleging *inter alia* that they conspired to deprive him of his mandate as President. On 22 October 2003, the House Committee on Justice dismissed the complaint on the ground

41. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 954 (2003).

42. 109 Phil. 863 (1960).

43. 46 Phil. 83 (1924).

44. *Id.* at 88.

45. *Arroyo v. de Venecia*, 277 SCRA 268 (1997).

46. *Santiago v. Guingona*, 298 SCRA 756 (1998).

47. *See, e.g., Abbas v. Senate Electoral Tribunal*, 166 SCRA 651; *Lerias v. House of Representatives Electoral Tribunal*, 202 SCRA 808 (1991); *Bondoc v. Pineda*, 201 SCRA 792 (1991).

48. *Marcos v. Manglapus*, 177 SCRA 668 (1989).

of insufficiency of substance. The following day, Congressmen Gilberto Teodoro, Jr. and Felix William Fuentebella filed another impeachment complaint, this time against Chief Justice Davide alone, charging him with betrayal of public trust and violations of the Anti-Graft and Corrupt Practices Act with regard to the disposition of the Judicial Development Fund. This second impeachment complaint was indorsed through a Resolution which was actually signed by at least one-third of all the members of the House.

The endorsement of the second impeachment complaint triggered the filing of the instant petitions with the Supreme Court which alleged, among others, that the filing of the second impeachment complaint against Chief Justice Davide was unconstitutional for being violative of the one-year bar rule regarding the initiation of impeachment proceedings under Section 3(5), Article XI of the Constitution. The said provision explicitly prohibits the initiation of impeachment proceedings against the same official more than once within a period of one year. Acting on the petitions, the Court, in its Resolution dated 28 October 2003, decided to consolidate the petitions, requiring the respondents to file their respective comments, appointing legal experts as *amici curiae* and setting the petitions for oral arguments.

On 29 October 2003, the Senate, represented by Senate President Franklin Drilon, filed a Manifestation attesting that the petitions presented no justiciable issue since the constitutional duty of the Senate to constitute itself as an impeachment court commences only upon its receipt of the Articles of Impeachment. The Senate supported the argument of the House of Representatives that the petitions should be dismissed as the principal issues raised pertain exclusively to the proceedings in the House of Representatives.

In resolving the issues, opinions, reliefs prayed for and arguments arising from the petitions, the Court determined the principal issues to be as follows: (1) whether or not the power of judicial review extends to those arising from impeachment proceedings; (2) whether or not the essential pre-requisites for the exercise of the power of judicial review have been fulfilled; and (3) whether the filing of the second impeachment complaint is constitutional.

Respondents raised the argument that the Constitution has excluded impeachment proceedings, a political action, from the coverage of judicial review. Intervenor Senator Aquilino Pimentel contended further that the Senate's "sole power to try" impeachment cases entirely excludes the application of judicial review over it; and necessarily includes the Senate's power to determine constitutional questions relative to impeachment proceedings. They argue that the exercise of judicial review over impeachment proceedings is inappropriate since it runs counter to the framers' decision to allocate to different fora the powers to try impeachments and to try crimes; it

disturbs the system of checks and balances, under which impeachment is the only legislative check on the Judiciary; and it would create a lack of finality and difficulty in fashioning relief.

To further bolster their position that the Supreme Court should exercise judicial restraint over the matter, Respondents posited the possibility that "judicial review of impeachments might also lead to embarrassing conflicts between the Congress and the [J]udiciary."⁴⁹ They stressed the need to avoid the appearance of impropriety or conflicts of interest in judicial hearings, and the need to prevent the risk of serious political instability at home and abroad if the Judiciary countermanded the vote of Congress to remove an impeachable official, and the consequent diminution of the Judiciary's judicial authority and the erosion public's confidence and faith in it should the Court fail to enforce its Resolution against Congress.

In defending the constitutionality of the filing of the second impeachment complaint, Respondents argued that Sections 16 and 17 of Rule V of the House Impeachment Rules do not constitute a violation of Section 3(5), Article XI of the Constitution, owing to the fact that the term "initiate" does not mean "to file." It further argued that Section 3(1) is clear in that it is the House of Representatives, as a collective body, which has the exclusive power to initiate all cases of impeachment; that initiate could not possibly mean "to file" because filing can only be accomplished, as Section 3(2), Article XI of the Constitution provides, in 3 ways, namely: (1) by a verified complaint for impeachment by any member of the House of Representatives; or (2) by any citizen upon a resolution of endorsement by any member; or (3) by at least 1/3 of all the members of the House. Respondent House of Representatives concludes that the one year bar prohibiting the initiation of impeachment proceedings against the same officials could not have been violated as the impeachment complaint against Chief Justice Davide and seven Associate Justices had not been initiated as the House of Representatives, acting as the collective body, has yet to act on it.

IV. THE COURT'S DECISION

The Court ruled against the constitutionality of the impeachment complaint against Chief Justice Davide. However, before disposing on this issue of constitutionality, the Court had to dwell on the issue of judicial review. The Court noted that the power of judicial review is conferred on the judicial branch of the government in Section 1, Article VIII of the Constitution. Relying upon *Angara*, the *ratio* quoted Justice Laurel extensively. Justice Conchita Carpio-Morales points out that "this 'moderating power' to 'determine the

proper allocation of powers' of the different branches of government and 'to direct the course of government along constitutional channels' is inherent in all courts as a necessary consequence of the judicial power itself, which is 'the power of the court to settle actual controversies involving rights which are legally demandable and enforceable.'"⁵⁰ This power extends to those arising from impeachment proceedings and that the essential pre-requisites for the exercise of the power of judicial review have been fulfilled. The Court ruled that:

... courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.⁵¹

Ultimately, the Court held that it possessed the power of judicial review as there was an actual case or controversy calling for the exercise of judicial power; the persons challenging the act possessed the "standing" to challenge; the question of constitutionality has been raised at the earliest possible opportunity; and the issue of constitutionality is the very *lis mota* of the case.

The Court ruled against the constitutionality of the second impeachment case against Chief Justice Davide. The Court held that 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 as supported by the records of the Constitutional Commission and by the briefs of *amici* Fr. Bernas and Regalado Maambong, former Constitutional Commissioners. Since 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), 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.

As to the constitutionality of the Rules on Impeachment adopted by the Legislature and whether the second impeachment complaint is barred under Section 3(5), Article XI,⁵² the Court, through Justice Carpio-Morales, held that judicial power imposes upon the Court the duty to resolve the petitions in the case at bar. Citing the concurring and dissenting opinion of Justice

⁵⁰. *Id.*

⁵¹. *Id.*

⁵². PHIL. CONST. art. XI §3(5). The pertinent provision states: "No impeachment proceeding shall be initiated against the same official more than once within a period of one year."

49. *Francisco*, G.R. No. 160261.

Reynato Puno in the case of *Arroyo v. de Venecia*,⁵³ the Court emphasized that "in the Philippine setting, there is a more compelling reason for courts to categorically reject the political question defense when its interposition will cover up abuse of power. For Section 1, Article VIII of [the] Constitution was intentionally cobbled to empower courts."⁵⁴

Considering therefore that 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 a resolution of impeachment by at least 1/3 of the members of the House, it is apparent that said rules contravene Section 3(5), Article XI for giving the term "initiate" a meaning different from filing and referral.

IV. ANALYSIS: THE COURT'S ADHERENCE TO CONSTITUTIONAL PRIMACY

Philippine jurisprudence is bereft of issues specifically addressing impeachment and its nature. Notably, never has there been a question brought before the Court as regards the impeachment of a member of the Judiciary, much less, the Chief Justice himself. Indeed, seen along the lines of *Marcos v. Manglapus*,⁵⁵ *Francisco* is and will be considered as a landmark decision having decided the very first impeachment case against a member of the Court. However, the *ratio decidendi* of *Francisco* has simply bolstered the Court's earlier pronouncements on political questions, judicial supremacy, and judicial review.

The Court admits that true political questions are beyond judicial review by virtue of the doctrine of separation of powers. Relying upon the definitive standards laid down in *Marbury* and *Baker*, the Supreme Court was mindful that the foregoing standards differ radically from the Philippine concept of judicial review and judicial power as provided in Section 1, Article VIII of the Constitution. Philippine courts are given far less discretion in determining

whether they should pass upon constitutional issues.⁵⁶ The Court proceeded to discuss the application of the political question doctrine in the Philippine context:

In our jurisdiction, the determination of a truly political question from a non-justiciable political question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits.⁵⁷

Clearly, as the principal issue raised before the Court was the constitutionality of the second impeachment complaint against the Chief Justice, it is non-political.

Having disposed the issue in *Francisco* as non-political in nature, the Court's reliance upon *Angara v. Electoral Commission* is undaunted. The mechanism of impeachment is a *sui generis* proceeding⁵⁸ but has its constitutional underpinnings. Similar to the Electoral Commission, it has a constitutional mandate and its powers are delineated under the fundamental law.⁵⁹ Reliance on the argument that impeachment as a process being *solely* vested with the Legislature precludes the exercise of judicial discretion is misplaced based on the cases where the Court upheld its power of judicial review over the Electoral Tribunals.⁶⁰ Under the Constitution, the legislative's electoral tribunals are the sole judges of questions relating to the election of the members of Congress. Clearly, the Court therefore has powers of judicial review over the case.

Amidst assertions of its exercise, judicial statesmanship has no sound basis in law and jurisprudence. Respondents state what statesmanship connotes: "[i]n principle, whenever possible, the Court should defer to the judgment of the people expressed legislatively, recognizing full well the perils of judicial willfulness and pride." Can this override a clear constitutional mandate to rule upon questions of interpretation of the fundamental law? Respondents would like to impress upon the Court that it can. However, as Justice Carpio-Morales addressed the issue in her *ponencia*, "the Constitution did not intend to leave the matter of impeachment to the sole discretion of Congress. Instead, it provided for certain well-defined limits for determining the validity of the exercise of such discretion, through the power of judicial review."

56. *Francisco*, G.R. No. 160261.

57. *Id.*

58. BERNAS, *supra* note 41, at 1109.

59. PHIL. CONST. art. IX § 3.

60. See, e.g., *Abbas v. Senate Electoral Tribunal*, 166 SCRA 651; *Lerias v. House of Representatives Electoral Tribunal*, 202 SCRA 808 (1991); *Bondoc v. Pineda*, 201 SCRA 792 (1991).

53. *Arroyo v. de Venecia*, 277 SCRA 268 (1997).

54. *Id.* at 314-15.

55. 177 SCRA 668 (1989).

In light of Chief Justice Moran's advocacy for the exercise of judicial statesmanship in *Guerrero v. Dinglasan*, is there such a basis in *Francisco*? The question may be simply put in this wise: should the Congress be given an opportunity to provide a measure to resolve the issue? Obviously, it cannot. In *Guerrero*, Chief Justice Moran's argument, stemmed from the desire to give Congress the adequate time to legislate an appropriation law instead of declaring an executive appropriation constitutionally void, creates a gap where no appropriation law is in effect. Certainly, the enactment of an appropriation measure is within the powers of Congress while to declare an impeachment complaint unconstitutional is not. If it was allowed by the Court, then the looming constitutional crisis would occur: the Legislature's usurpation of judicial powers.

The Court cannot even divest itself of jurisdiction on account of its indirect involvement with the issue. In *Perfecto*, *Nitafan*, and *Endencia* and even in *Estrada*, the Court judiciously decided the issues of the case as the final arbiter on questions of constitutionality. As discussed by the *amici curiae*, there lies a basis for the possibility of a disastrous confrontation with Congress in spite of an assertion of judicial power.⁶¹ But would such fear justify an abdication of a constitutional duty? The *ponencia* rightfully cites *amicus curiae* Fr. Bernas: "Jurisdiction is not just a power; it is a solemn duty which may not be renounced. To renounce it, even if it is vexatious, would be a dereliction of duty."⁶²

To exercise a duty is no activism.⁶³ Justice Reynato Puno observed that in the 1935 and 1972 Constitutions, the Court approached constitutional violations by initially determining what it cannot do so. The 1987 Constitution brought forth a shift in stress: "The Court is mandated to approach constitutional violations not by finding out what it should not do but what it must do."⁶⁴ In taking cognizance of the instant case, once again, the Court recognized its role as the last guardian of the Constitution. The Court chose

61. *Francisco*, G.R. No. 160261 (In the separate and concurring opinion of Justice Sandoval-Gutierrez).

62. *Francisco*, G.R. No. 160261.

63. See *contra Francisco*, G.R. No. 160261 (Sandoval-Gutierrez, J., separate and concurring opinion). Justice Sandoval-Gutierrez states:

There being a clear constitutional infringement, today is an appropriate occasion for judicial activism. To allow this transcendental issue to pass into legal limbo would be a clear case of misguided judicial self-restraint. This Court has assiduously taken every opportunity to maintain the constitutional order, the distribution of public power, and the limitations of that power. Certainly, this is no time for a display of judicial weakness.

64. *Francisco*, G.R. No. 160261 (Puno, J., concurring and dissenting).

to rule on the matter as a way to uphold and defend the Constitution at all costs.⁶⁵

VI. CONCLUSION

Even as early as the time the Draft Articles of Impeachment were being circulated in the House of Representatives, the Court was asked, urged, and advised to refrain from acting on the petitions. This clamor for non-interference was translated through arguments of "lack of jurisdiction," "non-justiciability," and "judicial self-restraint" in the various petitions, manifestations and motions for intervention filed before the Court. The Court did not heed the call to adopt a hands-off stance. Unmindful that the Court may be perceived as acting to protect one of its own or promoting judicial supremacy, the Court reiterated that all requisites for the exercise of its constitutionally vested duty of judicial review over the interpretation of the fundamental law of the land.⁶⁶

The three branches of government are inherently zealous and protective of their domain – and rightfully so. The exercise of the legislative, executive, and judicial power is not merely a right or a privilege, it is a solemn duty bestowed by the Filipino people and expressed in the Constitution. Such authority must be exercised with the greatest wisdom and discretion. Consequently, a conflict between any of the branches of government is a serious concern which must be approached with resolve and prudence.

In most cases, it is tempting to pursue a political solution as it is easier to achieve agreement via backdoor talks, political pressure, party decision and informal mediation. If the parties are merely seeking an immediate resolution, a political solution is clearly the easiest option to diffuse tension and relieve any impending crisis situation. The impeachment of the highest magistrate of the land has deeply polarized the nation. Though a political solution could have been the most expedient course of action, only a resolution by the Supreme Court – discussing the issues exhaustively and ruling impartially based on law – would put a decisive end to this crisis.

In acting swiftly, yet decisively, the Court established the supremacy not of the Judiciary, but of law – maintaining its credibility, integrity, and independence. As Justice Jose Vitug so wisely provided in his separate opinion: "The keeper of the fundamental law cannot afford to be a bystander, passively watching from the sidelines, lest events overtake it, making it impotent, and seriously endanger the Constitution and all it stands for."⁶⁷ It is in this sense that judicial activism takes place.

65. *Id.*

66. *Francisco*, G.R. No. 160261.

67. *Id.* (Vitug, J., separate opinion).