

The Meaning of Plunder Past and Present*

RUBEN CARRANZA

Plunder, as a word and as a crime, is a very recent addition to the Filipinos' consciousness and vocabulary. It took former presidents Ferdinand Marcos and Joseph Estrada and half a trillion in stolen money for plunder to assume special significance. Making people aware and defining the crime is the easy part. Putting plunderers behind bars is harder. From the creation of the Presidential Commission on Good Government (PCGG) 1987 to the signing of the Anti-Plunder Law in 2001, not one of the Marcos family or the Marcos cronies have spent a day in jail. This is because they have employed an army of the country's most brilliant lawyers; first, to hide the ill-gotten wealth and, later, to flood the courts with motions that delay trial. On the other hand, the present PCGG has only 11 lawyers handling 400 cases. The inherent complexity of litigation and the notorious slowness of the court system do not help. Some of the more successful cases took 10 years to drift from filing to ruling. And even if litigation prospers, a president, as in the case of Estrada, can slow down the process further by reducing the PCGG budget and finding a way to secure a pro-crony compromise agreement or even return the ill-gotten wealth to the rightful thieves. The present leadership appears to be more dedicated in pursuing plunderers. Punishment must come swiftly so that Filipinos will not forget and plunder will not become a meaningless word in the vocabulary.

"Plunder" has become part of the ordinary Filipino's vocabulary. That is both good and bad. It is good because it means many of us now know the difference between a policeman taking *tong* (grease money) from sidewalk vendors and a President taking bribes from multi-million peso stock market scams. It is good because we now have a name for what we always knew was going on but could not put a distinct label to. Without plunder, the petty crimes of City Hall clerks and the big-time stealing of Malacañang occupants would still be called by the same name: "graft and corruption." But with plunder, we can now draw a line between corruption prompted by poverty and corruption driven by greed, not that the distinction makes one kind of wrong justified and the other one inexcusable.

On the other hand, familiarity with the word "plunder" may be bad because it is the kind of familiarity that does not breed contempt. What

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it breeds instead is indifference. Indifference can come about by merely having a word to describe what Presidents do behind our backs, not even under the table but on it, just one foot away from would-be witnesses. After all, how are new words added to a society's vocabulary? By constant usage, which is not very far from tolerance. Naming plunder brings us closer to accepting it. Accepting it, we pervert our own values and even end up becoming perversely proud of our plunderers. We become famous for Imelda's collection of many shoes. We joke about a President's admission of many wives. As my friend, writer and political commentator Jojo Abinales observed about Imelda:

When foreigners express astonishment at her 3,000 pairs of shoes, we just smile, often explaining her acquisitions as the mark of a bourgeois gentleman seeking admission to the nobility, not the patrimonial plunder of a rapacious elite.

In welcoming the word "plunder" into our everyday lives, we may end up resigned to being plundered everyday. We might end up saying: "name it, we have it" and because we have had it for so long, we learn to live with it. "Plunder" therefore should not be used casually, lest we learn to live with the plunderers we vote into office.

This brings me to plunderers past and present and to why we Filipinos never seem to learn from our own mistakes.

I said it at the very first press briefing I attended last April as a Commissioner of the Presidential Commission on Good Government (PCGG) but I think it has not been said enough: had we quickly punished Ferdinand Marcos and his cronies for the plunder they committed, we would not now be burdened with going after another plundering ex-President.

An entire generation of Filipinos has grown up hardly knowing who Marcos was and what crimes he committed in his 20 years of power. To many young Filipinos, Joseph Estrada is the epitome of plunder. They may not know that Marcos stole more than what Estrada is alleged to have stolen. The plunder case against Estrada alleges that "Jose Velarde" took approximately P3.5 billion in public funds and illegal commissions. The

amount is known because this amount appears in the bank records contained in the now historic second envelope. Three and a half billion pesos is, of course, a huge sum of money.

But that is only a fraction of what the Marcoses – excluding their cronies – stole during their time. In one of the two main cases filed against the Marcoses – or Civil Case 002 – the charge is that Marcos and his wife stole more than P25 Billion in public funds. Add to this, the amount so far uncovered from Swiss accounts in the name of approximately six Marcos dummy foundations. These deposits are the subject of the other main case against the Marcoses, or Civil Case 0141. This amount is presently held in escrow at the Philippine National Bank (PNB), after having been turned over by Swiss banks to the Philippines pending final judgment in the said main case. These deposits are now worth \$640 million or about P32 billion in current exchange rates.

The total sum of P57 Billion is *not* the total sum accumulated by the Marcoses. Former Senator Jovito Salonga, the first chairman of the PCGG, estimates that Marcos amassed between \$5-10 billion worth of real estate, shares of stock, artwork, jewelry and other bank deposits. In current exchange rates, this amount equals P500 billion. R.A. 7080 or the Anti-Plunder Law makes it plunder to steal more than P50 Million from public funds. The amount Estrada allegedly stole would make him a plunderer if proven. Had there been an Anti-Plunder Law when Marcos committed his crimes, he would be 20 times the plunderer that Estrada is said to be.

In late 1998, Imelda Marcos had the audacity to practically admit that she and her husband did steal such a staggering amount of money. The *Philippine Daily Inquirer* quoted her as saying:

We practically own everything in the Philippines, from electricity, telecommunications, airlines, banking, beer and tobacco, newspaper publishing, television stations, shipping, oil, mining, hotels and health resorts, down to coconut oil mills, small firearms, real estate and insurance.

Years earlier, when asked by a foreign correspondent how they could have amassed so much wealth in such a poor country, Imelda had an even more audacious reply. She said: "Some are smarter than others."

Between 1986 and 2000, the PCGG was able to recover approximately P88 Billion of these assets. The recovery was done through litigation in U.S. courts, by the voluntary surrender of some assets by self-confessed Marcos cronies and through 37 compromise agreements reached between the PCGG and various Marcos cronies and dummy corporations. We are now reviewing these compromise agreements because some of the Marcos cronies did not completely fulfill their end of these bargains.

The rest of the Marcos ill-gotten wealth, however, remains hidden. The lapse of time, the complexity of litigation and the inherent difficulty of finding what has been cleverly concealed might make it impossible to recover all of them. As of today, the PCGG is still litigating 36 principal civil cases before the Sandiganbayan for either the recovery or the forfeiture of this ill-gotten wealth.

The Marcoses are defendants in *all* 36 cases, but I mentioned two principal cases against them. Civil Case 002 is for recovery. Civil Case 141 is for forfeiture. What is the difference? In the recovery case, the government has to prove the illegal manner by which the Marcoses acquired their assets. In the forfeiture case, the government has to prove that the Marcoses could not have amassed the \$640 million they deposited in Switzerland, given their total income and assets at the start of the Marcos regime in 1965. How much did the Marcoses own as of 1966? According to Marcos' own statement of assets and liabilities (SAL) for 1966, he had P240,000 worth of property. How much was his annual salary as President? P60,000. Given the disparity between his accumulated wealth and his reported income and assets, the Sandiganbayan ordered the forfeiture of the Marcos Swiss accounts in September 2000, nine years after the case was filed in 1991.

But Imelda Marcos has filed a motion for reconsideration. For almost a year now, the Sandiganbayan has not ruled on Imelda's motion. Even if the Sandiganbayan were to deny Imelda's motion, it is almost certain that she will appeal to the Supreme Court. Not only will that appeal further

delay the case, Imelda may also be hoping that the Supreme Court will hand her the kind of legal victory she had in 1999.

For the first time, the Sandiganbayan found Imelda guilty in a criminal case filed by the PCGG. A division of the Supreme Court affirmed her conviction. But in an exceptional turn that continues to be debated among some lawyers, the Supreme Court – led by then Chief Justice Andres Narvasa — allowed Imelda to take her case to the full Court *en banc*. The Court then reversed her conviction. Until now, neither Imelda nor any of the Marcos cronies have ever spent a single day in jail for their crimes.

Aside from these 36 principal cases, there are around 400 more in which the PCGG is a party. I have to give approximate figures for the number of PCGG cases because we are still in the middle of updating our list. This list of cases includes the following: (1) about 175 other civil cases in the Sandiganbayan involving sequestration and other issues incidental to the 36 main recovery cases, (2) about 50 cases before the Supreme Court, many involving countless appeals filed by the Marcoses and their cronies (3) and some 40 cases pending before other courts involving PCGG-sequestered or acquired property.

I should remark on the criminal cases filed by the PCGG before the Office of the Ombudsman. The Ombudsman's disposition of some important criminal cases filed against certain Marcos cronies could tell us what to expect with the criminal cases he filed against Estrada. The PCGG filed a criminal case against Marcos crony and Imelda cousin Herminio Disini for bribery in connection with the \$2 billion Bataan nuclear power plant. The Ombudsman dismissed the complaint, citing the absence of bank documents that would clearly show bribes paid to and received by Disini and Marcos. If bribery has to be proven every time with bank statements and withdrawal slips, no one would ever be convicted of the crime.

In another criminal case involving Imelda's brother and incumbent Tacloban mayor Alfredo "Bejo" Romualdez, the Special Prosecutor under the Ombudsman not only did not oppose Bejo's motions for postponement of his arraignment. The prosecutor signed the motion, too. When Bejo

Romualdez returned to the Philippines after fleeing with Marcos in 1986, the Ombudsman announced through our newspapers that he would "personally prosecute" Romualdez. Not only has he not done that; he has allowed his own deputies to delay the criminal case against this major Marcos crony. There are other noteworthy cases involving Marcos cronies where, to my mind, the Ombudsman has failed to perform his public duty.

Why have the Marcoses evaded jail or even the payment of a single centavo of their ill-gotten wealth in the 15 years of the PCGG's existence?

Let me summarize some of the reasons.

First, the staggering amount of money stolen by the Marcoses and their cronies means that they have the resources to hire the best lawyers and Swiss bankers their dirty money can buy. The Marcoses began stealing as early as 1967. For the next two decades, Marcos and his cronies were free to set up elaborate layers of foundations and dummies abroad that hid their stolen wealth. The repressive Martial Law regime made it deadly to even peek at these assets, let alone openly discuss their existence.

Second, after the cases were filed by the PCGG, the local lawyers of Marcos and his cronies inundated the Sandiganbayan and the Supreme Court with countless motions that delayed trial. Even now, some of the cases against such major Marcos cronies as Lucio Tan and Eduardo 'Danding' Cojuangco are still at the pre-trial stage. What do these two cronies have in common? Attorney Estelito Mendoza. In one Lucio Tan case, his lawyer filed a total of 85 motions in 15 years. The PCGG, on the other hand, filed only 17. In Cojuangco's case, his lawyers have already gone up to the Supreme Court 24 times, with every appeal delaying trial in the eight civil cases filed against Cojuangco. For her part, Imelda Marcos keeps changing lawyers. By my count, she has engaged at least ten different lawyers in the course of the on-going litigation against her.

Third, the inherent complexity of litigation and the notorious slowness of our court system, which includes the Ombudsman, the Sandiganbayan and the Supreme Court, have conspired to delay these cases. The PCGG already offered its evidence in the case against Marcos crony and Energy

Minister Geronimo Velasco. After two years, that offer of evidence is still gathering dust at the Sandiganbayan. The Supreme Court recently decided two criminal cases involving Danding Cojuangco. Those decisions came 10 years after the PCGG filed the complaints, which the Ombudsman dismissed supposedly due to lack of probable cause. In both cases, the Court said that there was in fact probable cause for the criminal cases to proceed — 10 years after the Ombudsman dismissed them.

Fourth, the PCGG and then Solicitor-General Frank Chavez had a serious disagreement some years ago that effectively suspended the prosecution of these cases. Even without that disagreement, government lawyers have never been famous for speed and efficiency. Worse, the PCGG only has 11 lawyers to handle more than 400 cases. Adding to those woes, the PCGG's budget was cut by half in 1999 by then President Estrada, even as he appointed known Marcos and Cojuangco dummies as directors in PCGG-sequestered corporations, such as San Miguel and United Coconut Planters Bank (UCPB). As a result, we are now practically re-litigating issues involving sequestration because the Estrada nominees refuse to vacate the boards of San Miguel and UCPB.

Finally, the temptation of entering into convenient compromise agreements with the Marcoses and Cojuangco led to inertia in litigating the cases. Estrada was particularly notorious. Not only did he appoint Cojuangco loyalists to companies earlier set up by Cojuangco using the Marcos-imposed coconut levy. He even issued an executive order last year that practically turned over the P100 billion coco-levy funds to Cojuangco and to Estrada's own allies, such as Clara Lobregat and Abello, Concepcion, Regala, Cruz law offices (ACCRA), Edgardo Angara's law office.

This brings me to the questions raised in the invitation to this forum. What are the Arroyo Administration's policies on the ill-gotten wealth cases involving the Marcoses and their cronies? How committed is the present administration in addressing the issue of plunder done under Marcos?

I cannot speak categorically for the President. I can point out, however, some of her statements and a few instances that may offer insights about her views on the Marcos cases.

In one meeting between the Marcos human rights victims and the President that I attended, she expressed her support for exploring lawful means by which the 10,000 victims of human rights violations under Marcos may be compensated. We are now preparing the necessary legislative and other steps towards that end.

In practically all matters involving the Marcos cases, the President has not intruded with the present PCGG's actions. Not once has she asked us to act in one way or another with respect to any Marcos crony. In one meeting, she informed us that an intermediary had sought an audience with her in behalf of the Marcoses. She told the intermediary that the Marcoses should deal formally and directly with the PCGG.

With respect to Danding Cojuangco and the so-called coco-levy cases, her State of the Nation Address included this declaration:

The government could help the coconut farmers better if the case of the coconut levy is resolved in favor of government. If this happens, the funds will be used for the modernization of the coconut industry. I have vetoed the executive order of the past administration on the coco levy so that the farmers will not be disadvantaged. We will not stop as long as the coconut farmers do not benefit from the Coco Levy Fund.

(Mas malaki pa ang matutulong ng gobyerno sa mga magsasaka ng niyog oras na maresolba ang kaso ng coconut levy na pabor sa gobyerno. Kapag mangyari ito, gagamitin ang pondo para sa modernisasyon ng mga niyugan. Pinawalang-bisa ko ang kautusan sa coco levy mula sa dating administrasyon upang hindi mادهado ang magsasaka. Hindi tayo hihinto habang hindi nakikinabang ang magsasaka ng niyog sa Coco Levy Fund.)

We have taken the President's declaration to mean support for the present PCGG's determination to litigate the cases against Cojuangco. This does not mean that we are foreclosing any possible settlement that

may benefit the more than four million small coconut farmers. But the PCGG has been firm in its position. The coco levy fund *must* go to the coconut farmers. The Estrada solution would have allowed Cojuangco and his allies to retain control over the coco-levy fund. Hence, we asked the President to recall the Estrada executive order. She did. Curiously, certain persons who claim to be her political allies are the ones now pushing for another executive order that resembles the Estrada solution.

There have been adverse speculations on how the relationship between the President's husband, Mike Arroyo and Marcos son-in-law Greggy Araneta, could affect the Marcos cases. In fairness to the President, in the three months since Haydee Yorac assumed the chairmanship of the PCGG, the President has never once asked us to act in one way or another on the Marcos cases. I would like to think that the President's own choice of Yorac as PCGG Chairman reflects her sense that the PCGG should be as independent and as insulated as possible from the political considerations that come with being President. I would also like to think that her choice of PCGG officials reflects her own view of how the Marcoses' ill-gotten wealth should be pursued.

The character of the PCGG is largely dependent on the character of those who compose it. Its credibility as an agency specifically created to go after the most notorious group of plunderers in our history depends on the credibility of those who sit as its chairman and commissioners. Senator Jovito Salonga's PCGG was a product of the 1986 People Power revolution. It was shaped by the activism of its time. Since then, the PCGGs that came after Salonga were hindered by the limitations I already discussed. At best, the PCGG was regarded as just another part of the slow, bumbling bureaucracy. At worst, it was perceived as an agency corrupted by its own powers. From the outside, I once thought it tragic that a commission established to fight the monster that was Marcos had itself become a monstrosity. From the inside, I now understand the limits that not even law and good intentions can easily overcome.

The present PCGG has adopted an activist orientation. It helps that all of us now in the Commission were – and still are – activists. As both activist and lawyer, I see the Constitution and the law *not* as inert rules that make no distinction between wrong and right. As both activist and

PCGG Commissioner, I cannot pretend – the way some officials in our legal system seem to pretend – that the Marcos dictatorship never existed. I cannot pretend that the detention, torture, killing and plunder committed by Marcos, his cronies and the police and military officers that defended his regime, never took place. If those who are duty-bound to seek or dispense justice refuse to recognize the injustice done by the Marcos dictatorship, then there would be no point to any of this. There would be no point at all in creating a PCGG, or a Sandiganbayan or an Ombudsman. There would be no point in creating a PCGG, a Sandiganbayan or an Ombudsman if the PCGG, the Sandiganbayan and the Ombudsman act as if words like “Marcos,” “dictatorship” and “plunder” do not have meanings already embedded in our history.

If we cannot even punish old plunderers, we should stop pretending that we are out to punish the plunderers who came after them. If our people do not see punishment for plunder past and present, then “plunder” would have become a meaningless word added to our vocabulary. ☸