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Popular opinion and the law

Following the release from prison of people who had figured in highly-publicized cases, a morning radio program recently conducted an interesting opinion survey. Listeners were invited to share their views on the question: whether the law did the right thing, or committed an error, in freeing the principal figures in four celebrated cases. The four cases were those of Senator Antonio Trillanes, Hubert Webb, the “Morong 43,” and retired General Carlos F. Garcia.

Trillanes, in jail for seven years on coup d’etat charges, was released to the custody of the Senate pending his application for amnesty. Webb, who spent fifteen years in prison, was freed after a divided Supreme Court ruled that his conviction for rape and murder by the lower court rested primarily on the testimony of a star witness who lacked credibility. The health workers tagged collectively as the “Morong 43,” in custody for ten months on charges of illegal possession of firearms and explosives, were released after President Aquino ordered the withdrawal of criminal charges against them. And ex-AFP Comptroller General Garcia, detained for six years on charges of plunder, walked free after the Ombudsman authorized a plea bargain that allowed him to post bail on the lesser offenses of bribery and money-laundering.

While I do not assign scientific validity to such radio surveys, I nonetheless find them useful as sources of information on the state of popular reasoning in our society. I did not keep track of the exact numbers, but I distinctly remember that the callers who responded were almost unanimous in their approval of the release of Trillanes, as well as in their disapproval of the release of Garcia. But, they were split in their views on Webb and the Morong 43.

Almost all regarded Trillanes as an idealistic military officer who put his promising career at stake in order to fight corruption in the armed forces and in the government itself. His actions, they said, might have violated the Constitution, but they were justified by the fact that he was fighting a corrupt and unpopular regime. In contrast, they saw in General Garcia the young officer's antithesis, a military bureaucrat who abused the powers of his office to enrich himself. Opinion on the Morong 43 was ambivalent. Callers thought their offense was so light that they did not deserve to stay even one day in detention. The fact that they were mostly women who hardly looked like guerillas in training also made it easy to accept the justness of their release. Still, the impression remained that they had links to the communist underground, and that therefore they were not entirely innocent.

This public ambivalence was however strongest with regard to Hubert Webb's exoneration. The fact that a big chunk of Webb's youth had been taken away from him for a crime that the highest court now says has not been sufficiently proven earned him a lot of sympathy. But the sad figure of Lauro Vizconde who lost his whole family in that heinous crime makes people hesitate to give Webb the complete benefit of the doubt. We don't know how representative of public opinion these views are. But what I have gleaned is that people are generally skeptical towards legal reasoning. They are especially dismissive of arguments that invoke "technicalities," completely oblivious of the fact that technicality is at the heart of legal reasoning.

On the ground that they had been denied due process, the President ordered the Morong 43 released. To some, this seems like splitting hairs over a technicality. In the view of the high court, Jessica Alfaro's eyewitness testimony against Hubert Webb and his companions fell apart because of its inconsistencies, and after it became known that she was a secret agent of the NBI. In a sense these too are technicalities. But they are no less important.

The question is whether the courts would be as ready to recognize their value when popular opinion leans heavily to one side. Consider the situation in which the Sandiganbayan currently finds itself in the Garcia case. They have postponed the approval of the plea bargain and the sentencing of General Garcia presumably in order to allow the public outcry over the plea bargain to simmer down. What if the evidence against Garcia is really weak, inadmissible, or non-existent? Even if gut feel tells us that he committed a crime, the courts can only convict him if there is sufficient evidence to prove the crime. More than the millions in property and bank accounts, it is the series of acts of accumulation of illegal wealth that needs to be proven.

It is disturbing that just about the only piece of evidence that has so far been cited as proof of Garcia's plunder is the affidavit that his wife, Mrs. Clarita Garcia, a US citizen, signed when she went to US Customs to claim the undeclared \$100,000 that was seized earlier from her sons at the San Francisco airport. The document reads like a confession of guilt, a straightforward act of self-incrimination. In a democracy, isn't one required to have legal counsel before signing a document like this, especially if it was prepared by somebody else? That is a constitutional right, not a trivial technicality.

Yet public opinion is not unreasonable. It is shocking to see a public official like General Garcia amass wealth that is utterly out of proportion to his income as a soldier. But since he and his family were charged with the crime of conspiracy to commit plunder, and not just graft, the law requires proof that shows more than mere possession of illegally-acquired wealth. And that burden lies with the Ombudsman.

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