

## **PUBLIC LIVES**

March 10, 2011

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### **Impeaching the Ombudsman**

Can one be political and fair at the same time? More precisely, can one be a fair-minded politician in this country? The answer, of course, is yes. But it is the uncertainty of the answer we usually give to this question that provides Ombudsman Merceditas Gutierrez the warrant to denounce the case against her as nothing but the product of partisan politics. She courts public sympathy by exploiting the Filipino's generally negative view of the country's politicians. Ironically, by routinely asserting that impeachment is a political exercise rather than a judicial proceeding – a game of numbers rather than a matter of justice -- our politicians unwittingly play into Gutierrez's hand.

To call impeachment a political function is indeed correct. It is simply to say that it is not a legal or judicial process. But it is not to say that, so long as one has the numbers, one can ignore fairness.

The person being subjected to impeachment may not necessarily have committed a crime or an offense punishable under our criminal laws. The object of the whole process is to remove the person from the position he or she is occupying. It is not to put him or her in jail, although the latter could follow as a result of a subsequent criminal indictment.

The most common cause for impeachment is "betrayal of public trust." This is not a crime in our penal books; it is rather a political offense. It can encompass a broad range of reasons – corruption, incompetence, tyranny, arbitrariness, abuse of power, etc. The one who betrays public trust is usually asked to resign under pain of removal from office. The typical target of impeachment is the president. Under our laws, justices of the Supreme Court and the heads of constitutional offices are also considered impeachable.

Cabinet members do not belong to the same category. They can be dismissed from their positions anytime by the President. Their hiring and firing are part of the political prerogatives of the president. But public officials whose term of office is protected by law can only be dismissed from public service for due cause and in accordance with a procedure defined by law.

The power to impeach belongs to the members of Congress. Instead of lawmaking, legislators – who are partisan actors in the political system - - assume a function that normally belongs to judicial bodies. It is a role that is very specific, one that is delicately situated at the boundary of the political and the judicial.

When politicians sit in judgment in impeachment cases, they are not required to check their partisan affiliations at the door. But neither are they expected to vote merely along partisan lines. They are politicians and therefore partisanship is at the core of their identity. But in this particular role, they are supposed to be fair-minded, like judges. They ought to suspend judgment, look at the charges, assess the evidence as objectively as possible, observe procedures, and give the accused a chance to defend herself.

The demands of this role are enough to make the politicians who must perform it schizophrenic. This is particularly so in the case of the members of the House of Representatives who, under our laws, have to play the part of prosecutors. Their partisanship is bound to betray itself one way or the other. The public may be willing to overlook this when the one being impeached is another politician, like the country's president. Then the proceedings become no more than an extension of normal political debate, with a large injection of moralistic arguments.

It's a different matter when the subject of the impeachment case is not a politician – such as, for example, the Chief Justice of the Supreme Court,

or, in the present case, the Ombudsman, who is supposed to be the chief public prosecutor for cases involving public officials. One can expect the accused to marshal and exploit all the arguments about the need to preserve institutional independence and to safeguard an effective system of checks and balances. At once, Congress' impeaching power is thus put on the defensive. Its moral right to sit in judgment of professional civil servants is called into question. Here, the issue is no longer whether legislators have the constitutional duty and power to impeach key public officials. The question becomes whether the moral ground that politicians occupy is high enough for them to pass judgment on non-political public servants.

This, precisely, has been the thrust of Ombudsman Gutierrez's defenders at the House. "Let him without sin cast the first stone," intones Rep. Marc Cagas, quoting the Bible, in an oblique effort to erode the moral ground on which Gutierrez's accusers are standing. As if on cue, the Ombudsman herself names the congressmen at the forefront of the impeachment efforts against her as being among the public officials currently facing charges at her office. The best defense is offense, as they say; and this is exactly how Gutierrez counters the overwhelming number of legislators ranged against her.

Fortunately for the impeachers, Merceditas Gutierrez failed to cultivate a reputation as a paragon of non-partisanship. Long after her patron, Gloria Macapagal Arroyo, ended her presidency, she continued to see the world through the prism of the regime of which she considered herself a part. In doing so, she betrayed the functions of her office. But -- to be able to see this clearly -- the legislators who sit in judgment must themselves rise above their first nature as politicians. This is what makes impeachment so unusual, complex, and challenging.

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