PEOPLE POWER IN A REGIME OF CONSTITUTIONALISM AND THE RULE OF LAW*

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When the Filipinos staged a bloodless people power revolution in 1986, dubbed as EDSA I, to topple constitutional authoritarianism,[1] people from all over the world hailed the country as a bastion of democracy and freedom. Fifteen years after, the Filipinos once more gathered in the revered EDSA shrine, this time to oust a corrupt[2] president. However, unlike its predecessor, EDSA II drew criticism from certain sectors of society[3] and even from foreign commentators.[4] A few months later, while most Filipinos were toying with the idea of having an unprecedented EDSA III, the forces vanquished by EDSA II, that is, the supporters of former President Joseph Estrada, conquered EDSA to demonstrate their own version of people power.

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[1] This refers to the philosophy of government of former President Marcos after the imposition of martial law in 1972. *See* Peter Payoyo, *The Rule of Law and the Decree-Making Power of the President Some Reflections on the Crisis of Constitutional Authoritarianism in the Philippines*, 59 PHIL. L.J. 152 (1984).

[2] This is merely an opinion of the author, not a conclusion of law.

[3] While a number of the population gathered in EDSA, a considerable number of supporters of the ousted President Estrada convened in Mendiola to oppose the public clamor for the latter to step down from the presidency. Majority of these Estrada supporters were believed to have come from the marginalized sectors of the society.

[4] Anthony Spaeth's essay in *Time*, for example, concluded that "people power has become an acceptable term for a troubling phenomenon: one that used to be known as mob rule." *See* Rigoberto Tiglao, *The law is what the SC says it is*, PHIL. DAILY INQUIRER, Jan. 28, 2001, at A7.

Amando Doronilla summed up the main points of criticism by the commentators and reporters of the liberal Western media of People Power II as follows: "The ouster of President Joseph Estrada was 'a defeat for due process' and has 'left the notion of constitutional democracy in tatters.' Filipinos had the mechanisms--i.e., impeachment--to legally change their head of state, but they chose popular uprising, which method portends a 'troubling future for democracy.' Edsa II was a 'rich people's power' that ejected an elected President in order to return the old, wealthy political and business elite to power." Amando Doronilla, *Edsa II worries Western media*, PHIL. DAILY INQUIRER, Jan. 31, 2001, at A9.

On a superficial level, the Philippines made a name for herself in history as a consequence of three people powers in a span of 15 years. However, the repercussions in the country's legal system are much deeper. The demonstration of the will of the people through people power was a departure from the regime of constitutionalism and law that characterizes the Philippines. In the words of former Sen. Arturo Tolentino:

> The rule of law is *supposed* to pervade our legal system...
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> The rule of law has been considered, in a government like ours, as *equivalent* to the supremacy of the Constitution. It is generally recognized that the Constitution sets the limits on the powers of government; it prevents arbitrary rule and despotism; it insures government by law, instead of government by will, which is tyranny based on naked force.[5] [Italics supplied.]

The conundrum that people power has created in the legal system arises from the presumption that the will of the people must be expressed in the mechanisms provided under the law and the constitution. Any extra-constitutional manifestation of this will, at least those not sanctioned by the constitution, is frowned upon by reason of the dangers they pose to the stability of the constitutional system. One such apparently extra-constitutional expression of *vox populi* is people power.

After EDSA I, it was expected that the Philippines would be in disarray. However, although stability was initially elusive, the country *reverted* to the constitutional regime that existed prior to the declaration of martial law, culminating in the ratification of the present 1987 Constitution on February 7, 1987.[6] EDSA II, under different circumstances, was adjudged by the Supreme Court[7] as a mere case of presidential succession provided under the 1987 Constitution, not a revolution as in EDSA I. EDSA III, on the other hand, was suppressed by the government after President Gloria Macapagal-Arroyo declared a state of rebellion and commandeered the armed forces.

Indeed, if people power jeopardizes the constitutional regime and the rule of law, why then has there been not only one, but three incidents of people power in Philippine history? More succinctly, why is it that people power failed to destroy the constitutional fabric of the society?

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[5] Arturo Tolentino, *The Rule of Law and our Constitution*, 36 U.S.T. L. REV. 41 (1985).

[6] TEODORO AGONCILLO, HISTORY OF THE FILIPINO PEOPLE 586 (8th ed., 1990).

[7] Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, 2 March 2001.

This paper seeks to address these questions in order to clarify the status of people power in the Philippines. As this author will attempt to show, the variance of the concept of people power vis-à-vis the concepts of constitutionalism and the rule of law is merely apparent. It is entirely possible to reconcile these notions, as may be proven by examining the country's political history. As a matter of fact, the Philippines has been able to preserve its traditions of constitutionalism and the rule of law despite its turbulent history.

Part I of the paper will demonstrate that the Philippines is under a constitutionalist regime and the rule of law. The relationship between these concepts will be expounded in Part II. Part III will analyze the concept of people power, in the context of the three phenomenal and historical events. Part IV will dwell on the ostensible incongruity between people power, on the one hand, and constitutionalism and the rule of law, on the other hand. Finally, in Part V, this paper will attempt to tie up these concepts based on two arguments: (1) that people power is a right implicit in a constitutional framework, and (2) that people power furthers the ideals of constitutionalism and the rule of law.

I. CONSTITUTIONALISM AND THE RULE OF LAW IN THE PHILIPPINES

A. THE CONCEPT OF CONSTITUTIONALISM

Constitutionalism first developed in the West, when British thinkers such as Sir Edward Coke (1552-1634), James Harrington (1611-1677), Richard Hooker (1155?-1600) and John Locke (1632-1704) floated the idea of restricting the authority of the government.[8]

Coke believed that "[n]either the King nor the Parliament was superior to the law."[9] He postulated that the law should control the acts of the Parliament and invalidate them if proper.

Harrington, for his part, suggested that constitutional devices be put in place to prevent absolute government. These devices included "a written constitution, the secret ballot, rotation in public office, and... an agrarian law to limit the amount of landed wealth a subject might possess."[10] He likewise argued that a system of checks and balances is necessary to prevent a single party from monopolizing power.

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[8] 1 MICHAEL CURTIS, THE GREAT POLITICAL THEORIES 357-360 (1981).
[9] *Id.* at 358.
[10] *Id.*

Hooker, on the other hand, invoked the theory of the social contract to bolster his claim that the "ruler must act in the public interest, and observe law."[11] According to him, "[t]he king's power was based on and limited by law, and the authority of the 'whole entire body' of the community."[12]

One of the more popular liberals, Locke, proposed that the power of the majority should be restrained "to prevent violation of laws of nature, property rights, the inalienable rights of men, or anything in the fundamental compact."[13] In *The Second Treatise of Civil Government*, Locke identified the legislative power as the supreme power in the commonwealth, but restricted its authority such that:

> It is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people...
>
> [It] cannot assume to itself a power to rule by extemporary, arbitrary decrees, but is bound to dispense justice and to decide the rights of the subject by promulgated, standing laws, and known authorized judges...
>
> [It] cannot take from any man part of his property without his consent...
>
> [It] cannot transfer the power of making laws to any other hands; for it being a delegated power from the people, they who have it cannot pass it over to others...[14]

Constitutionalism, therefore, was initially conceived to set limitations on the authority and acts of the government.

In its modern sense, constitutionalism continues to be a theory of limited government, a characteristic common among the various definitions ascribed to it by contemporary writers.

According to McIlwain, the term "constitutional" bears a negative connotation. It implies a restriction, as in the case of a "constitutional" monarchy, which is usually perceived as a "limited" monarchy.[15] "The characteristic that distinguishes this kind of monarchy from others for us is a negative, not a positive characteristic. We think first of all of what the monarchy may not do, not of what he *may* do."[16]

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[11] *Id.*

[12] *Id.* at 359.

[13] *Id.* at 360.

[14] *Id.* at 382-3.

[15] CHARLES HOWARD MCILWAIN, CONSTITUTIONALISM AND THE CHANGING WORLD: COLLECTED PAPERS 244 (1939).

[16] *Id.*

What the government may not do, McIlwain posits, depends on the law defining it. The law may be written or unwritten, "but in every case it is a law that puts bounds to arbitrary will."[17]

Giovanni Sartori enumerated the following fundamental attributes of liberal constitutionalism:

> (1) There is a higher law, either written or unwritten, called constitution;
> (2) There is judicial review;
> (3) There is an independent judiciary comprised of independent judges dedicated to legal reasoning;
> (4) Possibly, there is due process of law; and
> (5) There is a binding procedure establishing the method of law-making which remains an effective brake on the bare-will conception of law.[18]

Expounding on these elements, Bo Li defined constitutionalism as

> [A] system of political arrangements in which there is a supreme law (generally called 'constitution'), in which all (particularly the entire system of government) is governed by the supreme law, in which only the people's will (as defined through some pre-specified institutional procedure, usually through a super-majority voting mechanism) can supersede and change the supreme law, in which changes can only be made infrequently due to the difficulty of garnering the requisite popular support, and in which there are separation of power, checks and balances and an independent judiciary dedicated to legal reasoning to safeguard the supremacy of the constitution.[19]

In simpler terms, constitutionalism is "a determinate, stable legal order which prevents the arbitrary exercise of political power and subjects both the governed and the governors to 'one law for all men.'"[20]

G.K. Roberts, in *A Dictionary of Political Analysis*, analyzed constitutionalism from two perspectives: as a practice and as the positive valuation of that practice.[21]

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[17] *Id.*

[18] Bo Li, *What is Constitutionalism?*, 1 PERSPECTIVES, *at* http://www.oycf.org/Perspectives/6_063000/what _is_constitutionalism.htm (June 30, 2000) *quoting* GIOVANNI SARTORI, THE THEORY OF DEMOCRACY REVISITED 309 (1987).

[19] *Id.*

[20] Irene Cortes, *Constitutionalism in the Philippines—A View from Academia*, 59 PHIL. L.J. 338 (1984) (quoting J. DUNNER, DICTIONARY OF POLITICAL SCIENCE 120 (1964)).

[21] *Id.* at n.1.

As a practice, constitutionalism "is the ordering of political processes and institutions on the basis of a constitution, which lays down the pattern of formal political institutions and embodies the basic political norms of a society."[22] The role of the constitution is not merely to regulate relations of the branches and organs of government with one another but also to limit the discretionary powers of the government.[23] To fulfill these tasks, the constitution itself should provide mechanisms for arbitration and enforcement.

As a term of valuation, constitutionalism "refers to the ideas of those who wish to preserve or introduce the political supremacy of a constitution within a particular state, to act as protector of the citizen from arbitrary government and as a statement of political relationships, especially where these do not exist already in satisfactory form."[24]

It should be noted, however, that constitutionalism is not synonymous with nor identical to constitution, which is basically "[a] charter of government deriving its whole authority from the governed."[25] Nevertheless, a constitution, written or unwritten, is deemed an essential element of constitutionalism.

In fine, the concept of constitutionalism has not changed over time. As McIlwain observed:

> [I]n all its successive phases, constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law. In modern times the growth of political responsibility has been added to this through the winning of the initiative in the discretionary matters of national policy by the people's representatives, and of that more anon; but the most ancient, the most persistent, and the most lasting of the essentials of true constitutionalism still remains what it has been almost from the beginning, the limitation of government by law. "Constitutional limitations," if not the most important part of our constitutionalism, are beyond doubt the most ancient.[26]

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[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] Li, *supra* note 18 *quoting* BLACK'S LAW DICTIONARY.

[26] CHARLES HOWARD MCILWAIN, CONSTITUTIONALISM: ANCIENT AND MODERN 21-22 (1947). *Also available at* http://www.constitution.org/cmt/mcilw/mcilw.txt.

B. HISTORY OF CONSTITUTIONALISM IN THE PHILIPPINES

That constitutionalism has deep roots in the history of the Philippines is best evidenced by the various constitutions adopted by the Filipinos since the time of Spanish colonization.

The earliest constitution drafted was the provisional constitution of the Biyak-na-Bato Republic, "prepared by Felix Ferrer and Isabelo Artacho, who copied, almost word for word, the Cuban constitution of Jimaguayu."[27] Signed on November 1, 1897, the Biyak-na-Bato constitution established a republican government, under the leadership of a Supreme Council.[28]

When the truce of Biyak-na-Bato failed, the revolutionaries, led by Gen. Francisco Makabulos of Tarlac, established the Central Executive Committee, which was governed by the constitution of Makabulos.[29]

After the proclamation of independence in Kawit, Cavite on June 12, 1898, a committee was created to draft a constitution, which would later be called the Malolos Constitution. Felipe Calderon, while writing the draft, drew inspiration from the constitutions of Mexico, Belgium, Guatemala, Costa Rica, Brazil and France.[30] According to Agoncillo, "[t]he Malolos Constitution is the first important Filipino document ever produced by the people's representatives."[31] True enough, it embodied the fundamentals of constitutionalism, by providing for a government which was "popular, representative and responsible" and "with three distinct branches."[32]

During the Commonwealth period, another Constitution was drafted and overwhelmingly ratified by the people: the 1935 Constitution. It was patterned after the American charter in terms of structure and formal appearance, except that it provided for a unicameral legislature and a unitary system of government.[33] More importantly, the 1935 Constitution incorporated the American political concepts of democracy and government.[34]

Under martial law, Marcos maintained constitutionalism, albeit as an instrument to perpetuate himself in power, by submitting to the people, through the

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[27] AGONCILLO, *supra* note 6, at 183.
[28] *Id.*
[29] *Id.* at 185.
[30] *Id.* at 206.
[31] *Id.* at 207.
[32] *Id.*
[33] *Id.* at 351.
[34] *Id.*

citizens assemblies, a proposed draft of a new constitution. Thereafter, he signed Proclamation No. 1102, announcing the ratification by the Filipino people of the 1973 Constitution.[35] The validity of the "ratification" of the new Constitution was upheld by the Supreme Court in *Javellana v. Executive Secretary.*[36]

The tenure of Marcos, however, was terminated by the people power revolution in 1986. Then President Corazon Aquino established a revolutionary government by virtue of a Freedom Constitution.[37] This constitution was subsequently replaced by the 1987 Constitution, ratified on February 7, 1987, which remains as the fundamental law of the land until today.

C. THE CONCEPT OF THE RULE OF LAW

While the concept of constitutionalism is relatively new, the concept of the rule of law owes its origin from the Greek philosophers, Aristotle in particular. In *Politics*, Aristotle contrasted the rule of law and the rule of men. Although he admitted that man-made law can never attain perfect justice, he nevertheless stressed that "'the rule of law is preferable to that of any individual', and that magistrates should regulate only matters on which the law is silent. Whereas government based on law cannot be perfectly just, it is at least the lesser evil, when contrasted with the arbitrariness and passion inherent in government based on the rule of men."[38]

However, while the notion of the rule of law originated from the Greeks, the Western idea of the rule of law, as people now know it, is essentially Roman. This is so because one of the key aspects of the rule of law, i.e., limitation, is lacking in ancient Greek democracy. "[T]here were no limits to the (democratic) governments of ancient Greece, and the popular will, be it short-term passion or long-term rationality, would always become law if the *demos* so wished."[39]

The perception on what was the rule of law differed as time progressed. For instance, during the medieval era, when the belief on the divine right of kings prevailed, the rule of law was formulated thus: "[T]he king ought not to be subject to man, but subject to God and the law, because the law makes him king."[40]

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[35] *Id.* at 575.

[36] G.R. No. L-36142, 50 SCRA 30 (1973).

[37] AGONCILLO, *supra* note 6, at 585.

[38] WILLIAM EBENSTEIN, GREAT POLITICAL THINKERS: PLATO TO THE PRESENT 83 (6th ed., 2000).

[39] Bo Li, *What is the Rule of Law?*, 1 PERSPECTIVES, *at* http://www.oycf.org/Perspectives/5_043000/what_is_rule_of_law.htm (April 30, 2000).

[40] Peter Payoyo, *supra* note 1, at 157 *quoting* PHILLIPS, THE CONSTITUTIONAL LAW OF GREAT BRITAIN AND THE COMMONWEALTH 27 (1952).

Thereafter, the rule of law was conceived as the supremacy of the common law, "subject to such changes as king or parliament might make from time to time."[41]

The Age of Enlightenment brought about a change in the understanding of the rule of law. As a case in point, John Adams' writings were instrumental in transforming the rule of law "into a social conviction about the virtues of a constitution that acknowledged separation of powers."[42]

As it is currently formulated, the rule of law is based on principles placing "restrictions on how government is permitted to operate and how political power may be exercised."[43]

One theory suggests that the rule of law operates on principles which include the recognized requirements "that law be rule-like so far as appropriate, that it be clear, that it be public, and that it generally be prospective."[44] Summers enumerated eighteen (18)[45] such principles of the rule of law.

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[41] *Id.* at 158 *citing* PHILLIPS, THE CONSTITUTIONAL LAW OF GREAT BRITAIN AND THE COMMONWEALTH 28 (1952).

[42] *Id.* at 160.

[43] ANDREW ALTMAN, ARGUING ABOUT LAW 3 (1997).

[44] Robert Summers, *Propter Honoris Respectum: The Principles of the Rule of Law*, 74 NOTRE DAME L. REV. 1691 (1999).

[45] The principles of the rule of law consist of the following:

(1) that all forms of law be duly authorized, and thus conform to established criteria of validity;

(2) that the accepted criteria for determining the validity of law generally be clear and readily applicable, and include criteria for the resolution of any conflicts between otherwise valid forms of law;

(3) that state-made law on a given subject be uniform within state boundaries, and, so far as feasible and appropriate, take the perceptive form of general and definite rules applicable to classes of persons, acts, circumstances, etc. and also be applicable to officials and citizens alike, as appropriate;

(4) that all forms of law be appropriately clear and determinate in meaning;

(5) that state-made law, and other law as appropriate, be in some written form, and be promulgated, published, or otherwise be made accessible to its addressees;

(6) that law, and changes in law, generally be prospective rather than retroactive;

(7) that the behavioral requirements of a law be within the capacity of its addressees to comply;

(8) that the law on a subject, once made and put into effect, not be changed so frequently that its addressees cannot readily conform their conduct to it, or that long term planning cannot be feasible;

(9) that purported changes in the law be made by duly authorized institutions, officials, or persons, and in accordance with known procedures as appropriate;

(10) that a form of law be interpreted or otherwise applied in accord with an appropriate, uniform (for that type of law), and determinate interpretive or other relevant applicational methodology, itself a methodology duly respectful of the expressional form and content or that type of law;

Altman, on the other hand, anchored the rule of law on five principles:

(1) Government must not act or operate above the law;
(2) Government should maintain civil order and peace mainly through a system of general and authoritative rules, specifying whatever sanctions are to be imposed for violations;[46]

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(11) that any possible remedy, sanction, nullification, or other adverse consequence of failure to comply with a form of law be known or knowable in advance of the relevant occasions for action or decision under that law;

(12) that in cases of dispute, a politically independent and impartial system of courts and administrative tribunals exist and have power, (a) to determine the validity of the law in dispute; (b) to resolve issues of fact, all in accord with relevant procedural and substantive law; and (c) to apply the valid law in accord with an appropriate interpretive or other applicational methodology;

(13) that when an interpretive or other application methodology does not authorize an outcome under antecedent law, yet a court or a tribunal is urged (sometimes in the guise of such methodology) to modify or otherwise depart from law to achieve such an outcome, courts or tribunals shall have only quite limited and exceptional power thus to modify or otherwise depart from antecedent statute, precedent, or other law, so that the legal conclusions and any reasons for action or decision on the part of the law's addressees which would otherwise arise under valid law, duly interpreted or applied, generally remain peremptory for the law's addressees, including courts and other tribunals;

(14) that any exceptional power of courts or other tribunals to modify or depart from antecedent law at point of application be a power that, so far as feasible, is itself explicitly specified and duly circumscribed in rules, so that this is a power the exercise of which is itself law-governed;

(15) that a party who is the victim of a crime, or of a regulatory violation, or of a tort, or of a breach of contract, or of a wrongful denial of a public benefit, or of wrongful administrative action, or of other alleged legal wrong shall be entitled to instigate criminal prosecution insofar as appropriate (with any required official concurrence) or to seek other appropriate redress, before an independent and impartial court or other tribunal with power to compel the alleged wrongdoer or official to answer for such wrong;

(16) that, except for minor matters, no significant sanction, remedy, or other adverse legal consequences shall be imposed on a party, against his or her will, for an alleged crime, or regulatory violation, or tort, or breach of contract, or administrative wrong, or any other alleged legal wrong, without that party having advance notice thereof and a fair opportunity to contest the legality and the factual basis of any such projected adverse effect before an independent and impartial court or other similar tribunal

(17) that a private party who fails to prevail before such court or tribunal pursuant to (15) and (16) above, whether an alleged victim or an alleged wrongdoer, shall have the opportunity to seek at least one level of appellate review, in a court, as a check against legal error;

(18) that the system and its institutions and processes be generally accessible, that is, (a) that there be a recognized, organized, and independent legal profession legally empowered and willing to provide legal advice, and to advocate causes before courts, other tribunals, and other institutions as appropriate, and (b) that at least where a party is accused of a significant crime or similar violation, denies wrongdoing, and is without financial means to pay costs of defense, such party shall be entitled to have defense provided by the state. *Id.* at 1693-1695.

[46] Altman said that this second principle has two important corollaries:

(1) No action can be regarded by government as a crime unless a specific law prohibits the action;

(2) No individual can be legitimately punished by government unless they have committed a crime, and the punishment must be limited to that which is provided for by the law.

(3) General and authoritative rules through which the government maintains order and peace should meet the following conditions:
    (a) made public;
    (b) reasonably clear in meaning;
    (c) remain in force for a reasonable period of time;
    (d) applied prospectively, not retroactively;
    (e) applied in an impartial manner that is consistent with their meaning;
    (f) capable of being complied with; and
    (g) enacted in accordance with preexisting legal rules;
(4) Government must give all persons charged with violating the authoritative rules a fair chance to defend themselves against the charges; and
(5) Sovereign people must act within the requirements of legality.[47]

Hager conceptualized the rule of law as consisting of several core components:

(1) constitutionalism;
(2) law governs the governments;
(3) an independent judiciary;
(4) law must be fairly and consistently applied;
(5) law is transparent and accessible to all;
(6) application of the law is efficient and timely;
(7) property and economic rights are protected, including contracts;
(8) human and intellectual rights are protected; and
(9) law can be changed by an established process which itself is transparent and accessible to all.[48]

The most famous definition of the rule of law was that given by Dicey, who noted three elements: limitation on government arbitrariness and power abuse, equality before the law and formal or procedural justice.[49]

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[47] ALTMAN, *supra* note 43, at 3-7.

[48] BARRY HAGER, RULE OF LAW A LEXICON FOR POLICY MAKERS (2000), *available at* http://www.mcpa.org/rol/lexiconcom.pdf.

[49] In particular, Dicey, as mentioned by Peter Payoyo, *supra* note 1, at 162, enumerated the elements of the rule of law as follows:

> (1) That no man is punishable or can lawfully be made to suffer in body and goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land;

In essence then, the rule of law guarantees that a government is a government of laws, not of men.[50] As one Filipino politician wrote: "Rule of Law means that no one is above the law, that all must obey. It mandates fair play. It guarantees rights to citizens. It guards against deprivation of life and possessions without due process."[51]

D. HISTORY OF THE RULE OF LAW IN THE PHILIPPINES

In the Philippines, the development of the rule of law coincided with the development of constitutionalism.[52]

The concept of the rule of law first developed in the Philippines during the Age of Enlightenment (17th and 18th centuries) when men began to question the divine right to rule.[53] European liberalism and the modern ideas of Liberty, Equality and Fraternity "began to penetrate the minds of the natives."[54] Eventually, these ideas fermented the dissatisfaction of the Filipinos with the Spanish government and their longing for freedom, leading to the eruption of the revolution.

The American occupation afterwards further developed the principle of rule of law in the Philippines. The perpetuation and institutionalization of the rule of law in the country was consummated through President McKinley's instructions of April 7, 1900 to the Philippine Commission.[55] Based on these instructions, the Philippine Bill of 1902, the Jones Law of 1916 and the Tydings-McDuffie Act were enacted.[56] "What remained constant throughout all of these significant developments has been the concept of the Rule of Law as a fundamental, and defining, principle of democratic government."[57]

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(2) That not only is no one man above the law but that— what is a different thing— here, every man whatever be his rank or condition is subject to the ordinary law of the realm and amendable to the jurisdiction of ordinary tribunals; and

(3) That with us the law of the constitution, the law of a constitutional code are not the sources but the consequences of the rights of the individuals as defined and enforced by the courts.

[50] JOAQUIN BERNAS, THE CONSTITUTION OF THE PHILIPPINES, A COMMENTARY 20 (1988). For more definitions of the rule of law, *see* Carlo Carag, *Malcolm and the Rule of Law: A Structured Recollection*, 56 PHIL. L.J. 169 (1981).

[51] Teofisto Guingona, *Rule of Law and Democracy in the Philippines*, *in* RULE OF LAW AND DEMOCRACY IN THE PHILIPPINES 15 (Beatrice Gorawantschy, Roya Moghaddam & Eduardo Pedrosa eds., 1997).

[52] The relationship between constitutionalism and the rule of law will be explained in the latter part of the paper.

[53] Andres Narvasa, *Rule of Law and Democracy: Brief Historical Excursus*, *in* RULE OF LAW AND DEMOCRACY IN THE PHILIPPINES 12 (Beatrice Gorawantschy, Roya Moghaddam & Eduardo Pedrosa eds., 1997).

[54] AGONCILLO, *supra* note 6, at 119.

[55] Narvasa, *supra* note 53, at 13.

[56] *Id.*

[57] *Id.*

As the principles of democracy and constitutionalism were infused into the workings of the government and the State, the principles of the rule of law gradually seeped into the Philippine legal system.

In *Villavicencio v. Lukban*,[58] the Supreme Court declared that the Government of the Philippine Islands is a government of laws. Thus,

> No official, no matter how high, is above the law. The courts are the forum which functionate to safeguard individual liberty and to punish official transgressors. "The law," said Justice Miller, delivering the opinion of the Supreme Court of the United States, "is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives." (U.S. vs. Lee [1882], 106 U.S., 196, 220.)[59]

One of the fundamental principles of the rule of law, the separation of powers, was applied by the Supreme Court in *Government v. Springer*[60] where it held that "the powers which the Congress, the principal, has seen fit to entrust to the Philippine Government, the agent, are distributed among three coordinate departments, the executive, the legislative, and the judicial." The Court emphasized the doctrine of non-encroachment, whereby "[n]o department of the Government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others."[61]

Yet another basic principle adopted in the Philippines is the power of judicial review, the exercise of which was justified in *Marbury v. Madison*.[62] In *Angara v. Electoral Commission*,[63] the Supreme Court explained the nature, significance and necessity of judicial review in a constitutional system of government. In the words of Justice Laurel:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual

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[58] 39 Phil. 780 (1919).
[59] *Id.* at 787.
[60] 50 Phil. 259 (1927).
[61] *Id.* at 273.
[62] 5 U.S. (1 Cranch) 137 (1803).
[63] 63 Phil. 139 (1936).

> controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[64]

II. THE RELATIONSHIP BETWEEN CONSTITUTIONALISM AND THE RULE OF LAW

Though the concepts of constitutionalism and the rule of law developed separately, it is wholly reasonable to suppose that they are related to each other.

Indeed, most writers adhere to the belief that constitutionalism and the rule of law are at most, identical or synonymous, and at the least, that one is the component of the other.

Payoyo, for example, after surveying the history of constitutionalism and the rule of law, deduced that

> From the viewpoint that the concept of Rule of Law must be understood historically, the derived conclusion is that *today's concept of Rule of Law coincides with, and is identical to, constitutionalism.* Constitutionalism, in turn, has acquired its most recent and logical meaning as a principle of government that purposively aims to attain and fulfill Human Rights through the mechanism of separation of powers in government. In Western constitutions, human rights and constitutionally guaranteed individual rights are one and the same. The essence of present-day Rule of Law, of Constitutionalism, is its advocacy of individual human rights by state adherence to internationally evolved standards of human dignity and decency.[65] [Italics supplied.]

However, the other theory that constitutionalism is a component of the rule of law cannot be simply dismissed. Hager, for instance, posited that constitutionalism is a core component of the rule of law.[66] How the concept of constitutionalism fits into the model of the rule of law was aptly discussed by Hager in this wise:

> Constitutions then are meant to be the fundamental statement of what a group of people gathered together as citizens of a particular nation view as the basic rules and values which they share and to which they agree to bind themselves. The significance of a constitution is that once it is ratified by a democratic process, which confirms that it is supported by "we the people", in the initial phrase of the U.S. Constitution, it then serves both as an architectural blueprint for the organization of the institutions of that government and as the standard

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[64] *Id.* at 158.

[65] Payoyo, *supra* note 1, at 164.

[66] HAGER, *supra* note 48.

> by which any subsequent actions of the government may be checked to ensure their validity. The constitutional standard of validity is inherently that of respect for the consent of the governed.[67]

Dicey, on the other hand, viewed the relationship between the two concepts differently. He considered "'the universal rule or supremacy...of ordinary law' as one element of English constitutionalism."[68] In fact, he formulated his theory of the rule of law within the framework of 19th century constitutionalism.[69]

Kay took a different position. He theorized that "constitutionalism implements the rule of law: it brings about predictability and security in the relations of individuals to the government by defining in advance the powers and limits of that government."[70]

Li, for his part, postulated a four-fold connection between constitutionalism and the rule of law.

First, according to Li, "constitutionalism is a necessary foundation for the rule of law."[71] One of the core elements of the rule of law is limitation, which means that the law has to limit the activities of the government and prescribe the conduct of its business. Constitutionalism provides the necessary mechanisms to operationalize these limitations, through the principles of separation of powers, checks and balances, independent constitutional review and the existence of an independent judiciary, among others.[72]

Second, "constitutionalism provides a minimal guarantee of the justice of both the content and the form of law."[73] On this point, Li explained that constitutional devices, such as representative democracy, competitive and periodic elections and the guarantee of a free press, ensure the just content of laws. At the same time, a constitutional government provides a minimum safeguard for the form of law to be just.

> In order to have procedural justice, specific procedures have to be either written into statutes by legislators or articulated by independent judges in case law. A constitutional mandate and culture of rights protection is necessary for the establishment of fair and transparent procedures. In addition, there must be

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[67] *Id.* at 29.

[68] Li, *Constitutionalism and the Rule of Law*, 2 Perspectives, *at* http://www.oycf.org/Perspectives/7_083100/ constitutionalism_and_the_rule_o.htm (Aug. 31, 2000).

[69] *Id.*

[70] CONSTITUTIONALISM: PHILOSOPHICAL FOUNDATIONS 4 (Larry Alexander ed., 1998).

[71] Li, *supra* note 68.

[72] *Id.*

[73] *Id.*

> independent judges dedicated to legal reasoning to see to it that well-established procedures are complied with. A constitutional structure of separation of powers, checks and balances and independent judiciary is necessary for the effective and consistent implementation and enforcement of well-established procedures. [74]

Third, "constitutionalism strikes a proper balance between rule of law and rule of person."[75] This theory proceeds from the assumption that either the rule of law or the rule of person per se is inadequate.[76] The proposed solution was the institutionalization of liberal constitutionalism.

> Liberal constitutionalism is the technique of retaining the advantages of [the rule of legislators and the rule of law] while lessening their respective shortcomings. On the one hand, the constitutional solution adopts rule by legislators, but with two limitations: one concerning the method of lawmaking, which is checked by a severe iter legis; and one concerning the range of lawmaking, which is restricted by a higher law and thereby prevented from tampering with the fundamental rights affecting the liberty of the citizen. On the other hand, the constitutional solution also sees to it that the rule of law is retained within the system. Even though this latter component of the constitutional rule has been gradually displaced by the former, it is well to remind ourselves that the framers of liberal constitutions did not conceive of the state as being a machine a faire lois, a lawmaking machine, but conceived of the role of the legislators as a complementary role according to which parliament was supposed to integrate, not to replace, judicial law finding.[77]

Fourth and last, "constitutionalism is safeguarded by the rule of law. Without the rule of law, there is no constitutionalism." [78] According to Li, the rule of law protects the integrity of a constitutionalist system. She justified this proposition by arguing that

> [I]f laws are exclusively the results of the "sheer will" of the legislators, there can be no constitutionalism. For a constitutional structure of separation of powers, checks and balances and rights protection to exist, there must be some limits on what the legislators can do. This limit is imposed by the rule of law and implemented through an independent judiciary, the process of judicial

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[74] *Id.*

[75] *Id.*

[76] According to Li, *citing* GIOVANNI SARTORI, THE THEORY OF DEMOCRACY REVISITED 308 (1987), [i]n a representative democracy, the rule of person means the rule of legislators. Under the rule of person in a representative democracy, law is the product of the "sheer will" of the legislators. The rule of person, left unchecked, presents the danger of tyranny. In contrast, under the rule of law, law is the product of judges' "legal reasoning". The rule of law, by itself, can be inadequate for three reasons. First, the rule of law can be too static; secondly, the rule of law can result in the tyranny of (unelected) judges; and finally, the rule of law, by itself, may not address the problem of political freedom. *Id.*

[77] *Id. quoting* GIOVANNI SARTORI, THE THEORY OF DEMOCRACY REVISITED 308 (1987).

[78] Li, *supra* note 68.

review, and the notion that law is, at least in part, the product of independent legal reasoning by judges.[79]

In another sense,

> The letters of the constitution, by themselves, are neither enabling nor constraining. For constitutional provisions to be meaningfully and effectively operative, there must be an institutional and cultural apparatus, which is partially created by the constitution itself, to implement, enforce and safeguard the constitution. The rule of law is one key component in the constitution-implementing and -safeguarding apparatus. An independent judiciary, independent constitutional review, and the notion of the supremacy of law all work together to ensure that the letter and spirit of the constitution are complied with in the working of a constitutional government.[80]

III. THE CONCEPT OF PEOPLE POWER

Some call it civil disobedience. Others call it revolution. The Filipinos call it people power.[81]

This, perhaps, is the simplest way to understand the phenomenon of people power. For Filipinos, however, "people power", as a concept has attained a special meaning.[82] Hence, although history points to three distinct incidents of people power, it is debatable whether, indeed, there were three instances of EDSA people power.

Considering that there is, as yet, no exact meaning of people power, it will be very instructive to cull the elements of a "genuine" people power from the repository of definitions provided by various authors.[83]

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[79] *Id.*

[80] *Id.*

[81] Perhaps, the concept of people power is richer and more meaningful from a social-psychological perspective than from a politico-legal point of view. In fact, it existed long before the 1986 EDSA Revolution. As it was previously known, people power was synonymous with concepts like "popular participation", "empowerment of people", and "community organizing and mobilization". *See* PATRICIA LICUANAN, *People Power: A Social Psychological Analysis, in* UNDERSTANDING PEOPLE POWER 18 (1987) and LEDIVINA CARIÑO, *People Power and Government: Towards the Long-Term Efficacy of a Revolutionary Tool, in* UNDERSTANDING PEOPLE POWER 31 (1987). However, it is the opinion of this author that such understanding refers generally to "people's power", a concept different from "people power".

For the purposes of this paper, people power will be assumed to take its definition from the politico-legal standpoint. It is admitted by this author, though, that "people's power" and "people power" are nearly synonymous, hence they may consist of common elements.

[82] There is, in fact, no settled meaning of people power. Most of the definitions ascribed to people power consisted of a suggested enumeration of its elements or a description of what occurred in EDSA. For the purposes of this paper, these definitions, while strictly speaking insufficient, will be adopted for the time being.

[83] This author attempts to provide a set of elements of people power.

People power involves numbers. "[I]ndividuals band together and achieve their strength in numbers and in groups rather than individual action."[84] The necessity of numbers stems from the fact that initially, these individuals were powerless, compared to a President or any other government official with the backing of the entire State machinery. What numbers are sufficient to stage people power is uncertain, though. "The numbers vary, but numbers are necessary for both objective strength and the subjective feeling of strength."[85]

Numbers alone are not enough, however. Numbers must be built by the thinking constituency, "who cannot be hoodwinked by falsehood."[86] Perhaps, this is one of the reasons that some refused to consider EDSA III as true people power. It was largely believed that although the crowd that gathered in EDSA on April 2001 was massive, its members perhaps even more numerous than the supporters of EDSA II, it did not constitute people power since most of them came from the "dumb" *masa*.[87] A lot of people were convinced that the *masa* who participated in EDSA III were paid for their "attendance" and were led to believe that they were fighting a cause.[88]

This leads to the third important element of people power: the individuals must be organized for a common *causa,* that is, for the common good. In other words, people power, to be legitimate, should be "directed at elaborating itself in the direction of justice and democracy."[89] It must serve "justice and freedom" and must seek "to eliminate oppression, exploitation, tyranny and other forces which prevent the full development of people and society."[90]

Dr. Erlinda Henson, in her empirical survey on the people power phenomenon, observed that "true people power is one that is resorted to when there is a right, just and noble cause and when the general welfare of all sectors of society is at stake."[91]

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[84] PATRICIA LICUANAN, *People Power: A Social Psychological Analysis*, *in* UNDERSTANDING PEOPLE POWER 20 (1987).

[85] *Id.*

[86] Belinda Olivares-Cunanan, *How could it have been mob rule?*, PHIL. DAILY INQUIRER, Feb. 22, 2001, at A9.

[87] Conrado De Quiros, *Again, the 'dumb' masa*, PHIL. DAILY.INQUIRER, April 30, 2001, at A8.

[88] These opinions led to a misconception that people power is just middle-class power. Randy David believes otherwise. In *Five Questions on People Power 2*, PHIL. DAILY INQUIRER, Jan. 28, 2001, at A7, he wrote: "People Power is not so much of the middle class as the informed and critical sectors of the nation, including the organized peasantry, labor and the urban poor. Most of all, however, it is the power of the young and the hopeful generation."

[89] PONCIANO BENNAGEN, *People's Power Toward a Just and Democratic Society*, *in* ISSUES IN SOCIO-POLITICAL TRANSFORMATION IN ASIA AND THE PACIFIC: THE RECENT PHILIPPINE POLITICAL EXPERIENCE 100 (Carolina Hernandez, Winifreda Evangelista & Edgardo Maranan eds., 1987).

[90] LICUANAN, *supra* note 84, at 21.

[91] ERLINDA HENSON, THE "PEOPLE POWER" PHENOMENON A SURVEY OF PARTICIPANTS' PERCEPTIONS 9 (n.d.).

> Specifically, when asked when and on what occasions people power could be used, the respondents' most frequent responses were: a) when there is a violation of human rights/abuses of power/oppression/injustice; b) when there is a need to change leaders; c) when it involves collective action for a common goal; and d) incidents similar to the February revolution at EDSA.[92]

Hence, in both EDSA I and EDSA II, the collective action of the people was directed towards ousting a president perceived to be corrupt and incapable of governing the nation. It was fueled by a general dissatisfaction with the government. The same, however, was not true with respect to EDSA III,[93] which was impelled by the desire of the *masa* to re-install a presidency already tainted with corruption and dishonesty.[94]

In general, these are the basic components of people power. Most writers would add more elements, like the intervention of the military, which are critical in staging a successful people power.

Indeed, people power remains an elusive concept. However, it suffices to say that people power is a concept that is entirely Filipino. It is a creation of the Filipinos' passion for democracy, justice and freedom. The concept of people power is best encapsulated by these words:

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[92] *Id.*

[93] Indeed, there are a lot of differences between EDSA II and EDSA III. According to Randy David in *The third time as farce*, PHIL. DAILY INQUIRER, at A7:

"Crowds like the one that has gathered at the Edsa Shrine following the arrest of the deposed president, Joseph Estrada, can in fact accommodate a variety of motives. People may exchange their presence for nothing more meaningful than a meal or a fee. Some may come for the entertainment. Others may come out of genuine sympathy for a fallen idol. But many join a crowd like this because it provides a venue for the discharge of accumulated resentment. What they get is not catharsis, however. The emotions are not purified so much as they are indulged.

This is not people power; this is its parody, its farcical version. People power is moved by hope; the so-called 'Edsa III' is burdened by despair. People power imagines what life can be if people placed their destiny in their hands. This one imagines what life would have been if their patron had not been overthrown. People power desires to move on and remake the world; people resentment desires to dwell in the past and display its wounds.

The only thing they have in common is Edsa. But the place does not make the event; the event makes the place. Edsa is everywhere there are people who are moved by something bigger than themselves, who find strength in their solidarity and are determined to change the circumstances of their lives. The Edsa Shrine holds no meaning for the participants of "Edsa III." They cannot clothe their resentment with the venerable symbolism of the Edsa Shrine and expect to derive any strength from it. The magic is not in the place but in the energy that people are able to summon from within their hearts when the memory of greatness moves them."

[94] Belief plays a very important role in determining the element of "for the common good". EDSA III supporters may believe that an injustice was done to former President Estrada and their collective action was inspired by their desire to correct this injustice. Justice is, liberally speaking, a legitimate goal that inures to the benefit of all.

> The first thing we must recognize about people power is that it is not easy to mount. One cannot just summon it, for it has a will of its own. Cynical politicians will always try to simulate it because they have this impression that people power is nothing more than just bringing large numbers of people to a designated place, and furnishing them with slogans to shout and banners under which to march. They think of people not as willful beings who can make decisions for themselves but as mobilizable masses that can be manipulated and ordered around. They equate people power with crowds for hire. Well, we have seen what happens to such crowds at the first sign of danger.
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> Real people power is autonomous, self-willed and well informed. It draws its courage and determination from the power of its convictions. It is inventive and free, and not constrained by dogma, political correctness or any party line. It is moral protest elevated to an art. It is not awed by power. It stands up to power, but it disdains power. That is why it has no leaders, only symbols. It clothes itself in the symbols of everything that is good, decent and responsible.
>
> It is unarmed, non-violent and highly disciplined. It is militant but never sad. Indeed it is festive and celebratory. It is angry at times, but never aggressive. It does not only claim the moral high ground, but it also regards itself as the force of the new, the vanguard of a hopeful future. Oppressive, morally bankrupt and corrupt regimes are its principal targets. The power that installs colonels or generals in successful military coups is not people power. That is the power of tanks and armed troops.
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> The crowds that are mobilized and prompted to sing praises for someone already in power do not constitute people power. People power is never sycophantic. While it fights tyrants and corrupt leaders, it studiously avoids being used for narrow personal ends. And herein lies its paradoxical strength: people power is a political weapon with political ends; yet it resolutely rejects political ambition.
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> . . . .
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> People power stays aboveground, but it creates its own arena of political engagement and its own modes of expression. It firmly opposes power, but it does so without attempting to match, weapon for weapon, the armed might of the state. Its nakedness is the source of its power. The world out there is its sole protection. So long as the media bear witness to its struggle, no further shield is necessary. The battle is waged not as a contest of arms but as a fight for legitimacy. Such terrain is unfamiliar to autocrats, generals and obsolete politicians.[95]

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[95] Randy David, *What Makes People Power Possible?* PHIL. DAILY INQUIRER, Feb. 25, 2001, at A9.

IV. CONSTITUTIONALISM AND THE RULE OF LAW VERSUS PEOPLE POWER

Constitutionalism and the rule of law, understood as setting limitations not only on the acts of the government but also on the citizens, are undoubtedly at odds with people power, which is essentially an organized and non-violent action in disregard of the mechanisms provided by the law and the Constitution, in pursuit of the common good, and mounted by the people consisting of the country's thinking constituency.

As a matter of fact, EDSA II drew flak from some sectors of the society because it showed the Filipinos' "propensity" for direct non-institutional action. In the context of the events prior to EDSA II, instead of allowing the impeachment trial to continue, the people chose to summon its power to oust Estrada.

> People Power is clearly the forbidden fruit of politics...What makes political theorists wary of its use is the belief that for collective life in the modern world to have any degree of security, it must develop stable institutions under a culture of law. To fail to do so would be to invite recurrent disorder and destructive conflict.[96]

In the usual order of things, people power bows to the primacy of the law and the constitution.[97] It is often observed that "the law may often seem as if it stands among the gods, way above the messy conflict of mortals....In the name of institutional stability, political reality is rejected."[98] For the sake of stability and democracy, sporadic collective action that would endanger the constitutionally protected institutions is discouraged.

The contentious issue of the nature of people power vis-à-vis constitutionalism and the rule of law was brought to the fore in the consolidated cases of *Estrada v. Desierto*[99] and *Estrada v. Macapagal-Arroyo*.[100] In these cases, the Supreme Court upheld the legitimacy of the Arroyo presidency, not on the ground that the people revolted but on the ground that Estrada resigned, thereby operationalizing the provisions on presidential succession under the 1987 Constitution.

Accordingly, what the Filipinos thought to be a People Power II, in the sense that it was understood in 1986, was considered by the Supreme Court as a mere exercise of the freedoms guaranteed by the Constitution. In essence, what was

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[96] *Id.*

[97] An obvious exception to this, of course, is a revolution, as what happened in EDSA I.

[98] Randy David, *People power and the law*, PHIL. DAILY INQUIRER, Feb. 11, 2001, at A9.

[99] G.R. Nos. 146710-15, March 2, 2001.

[100] G.R. No. 146738, March 2, 2001.

perceived to be an extra-constitutional act was declared by the Supreme Court to be an act within the Constitutional framework. The Supreme Court held:

> In fine, the legal distinction between EDSA People Power I and EDSA People Power II is clear. EDSA I involves the exercise of the people power of revolution which overthrew the whole government. EDSA II is an exercise of people power of freedom of speech and freedom of assembly to petition the government for redress of grievances, which only affected the Office of the President. EDSA I is extra constitutional and the legitimacy of the new government that resulted from it cannot be the subject of judicial review, but EDSA II is intra constitutional and the resignation of the sitting President that it caused and the succession of the Vice President as President are subject to judicial review. EDSA I presented political questions; EDSA II involves legal questions.[101]

Apparently, the Supreme Court justices adhered to the presumption that people power is incompatible with the institutions of constitutionalism and law. As a case in point, "while [t]he Constitution prescribes that the sovereign power of the people is to be expressed principally in the processes of election, referendum and plebiscite,"[102] people power presents an alternative to effect changes in the government and its leadership by advocating popular mass action.

To the minds of the justices, to sanction people power is to court instability and anarchy because it allows the people to utilize a mode of change different from that provided by the Constitution and the laws. In the words of Cooley:

> Although by their constitutions the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. They retain in their own hands, so far as they have thought it needful to do so, a power to control the governments they create, and the three departments are responsible to and subject to be ordered, directed, changed or abolished by them. *But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, acting in their sovereign capacity, can be of legal force only when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the Constitution, or which, consistently with the Constitution, have been prescribed and pointed out for them by statute,* and if by any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and

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[101] Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arryoyo, G.R. No. 146738, March 2, 2001, 22.

[102] *Id.* at 4 (Kapunan, J., separate opinion).

> repressed by the officers who, for the time being, represent legitimate government.[103] [Italics supplied.]

To rule that EDSA II is of a similar character with EDSA I will only challenge the time-tested preeminence of constitutionalism and law in the Philippines. Seen in this light, it becomes logical for the Supreme Court to draw a fine distinction between two types of people power: an extra-constitutional people power and an intra-constitutional one. By making these distinctions, the Court was able to preserve constitutionalism and the rule of law, particularly by invoking the quintessential power of judicial review.

Justice Ynares-Santiago's separate opinion sums up the *inevitable* position of the Supreme Court on the matter:

> The Philippines adheres to the rule of law. The Constitution fixes the parameters for the assumption to the highest office of the President and the exercise of its powers. A healthy respect for constitutionalism calls for the interpretation of constitutional provisions according to their established and rational connotations. The situation should conform to the Constitution. The Constitution should not be adjusted and made to conform to the situation.[104]

IV. RECONCILING PEOPLE POWER WITH CONSTITUTIONALISM AND THE RULE OF LAW

By far, it is accurate to say that the Philippines remains a steadfast constitutionalist regime. The Supreme Court decision on the legitimacy of the presidency of Arroyo merely emphasized the foregone conclusion that the Filipinos are supposed to be bound by a commitment to constitutionalism and the rule of law.

This does not mean, however, that people power has no place in the Philippine legal system. As this author will argue, it is possible for people power to thrive in a system adherent to the constitution and the rule of law.

A. PEOPLE POWER IS A RIGHT AND DUTY

People power is a right, and even a duty, of citizens in specific circumstances. In theory, this is referred to as the duty of civil disobedience.[105]

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[103] *Id.* at 6 (Kapunan, J., separate opinion, *quoting* T.M. COOLEY, II CONSTITUTIONAL LIMITATIONS 1349 (8th ed., 1927)).

[104] *Id.* at 6 (Ynares-Santiago, J., separate opinion).

[105] People power and civil disobedience are used in this paper interchangeably.

Cohen characterized this argument as a "higher-law justification of civil disobedience."[106] In this type of reasoning, an individual justifies his conduct "by appealing to a law higher than any man-made law—a 'divine' or 'natural' law whose authority is supreme. Such laws, he may argue, impose duties so compelling that they override any conflicting obligations."[107]

The existence of this right and duty is explained in the Declaration of Independence of July 4, 1776 of the American Congress, which states, among others, that

> Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly ally Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, *it is their Right, it is their Duty*, to throw off such Government, and to provide new Guards for their future Security.[108] [Italics supplied.]

In turn, this declaration was based on the philosophy of Locke, a staunch advocate of constitutionalism, who, in *The Second Treatise of Civil Government*, declared:

> But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under and see whither they are going, it is not to be wondered that they should then *rouse themselves and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected*, and without which ancient names and specious forms are so far from being better that they are much worse than the state of nature or pure anarchy....[109] [Italics supplied.]

In affirming that constitutionalism itself breathes life to people power (or civil disobedience), Wheeler has this to say:

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[106] CARL COHEN, CIVIL DISOBEDIENCE: CONSCIENCE, TACTICS AND THE LAW 105 (1971).

[107] *Id.*

[108] Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arryoyo, G.R. No. 146738, March 2, 2001, 6 (Mendoza, J., separate opinion).

[109] 1 CURTIS, *supra* note 8, at 388.

The right and duty of civil disobedience was an essential part of the philosophy of Locke and another liberal philospher, Rousseau. As a matter of fact, they inspired the Philippine Revolution of 1896. According to Agoncillo: "Two philosophers of the Age of Reason left indelible marks on the Filipino intelligentsia of the nineteenth century: John Locke and Jean Jacques Rousseau. Locke in his *Two Treatises on Government* (1689) posited that the social contract between the king, who did not exercise absolute powers, and his subjects, means that if the king failed to do his duty and did not respond to natural rights, his subjects had the right to overthrow him. Rousseau re-echoed the same principle in *The Social Contract* (1762), agreeing that if the government did not satisfy its subjects, they have all the reason to alter the government to whatever they thought best." AGONCILLO, *supra* note 6, at 120.

> Constitutionalism combines two elements: the rule of law and democracy. The two often appear to be incompatible; constitutionalism unifies them. Popular demand sometimes conflicts with the rule of law. Charles H. McIlwain, the great authority on constitutionalism, gave a formula for the synthesis of the two in the form of a political equation: *Constitutionalism is "the institutionalization of civil disobedience". Civil Disobedience is constitutional populism; the rule of law is constitutional order.*
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> Civil Disobedience means that the people can nullify tyrannical governmental actions. *Constitutionalism requires that the capability for doing so must be protected.*[110] [Italics supplied.]

It is evident that the constitutionalist framework itself allows the mechanism of people power in situations where there is abuse and tyranny. In fact, a modern theory of constitutionalism, called the resistance theory, "urges that the people have the right to resist a ruler who does not obey or directly disobeys the constitution."[111]

It is proposed by this author that the right and duty of the citizens to make use of people power, in disregard of the existence of sound constitutional mechanisms, is justified either because the people deemed it necessary to invoke their sovereign right or because the institutions are either insufficient or inadequate to resolve the grievances of the people or disrespected by the government itself.

First, the right and duty of civil disobedience arises from the people's right of sovereignty. According to Bodin,[112] "[s]overeignty was the absolute and perpetual power of commanding in a state."[113] The real sovereign, in Rousseau's theory, "is the people, constituted as a political community through the social contract."[114] The sovereignty of the people is inalienable and indivisible. By this, Rousseau meant that "the people cannot give away, or transfer, to any person or body their ultimate right of self-government, of deciding their own destiny."[115]

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[110] Harvey Wheeler, *The Constitutionality of Civil Disobedience*, *at* http://www.constitution.org/hwheeler/ConstCivDisobed.htm (2000).

[111] Rebecca Bichel, Deconstructing Constitutionalism: The Case of Central Asia and Uzbekistan, *at* http://www.icarp.com/publications/pub-deconstruct.html (1997).

[112] He was a member of the *Politiques*, a group of French politicians and lawyers in the late 16th century, which asserted the concepts of divine right and sovereignty. Bodin himself provided the classic definition of sovereignty in *The Six Books of the Republic* in 1579. 1 CURTIS, *supra* note 8, at 301.

[113] 1 CURTIS, *supra* note 8, at 301.

[114] EBENSTEIN, *supra* note 38, at 448.

[115] *Id.* at 44.

The sovereign is distinct from the government, the latter being a mere temporary agent of the former. According to Rousseau, although the people have delegated the exercise of their powers to the government, they have not given up their so-called legislative function, which is the supreme authority in the state.[116]

The theory of sovereignty remains an elementary principle of constitutional law up to this date. The 1987 Philippine Constitution itself recognizes this age-old principle.[117] Sovereignty, as it is presently understood, emphasizes the supremacy of the people's will over that of the governmental organs that they themselves created. Indeed, a government acting for the common good remains "sovereign" and must be obeyed, but once its acts "cease to be for the public good as the people see it, nothing could prevent their abolishing an organ they have ceased to trust."[118] The right of the people to "abolish" the government is only logical for the latter's "authority comes from the permission of the people."[119] What the people have conferred upon the government may also be withdrawn by them.[120]

Taking off from the principle that sovereignty resides in the people, it may be inevitably concluded that the people have a right to depose their leader or overthrow the government if they failed to discharge the responsibility of attaining the ends for which the society existed.

However, sovereignty is by no means unlimited. Bodin speaks of the limitations provided by natural law, eternal law of God and fundamental laws.[121] In contemporary political thought, sovereignty is restricted by the institutions that the people have set up to regulate their affairs. These institutions include the government apparatuses created by the Constitution. This means that the citizens may not avail of their right to civil disobedience until and unless they have initially taken advantage of their political institutions. All the remedies provided by the Constitution and the law should be exhausted first before any resort to civil disobedience or revolution or people power may be had.

These principles provide the bases for the second justification of the right and duty of civil disobedience. People power is justified if the constitutional

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[116] *Id.*

[117] Art. II, sec. 1 states: The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

[118] MCILWAIN, *supra* note 15, at 38.

[119] *Id.*

[120] To further bolster this point, it is worth quoting Nono Alfonso, S.J., from the Institute on Church and Social Issues, who wrote: "The government's hold on power is only incidental. A public office is a public trust—a privilege loaned to a few as long as they enjoy the trust and confidence of the people. It is never anyone's property. No individual, no family, no dynasty has an absolute claim on it; for it belongs to the sovereign people." Nono Alfonso, S.J., *Lessons on Power*, PHIL. DAILY INQUIRER, Jan. 31, 2001, at A9.

[121] 1 CURTIS, *supra* note 8, at 302.

mechanisms are inadequate or insufficient or are utterly disregarded by the government, provided the citizens at the outset avail of them.

Applying these principles in the Philippine context, it is plain that the Filipinos have in fact given the constitutional machineries a chance to operate before resorting to people power. The outbreak of EDSA I, for instance, was triggered by the failure of the February 7, 1986 snap presidential election to express the true intent of the people. Although Marcos and his running mate, Arturo Tolentino, were proclaimed winners by the Batasang Pambansa, based on the results arrived at by the Commission on Elections, the opposition candidates, Corazon Aquino and Salvador Laurel, contested the proclamation on the grounds of massive fraud and terrorism.[122] It was only when the people felt that the sanctity of their ballots were disrespected that the people mobilized and demanded the ouster of the president. However, the political crisis already began with the assassination of Benigno Aquino Jr. on August 21, 1983.

As Amando Doronilla opined:

> The Filipinos rose in the 1986 People Power Revolution after President Marcos stole the election. That was the last straw. Marcos' dictatorship controlled the entire apparatus of the political system—the military and police, the courts, the legislature and the press—and ruled by decree. When he stole the 1986 snap election, the people, already fired up by the assassination of Benigno Aquino Jr. in 1983, felt their last chance of changing leaders through a democratic process—election—was foreclosed. So, they went to the streets to depose Marcos.[123]

A similar situation arose prior to EDSA II. After the disclosure of Gov. Luis "Chavit" Singson accusing Estrada of "taking *jueteng* payoffs and skimming excise tax money,"[124] a popular call demanding his resignation was deflected by his submission to a constitutional process—the impeachment trial. However, the people "felt betrayed after the Senate voted 11-10 to seal an envelope containing evidence on corruption."[125] The people's confidence in the political institutions, particularly the Presidency and the Senate, was eroded. The impeachment trial, touted as the "constitutional process of last resort,"[126] was undermined.

> Estrada's crisis of confidence derived from incompetent economic management, bad governance and involvement in a wave of corruption scandals. But the triggering spark of people power was the blasting of the

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[122] AGONCILLO, *supra* note 6, at 584.

[123] Amando Doronilla, *Edsa II worries Western media*, PHIL. DAILY INQUIRER, Jan. 31, 2001, at A9.

[124] *Id.*

[125] *Id.*

[126] *Id.*

> people's confidence in their institutions—e.g., the Senate and the impeachment trial. These sparked the rage that culminated in People Power II. Estrada had undermined key political institutions—such as the political parties, Congress and the Cabinet—as a counterweight to vast presidential powers. When the impeachment trial collapsed, the people were left without any further option of deciding the impeachment case with due process.[127]

People power, then, remains a sovereign right and duty of the people. It is necessitated by the breakdown of the political and legal institutions created by the community to safeguard the common good. In particular, this fundamental sovereign right is exercised if the constitutional or legal processes are rendered inutile by the person or groups of persons to whom the rights of the citizens are delegated.[128]

B. PEOPLE POWER FURTHERS THE IDEALS OF CONSTITUTIONALISM AND THE RULE OF LAW

Article II, section 5 of the 1987 Constitution states: "The maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy."

These are precisely the ideals of constitutionalism and the rule of law. In particular, the rule of law helps prevent arbitrary and corrupt government, restrains vengeance and secures individual liberty.[129] The same freedom from arbitrariness and the guarantee of liberty are likewise the ends of constitutionalism. As Locke said:

> Men....enter into society....the better to preserve himself, his liberty and property—...the power of the society, or legislative constituted by them, can never be supposed to extend farther than the common good. And so whoever

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[127] *Id.*

[128] Amando Doronilla aptly summarized this author's point: "Filipinos have a high threshold of patience to take abuse of power and appalling corruption. But when they are denied the last resort to democratic due process—as in the impeachment trial—they assert their sovereign right to replace their leaders by taking to the streets.

. . . .

"The point is that when Filipinos are robbed of the constitutional or legal due process through which they can effect political change, they exercise their fundamental sovereign rights. If Marcos and Estrada had not scuttled and undermined the integrity of the democratic processes, they could have been changed without people power. The antidote against future people power is to strengthen countervailing political institutions and good governance." *Id.*

[129] ALTMAN, *supra* note 43, at 17.

> has the legislative or supreme power of any commonwealth is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees; by indifferent and upright judges who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. And all this to be directed to no other end but the peace, safety, and public good of the people.[130]

The same values of general welfare, liberty and peace, among others, inspired the idea of people power in 1986. It was backed by "nationalist and democratic causes and pro-people causes"[131] which were all directed to the common good. As former President Aquino herself said at her swearing in ceremony: "People power shattered the dictatorship, protected those in the military who chose freedom, and today has established a government dedicated to the protection and meaningful fulfillment of our rights and liberties."[132]

More importantly, people power, constitutionalism and the rule of law were conceived primarily to attain justice in the society. The 1987 Constitution itself is replete with provisions promoting justice.[133] People power, no doubt, was fought for by the people to achieve social justice, an ideal close to the heart of every Filipino.

> Social Justice, for us Filipinos, means a coherent intelligible system of law, made known to us, enacted by a legitimate government freely chosen by us, and enforced fairly and equitably by a courageous, honest, impartial, and competent police force, legal profession and judiciary, that *first*, respects our rights and our freedoms both as individuals and as a people; *second*, seeks to repair the injustices that society has inflicted on the poor by eliminating poverty as our resources and our ingenuity permit; *third*, develops a self-directed and self-sustaining economy that distributes its benefits to meet, at first, the basic

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[130] 1 CURTIS, *supra* note 8, at 381-2 *quoting* JOHN LOCKE, THE SECOND TREATISE OF CIVIL GOVERNMENT.

[131] HENSON, *supra* note 91, at 8.

[132] *Id.* at 2.

[133] Some of these provisions are:

Art. II, sec. 9: "The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

Art. II, sec. 10: "The State shall promote social justice in all phases of national development."

Art. III, sec. 1 states: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

Art. XIII, sec. 1: "The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."

Art. XIII, sec. 2: "The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance."

> material needs of all, then to provide an improving standard of living for all, but particularly for the lower income groups, with time enough and space to allow them to take part in and to enjoy our cultures; *fourth*, changes our institutions and structures, our ways of doing things and relating to each other, so that whatever inequalities remain are not caused by those institutions or structures, unless inequality is needed temporarily to favor the least favored among us and its cost is borne by the most favored; and *fifth*, adopts means and processes that are capable of attaining these objectives."[134]

People power, after all, is not an empty concept but a dynamic one fraught with ideals. It is, in fact, bolstered by the ideals of a democratic and constitutionalist system like the Philippines.

CONCLUSION

The resiliency of the regime of constitutionalism and the rule of law in the Philippines was demonstrated by its ability to preserve itself despite the occurrence of three EDSA people power in a span of 15 years. Though it cannot be argued that a constitutionalist regime will explicitly adopt people power as a legal mode of effecting change in the government, it has been shown that it is possible to reconcile the concept of people power with constitutionalism and the rule of law.

This is significant because it clarifies the relationship of people power with constitutionalism and the rule of law. Indeed, people power should not be viewed outright as an attack or a serious challenge upon a constitutionalist regime. Instead, it should be viewed as a mechanism to fill the gaps of a system adhering to constitutionalism and the rule of law.

> I think we have been extremely fortunate to have stumbled upon people power as a tool for resolving difficult political crises at a time when armed uprisings have become increasingly costly for nations in the modern world. While other societies remain trapped in dysfunctional political structures and processes that impede their growth, we have been more daring in our quest for solutions, trusting only in the basic goodwill of our people.[135]

In fine, the concepts of people power, constitutionalism and the rule of law should not be regarded as opposing ideas. After all, they all work for the benefit of the people: by enhancing democracy and promoting justice.

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[134] As defined by Atty. Jose W. Diokno. BENNAGEN, *supra* note 89, at 101.
[135] David, *supra* note 95.

ABSTRACT:

THE REMOVAL OF PRESIDENT ESTRADA THROUGH PEOPLE POWER: A THREAT TO CONSTITUTIONAL DEMOCRACY

In contrast with the previous article, Mr. Raymond Vincent G. Sandoval agrees with the criticisms of People Power II regarding its detrimental effect on constitutionalism and the rule of law. Having been a participant himself in the protest rallies, Mr. Sandoval recognizes that People Power II was a valid exercise of the constitutionally-protected right to freedom of speech and to peaceably assemble and petition a corrupt and inept government for redress of grievances. He stresses that People Power *per se* is not harmful to a democracy; under extreme circumstances, such as those surrounding the first People Power in 1986, it may be the only tool available to enable the survival of a democracy. He argues, however, that such exceptional circumstances were absent during People Power II. The resultant mode of removal of President Estrada failed to abide by the strict rules laid down in the Constitution as regards the succession of the vice president to the presidency. This thus sets a dangerous precedent which will serve to undermine the foundation of Philippine society as a constitutional democracy.

Part I of Mr. Sandoval's article discusses the relation of constitutionalism to the rule of law. Part II analyzes the concept of people power and how the brand of people power used in ousting Estrada from the top position in the nation differed from the 1986 EDSA Revolution instrumental in booting out the Marcos dictatorship. Part III focuses on how the removal of Estrada through people power created a constitutional crisis, that is, a situation wherein the significance and inviolability of the constitution were disregarded, thus posing as an ever-present threat to the Philippine Republic as a constitutional democracy.