

## Erap's conviction and the rule of law

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IT WAS INDEED A HISTORIC MOMENT IN our nation's life — the first time a former president has ever been convicted for an offense committed while he was in office. Because of the stature of the accused, we are led to think that, finally, the rule of law in our society has prevailed. I'm afraid that expectation is premature.

The legal system of any society is strengthened not so much when it succeeds in putting the high and mighty on trial, but when the law is applied consistently and predictably over time. We know there is rule of law when people have stable notions of what is legal and illegal, and know what to expect when laws are violated.

Does the Sandiganbayan verdict on the Joseph "Erap" Estrada plunder case affirm the rule of law? Or does it only affirm in the public mind the rule of politics over the law? Was Erap put on trial notwithstanding the fact that he was a former president, or was he charged and convicted precisely because there was a pressing need to justify removing him from the presidency? These are lingering doubts.

What lessons might incumbent President Macapagal-Arroyo, who was installed in the presidency after a civilian-military coup, draw from Erap's trial and conviction? Would it deter her from using the prerogatives of her office to commit similar offenses? Or would it merely warn her about the costs of being out of power? Would it make her more respectful of the law, or would it only stiffen her belief in the primacy of power?

Because Ms Arroyo's presidency has a fixed term, it is natural to think she has no choice but to relinquish her power in 2010. Let us assume there will be no constitutional revision to allow her to continue in office as president or as prime minister beyond 2010. Still, anyone in her position, who has come to power in a controversial way and has ruled callously over a bitterly divided country, may be expected to use her present powers to bind the future in order to protect herself and her family from the kind of fate that befell Erap. She has had all of six years to do that, and she has three more years to prepare for all possible contingencies. Are we to think that this President—who has faced repeated impeachment and coup attempts, recurrent calls for her resignation, and innumerable cases in the Supreme Court questioning the legality of her actions—will not lift a finger to protect herself against future suits? The way she has handled power throughout her presidency makes this unlikely.

The independence of the judiciary and the professional integrity of those who serve in the various agencies of government, including those in the police and the armed forces, are the minimum conditions needed to make the rule of law work in a democracy. Alas, under Ms Arroyo's watch, we have seen the most blatant undermining of these institutions by the executive. The assault on the autonomy of the investigative and prosecutorial offices of government, in particular, has been so brazen one wonders if those in charge are still in possession of their wits. Investigations, prosecutions, and preventive suspensions have been utterly selective. The pace and pattern in which

they have been conducted manifest an astonishing partisanship often bordering on sheer malice and whim. The law has plainly been used as a weapon to threaten and punish political enemies.

The result of all this has been the consistent erosion of public trust in the country's legal system. One of the disturbing findings of a Social Weather Stations nationwide survey done just a week before the promulgation of the Erap verdict shows the level of public trust in the Sandiganbayan. Only 27 percent of those who were asked could say they had much trust in the Sandiganbayan's capacity to render a fair judgment on Erap's case. Twenty-three per cent said they had little trust in it, and 50 percent could give no opinion on the matter. This is a sad picture of the public's perception of the country's anti-graft court, and, no matter how one looks at it, it tells us why it is difficult to achieve a satisfactory legal closure to this case. But, we have no choice but to keep trying.

For, this is not the Sandiganbayan's fault. Theirs has been an extremely difficult task, and there is every reason to recognize the justices' efforts to maintain equanimity and keep a strictly legal perspective on such a complex case. If blame must be allocated, it has to be laid at the door of those who have done everything, directly and indirectly, to prevent the Court from focusing on the strictly legal merits of the case. I'm afraid they come from all sides of the political equation. If we keep subverting the autonomy of our judicial system, or promote a cynical view of our courts, how much justice can we expect when it is GMA's or Comelec Chair Benjamin Abalos' turn to be tried?

Like all nations caught up in the vortex of global modernity, our social reality is becoming more complex every day. Despite our sometimes thoughtless attempts to undercut its operation, our society has evolved functional mechanisms for dealing with this complexity. The elaborate codes, norms, and procedures we find in the economy, in education, in the mass media, and indeed, in the legal system, all attest to our society's painful passage to modernity.

We must keep our society's compartments apart. It is right that Erap's lawyers are going to ask for a review of the Sandiganbayan decision's correctness and consistency in the application of legal norms. But we must resist using public opinion to impugn the validity of legal decisions. Doing so only further weakens the rule of law

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