Justice on Trial: Consolidation of Powers, Judicial Independence, and Public Accountability in the Philippine Judiciary

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I. INTRODUCTION

A lady in light purple descends down the steps of the High Court, flanked on each end by supporters and oppositors — one group holding placards with "JUDICIAL INDEPENDENCE" imposed in dark purple, the other brandishing banners proclaiming "OUSTER" in blood red. She speaks, reading from a folded, slightly crumpled paper, "*Kaya't kailangan ding ipagtanggol ang independensya ng mga mahistrado sa isa't isa. Kung hindi, kayang kayang tanggalin ng barkadahan ang sino man, sa ano mang rason, basta't nasa kanila ang sapat na boto. Ganoon na nga po ang nangyari.*(That is why, there is a need to secure the independence of magistrates from each other. If not, their cohort can easily remove anyone, for whatever reason, as long as they have the votes. That is what happened.)"[1] At high noon on 11 May 2018, the gavel came down in Padre Faura, Manila. The Philippine Supreme Court ousted the Chief Justice.[2]

As the noise surrounding the decision lulls into the country's history, the Authors conduct a sober contemplation on the state of the Philippine judiciary post-*Republic of the Philippines v. Sereno*,[3] one guided not by heightened emotions, but nuanced discourse into the logic of judicial behavior in the nation, ever always forward looking, understanding Filipinos' unique place in the country's and the world's histories.

In the span of 15 years, the nascent Philippine democracy under the auspices of its young Constitution, saw the head of its highest judicial office pressed on the guillotine, two of such executions succeeded. In 2003, Chief Justice Hilario G. Davide, Jr. (CJ Davide) was wrung by impeachment proceedings, not once but twice, leading the Supreme Court to step in and save the Highest Magistrate from an "unconstitutional impeachment process."[4] In 2012, Chief Justice Renato Antonio C. Corona (CJ Corona)

1. Rappler, Video, *Full speech: Ousted CJ Maria Lourdes Sereno talks to her supporters after SC decision*, YOUTUBE, *available at* https://www.youtube.com/watch?v=Iw6LSh3kAZA (last accessed Aug. 31, 2018) (cited material is at 00:00-00:26).

2. ABS-CBN News, Supreme Court rules CJ Sereno ouster final, *available at* http://news.abs-cbn.com/news/06/19/18/supreme-court-rules-cj-sereno-ouster-final (last accessed Aug. 31, 2018).

3. Republic of the Philippines v. Sereno, G.R. No. 237428, May 11, 2018, *available at* http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/237428.pdf (last accessed Aug. 31, 2018).

4. Francisco, Jr. v. Nagmamalasakit na mga Mananganggol ng mga Manggagawang Pilipino, Inc., 415 SCRA 44 (2003).

earned the ire of the leadership[5] and was impeached by the House of Representatives on eight Articles of Impeachment,[6] and later convicted on one.[7] Back then, the Supreme Court took steps to foreclose impeachment, first by legitimizing CJ Corona's appointment before it was issued,[8] and then claiming judicial privilege — perhaps for the first time in the Court's history.[9] Barely six years after the circus of the Corona impeachment, Chief Justice Maria Lourdes P.A. Sereno (CJ Sereno) was put under investigation before the House of Representatives Justice Committee upon a complaint filed by Atty. Lorenzo "Larry" Gadon.[10] Midway through the House investigation, the Office of the Solicitor General, in an unprecedented move, filed a *quo warranto* case against CJ Sereno for lack of the constitutional qualification of "proven integrity" prescribed for every member of the High Court.[11] There was no saving CJ Sereno, the axe of her ouster was swung by her colleagues[12] with finality.[13]

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5. Tetch Torres, *Corona on his impeachment: It's all about Hacienda Luisita*, PHIL. DAILY INQ., Mar. 7, 2012, *available at* http://newsinfo.inquirer.net/157623/corona-on-his-impeachment-it%E2%80%99s-all-about-hacienda-luisita (last accessed Aug. 31, 2018).

6. ABS-CBN News, Summary of the impeachment complaint vs CJ Corona, *available at* http://news.abs-cbn.com/-depth/12/12/11/summary-impeachment-complaint-vs-cj-corona (last accessed Aug. 31, 2018).

7. Maial Ager, *Senate votes 20-3 to convict Corona*, PHIL. DAILY INQ., May 29, 2012, *available at* http://newsinfo.inquirer.net/202929/senate-convicts-corona (last accessed Aug. 31, 2018).

8. De Castro v. Judicial and Bar Council (JBC), 615 SCRA 666 (2010) & De Castro v. Judicial and Bar Council (JBC), 618 SCRA 639 (2010).

9. In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012, *available at* http://sc.judiciary.gov.ph/jurisprudence/2012/february2012/notice.pdf (last accessed Aug. 31, 2018).

10. PhilStar.com, *Point by point: Sereno answers impeachment complaint*, PHIL. STAR, Sep. 27, 2017, *available at* https://www.philstar.com/headlines/2017/09/27/1742872/point-point-sereno-answers-impeachment-complaint#4GIyte9Ur7gPoXWY.99 (last accessed Aug. 31, 2018).

11. Petition for *Quo Warranto* by the Republic of the Philippines, Mar, 6, 2018 (on file with the Supreme Court), *in Sereno* G.R. No. 237428.

12. *Sereno*, G.R. No. 237428.

13. Republic of the Philippines v. Sereno (Resolution), G.R. No. 237428, June 19, 2018, *available at* http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/237428.pdf (last accessed Aug. 31, 2018).

The Authors theorize that in all these cases, the Court did not support or go against the person of the Chief Justice, but decided in favor of the judicial institution. Here, the Authors show that the Supreme Court is not interested in saving nor condemning a specific person, but in consolidating power onto itself in an attempt to preserve its independence from the political departments and its processes.

This Article focuses on these three major events in the Philippine judiciary's history, bringing to fore the acts of the judiciary itself, both as an institution and as a conglomerate of different-minded judicial actors. The second part of this Article dissects the events that turned the spotlight on the judiciary. The next section makes a comparative analysis of the dissected cases, highlighting the narrative of a judiciary aching to consolidate its power. The Authors then relate this ongoing effort with the idea of judicial independence, discussing thereunder the foundational role judicial independence plays in birthing a truly democratic nation, and minding the gaps between text and practice in the Philippine setting. The next section referees between the values being championed by consolidation efforts and Philippine democracy as a function of freedom, separation of powers, and public accountability. Finally, the Authors conclude with a review of policy considerations in light of an administration keen on changing the country's Charter.

This Article runs along the hypothesis that the Filipino metric for strong, independent institutions is the bodies' absolute supremacy in all matters relating to itself. The current government set-up and the festering ills of the judicial machinery has isolated the judiciary from the imagines of the Filipino people as a powerful institution — one whose altars can be easily desecrated by the political departments. Thus, in the instances when the Supreme Court can, it consolidates power onto itself. This is best seen in the decided cases involving its leadership.

II. A TALE OF THREE CHIEF JUSTICES

A. Davide on Trial: David and Goliath

> *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!'*

— Justice Angelina Sandoval-Gutierrez[14]

1. CJ Davide's Impeachment Cases: God Save Our Country!

On the afternoon of 16 January 2001, people began pouring onto Epifanio delos Santos Avenue (EDSA) to demand for the resignation of President Joseph Ejercito Estrada (Estrada) after the dramatic events in the Senate Hall.[15] This mass assemblage came to be known as EDSA II.[16] Four days later, on 20 January 2001, then Vice President Gloria Macapagal-Arroyo (Arroyo) was sworn in as President by CJ Davide.[17] Later that day, Estrada and his family left Malacañan "for the sake of peace and in order to begin the healing process of our nation."[18] Estrada later petitioned the Supreme Court to reclaim the presidency by having Arroyo's proclamation nullified and voided.[19] The High Court, voting 8-5-2, denied Estrada's claim to the office he abandoned.[20] This prompted Estrada to file an impeachment complaint against CJ Davide and seven other Justices of the Court on 2 June 2003 "for 'culpable violation of the Constitution, betrayal of the public trust[,] and other high crimes.' The complaint was endorsed by Representatives Rolex T. Suplico, Ronaldo B. Zamora, and Didagen Piang Dilangalen, and was referred to the House Committee on Justice on [5 August 2003]."[21] On 22 October 2003, the House Committee on Justice decided to dismiss the complaint for being insufficient in substance.[22]

A day after the dismissal of Estrada's impeachment complaint against CJ Davide and the other Justices, Representatives Gilberto Teodoro and Felix William Fuentabella filed a second impeachment complaint based on the results of the House of Representative's inquiry into the management of the

14. *Francisco, Jr.*, 415 SCRA at 250 (J. Sandoval-Gutierrez, separate and concurring opinion).

15. Rappler.com, Looking back at EDSA II: The political paths of Estrada and Arroyo, *available at* https://www.rappler.com/newsbreak/flashback/158523-look-back-edsa-ii-joseph-estrada-gloria-arroyo (last accessed Aug. 31, 2018).

16. Justice Isagani Cruz, *Estrada v. Arroyo: Some Reflections*, 47 ATENEO L.J. 2, 3 (2002).

17. *Id.*

18. *Id.*

19. *See* Estrada v. Desierto, 353 SCRA 452 (2001) & Estrada v. Desierto, 356 SCRA 108 (2001).

20. Cruz, *supra* note 16.

21. *Francisco, Jr.*, 415 SCRA at 109.

22. *Id.*

Judiciary Development Fund (JDF).[23] The complaint against CJ Davide alleged that he ordered the use of the cost-of-living allowance of the 25,000-member judiciary for the purchase of luxury cars, vacation homes, and office furnishings of the Supreme Court Justices.[24] Rumors regarding the patronage of the impeachment case abounded — one thing was for sure, gigantic forces led up to the events that rattled the judiciary in 2003, and the years after.[25]

2. *Francisco, Jr. v. Nagmamalasakit na Mananganggol ng mga Manggagawang Pilipino, Inc.*

The previous section laid down the factual backdrop of the Supreme Court decision penned by then Associate Justice Conchita C. Carpio-Morales.[26]

The controversy centered on the validity of the second impeachment complaint filed against CJ Davide. The Court, in interpreting Article XI, Section 3 (5) of the Constitution,[27] held that "the term 'to initiate' refers to the filing of the impeachment complaint coupled with Congress taking initial action of said complaint"[28] thereby declaring Sections 16 and 17 of the House Rules on Impeachment promulgated by the 12th Congress unconstitutional.[29] The Court reached this conclusion by resorting to

23. *Id.* at 108-10.

24. Paolo Romero, *House impeaches Davide*, PHIL. STAR, Oct. 24, 2003, *available at* https://www.philstar.com/headlines/2003/10/24/225245/house-impeaches-davide (last accessed Aug. 31, 2018).

25. Aurea Calica, *The judiciary under attack in '03*, PHIL. STAR, Dec. 30, 2003, *available at* https://www.philstar.com/headlines/2003/12/30/233381/judiciary-under-attack-14603 (last accessed Aug. 31, 2018).

26. *Id.*

27. PHIL. CONST. art XI, § 3 (5). The provision states, "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year." PHIL. CONST. art XI, § 3 (5).

28. *Francisco, Jr.*, 415 SCRA at 169.

29. *Id.* at 179 (citing House Rules on Impeachment of the 12th Congress, §§ 16-17). Section 16 provides —

> Section 16. — Impeachment Proceedings Deemed Initiated. — In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance, or on the date the House votes

statutory construction, specifically by understanding the term "to initiate" in its plain meaning.[30] They also based their conclusion on the *amicus* briefs of several members of the Constitutional Commission and other Constitutional Law experts, as well as on the records of the Constitutional Commission.[31] In fine, the Court held that the second impeachment case grounded on the mishandling of the JDF was unconstitutional for being filed within the one-year bar.[32]

Another issue raised in this case was whether the Court should hear and decide the matter, considering that it was ruling upon matters that affected the Chief Justice and the judiciary. As an adjunct to the discussion on judicial restraint, both the majority opinion, and the separate opinion of then Associate Justice Artemio V. Panganiban, Jr. lifted from *Estrada v. Desierto*[33] stating, to wit —

> [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

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> to overturn or affirm the finding of the said Committee that the verified complaint and/or resolution, as the case may be, is not sufficient in substance. In cases where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, at least one-third (1/3) of the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.

House Rules on Impeachment, rule V, § 16.

While Sec. 17 of the same Rules states —

> Section 17. Bar Against Initiation Of Impeachment Proceedings. Within a period of one year from the date impeachment proceedings are deemed initiated as provided in Section 16 hereof, no impeachment proceedings as such, can be initiated, against the same official.

Id. rule V, § 17.

30. *Francisco, Jr.*, 415 SCRA at 168-69.

31. *Id.* at 169-70 (citing 2 RECORD OF THE CONSTITUTIONAL, at 416 (1985) & Justice Hugo Gutierrez's *Amicus Curiae Brief* at 7).

32. *See Francisco, Jr.*, 415 SCRA at 176-79.

33. Estrada v. Desierto, 356 SCRA 108 (2001).

> 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.[34]

Going beyond the power to decide the instant case, then Associate Justice Corona, in his separate opinion, claimed that the very root of the second impeachment complaint is beyond Congress' competence. He opined that

> not only is Congress precluded from usurping the [Commission on Audit's] power to audit the JDF, Congress is also bound to respect the wisdom of the judiciary in disbursing it. It is for this precise reason that, to strengthen the doctrine of separation of powers and judicial independence, Article VIII, Section 3 of the Constitution accords fiscal autonomy to the judiciary.[35]

In *Francisco, Jr.*, the Court made no qualms in asserting its power to decide the case concerning the Chief Justice even against calls for institutional deference from the giants of the political departments.[36]

B. Corona on Trial: Heavy Hangs the Head that Wears the Crown

> *The executive and legislative branches are political in nature. But the judicial branch is nonpolitical. If the [C]hief [J]ustice is removed for political reasons, then that would be a signal that even the judicial branch has also become political. That would be the end of our democracy as we know it today.*
>
> — Senator Miriam Defensor-Santiago[37]

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34. *Francisco, Jr.*, 415 SCRA at 160 (citing *Estrada*, 356 SCRA at 155-56) & *Francisco, Jr.*, 415 SCRA at 233 (J. Panganiban, concurring opinion) (citing *Estrada*, 356 SCRA).

35. *Francisco, Jr.*, 415 SCRA at 290 (citing PHIL. CONST. art. VIII, § 3) (J. Corona, separate opinion). The cited constitutional provision states —

> Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.
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> PHIL. CONST. art. VIII, § 3.

36. *Francisco, Jr.*, 415 SCRA at 158.

37. Senate of the Philippines, Miriam sees failed State if CJ impeached (Press Release), *available at* https://www.senate.gov.ph/press_release/2010/1210_santiago01.asp (last accessed Aug. 31, 2018).

1. CJ Corona's Impeachment case: Of things spun in the dead of night

On 17 May 2010, Chief Justice Reynato S. Puno (CJ Puno) reached the mandatory retirement age for members of the High Court. That same day, CJ Corona took his oath of office.[38] The currents underneath CJ Corona's appointment ran deep. The Supreme Court earlier ruled that whoever Arroyo appointed to the post would not be covered by the election ban.[39] Then President-elect Benigno Simeon Aquino III (Aquino) refused to acknowledge CJ Corona as Chief Justice because Aquino believed that the appointment was issued against the Constitution.[40] Aquino even refused to take his oath as President before the Chief Justice, choosing instead to have Associate Justice Carpio-Morales administer the same, in defiance of long-standing practice.[41] This was the beginning of the bitter relations between the presidency and the judiciary that lasted two years, culminating in the first impeachment of a Chief Justice in the Philippines.

In the in-between years, Aquino relentlessly accused the Court, under the leadership of CJ Corona, of obstructing his *tuwid na landas* (straight path) platform.[42] He staged a campaign against decisions of the Court that tended to favor Arroyo, who was then being tagged for corruption, plunder, and electoral sabotage.[43] CJ Corona maintained that he earned the ire of the Presidency when the Court ordered the distribution of the Cojuanco-owned Hacienda Luisita estate.[44] The tension between the two branches of government carried on for a few more months. Then, on 12 December 2011,

38. ABS-CBN News.com, Corona takes oath as SC Chief Justice, *available at* http://news.abs-cbn.com/nation/05/17/10/corona-takes-oath-sc-chief-justice (last accessed Aug. 31, 2018).

39. *See generally De Castro*, 615 SCRA & *De Castro (Resolution)*, 618 SCRA.

40. Purple S. Romero, Can Noynoy void Corona's appointment as chief justice, *available at* http://news.abs-cbn.com/-depth/05/12/10/can-noynoy-void-coronas-appointment-chief-justice (last accessed Aug. 31, 2018).

41. Marlon Ramos, *Chief Justice Corona calmly takes Aquino tirade*, PHIL. DAILY INQ., Dec. 5, 2011, *available at* http://newsinfo.inquirer.net/105717/chief-justice-corona-calmly-takes-aquino-tirade (last accessed Aug. 31, 2018).

42. Christine O. Avendaño & Marlon Ramos, *Aquino lambasts Supreme Court in front of Corona*, Dec. 6, 2011, *available at* http://newsinfo.inquirer.net/105887/aquino-lambasts-supreme-court-in-front-of-corona (last accessed Aug. 31, 2018).

43. Purple S. Romero, Decrowned: The fall of Renato Corona, *available at* https://www.rappler.com/newsbreak/6072-decrowned-the-fall-of-renato-corona (last accessed Aug. 31, 2018).

44. *Id.*

in what has been dubbed as a "midnight impeachment," majority of the members of the House of Representatives signed the articles of impeachment against CJ Corona citing as grounds "betrayal of public trust, culpable violation of the Constitution[,] and graft and corruption, citing specifically in the eight articles of impeachment his 'undue closeness' to Arroyo."[45]

2. *De Castro v. Judicial and Bar Council (JBC)*

Even before CJ Corona was appointed, the Chief Justice post was already subjected to fiery debates for being vacated at the tail-end of election season. One side claimed that the right to appoint belonged to the incumbent president notwithstanding the appointment ban during elections, and the other argued that the appointing authority would have to be the president-elect. The case sought to enjoin the JBC from transmitting to Arroyo the list of nominees for the post vacated by CJ Puno.

The Court, relying heavily on the records of the Constitutional Commission and the manifestations of some of its members, ruled that the appointment-ban during election period did not apply to judicial appointments. First, the Court pointed out that the Presidential power of appointment dealt with in Article VII, Sections 14, 15, and 16 of the Constitution,[46] where the appointment ban during election period could be found, pertained to appointments in the executive branch of the government.[47] The applicable provision on appointment of Justices is the one found in Article VIII, Section 4 (1), which mandates the filling of vacancies in the Supreme Court within 90 days from the occurrence thereof.[48] The Court, through Justice Lucas P. Bersamin, opined that

45. Cynthia D. Balana & Gil C. Cabacungan, *188 solons impeach CJ Corona*, PHIL. DAILY INQ., Dec. 13, 2011, *available at* http://newsinfo.inquirer.net/109793/188-solons-impeach-cj-corona (last accessed Aug. 31, 2018).

46. PHIL. CONST. art. VII, §§ 14-16. Specifically, Article VII, Section 15 states —

> Section 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

Id. art. VII, § 15.

47. *De Castro*, 615 SCRA at 733.

48. *Id.* (citing PHIL. CONST. art. VIII, § 4 (1)). The Constitution provides —

> Section 4. (1). The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its

> [h]ad the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have *easily* and *surely* written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII.[49]

Further, the Court held that the evil sought to be avoided in prescribing the ban against midnight appointments did not apply to the judiciary, with the JBC serving as a check to electoral and partisan considerations.[50] The Court was also of the opinion that a contrary reading of the provisions of the Constitution would undermine judicial independence by inducing a system of patronage in judicial appointments, which could not have been the intent of the Constitutional framers.[51] In conclusion, the Court directed the JBC to carry on with the screening process for the position of Chief Justice.

The JBC transmitted a list to Arroyo with the names of then Associate Justice Corona, Associate Justice Teresita Leonardo-De Castro, Associate Justice Arturo D. Brion, and then Sandiganbayan Presiding Justice Edilberto G. Sandoval.[52] From this list, CJ Corona was appointed.[53]

3. Corona's "Midnight Impeachment"

As earlier stated, the House of Representatives impeached CJ Corona in a mad scramble during the last week of Congressional Sessions in 2011. The Articles of Impeachment were presented during a House Majority caucus composed mostly of men and women from the Liberal Party and those

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> discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

PHIL. CONST. art. VIII, § 4 (1).

49. *De Castro*, 615 SCRA at 734.

50. *Id.* at 743.

51. *Id.* at 746.

52. ABS-CBN News, JBC drops Carpio, Morales from list of nominees to chief justice post, *available at* http://news.abs-cbn.com/nation/05/03/10/jbc-drops-carpio-morales-list-nominees-chief-justice-post (last accessed Aug. 31, 2018).

53. ABS-CBN News, Arroyo picks Corona as next Chief Justice, *available at* http://news.abs-cbn.com/nation/05/12/10/arroyo-picks-corona-next-chief-justice (last accessed Aug. 31, 2018).

coalesced with it.[54] The document was presented by Rep. Neil Tupas, Jr. and Rep. Neptali Gonzales II.[55] It was later signed by 188 of 284 members of the House of Representatives.[56] The document accused CJ Corona of (1) partiality and subservience in cases involving the Arroyo administration; (2) failure to disclose to the public his Statement of Assets, Liabilities and Net Worth (SALN); (3) issuing of flip-flopping decisions in final and executory cases; (4) issuing of the *status quo ante* order against the House of Representatives in the case concerning the impeachment of Ombudsman Merceditas N. Gutierrez; (5) deciding in favor of gerrymandering in the cases involving 16 newly-created cities, and the promotion of Dinagat Island into a province; (6) arrogating unto himself, and to a committee he created, the authority and jurisdiction to improperly investigate an alleged erring member of the Supreme Court for the purpose of exculpating him; (7) granting temporary restraining order in favor of former President Arroyo; and (8) failing and refusing to account for the JDF and special allowance for the judiciary collections.[57]

The short-circuited process was questioned by Rep. Tobias Tiangco in a privilege speech he delivered the day after the vote was conducted. He said,

> How can you vote for impeachment without having had the chance to even read the Articles of Impeachment, much less, verify the facts and merits of the case? I cannot understand the speed at which the entire process was effected. Why the haste in a matter of hours? Why can we not give him due process, a basic right protected by no less than the fundamental law of the land?[58]

The objections to the impeachment notwithstanding, the Articles of Impeachment were sent to the Senate and the House Prosecution Team

54. Andrea Calonzo, Supreme Court Chief Justice Renato Corona impeached, *available at* http://www.gmanetwork.com/news/news/nation/241463/supreme-court-chief-justice-renato-corona-impeached/story (last accessed Aug. 31, 2018).

55. *Id.*

56. *Id.*

57. Verified Complaint for Impeachment, Dec. 12, 2011 (*available at* http://www.officialgazette.gov.ph/downloads/2011/12dec/20111212-Articles-of-Impeachment.pdf (last accessed Aug. 31, 2018)), *in* In the Matter of the Impeachment of Renato C. Corona as Chief Justice of the Supreme Court of the Philippines, Case No. 002-2011 (Senate Impeachment Court 2012). *See also* ABS-CBN News, *supra* note 6 & Calonzo, *supra* note 54.

58. CONG. REC., Vol. 2, 15th Cong., 2d Reg. Sess., at 11 (Dec. 13, 2011).

began its preparation. On 17 January 2012, the Senate convened as an Impeachment Court to try the Chief Justice.[59]

4. *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses under the Subpoenas of February 10, 2012 and the Various Letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*

In the months that followed, the Senate Impeachment Court issued several resolutions upon the prayer of the House Prosecution Panel for the production of several records from the Court, the prosecution also sought the issuance of subpoenas against Justices, Court officials, and employees.

The documents sought to be produced were:

(1) The *rollo* of *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc. (PAL), et al.*, G.R. No. 178083;

   (a) Records/Logbook of the Raffle Committee showing the assignment of the *FASAP* case;

   (b) Letter of Atty. Estelito Mendoza addressed to the Clerk of Court dated 13 September 2011, in connection with the *FASAP* case;

   (c) Letter of Atty. Estelito Mendoza addressed to the Clerk of Court dated 20 September 2011, in connection with the *FASAP* case;

   (d) Letter of Atty. Estelito Mendoza addressed to the Clerk of Court dated 22 September 2011, in connection with the *FASAP* case;

   (e) Letter of Atty. Estelito Mendoza addressed to the Clerk of Court dated 16 September 2011, in connection with the *FASAP* case.

(2) Certified true copies of the Agenda and Minutes of the Deliberations of, among others, the *FASAP* case;

(3) The *rollo* of *Navarro v. Ermita*, G.R. No. 180050, 12 April 2011;

59. Michael Lim Ubac, *First day of Cororna impeach trial filled with ironies, bereft of drama*, PHIL. DAILY INQ., Jan. 17, 2012, *available at* http://newsinfo.inquirer.net/129375/first-day-of-corona-impeach-trial-filled-with-ironies-bereft-of-drama (last accessed Aug. 31, 2018).

(4) The *rollo* of the case of *Ma. Merceditas N. Gutierrez v. The House of Representatives Committee on Justice, et al.*, G.R. No. 193459;

(5) The *rollo* of *League of Cities v. COMELEC*, G.R. Nos. 176951, 177499 and 178056;

(6) Supreme Court received (with time and date stamp) Petition for Special Civil Actions for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction filed by Gloria Macapagal Arroyo (G.R. No. 199034) (GMA TRO Petition), including the Annexes thereto;

(7) Supreme Court received (with time and date stamp) Petition for Special Civil Actions for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction docketed as G.R. No. 199046 (Mike Arroyo TRO Petition), including the Annexes thereto;

(8) Respondent Corona's travel order or leave applied for within the month of November 2011;

(9) Minutes of the Supreme Court Raffle Committee which handled the GMA and Mike Arroyo TRO Petitions;

(10) Appointment or Assignment of the Member-in-Charge of the GMA and Mike Arroyo TRO Petitions;

(11) TRO dated 15 November 2011 issued in the GMA and Mike Arroyo TRO Petitions;

(12) Logbook or receiving copy showing the time the TRO was issued to the counsel of GMA and Mike Arroyo, as well as the date and time the TRO was received by the Sheriff for service to the parties;

(13) Special Power of Attorney dated November 15, 2011 submitted by GMA and Mike Arroyo in favor of Atty. Ferdinand Topacio and Anacleto M. Diaz, in compliance with the TRO dated 15 November 2011;

(14) Official Receipt No. 00300227-SC-EP dated 15 November 2011 issued by the Supreme Court for the Two Million Pesos Cash Bond of GMA and Mike Arroyo, with the official date and time stamp;

(15) 15 and 16 November 2011 Sheriff's Return for service of the GMA and Mike Arroyo TRO dated 15 November 2011, upon the Department of Justice and the Office of the Solicitor General;

(16) Certification from the Fiscal Management and Budget Office of the Supreme Court dated 15 November 2011, with the date and time it was received by the Supreme Court Clerk of Court showing it to be 16 November 2011 at 8:55 a.m.;

(17) Resolution dated 18 November 2011 issued in the GMA and Mike Arroyo TRO Petitions;

(18) Resolution dated 22 November 2011 on the GMA and Mike Arroyo TRO Petitions;

(19) Logbook showing the date and time Justice Sereno's dissent to the 22 November 2011 Resolution was received by the Clerk of Court En Banc;

(20) Dissenting Opinions dated 13 and 18 November 2011, and 13 December 2011 of Justice Sereno on the GMA and Mike Arroyo TRO Petitions;

(21) Dissenting Opinions dated 15 November 2011 and 13 December 2011 of Justice Carpio on the GMA and Mike Arroyo TRO Petitions;

(22) Separate Opinion dated 13 December 2011 of Justice Velasco on the GMA and Mike Arroyo TRO Petitions;

(23) Concurring Opinion dated 13 December 2011 of Justice Abad on the GMA and Mike Arroyo TRO Petitions;

(24) Official Appointment of Respondent Corona as Associate Justice of the Supreme Court; and,

(25) Official Appointment of Respondent Corona as Chief Justice.[60]

The Senate Impeachment Court also sought the appearance of then Clerk of Court Enriqueta E. Vidal and Deputy Clerk of Court Felipa B. Anama to testify as witness in the impeachment trial.[61]

In its *Per Curiam* Resolution, the Court banked on the doctrine of separation of powers in relation to the principle of comity, and judicial

60. *Production of Court Records*, at 1-6.

61. *Id.* at 2.

independence. Upon the separation of powers lie "the need to preserve the structure of a democratic and republican government, particularly the check and balance that should prevail[,]"[62] which is the standard upon which decisions should be made in cases of doubt in an impeachment case.[63] Here, the Court stated that the "basic underlying limitation [to the rule granting access to court records] is the need to preserve and protect the integrity of their main adjudicative function."[64] Another remarkable development in this case was the denomination of common practice, now known as judicial privilege, which applies with equal force to justices and judges, as well as employees who are privy to the deliberations of the court.[65] "To qualify for protection under the deliberative process privilege, the agency must show that the document is both (1) predecisional and (2) deliberative."[66] Here, the Court demanded "[i]nter-departmental courtesy ... that the highest levels of each department be exempt from the compulsory processes of the other departments on matters related to the functions and duties of their office."[67]

In fine, the Court ruled against the disclosure of the matters sought to be presented by the prosecution for being privileged in nature.[68] A prior resolution to *Production of Court Records* granted Philippine Savings Bank's prayer for the issuance of a TRO against the Senate Impeachment Court's order to provide details on CJ Corona's foreign currency deposit account with said bank.[69] The Senate Impeachment Court later voted 13-10 to heed the TRO.[70] These led the prosecution to drop several of the charges originally lodged against CJ Corona.[71] What remained for the Senate

62. *Id.* at 10-11.

63. *Id.* at 10.

64. *Id.* at 12.

65. *Id.* at 15.

66. *Production of Court Records*, at 16 (citing Electronic Frontier Foundation v. US Department of Justice, 826 F.Supp.2d 157, 166 (2011)(U.S)).

67. *Production of Court Records*, at 20.

68. *Id.* at 25-27.

69. Philippine Savings Bank (PSBANK) v. Senate Impeachment Court, G.R. No. 200238, Feb. 9, 2012 (unreported).

70. Kimberly Jane Tan, Senate votes 13-10 to heed SC TRO on Corona dollar accounts, *available at* http://www.gmanetwork.com/news/news/nation/247826/senate-votes-13-10-to-heed-sc-tro-on-corona-dollar-accounts/story (last accessed Aug. 31, 2018).

71. Cathy Yamsuan, *Prosecutors drop 2 raps in Article 3 vs Corona*, PHIL. DAILY INQ., Feb. 23, 2012, *available at* http://newsinfo.inquirer.net/150165/prosecution-

Impeachment Court to decide were Articles II, III, and VII of the Articles of Impeachment.

Here one can see a Court recusing itself from the impeachment trial by removing its members, officers, employees, personnel, and documents from the reach of the compulsory processes of the Senate Impeachment Court.

5. CJ Corona's Impeachment Conviction

After 44 days of sitting as an Impeachment Court, Senator Vicente C. Sotto III, then Majority Floor Leader, made a manifestation that the Senate Impeachment Court is ready to vote on Case No. 002-2011, *In the Matter of Impeachment of Renato C. Corona as Chief Justice of the Supreme Court of the Philippines*.

CJ Corona's fate was sealed on Article II of the Articles of Impeachment,

> Article II. — Respondent committed culpable violation of the Constitution and/or betrayed public trust when he failed to disclose his Statement of Assets, Liabilities[,] and Net Worth as required under Section 17, Article XI of the 1987 Constitution.[72]

The House Prosecution Panel accused CJ Corona of misdeclarations in his SALN.[73] In his 2010 SALN, CJ Corona declared five real properties and ₱3.5 million in cash assets and investments.[74] However, the prosecution was able to show that he belatedly declared a number of real properties, that those declared were undervalued, and that he did not declare his peso and

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drops-2-charges-under-article-3-of-impeach-complaint (last accessed Aug. 31, 2018).

72. Record of the Senate Sitting as an Impeachment Court, May 29, 2012, at 3. (citing PHIL. CONST. art. XI, § 17). The cited provision states —

> Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

PHIL. CONST. art. XI, § 17.

73. Carmela Fonbuena, A Guide: The charges vs Corona, *available at* https://www.rappler.com/nation/special-coverage/5703-a-guide-charges-against-corona (last accessed Aug. 31, 2018).

74. *Id.*

dollar deposits.[75] A prior TRO on the opening of CJ Corona's bank accounts initially foreclosed a review of his local and foreign currency deposits.[76] However, Ombudsman Carpio-Morales submitted transaction records from the Anti-Money Laundering Council showing that there was a foreign currency deposit account worth US$10 million under CJ Corona's name.[77] The prosecution also alleged that CJ Corona owned properties under the name of his children.[78] As defense, CJ Corona asserted that he belatedly declared the said transactions because of the fact that the real properties were only "deemed accepted" in 2010 and not earlier.[79] As to the other assets, CJ Corona disclaimed them, saying that said assets exclusively belonged to his wife and his children.[80]

Upon these facts, the Senator-Judges voted, 20-3, to convict CJ Corona of betrayal of public trust and culpable violation of the Constitution for failing to disclose in his SALN his assets, specifically his foreign currency deposit accounts. As he cast his vote to convict, then Senator-Judge Edgardo J. Angara explained, thus —

> The Prosecution and the Defense, combined as one in producing proof that the Chief Justice has bank accounts that he did not declare in his SALN[.] [R]emoving any iota of doubt about this vital fact was the Chief Justice himself coming here to testify [ ] and openly admit that, in fact, he did have four [ ] US dollar accounts totaling $2,400,000 and three [ ] peso accounts of ₱80,700,000.
>
> I may grant the Chief Justice's plea of honest mistake of judgment. But given his broad experience in public law and practice in investment advisory services, his willful and deliberate omission, together with the magnitude of the amounts involved, amounts to culpable violation.[81]

Justifying his vote to acquit, Senator-Judge Ceferino "Joker" P. Arroyo, Jr. was of the opinion that

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75. *Id.*

76. *Philippine Savings Bank (PSBANK)*, G.R. No. 200238.

77. Christian V. Esguerra, *Hostile witness Ombudsman drops bombshell on Corona*, PHIL. DAILY INQ., May 14, 2012, *available at* http://newsinfo.inquirer.net/193215/hostile-witness-ombudsman-drops-bombshell-on-corona (last accessed Aug. 31, 2018).

78. Fonbuena, *supra* note 73.

79. *Id.*

80. *Id.*

81. Record of the Senate Sitting as an Impeachment Court, May 29, 2012, at 4-5.

> impeachment is a political process, not a political assassination. An impeachment aspires to be a judicial proceeding that makes imperative that it stick to judicial rules. An impeachment must ever uphold the due process that no citizen, high or low, can be denied. That is why we wear judicial robes as you see them, to listen, to ponder, and decide like judges according to law.
>
> ...
>
> Today, we are one step from violating the Constitution…No one can stop us if we do not stop ourselves. This is not justice, political or legal. This is certainly not law. For sure, this is certainly not the law and the Constitution; this is only naked power as it was in 1972.
>
> I have not thought that I would see it again so brazenly performed, but for whatever it is worth, I cast my vote, if not for innocence falsely accused of offenses yet to exist[,] and if not for the law and the Constitution that we were privileged to restore under [Corazon] Aquino[,] then because it is dangerous not to do what is right when soon we shall stand before the Lord.[82]

A year later, a new controversy emerged. Senator Jose "Jinggoy" P. Estrada, Jr., among the 20 Senator-Judges who convicted CJ Corona, came out with allegations of a ₱50 million "incentive" received by the Senator-Judges who voted to convict.[83] It was later discovered that the funds were distributed under the Disbursement Acceleration Program (DAP),[84] whose constitutionality was later passed upon by the Court in *Araullo v. Aquino III*.[85] CJ Puno even spoke of the possibility of voiding the impeachment trial if the bribery was proven.[86] By the time the matter became public however, more than a year had already passed since the JBC vetted and nominated personalities for the vacated Chief Justice post. On 24 August 2012, CJ

82. *Id*. at 5-6.

83. Maila Ager, *Senators who convicted Corona got P50-M 'incentive,' says Estrada*, PHIL. DAILY INQ., Sep. 25, 2013, *available at* http://newsinfo.inquirer.net/494931/senators-who-convicted-corona-got-p50m-more-says-estrada (last accessed Aug. 31, 2018).

84. Louis Bacani, *Miriam: 'Pork' released right after Corona trial constitutes bribery*, PHIL. STAR, Sep. 30, 2012, *available at* https://www.philstar.com/headlines/2013/09/30/1239887/miriam-pork-released-right-after-corona-trial-constitutes-bribery (last accessed Aug. 31, 2018).

85. Araullo v. Aquino III, 728 SCRA 1 (2014).

86. Manila Times, *'Bribery' voids Corona impeachment — Puno*, MANILA TIMES, Oct. 29, 2013, *available at* http://www.manilatimes.net/bribery-voids-corona-impeachment-puno/49005/ (last accessed Aug. 31, 2018).

Sereno took her oath as the 24th Chief Justice of the Supreme Court of the Philippines, the first woman to hold the high post.[87]

C. Sereno on Trial: Farewell to Judicial Serenity

> *To object to the trial of a judge for misconduct, by his judicial peers…is to cast doubt on the fairness of the judicial process. If such a panel cannot be trusted to fairly try a 'dissenter' for alleged judicial misconduct, no more can a [ ] judge be trusted to try social rebels. If the process is good enough for the common man in matters of life and death, it is good enough for the trial of a judge's fitness to try others.*
>
> — Raoul Berger[88]

1. CJ Sereno's Impeachment Investigation: The Making and Unmaking of Integrity

On the heels of CJ Corona's impeachment conviction, the JBC went through a mad dash of screening candidates for the vacated position. Cognizant of the need for the judiciary to regain public trust, the JBC made several issuances to the effect of full and absolute disclosure on the part of the Chief Justice applicants.[89] The JBC Announcement, dated 19 June 2012, mandated the submission of all previous SALNs for applicants who are from the public sector,[90] and SALN as of 31 December 2011 for applicants from the private sector.[91] After the rigorous screening process, the JBC nominated Justices Carpio, Leonardo-de Castro, Roberto A. Abad, Arturo D. Brion, and Ma. Lourdes P.A. Sereno; then Solicitor General Francis H. Jardeleza; former San Juan Representative Ronaldo B. Zamora; and Dean Cesar L.

87. Rappler.com, Chief Justice Sereno sworn in, *available at* https://www.rappler.com/nation/special-coverage/scwatch/11154-chief-justice-sereno-takes-her-oath (last accessed Aug. 31, 2018).

88. Rauol Berger, Chilling Judicial Independence: A Scarecrow, 64 CORNELL L. REV. 822, 825 (1979).

89. *Sereno*, G.R. No. 237428, at 123.

90. Judicial and Bar Council, Announcement dated 19 June 2012, *available at* http://jbc.judiciary.gov.ph/announcements/2012/Announcement%206-19-2012%20ammended.pdf (last accessed Aug. 31, 2018).

91. *Id.*

Villanueva.[92] Aquino appointed the most junior of the nominated Supreme Court Justices.[93]

CJ Sereno undertook to implement a reform program in the judiciary guided by four pillars — Institutionalized Integrity and Increased Credibility; Rational, Predictable, Speedy and Appropriate Judicial Actions; Improved Infrastructure, Systems and Processes; and Effective and Efficient Human Resources.[94]

In her fifth year as Chief Justice, CJ Sereno was investigated by the House Justice Committee upon the complaint of Atty. Gadon.[95] The House Justice Committee investigating the case invited former and current Justices of the High Court to testify before the Committee.[96] The Court allowed the invited Justices to appear before the panel,[97] where said Justices answered questions about the Chief Justice.[98] CJ Sereno asked that she be represented

92. Purple Romero, JBC: How they voted on the shortlist, *available at* https://www.rappler.com/nation/special-coverage/scwatch/10440-jbc-how-they-voted-on-cj-shortlist (last accessed Aug. 31, 2018).

93. David Dizon, Sereno is new Chief Justice, *available at* http://news.abs-cbn.com/nation/08/24/12/sereno-new-chief-justice (last accessed Aug. 31, 2018).

94. Aubreylaine M. Salazar, *CJ Sereno discusses SC reforms in Talab*, GUIDON, Oct. 17, 2017, *available at* http://www.theguidon.com/1112/main/2017/10/cj-sereno-discusses-sc-reforms-talab/ (last accessed Aug. 31, 2018).

95. Marc Jayson Cayabyab, *Gadon impeach complaint vs Sereno sufficient in form, substance —House body*, PHIL. DAILY INQ., Sep. 13, 2017, *available at* http://newsinfo.inquirer.net/930313/gadon-impeach-complaint-vs-sereno-sufficient-in-form-house-body (last accessed Aug. 31, 2018). *See also* ABS-CBN News, House panel Oks articles of impeachment against Sereno, *available at* http://news.abs-cbn.com/news/03/19/18/house-panel-oks-articles-of-impeachment-against-sereno (last accessed Aug. 31, 2018).

96. Julliane Love De Jesus, *House panel to summon SC associate justice, reporter at impeach hearing vs Sereno*, PHIL. DAILY INQ., Nov. 22, 2017, *available at* http://newsinfo.inquirer.net/946855/breaking-impeachment-chief-justice-maria-lourdes-sereno-house-justice-committee-associate-justice-reporter (last accessed Aug. 31, 2018).

97. Edu Punay, *SC allows justices to testify vs Sereno*, PHIL. Star, Nov. 28, 2017, *available at* https://www.philstar.com/headlines/2017/11/28/1763485/sc-allows-justices-testify-vs-sereno (last accessed Aug. 31, 2018).

98. Edu Punay, *5 more justices to testify vs Sereno*, PHIL. STAR, Dec. 17, 2017, *available at* https://www.philstar.com/headlines/2017/12/17/1769539/5-more-justices-testify-vs-sereno (last accessed Aug. 31, 2018). The Justices who testified were Justices Teresita Leonardo-De Castro, Francis H. Jardeleza, Noel G. Tijam,

by counsel in the proceedings and that she be allowed to cross-examine the witnesses against her.[99] These requests were denied by the House panel.[100] The whole debacle was painted as an attack against judicial institutions, with President Rodrigo Roa Duterte (Duterte) declaring Sereno an enemy.[101] In the end, the investigating body voted that there was probable cause to impeach CJ Sereno and transmitted the Articles of Impeachment to the House plenary for the required vote.[102] However, the House plenary never got the chance to vote on whether to impeach CJ Sereno because the Solicitor General brought a *quo warranto* case against her before the Supreme Court.[103]

2. CJ Sereno's Ouster Case

a. Republic of the Philippines v. Sereno

In *Sereno*, the Court was tasked to resolve issues on the inhibition of its Members, on the propriety of taking cognizance of the case, on the exclusivity of impeachment as a mode of removing an impeachable officer and the propriety of the case, and on the possession of integrity by the Chief Justice.[104]

Diosdado M. Peralta, Samuel P. Martires, and Lucas P. Bersamin. Retired Justice Arturo D. Brion also testified. *Id.*

99. Pathricia Ann V. Roxas, *Sereno camp on denial of right to counsel, cross-examination: 'Sad day for justice,'* PHIL. DAILY INQ., Nov. 22, 2017, *available at* http://newsinfo.inquirer.net/946853/sereno-camp-impeachment-house-justice-committee-right-to-counsel-cross-examination (last accessed Aug. 31, 2018).

100. *Id.*

101. Felipe Villamor, *She Stood Up to Duterte. Now She Faces Impeachment*, N.Y. TIMES, Mar. 2, 2018, *available at* https://www.nytimes.com/2018/03/02/world/asia/philippines-chief-justice-duterte.html (last accessed Aug. 31, 2018). *See also* Andreo Calonzo & Clarissa Batino, First Female Chief Justice in Philippines Faces Impeachment, *available at* https://www.bloomberg.com/news/articles/2018-03-08/impeachment-of-top-judge-may-mar-women-s-day-in-the-philippines (last accessed Aug. 31, 2018).

102. Bea Cupin, House panel votes: Impeach Sereno, *available at* https://www.rappler.com/nation/197686-sereno-impeachment-house-committee-vote (last accessed Aug. 31, 2018).

103. Petition for *Quo Warranto* by the Republic of the Philippines, Mar, 6, 2018, *supra* note 11.

104. *Sereno*, G.R. No. 237428, at 32-33.

During the House impeachment investigation, it was revealed that CJ Sereno failed to file the required SALNs during her applications as Associate Justice and as Chief Justice notwithstanding the fact that she was employed as a professor at the University of the Philippines College of Law, and held various posts in government.[105] She explained that she was declared to have substantially complied with the SALN requirement by the JBC, through the Office of Recruitment, Selection, and Nomination upon her plea that she is unable to retrieve old records but is nonetheless armed with a certification from the University of the Philippines Human Resources Development Office (U.P. HRDO) and the Office of the Ombudsman that she has no pending administrative cases before them.[106] However, the records bare that no SALNs were

> filed by [CJ Sereno] for calendar years 1999 to 2009 except for the SALN ending December 1998 which was subscribed only in August 2003 and transmitted by the U.P. HRDO to the Ombudsman only on [16 December 2003]... Similarly, despite having been employed as legal counsel of various government agencies from 2003 to 2009, there is likewise no showing that she filed her SALNs for these years, except for the SALN ending [31 December 2009] which was unsubscribed and filed before the Office of the Clerk of Court only on [22 June 2012].[107]

It would also appear that there were several lapses in her SALN filings when she was appointed as Associate Justice in 2010.[108]

Upon these facts, the Solicitor General brought a case to challenge the legality of CJ Sereno's appointment, arguing that *quo warranto* is the proper remedy to challenge the qualification even of an impeachable officer, she having no right to hold the office in the first place.[109] The Solicitor General further argued that the remedy of *quo warranto* is not time-barred when it is the government that seeks to protect itself from persons unlawfully holding office and that the reckoning point must be from discovery of the fact of disqualification.[110] "The Republic contends that respondent's failure to submit her SALN as required by the JBC disqualifies her, at the outset, from being a candidate for the position of Chief Justice. Lacking her SALNs,

105. *Id.* at 3-6.

106. *Id.* at 6.

107. *Id.* at 5-8.

108. *Id.* at 8.

109. *Id.* at 15-16.

110. *Sereno*, G.R. No. 237428, at 15.

respondent has not proven her integrity which is a requirement under the Constitution."[111]

For her part, CJ Sereno sought the inhibition of the Justices who had testified against her during the House impeachment investigation — Associate Justices Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Noel G. Tijam, and Leonardo-de Castro — arguing that they have prejudged the case.[112] On the part of Justice Peralta, CJ Sereno argued that, as *ex officio* chairman of the JBC that nominated her, he had personal knowledge of facts material to the case.[113] After the Oral Arguments for the case, she also prayed for the inhibition of Associate Justice Samuel Martires for comments made during the Oral Arguments on the relation of religiosity and soundness of mind.[114] Further to her defense, she pleaded that the Court apply the doctrine in the case of *Concerned Taxpayer v. Doblada*[115] where the Court held that in cases where a public officer's SALN compliance is questioned, the burden of proof rests on the complainant to show that the missing SALNs were not filed, and not merely missing.[116]

On the matter of inhibition, the Court held that CJ Sereno has not cited any act that would warrant the compulsory inhibition of the Justices.[117] Instead, she has pointed to facts that could precipitate a personal review on the part of the Justices as to whether they would voluntarily inhibit from hearing and deciding the case,[118] saying that, "no Judge or Justice who is not legally disqualified should evade the duty and responsibility to sit in the adjudication of any controversy without committing a dereliction of duty for which he or she may be held accountable."[119]

Upon the argument that the Court has no jurisdiction over the instant case, the matter being a political question, the Court held that by virtue of Article VIII, Section 1, it has original jurisdiction to hear and decide the

111. *Id.* at 16.

112. *Id.* at 31.

113. *Id.*

114. *Id.* at 32.

115. Concerned Taxpayer v. Doblada, 498 Phil. 395 (2005).

116. *Sereno*, G.R. No. 237428, at 24 (citing *Doblada*, 498 Phil. at 848).

117. *Sereno*, G.R. No. 237428, at 45.

118. *Id.* at 37-45.

119. *Id.* at 44.

case, once again harping at the Court's solemn duty to put an end to controversies.[120]

Coming to the question of the exclusivity of impeachment, the Court resorted to statutory construction to hold that the Constitutional provision on impeachment does not preclude other modes of removing an impeachable officer from office, thus —

> The provision uses the permissive term 'may' which, in statutory construction, denotes discretion and cannot be construed as having a mandatory effect. We have consistently held that the term 'may' is indicative of a mere possibility, an opportunity or an option. The grantee of that opportunity is vested with a right or faculty which he has the option to exercise. An option to remove by impeachment admits of an alternative mode of effecting the removal.
>
> ...
>
> We hold, therefore, that by its tenor, Section 2, Article XI of the Constitution allows the institution of a *quo warranto* action against an impeachable officer. After all, a *quo warranto* petition is predicated on grounds distinct from those of impeachment. The former questions the validity of a public officer's appointment while the latter indicts him for the so-called impeachable offenses without questioning his title to the office he holds.
>
> Further, that the enumeration of 'impeachable offenses' is made absolute, that is, only those enumerated offenses are treated as grounds for impeachment, is not equivalent to saying that the enumeration likewise purport[s] to be a complete statement of the causes of removal from office.
>
> ...
>
> To subscribe to the view that appointments or election of impeachable officers are outside judicial review is to cleanse their appointments or election of any possible defect pertaining to the Constitutionally-prescribed qualifications which cannot otherwise be raised in an impeachment proceeding.[121]

The Court declared that *quo warranto* is a valid mode of removing a usurper because the office of the ancient writ of *quo warranto* is, after all, to protect the body politic from one who unlawfully holds office. It questions one's right to hold a post, not the person's misconduct in office.[122]

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120. *Id.* at 46 (citing PHIL. CONST. art. VIII, § 1).

121. *Sereno*, G.R. No. 237428, at 60-62 (citing PHIL. CONST. art. XI, § 2).

122. *Sereno*, G.R. No. 237428, at 65.

Finally, the Court ordered CJ Sereno to show cause why she should not be disbarred for violating the *sub judice* rule,[123] citing instances when the Chief Justice, during the pendency of the case, made public appearances to talk about the merits of the case.[124]

The dissent of Justice Marvic M.V.F. Leonen is anchored on the exclusivity of impeachment as a mode of removing the Chief Justice from office. He strongly remarked that "[e]ven if the Chief Justice has failed our expectations, *quo warranto*, as a process to oust an impeachable officer and a sitting member of the Supreme Court, is a legal abomination."[125] Justice Mariano C. del Castillo, by going through a learned exercise in statutory construction, shows in his dissent that impeachment, not *quo warranto*, is the proper remedy against an erring Chief Justice.[126] Justice Alfredo Benjamin S. Caguioa forwards the same idea in this wise —

> This *quo warranto* petition is brought before the Court purportedly to test the integrity of the Chief Justice. However, what it really tests is the integrity of the Court — its ability to stand by an idea. The idea is simple, clearly stated in the Constitution, and consistently upheld by the Court in its jurisprudence before today: impeachable officers, by express constitutional command, may only be removed from office by impeachment. By ousting the Chief Justice through the expediency of holding that the Chief Justice failed this 'test' of integrity, it is actually the Court that fails.[127]
>
> ...
>
> This case marks the time when the Court commits *seppuku* — without honor.[128]

Justice Carpio espouses the same doctrine, but markedly held that CJ Sereno violated the SALN law, and declared the same an impeachable offense.[129] Justice Estela M. Perlas-Bernabe, on the other hand, agrees with the majority that impeachment is not an exclusive mode of removing the Chief Justice, but opined that the writ of *certiorari* must first issue against the decision of the JBC and Aquino to nominate and appoint CJ Sereno,

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123. *Id.* at 151.

124. *Id.* at 141.

125. *Id.* at 1 (J. Leonen, dissenting opinion).

126. *Id.* at 1 (J. del Castillo, dissenting opinion).

127. *Id.* at 1 (J. Caguioa, dissenting opinion).

128. *Sereno*, G.R. No. 237428, at 64 (majority opinion).

129. *Id.* at 7 (J. Carpio, dissenting opinion).

respectively.[130] Justice Presbitero J. Velasco, Jr., though agreeing that *quo warranto* is an available remedy against an impeachable officer having no right to office, clings to the clarity of the rules on prescription.[131]

b. Republic of the Philippines v. Sereno (Resolution)

On the same 8-6 split, the Court affirmed CJ Sereno's ouster with finality. Aside from the issue on CJ Sereno's allegation that she was not accorded due process during the proceedings, which the Court disclaimed,[132] the Resolution of the Motion for Reconsideration, turned upon the same facts and issues as the main Decision.[133]

The jurisprudential value of the *Sereno Resolution* is found in the separate opinion of Justice Jardeleza, where he wrote —

> It is not difficult to concede that the impeachment-only argument is popular, especially if the Constitution is understood as a restricted enumeration of powers. As I stated in the outset, I myself previously thought its premises to be correct. The reality, however, is that, prior to this case, there has been no factual occasion for the examination (or rejection) of the plausibility of the impeachment-only view in the context of an actual case and controversy involving an incumbent Justice of the Supreme Court, where this exclusive view could be tested on all accounts. Thus, while it is not hard to imagine how the impeachment-only argument respecting our country's highest ranking judicial magistrates might be accepted as resolved, this case has forced us to look more closely into its historical, legal, and logical bases. Upon doing so, I am convinced that impeachment is not an exclusive mode of removal respecting justices of the Supreme Court, respecting their constitutional qualifications.
>
> I am further convinced that this reading gives more life to the Constitution's promise of accountability of public officers, not excluding the Court's own.[134]

Ultimately, *Sereno* was fought on the battlefield of judicial independence. One side brandishing the sword of Damocles, illustrating how the Decision will tie the hands of judicial officers, subjecting them to the puppeteering of the Office of the Solicitor General. The other, making a case for guarded

130. *Id.* at 18-19 (J. Perlas-Bernabe, separate opinion).

131. *Id.* at 1 (J. Velasco, concurring and dissenting opinion).

132. *Sereno (Resolution)*, G.R. No. 237428, at 3-5.

133. *Id.*

134. *Sereno (Resolution)*, G.R. No. 237428, at 16-17 (J. Jardeleza, separate opinion).

optimism, and advocating the preservation of the judiciary's integrity and independence as an institution.

III. TOWARDS CONSOLIDATION OF POWER

This study stands on the theory that *Sereno*[135] is not entirely unprecedented. It is among a litany of cases where the Court decided in favor of shielding the judiciary from the political departments of government. As shown in this section of the Article, the Judiciary has endeavored to consolidate its power on matters involving itself as an institution. Specifically, this consolidation is seen in three areas of concern: (a) the power to decide a case involving the judiciary and judicial officers, (b) the Court's supervisory power over the manner of filling the judicial ranks, and (c) the power to discipline members of the judicial branch.

A. Judicial Restraint: Duty to Hear and Decide a Case

Judicial restraint is founded upon "the assertion that judicial policy-making conflicts with the very essence of a 'democratic society,'"[136] and that the "courts simply are not equipped to make 'wise policy.'"[137] In Philippine jurisdiction, judicial restraint found its backbone in the political question doctrine. In *Tañada v. Cuenco*,[138] the Court defined political questions as "those 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."[139] The oft-cited case relating to the political question doctrine is *Javellana v. Executive Secretary*,[140] where the Court decided the issue of whether the validity of the 1973 Constitution's ratification was a political question on an even split. In the end, the Court ruled that "there is no further judicial obstacle to the new Constitution being considered in force and effect,"[141] thereby ushering the peak of the Marcos dictatorship. During the dictatorship era, the Court had the propensity of shying away from ruling upon controversies involving the President's policies. Thus, upon the fall of

135. *Sereno*, G.R. No. 237428.

136. Charles M. Lamb, *Judicial Restraint Reappraised*, 31 CATH. U. L. REV. 181, 183. (1982).

137. *Id.* 186.

138. Tañada v. Cuenco, 103 Phil. 1051 (1965).

139. *Id.* at 1067.

140. Javellana v. Executive Secretary, 50 SCRA 30 (1973).

141. *Id.* at 141.

the Marcos regime, the 1986 Constitutional Commission took pains in crafting the provision allocating judicial power upon the courts.[142] This process birthed what is now Article VIII, Section 1 of the Constitution.[143]

In one of the early cases decided by the Court under its newly-minted powers, it had the chance to pass upon a claim for deference to the judgment of the executive, thus —

> The framers of the Constitution believed that the free use of the political question doctrine allowed the Court during the Marcos years to fall back on prudence, institutional difficulties, complexity of issues, momentousness of consequences[,] or fear that it was extravagantly extending judicial power in the cases where it refused to examine and strike down an exercise of authoritarian power ... The Constitution was accordingly amended. We are now precluded by its mandate from refusing to invalidate a political use of power through a convenient resort to the political question doctrine. We are compelled to decide what would have been non-justiciable under our decisions interpreting earlier fundamental charters.[144]

The duty to decide controversies undercuts the Court's reasoning in all cases involving the impeachment or removal of the Chief Magistrate. There, the Court refused to exercise judicial restraint and asserted judicial supremacy and its primary duty to hear and decide controversies. The Court, in *Francisco, Jr.*[145] held, to wit —

> The exercise of judicial restraint over justiciable issues is not an option before this Court. Adjudication may not be declined, because this Court is not legally disqualified. Nor can jurisdiction be renounced as there is no other tribunal to which the controversy may be referred. Otherwise, this Court would be shirking from its duty vested under Art. VIII, Sec. 1(2) of the Constitution. More than being clothed with authority thus, this Court is duty-bound to take cognizance of the instant petitions. In the august

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142. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 991 (2009 ed.).

143. PHIL. CONST. art. VIII, § 1. The provision states —

> Section 1. The judicial powers shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> 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.

144. Marcos v. Manglapus, 177 SCRA 668, 708 (1971).

145. *Francisco, Jr.*, 415 SCRA.

> words of amicus curiae [Fr. Joaquin G. Bernas, S.J.], '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.'
>
> Even in cases where it is an interested party, the Court under our system of government cannot inhibit itself and must rule upon the challenge because no other office has the authority to do so. On the occasion that this Court had been an interested party to the controversy before it, it has acted upon the matter 'not with officiousness but in the discharge of an unavoidable duty and, as always, with detachment and fairness.' After all, 'by [his] appointment to the office, the public has laid on [a member of the judiciary] their confidence that [he] is mentally and morally fit to pass upon the merits of their varied contentions. For this reason, they expect [him] to be fearless in [his] pursuit to render justice, to be unafraid to displease any person, interest or power and to be equipped with a moral fiber strong enough to resist the temptations lurking in [his] office.'[146]

With greater gravitas, the Court reiterated the above doctrine in *Sereno*[147] saying —

> Judicial power is vested in one Supreme Court and in such lower courts as may be established by law. 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.
>
> In the presence of all the requisites for the Court's exercise of judicial review, there can be no doubt that the exercise thereof is not discretionary upon the Court, nor dependent upon the whims and caprices of any of its Members nor any of the parties. Even in cases rendered moot and academic by supervening events, the Court nevertheless exercised its power of review on the basis of certain recognized exceptions. Neither is its exercise circumscribed by fear of displeasing a co-equal branch of the government. Instead, the Constitution makes it crystal clear that the exercise of judicial power is a duty of the Court.[148]

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146. *Id.* at 158 (citing Perfecto v. Meer, 85 Phil. 552, 553 (1950); *Estrada*, 356 SCRA at 155-156 (2001); Vide Abbas v. Senate Electoral Tribunal, 166 SCRA 651 (1988); Vargas v. Rilloraza, et al., 80 Phil. 297, 315-316 (1948); Planas v. Commission on Elections, 49 SCRA 105 (1973) (J. Concepcion, concurring opinion); Philippine Judges Association v. Prado, 227 SCRA 703, 705 (1993); & Ramirez v. Corpuz-Macandog, 144 SCRA 462, 477 (1986)).

147. *Sereno*, G.R. No. 237428.

148. *Id.* at 68-69 (citing PHIL. CONST. art. VIII, § 3).

This claim of authority by the Court is the drawstring of their Decisions' legitimacy. Without a stable platform from whence the Court can make its pronouncements, any of its subsequent acts will be mooted. By standing on its authority to write *finis* to every controversy — even those where the Judicial institution is interested — the Court lives up to its moniker as the last bastion of democracy, the final arbiter of justice. Lest the glorification become unpalatable, we recall the wise words of Justice Robert Jackson, "[the Court] is not final because it is infallible, [it] is infallible because it is final."[149]

In the cases discussed here, the bold statement being made by the Court is that its mandate and power is to decide. How they decide is a matter left to their discretion, having nothing else in mind but justice and the law, for judges and justices should not answer to the whims of an electorate nor should they be beholden to any power. Their rubric is their judicial training, and their light their conscience.

The above disquisition may surrender to theory but will not stand against current reality because moral indebtedness remains at the core of Filipino political and cultural rhetoric,[150] regardless of the truth. This is an ancient phenomenon, but with contemporaneous translation — a Justice's decision is measured against the person of the appointing authority.[151] It was among the Articles of Impeachment levied against CJ Corona.[152] CJ Sereno

149. Brown v. Allen, 344 U.S. 443, 540 (1953).

150. Christina Jayme Montiel, Philippine Political Culture and Governance at 33-35, *available at* http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2012/12/Philippine-Political-Culture-and-Governance.pdf (last accessed Aug. 31, 2018). *See also* Patricia B. Licuanan, *A Moral Recovery Program: Building a People — Building a Nation*, *in* VALUES IN PHILIPPINE CULTURE AND EDUCATION 35-54 (Manuel B. Dy ed., 1994).

151. Eric Posner, *Does Political Bias in the Judiciary Matter?: Implications of Judicial Bias Studies for Legal and Constitutional Reform*, 75 U. CHI. L. REV. 853, 859 (2008). *See also* Jeline Malasig, How Supreme Court justices voted in major cases under Duterte administration, *available at* http://www.interaksyon.com/supreme-court-voting-patterns-duterte-administration/ (last accessed Aug. 31, 2018); Aries C. Rufo and Purple S. Romero, Voting pattern of Supreme Court justices shows they play politics, *available at* http://news.abs-cbn.com/special-report/10/22/08/voting-pattern-supreme-court-justices-shows-they-play-politics (last accessed Aug. 10, 2018); & Michael Bueza, How did SC justices vote on major political cases?, *available at* https://www.rappler.com/newsbreak/iq/151998-supreme-court-votes-major-political-cases (last accessed Aug. 31, 2018).

152. Verified Complaint for Impeachment, *supra* note 57, at 5-7 & 18-38.

even claimed that her ouster was caused by her constant dissention in cases involving the Duterte administration.[153] It took Justice Leonen's dissent in *Sereno* to discredit the claim,[154] but the narrative stuck. Though a judge's decision is influenced by his or her political alignment,[155] the same should not be painted as the be all, end all of judicial decision making. Stripped of all complexities, the calling of a judge is to decide, foremost upon the dictates of law, and only secondarily, upon his or her conscience. Alas, the concept is somehow elusive.

This mindset makes the consolidation project even more cumbersome, but also necessary. It is in consolidation that the judiciary is able to show that it is not a stringed puppet of whoever is in power. The metric is not whether a judge or justice agrees with the posturing of the appointing authority, but in his or her ability to decide regardless of the personality of the parties. By corralling unto itself the power — neigh — the duty to hear and decide a case, the judiciary is saying that, after all is said and done, it is they who "let justice be done, though the heavens fall."[156]

B. Supervision: Duty to Ensure the Constitutionality of Discretionary Acts

The second area upon which the Court stakes its claim is on issues involving the nomination of judges and justices of the court. On several occasions, the Court invoked its supervisory authority over the JBC, claiming interest in the nomination process of said constitutional body.

The relevant provision regarding this point is Article VIII, Section 8, which implanted the JBC in our system of government thus —

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a

153. Joseph Tristan Roxas, Sereno sees Duterte's hand in oust moves against her, *available at* http://www.gmanetwork.com/news/news/nation/649359/sereno-sees-duterte-s-hand-in-oust-moves-against-her/story/ (last accessed Aug. 31, 2018). *See also* Kristine Joy Patag, *Palace to Sereno: Your ouster is on you, not Duterte*, PHIL. STAR, May 18, 2018, *available at* https://www.philstar.com/headlines/2018/05/18/1816421/palace-sereno-your-ouster-you-not-duterte (last accessed Aug. 31, 2018).

154. *See Sereno*, G.R. No. 237428, at 57-59 (J. Leonen, dissenting opinion).

155. Posner, *supra* note 151.

156. SENECA, DE IRA, book I, ch. XVII (1643 ed.). *See also* Somerset v. Stewart, 98 ER 499 (1972).

> professor of law, a retired Member of the Supreme Court, and a representative of the private sector.
>
> (2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
>
> (3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.
>
> (4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
>
> (5) The Council shall have the principal function of recommending appointees to the judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.[157]

There are no set rules for succession in the judiciary.[158] The Constitution defines the qualification of Justices of the Court,[159] but it does not provide for a rigid system of transition. This comes from the fact that the power of appointment is traditionally an executive act, wielded solely by the President.[160] Thus, in our system of government, the JBC screens candidates for judicial posts based on constitutional and statutory qualifications, and submits the list of nominees to the President who appoints from the JBC's list without need for confirmation by a Commission on Appointments.[161] This system was introduced "to forestall as much as possible the influence of partisan politics."[162]

However, while political influence has been minimized with the establishment of the JBC, influences from varying provenance have come into play, among them, the influence of the Justices themselves. Court insiders have spoken of an internal process within the Supreme Court, whereby the Justices are called upon to nominate members of the bench and the bar upon whom the powerful vote of the Chief Justice, sitting as a

157. PHIL. CONST. art. VIII, § 8.

158. Jose M. Roy III, *From Selection to Succession of the Chief Justice: A Note on the Next-in-Rank Rule*, 50 ATENEO L.J. 1063, 1076 (2006).

159. PHIL. CONST. art. VIII, § 7.

160. *Roy III*, *supra* note 158, at 1074.

161. BERNAS, *supra* note 142, at 1017-18.

162. Topacio v. Judge Ong, 574 SCRA 817 (2008).

member and *ex officio* chair of the JBC, should be cast. No less than members of the Court have discussed this practice, most recently and most explicitly in the case of *Jardeleza v. Sereno*.[163] The case finds its genesis in the JBC's nomination process for the seat vacated by Associate Justice Abad.[164] During the voting process, then Solicitor General Jardeleza obtained a majority vote of five, however, CJ Sereno invoked Rule 10, Section 2 of JBC-009[165] questioning "Jardeleza's ability to discharge the duties of his office as shown in a confidential legal memorandum over his handling of an international arbitration case for the government."[166] The issue thus revolved around the JBC's interpretation and application of Rule 10, Section 2 of JBC-009, and the alleged grave abuse of discretion that led to his being removed from the shortlist transmitted to Aquino.[167] Invoking its supervisory authority over the JBC, the Court took cognizance of the case and ruled in favor of Jardeleza.[168] In his concurring opinion, Justice Brion spoke of the recommendation process for candidates for Justiceship in this manner —

> I strongly believe, too, based on the circumstances and reasons discussed below, that CJ Sereno manipulated the JBC processes to exclude Jardeleza as a nominee. The manipulation was a purposive campaign to discredit and deal Jardeleza a mortal blow at the JBC level to remove him as a contender at the presidential level of the appointing process.
>
> [ ]Of particular note in this regard is this Court's own experience when it failed to vote for its recommendees for the position vacated by retired Associate Justice [ ] Abad, because of a letter dated [29 May 2014] from the Chief Justice representing to the Court that 'several Justices' requested that the Court do away with the voting for Court recommendees, as provided in Section 1, Rule 8 of JBC-009. When subsequently confronted on who these Justices were, the Chief Justice failed to name anyone. As a result,

163. Jardeleza v. Sereno, 733 SCRA 279 (2014).

164. *Id.* at 312.

165. JBC-009, rule 10, § 2. The rule provides —

> Section 2. *Votes required when integrity of a qualified applicant is challenged.* — In every case when the integrity of an applicant who is not otherwise disqualified for nomination is raised or challenged, the affirmative vote of all the members of the Council must be obtained for the [favorable] consideration of his nomination.

166. *Jardeleza*, 733 SCRA at 314.

167. *Id.* at 316-19.

168. *Id.* at 326.

> applicants who could have been recommended by the Court (Jardeleza, among them), missed their chance to be nominees.[ ][169]

It was in Justice Leonardo-De Castro's concurring opinion in *Sereno* that the undercurrents of *Jardeleza* were further revealed. She said,

> It was during the course of the processing by the JBC of the applications for the vacancy in the Supreme Court resulting from Associate Justice Abad's retirement, and apparently in furtherance of respondent's efforts to block the inclusion of [Sol. Gen.] Jardeleza in the shortlist of qualified nominees for the said vacancy, that respondent falsely claimed that several Supreme Court Associate Justices wished to do away with the JBC undertaking under Section 1, Rule 8 of JBC-009. Said rule gives the Court *en banc* the opportunity to be part of the JBC selection process by submitting its recommendees for the Supreme Court vacancy to the JBC.
>
> ...
>
> The rest of the Court *en banc* initially relied in good faith on respondent's letter and no voting was held on the Court's recommendees to the JBC for the Supreme Court Associate Justice post vacated by Justice Abad. Subsequently, though, after the factual circumstances of the *Jardeleza* case were brought to their attention, the Supreme Court Associate Justices began asking one another who made the request to do away with the voting of recommendees for the Supreme Court vacancy, but no one admitted doing so. When directly confronted during an *en banc* session by the Supreme Court Associate Justices as to the identities of the 'several Justices' referred to in her letter dated [29 May 2014], respondent was unable to name any of them.[170]

In making the case for overturning the decision of the JBC in *Jardeleza*, the Court harked back to the jurisprudential definition and scope of supervision —

> It is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.

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169. *Jardeleza*, 733 SCRA at 390-91 (J. Brion, concurring opinion).

170. *Sereno*, G.R. No. 237428 (J. Leonardo-De Castro, concurring opinion).

The same sentiment was earlier quipped by Justice Brion in his concurrence in *De Castro*. He said,

> [The JBC] is effectively an adjunct of the Supreme Court: the Council is under the supervision of the Court, but is fully independent in undertaking its main function; the Chief Justice is the Chair, with the SC Clerk of Court as the Secretary; the emoluments of Council members are determined by the Court with the Council budget a part of the SC budget; and the SC may assign functions and duties to the Council.[171]

In distilling the doctrine further, the Court reconciled its supervisory authority over the JBC with the JBC's constitutional duty in this wise —

> In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the Judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long-held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.
>
> ...
>
> The primary limitation to the JBC's exercise of discretion is that the nominee must possess the minimum qualifications required by the Constitution and the laws relative to the position. While the resolution of who to nominate as between two candidates of equal qualification cannot be dictated by this Court upon the JBC, such surrender of choice presupposes that whosoever is nominated is not otherwise disqualified. The question of whether or not a nominee possesses the requisite qualifications is determined based on facts and therefore does not depend on, nor call for, the exercise of discretion on the part of the nominating body.[172]

At the height of CJ Sereno's impeachment investigation, the "Next-in-Rank" Rule, or the principle of seniority was again brought to light,[173] framed as the progenitor of the rivalry between CJ Sereno and Justice Leonardo-De Castro. The practice "has long since been established as the

171. *De Castro*, 615 SCRA at 749 (J. Brion, concurring opinion).

172. *Sereno*, G.R. No. 237428, at 83 (citing Judge Villanueva v. JBC, 755 SCRA 182 (2010)).

173. Purple Romero, Justice Lourdes Sereno: defying tradition, *available at* https://www.rappler.com/nation/special-coverage/scwatch/9029-justice-lourdes-sereno (Aug. 6, 2018). *See also* Purple Romero, Scrutinizing Sereno, one year after, *available at* https://www.rappler.com/newsbreak/37186-scrutinizing-sereno-supreme-court (last accessed Aug. 3, 2018).

mode of succession to the Office of the Chief Justice,"[174] though not mandated by the Constitution.[175] Dean Jose M. Roy III argued for the institutionalization of the "Next-in-Rank" Rule, being a customary rule in the Court.[176] He said that the institutionalization of said practice

> would favor the smooth transition of power and leadership in the judiciary, insulating it from the whim and caprice of executive selection. Beyond this, automatic succession would reduce speculation on the possibility of concatenation between the executive and the chief justice, if not the perception of executive control or influence over the judicial system.[177]

Clearly, the matter of nomination is an area of interest for members of the Court. In the line of decisions illustrated above, the Court recalibrated what was once a purely political process. While the appointment of judges and justices remains a political question, the matter of who can be appointed rests in the august halls of Padre Faura, through the Court's supervisory hand over the JBC. In big, bold strokes the Supreme Court claimed power over the nomination process.

Relating the above narration with the consolidation efforts, the Authors understand this to be a strategic stance in integrating the judiciary as an institution. By controlling who can sit on the bench, the Court assumes a position of supremacy over its chambers. By posturing itself as front liners in the defense of the judiciary from politicking, they have, in one way or the other, dispossessed the political departments of their influence in judicial matters. But this consolidation of power makes for other forms of corruption. While it insulates the Court from the *padrino* system from without, it may potentially cultivate one within. Meritocracy may buckle under the pressures of economic necessity, affiliations, proximity, and other more latent pressure points. The solution may be found in the fact of plurality. The Court, after all, is made up of 15 men and women of high renown, luminaries in the field of law, priests and priestesses of the altars of justice. Whether that system is enough to counter the in-bred controversies is not for this Article to tackle. Suffice it to say, however, that the Court has made strides in terms of shielding the judiciary from more blatant politicking from the popular, elected branches of government.

C. Discipline: Duty to Maintain Public Trust

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174. *Roy III*, *supra* note 158, at 1076.

175. *Id.* at 1078.

176. *Id.* at 1093.

177. *Id.* at 1094.

As earlier intimated in this Article, *Sereno* is not entirely unprecedented. In fact, it has also prompted a review of jurisprudence regarding the Court's exercise of disciplinary authority over its own members. Aside from the fact that the decision is consonant with a latent Court policy, it also aligns with cases where the Court reviewed disciplinary cases involving sitting members of the Court. The case of *In the Matter of the Charges of Plagiarism Against Associate Justice Mariano Del Castillo*[178] and its companion cases[179] come to mind. There the Supreme Court had the occasion to assert its power over the action of its individual members. Along this analytical line, the issue of usurpation by the Court of Congress' impeachment power can hardly be ignored. Indeed, in addressing Justice Carpio's dissent in *In the Matter of Charges of Plagiarism*, Justice Abad made the following distinction —

> [Justice Carpio] asserts that the sole disciplining authority of all impeachable officers, including the Justices of this Court, lies in Congress. This is quite true but only with respect to impeachable offenses that consist in 'culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust,' all offenses that warrant the removal of such officers and disqualification for holding any office in the government. The Supreme Court has no intention of exercising the power of impeachment that belongs to Congress alone.[180]

In *Sereno*, the distinction was drawn vis-à-vis acts done while in office, and acts done prior thereto. The majority held that acts done prior to one's assumption to an office subject of impeachment are justiciable issues, properly taken cognizance of by the Court, especially if the misgivings go into the officer's qualification for the office held. Contrasting CJ Corona's impeachment and CJ Sereno's ouster, one would see that the article upon which CJ Corona was convicted specifically alleged non-disclosures in his SALN while serving as a member of the Court, while CJ Sereno was ousted for acts done prior to her appointment to the High Court.

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178. In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, 632 SCRA 607 (2010).

179. In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, 642 SCRA 11 (2011); & Re: Letter of the UP Law Faculty entitled Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court, A.M. No. 10-10-4-SC, *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/october2010/10-10-4-SC.htm (last accessed Aug. 31, 2018).

180. *In the Matter of the Charges of Plagiarism (Resolution)*, 642 SCRA at 76 (J. Abad, concurring opinion).

Contrary to the claim that the Court had loosened the construction of the impeachment clause in *Sereno*, it, in fact, construed the provision on impeachment strictly. In essence, what the Court held in *In re: Justice Del Castillo* and in *Sereno* is that: (1) impeachment is only resorted to for the offenses listed under the provision, (2) impeachment is a remedy only against the erring public officials listed therein, and (3) impeachment is only for acts done while the impeachable officer is holding the office so listed as subject to the impeachment clause.

Further, the Court has opened itself to the remedial measure of *quo warranto*, notwithstanding the Damoclesian threats to judges and justices. In its most ideal form, the broadening of the Solicitor General's *quo warranto* capacities should be a non-threat to a judge or justice truly deserving of donning the judicial robes. However, the Authors are not blind to the remedy's propensity for abuse. Justice Leonen's and Justice Caguioa's fear of the remedy being used to influence members of the judicial institution are not entirely unfounded. However, a step back from the draconian picture thus painted would reveal that it is the Court who will ultimately decide such cases. If there is truly misuse by the Solicitor General of his newly-found capacities in representing the Republic of the Philippines, the Court has enough weapons in its arsenal to retaliate. Foremost, as already pointed out in *Sereno*, the Solicitor General is an officer of the Court, and is bound by his or her oath as a member of the bar. Second, the Court, having authority to hear and decide a case, could always dismiss a case brought to harass or malign any party.

In the end, everyone becomes a witness to a Court ready to exact responsibility and accountability from its own. Short of initiating a constitutional crisis, the Court has tightened the noose on Congress' impeachment prerogatives, and grounded these exceptions on remedial measures.

Consolidation under this third area of concern is, unsurprisingly, the most controversial. Questions on the objectivity of judicial actors and their independence take center stage.

IV. JUDICIAL INDEPENDENCE AND STRONG INSTITUTIONS

There are two ways of understanding judicial independence: *first*, that the individual judge is "able to take actions without fear of interference by another...without fear or anticipation of (illegitimate) punishments or

rewards;"[181] *second*, that the institution is able "to do its job without relying on some other institution or group."[182] The matter of independence of the judiciary strikes at the heart of our democratic system because it requires a judiciary that is "free to speak its own honest judgment within the established rules."[183] Lisa Hilbink, a legal scholar whose body of work has tended towards studying judicial behavior, makes her own dichotomy thus —

> [Formal judicial autonomy or negative judicial independence] refers to the rules (formal and informal) governing judicial appointment, discipline, tenure, jurisdiction, and budget, while the [positive judicial independence] is behavioral. Positive judicial independence can be assessed only empirically, that is, through an examination of what judges actually do in cases involving politically powerful actors.[184]

Hilbink's paradigm does not stray from the individual-institution framework, but nuances independence in practice. These analytical measures are used in this study to understand consolidation efforts as a negotiation of the Court's independence as an institution, and the independence of its individual members. Further, the manner by which such independence is upheld goes into both the overt and covert behaviors of judicial actors. The Authors put the consolidation measures under the microscope of judicial independence. Specifically, the Authors look at how decisions seek to forward judicial independence as a value within the judicial institution.

A. Personal Independence

Many of the dissents in the above cases seek to assert the independence of the individual Members of the judicial system, warning against decisions that will open the floodgates for executive and/or legislative interference in judicial matters — a Damocles sword hanging above the heads of judges, justices, and members of tribunals exercising judicial or quasi-judicial functions. Justice Del Castillo said in his dissenting opinion in *Sereno* —

> It is therefore clear that the grant to the [Solicitor General] of unrestricted and imprescriptible power to institute *quo warranto* petitions against

181. John Ferejohn, *Independent Judges, Dependent Judiciary: Explaining Judicial Independence*, 72 S. CAL. L. REV. 353, 355 (1999).

182. *Id.*

183. Mario M. Cuomo, *Some Thoughts on Judicial Independence*, 72 N.Y.U. L. REV. 298, 303 (1997).

184. Lisa Hilbink, *The Origins of Positive Judicial Independence*, WORLD POL., Oct. 2012, at 387-88.

> appointive impeachable officers poses serious risks to the independence of constitutional offices declared to be independent. In *Bengzon v. Drilon*, we ruled that '[t]he judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties.' They 'should be free to act as their conscience demands, without fear of retaliation or hope [of] reward.' With the [Solicitor General] wielding a *quo warranto* sword of Damocles over the heads of these officers, the Filipino people cannot be assured that they will discharge their constitutional mandate and functions without fear or favor. Without such assurance, there can be no guarantee that the primordial interest of the sovereign people is promoted.[185]

There is a conscious advocacy among members of the Court to maintain the independence of individual Justices, not only from executive and legislative interference, but also from the influence of their peers. There is an in-group and out-group rhetoric that goes on within the Court itself. The dissents in *Sereno*, particularly, claim that a system where the Court has the power to discipline its own members silences dissent. Justice Irving R. Kaufman of the United States Court of Appeals has extensively discussed this possibility, thus —

> Judicial community is formed in the main in the conference room, and it is important that it be so. Judges remain acutely aware that too much dissension creates gnawing uncertainty in the law. Apart from the interests of legal uniformity and coherence, judges usually realize that continual dissent and refusal to accept settled doctrine undercut the weight their views carry with their brethren, the bar, and the public. In sum, judges must be willing to engage in a dialogue with their colleagues. Whether they employ legal argument, hard-nosed negotiation and compromise, or a combination of these techniques, that dialogue will not be productive in the absence of personal respect and confidence.
>
> Sometimes, of course, ideological disagreements combine with personal incompatibilities to disrupt the working relationship. These rifts are unfortunate but tolerable. The other judges muffle the flames, and the consequences are rarely more severe than a few heated dissents and a mild increase in the number of cases heard *en banc*. But add a judicial mechanism for investigating judges and the problem would be magnified. A judge might see across the table not merely a working partner but a potential adversary. The dialogue would continue, of course. In most cases no change would be detectable. But there would be an inevitable loss of

185. *Sereno*, G.R. No. 237428, at 18 (J. del Castillo, dissenting opinion) (citing Bengzon v. Drilon, 208 SCRA 133, 150 (1992)).

> frankness if each participant feared that candor might one day build a case against him.[186]

But, as renowned legal scholar Raoul Berger put it, a Court that cannot be trusted with the discipline of dissenters, cannot be trusted with other matters relating to the life of the nation.[187]

B. Institutional Independence

There is a line of opinions among these cases which seeks to assert the independence of the judiciary as an institution, externalized by the Court's taking cognizance of the case. This is the prevailing doctrine on the matter. Between a decision that makes for greater independence of the judicial institution and independence of individual members of the judiciary, the Court has sided greatly on the independence of the institution.

In all the majority opinions in the cases involving the Chief Justice, the Court mainly decided in favor of establishing the independence of the judiciary as an institution — shielding its disbursement of the JDF from congressional scrutiny;[188] distinguishing judicial and executive appointments;[189] claiming judicial privilege over its internal processes, documents, officers, and employees;[190] rectifying the mistakes of a supervised body;[191] and taking cognizance of disciplinary cases against its own members.[192] The tendency of the Court to favor institutional independence over the personal independence of individual judges and justices has only been confirmed recently with the decision in *Sereno*. Prior to *Sereno*, it appeared that the Court favored the exoneration of the Chief Justice, however, with *Sereno*, the propensity of the Court became apparent. In *Sereno*, as in *Francisco, Jr.* and *In re: Production of Court Records*, one can see that the Court was not protecting the person of the Chief Justice, but the Judiciary as an institution.

In carving out these distinctions, exemptions, privileges, and powers, the Court lays claim to its independence as an institution. It has corralled power and support for all actors exercising similar powers. With these precedents,

186. Irving Kaufman, *Chilling Judicial Independence*, 88 YALE L.J. 681, 711 (1979).

187. Berger, *supra* note 88.

188. *See generally Francisco, Jr.*, 415 SCRA.

189. *See generally De Castro*, 615 SCRA.

190. *See generally Production of Court Records*.

191. *See generally Sereno*, G.R. No. 237428 & *Jardeleza*, 733 SCRA.

192. *See generally In the Matter of charges of Plagiarism*, 632 SCRA.

the Court validates subsequent rejections of executive and/or legislative expeditions within the Court. But why the earnestness to make the judicial institution invincible against possible breaches from the other branches of government? And what of the constitutional mechanisms of exacting accountability from public officers? The Authors tackle these questions in the next section.

V. PUBLIC OFFICE IS A PUBLIC TRUST

A. Foundations of a Democratic Way of Life

The Philippines is a democratic and republican State.[193] It is founded upon the principles of representation, freedom, rule of the majority, and tolerance for dissent.[194] In our framework of government, the Philippines adheres to the doctrine of separation of powers and the system of checks-and-balances.

The courts' role in the greater scheme of things is to serve as an arbiter between competing interests. They see to it that legislative and executive agenda conform to the above principles. In case of doubt, the Court is called upon to decide whether acts of the other departments, and/or the lower courts are consistent with these democratic values.

Within the institution itself, the Court must see to it that its systems and processes are in keeping with the democratic way of life. In the country's court system, for example, the opportunity to be heard is jealously guarded. Due process is a right protected in all kinds of litigation. Within judicial ranks, opportunity to be heard is likewise a treasured right. Every justice has the right to say his piece without fear of backlash. This notwithstanding, a justice's opinion is denominated by the number. If it conforms with the vote of the majority of the collegial body, his opinion becomes part of the concurrence, otherwise his opinion is filed among the dissents. The controlling decision is that which is concurred in by the Court. This system of concurrence and dissent illustrate the Court's adherence to core democratic principles. Among these values, the protection of dissent takes center stage. The rule of the majority is tempered by the minority's right to disagree.

The right to disagree is wielded by members of the court through the concurrent publication of their dissenting opinion in decided cases.[195] As earlier stated, the fear that dissent will cause the ouster or removal of a sitting

193. PHIL. CONST. art. II, § 1.

194. Hans Kelsen, *Foundations of Democracy*, ETHICS, Oct. 1995.

195. PHIL. CONST. art. VIII, § 13.

justice should be unheard of in a democracy, the same being a capacity vested by the adoption of the State's form of government. And yet, it would seem to be a pivotal mark in the relations of the administration and the judiciary. Justices who rule against administrative agenda are painted as enemies of the State and become the subject of politicking.[196] The executive branch of government in the Philippines is concerned not only with how the judiciary is run, but who runs it as well. This sentiment is shrouded in the "mandate of the people" narrative. During CJ Corona's impeachment, Aquino came out saying that the project of impeaching the Chief Justice was an order from his "bosses."[197] Likewise, in CJ Sereno's case, Duterte said that he cannot let the Chief Justice dictate against executive decision-making.[198]

This is problematic. Foremost, judges and justices are not put in office through popular vote. The measure of their competence cannot be decided by the people-at-large because, under the country's system, they decide in accordance with law and jurisprudence, not upon popular desire or upon their own wisdom. They are not beholden to the projects of the current nor any administration. As non-political actors, they cannot decide controversies upon the prodding of a majority of the people, but only upon what the law is.

This majoritarian frame of thinking is what endangers dissent. When that right is cut off with the threat of removal, we might as well recalibrate the judiciary every time a new president is elected — a scenario that is becoming familiar in the Philippine setting. The Aquino administration set precedent for the "clean slate" approach to the making of the judiciary. The tone set with CJ Corona's impeachment is one of aggression against judicial actors who refuse to align with the program of the administration. The dissonance in *Sereno* is found in the Court's rejection of the "clean slate" approach — i.e., insulating the Chief Justice from the political process of impeachment —

196. *See* Gaea Katreena Cabico, *Duterte tells Sereno: I am now your enemy*, PHIL. STAR, Apr. 9, 2018, *available at* https://www.philstar.com/headlines/2018/04/09/1804326/duterte-tells-sereno-i-am-now-your-enemy (last accessed Aug. 31, 2018) & Villamor, *supra* note 101.

197. Benigno Simeon C. Aquino III, President of the Republic of the Philippines, *Third State of the Nation Address*, Address at the Batasang Pambansa Complex (July 23, 2012) (transcript *available at* http://sona.inquirer.net/19/state-of-the-nation-address-2012-benigno-aquino-iii/ (last accessed Aug. 31, 2018).

198. Nestor Corrales, *Duterte slams Sereno anew: She's 'ignorant,' 'dumb'*, PHIL. DAILY INQ., Apr. 13, 2018, *available at* http://newsinfo.inquirer.net/982082/duterte-scorns-sereno-anew-shes-ignorant-dumb (last accessed Aug. 31, 2018).

but also resulting in the same. The caveat here, however, is that in CJ Corona's impeachment, the matter was a decided fact. Those who sat as judges in the impeachment proceedings cared little for judiciousness or evidence, but sat in judgment as representatives of the people who clamored for the removal of the Chief Justice. In the case of CJ Sereno, she had the opportunity to make her case before a tribunal of record. The decision could have gone either way, it was her staunch refusal to present records of her compliance with the SALN law despite the opportunity to do so[199] which sealed her faith. The decision in *Sereno*, was not born of political pressure, but of unavailable facts for salvation.

This emerging reality of co-terminus Chief Justiceship erodes the separation of powers and the check-and-balances of our constitutional set up.

B. Separation of Powers and Checks-and-Balances

The case of *Angara v. Electoral Commission*[200] explains the separation of powers and the systems of checks-and-balances thus —

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. ... And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other department in its exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[201]

It must be pointed out that the separation of powers is distinct from the system of checks-and-balances as explained in the above quotation. But with the decisions of the Court in matters involving the Chief Justice, the line has been blurred.

Indeed, the duty to hear and decide actual controversies come within the constitutionally vested power of the judiciary. But such power has been wielded in a manner that undermines the systems of checks-and-balances

199. *Sereno*, G.R. No. 237428, at 19.

200. Angara v. Electoral Commission, 63 Phil. 139 (1936).

201. *Id.* at 156.

against the abuses of the co-equal branches of government. In its inception, the impeachment powers of congress are checks on the high officers of the Republic. With the decision in *Sereno*, the distinction has between separation of powers and the system of checks-and-balances has been muddied. Whether this blurring of lines is good or bad is beyond the competence of this current study, its object is to surface the fact of its occurrence, and trace its genesis.

VI. GUARDING THE GUARDIANS

In the cases surveyed above, the Court routinely echoes the sanctified phrase — "Public office is a public trust."[202] Stripped down to its barest elements, the decisions of the Court regarding its leadership seek to exact responsibility. In passing upon matters of truth, justice, and integrity, the Court has in its mind the longevity of the judicial institution. The consolidation efforts is part of a greater project of the Court — the restoration of judicial integrity and a strengthening of the Court's supremacy in matters relating to itself.

In the Matter of Charges of Plagiarism made the case for the Court exercising disciplinary authority over its own members, removing allegations of plagiarism and dishonesty from the reach of impeachment prosecution. Congress again dabbled in the prosecution of a Justice of the Court with CJ Corona. CJ Corona's impeachment put premium on the SALN requirement. Though impeachment proceedings are *sui generis*, issues on compliance with the SALN requirement once again surfaced as a yardstick of integrity in CJ Sereno's impeachment investigation and ouster case. This time, however, the Court again removed the controversy from the Congressional power. Although the Court explicitly said in *Sereno* that an impeachment case and a *quo warranto* case are not the same and could be pursued simultaneously, the net effect is the same — the removal of a sitting Justice. Nonetheless, we nuance this observation on the actors making the decision.

In impeachment proceedings, it is a political branch of government calling the shots. They are beholden to an electorate. They act in a representative capacity. The check on the popular branches of government is their desire to get re-elected or their programs picked up by their successors. It has been popularly said that impeachment is a political process, and being so, it is dictated by public opinion. While democracy works in a manner that calls for the cacophony, the advantages thereof dim in the post-modernist

202. PHIL. CONST. art. XI, § 1.

era, one characterized by individualism and personal truths. The public succumbs to comfortable framings of events, with little regard for record or evidence. After all, the court of public opinion today is the same one that crucified Jesus Christ.

In a *quo warranto* proceeding, the judges are judicial actors whose oaths of office and core functionality are tied to case records and evidence. No matter how an issue is framed, if the evidence so presented in Court makes a case for one party as against another, the judge's duty is to decide the case in light of evidence or lack thereof, as the case may be. In this sense, the judicial actors are bound by law and facts on record, regardless of popular opinion. Perhaps, it is this latter distinction that made Justice Jardeleza remark that "for [him], it is unnatural, even aberrant, of any Member of [the] Court to prefer that a case (where his or her legal qualification to the office of Justice of this Court is in issue) be decided by way of a political, rather than judicial, process."[203]

The marked difference in CJ Corona's impeachment and CJ Sereno's ouster, is the opportunity given to the latter to present evidence on her behalf.[204]

The dignity of the courts has been under attack for several decades now, and every judge and justice has been made to face the fact that the people have little trust in the court to resolve their problems judiciously. The relatively slow pace of the judicial process; allegations of bribery; and the judiciary's budget in the hands of a department bent on whipping a cordial court, are only some of the challenges faced by the institution as a whole. It does not help that the Court has limited disciplinary authority. Indeed, the Supreme Court has the power to discipline members of the bench and the bar,[205] but its supremacy ends there. At least in theory, one must petition the legislative branch of government to discipline a member of the judiciary. In that sense, the Supreme Court is not "supreme" in all matters relating unto itself, unlike the Congress which has the power to suspend and even remove its erring members.[206] The Supreme Court's disciplinary powers are also unlike the power of the Executive, who can decide matters of its membership on its own.[207] This vacuum generates the principal motive for consolidation. In order for the judiciary to at least appear to the people as a

203. *Sereno (Resolution)*, G.R. No. 237428, at 3 (J. Jardeleza, concurring opinion).

204. *Id.* at 3-5.

205. PHIL. CONST. art. VIII, § 11.

206. PHIL. CONST. art. VI, § 16, ¶ 4.

207. PHIL. CONST. art. VII, § 17.

strong institution in the greater scheme of our life as a nation, it must — and it tries — "to keep its own house in order."[208]

Judicial independence in the Philippines — introduced by the American minds and re-crafted by Filipino hands — is realized through mechanisms of self-regulation. Judicial reforms must be pursued under the aegis of a judiciary seeking to assert its supremacy, not only over controversies arising from the acts of the political branches of government, but more so, those coming from among its ranks, especially its leaders. The manner by which public accountability is exacted should be reworked to grant broader powers of self-regulation upon the High Court, without sacrificing the system of checks-and-balances imposed by the Constitution.

How can it be done? Should a more rigid system of succession in the judiciary be imposed? Should the Philippines adhere to the "clean slate" approach? Should the JBC be empowered further? These are questions one reckons with as the quiet once again falls on Padre Faura; every now and then, one hears its keepers hoping, praying, pleading that stability, mystery, godliness, and serenity once again envelope its altars.

208. *Sereno (Resolution)*, G.R. No. 237428, at 14 (J. Jardeleza, concurring opinion).