

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

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*He who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast and passion perverts the minds of rulers even when they are the best of men.*

*-Aristotle<sup>1</sup>*

## INTRODUCTION

The eventful days of January 17-20, 2001 will never cease to comprise a momentous occasion in Philippine history. The moment the Senate voted 11-10 against the opening of the envelope purportedly containing bank records confirming corruption charges against former President Estrada, mobile phone text messages raced throughout the metropolis, instructing the outraged citizenry to gather at Epifanio de los Santos Avenue (EDSA), decry the blatantly party-influenced Senate vote and demand the resignation of Estrada.<sup>2</sup> The crowd at EDSA grew in number, at one point exceeding two million in number, until eventually the top military brass shifted their allegiance to then-Vice President Arroyo.<sup>3</sup> Then it was all over for

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<sup>1</sup> Alberto Muiot, *Amendment No. 6 and the Rule of Law*, 59 PHIL. L.J. 156 (1984).

<sup>2</sup> *Suppression sparks outrage*, PHIL. DAILY INQUIRER, Jan. 17, 2001, at A1.

<sup>3</sup> Christine Herrera et al., *AFP deals fatal blow to the presidency*, PHIL DAILY INQUIRER, Jan. 20, 2001, at A1; Carolyn Arguillas, *Reyes vows to obey only Macapagal*, PHIL. DAILY INQUIRER, Jan. 20, 2001, at A19.

Estrada, who was elected with the largest electoral mandate<sup>4</sup> in 1998. He had no choice but to vacate Malacañang.

News of Estrada's downfall was met with the loudest of cheers not only in the streets but also in the stock market and across the world.<sup>5</sup> The peso-dollar exchange rate soared from a historic low of P54.79 to \$1 to P47.50 to \$1.<sup>6</sup> The Philippines had allegedly demonstrated once again that it possessed the ability to dispose of a corrupt and inept leader who had lost the moral ascendancy to govern, similar to how the Marcos dictatorship was toppled in 1986. Many were alluding to the successive triumph of "People Power," hence referring to the momentous series of events as "People Power II."<sup>7</sup>

Yet, while the removal of Estrada from power may have indeed been something to celebrate, many of the legal minds of the country could not help but question the unusual circumstances that surrounded the transfer of power.

As will be discussed at length later on in this article, the problem with Estrada's ouster was that it did not abide by the strict rules laid out in the Constitution regarding the succession of the vice president to the presidency. The controversial nature of the extra-constitutional mode of succession which Arroyo followed lies in its deleterious effects on constitutionalism and the rule of law. With the Philippines being both a constitutional government and a representative democracy, constitutionalism and the rule of law must be upheld for these are its very foundations. As such, Part I of this article will discuss the relation of constitutionalism to the rule of law. Part II will analyze 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 will focus 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, which will be an ever-present threat to the Philippines as a constitutional democracy.

It is submitted that People Power as a direct mode of removal of a head of state, under the particular circumstances surrounding Estrada's ouster, threatens the nature of the Philippine Republic as a constitutional democracy.

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<sup>4</sup> Brook Larmer & Mahlon Meyer, *The Return of People Power*, NEWSWEEK, Jan. 29, 2001, at 13; William Overholt, *It's 'People Power' Again, but this Time Without the People*, International Herald Tribune, Jan. 24, 2001, <http://www.ihb.com/articles/8430.htm>.

<sup>5</sup> Dona Pazzibugan & Jennie Ilustre, *World praises bloodless new people power*, PHIL. DAILY INQUIRER, Jan. 21, 2001, at A2.

<sup>6</sup> Clarisa Batino, *Peso makes dramatic rebound to P47.50*, PHIL. DAILY INQUIRER, Jan. 20, 2001, at A2.

<sup>7</sup> Sandra Burton, *People Power Redux*, TIME, Jan. 29, 2001, at 14-19.

## I. CONSTITUTIONALISM AND THE RULE OF LAW

Burin has pointed out that “legally...constitutionalism may be equated to the rule of law.”<sup>8</sup> These two abstract concepts are embodied in 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.’”<sup>9</sup>

Constitutionalism has been described as 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. The constitution not only regulates the relationships of organs of government to each other; it also limits the discretionary powers of government, and, in doing so, it protects the citizen.

It is stressed, however, that constitutionalism is not identical with constitutions, which can often be meaningless pieces of paper which are not in accordance with established political institutions.<sup>10</sup> Subsequently, a government may embody constitutionalism whether it has a written constitution or not.<sup>11</sup> Nevertheless, where there exists a constitution, the rule of law is manifested either expressly or implicitly. The 1987 Philippine Constitution has expressly referred to the rule of law in its preamble<sup>12</sup> and has likewise indirectly invoked it through reference to elements of the rule of law. Article II, section 1 of the Constitution declares that the Philippines is “a democratic and republican State” and that “sovereignty resides in the people and all government authority emanates from them.”

Fernandez has explained that the rule of law is the spirit behind the concept of the republican state, adding that “the concept of Rule of Law epitomizes republican government.”<sup>13</sup> Furthermore, an essential element of a republican state is that of the doctrine of separation of powers, which is indispensable to the rule of law.<sup>14</sup> The principle of separation of powers has been adopted because arbitrary rule

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<sup>8</sup> Muyor, *supra* note 1, at 141.

<sup>9</sup> Irene Cortes, *Constitutionalism in the Philippines-A View From Academia*, 59 PHIL. L.J. 338 (1984), n.1.

<sup>10</sup> *Id.*

<sup>11</sup> ANDREW ALTMAN, ARGUING ABOUT LAW 6 (1997).

<sup>12</sup> CONST. Preamble:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the *rule of law* and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution. [Italics supplied.]

<sup>13</sup> Muyor, *supra* note 1, at 142.

<sup>14</sup> *Id.*

and abuse of authority would inevitably result from the concentration of powers in the same persons or body of persons which will be destructive of individual liberty.<sup>15</sup>

John Adams clearly intertwined the two concepts in the Massachusetts Constitution of 1780:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; *to the end it may be a government of laws and not of men.*<sup>16</sup> [Italics supplied.]

Dicey has further expounded on the concept of the rule of law by offering three perspectives. One, the rule of law may be understood as the absolute supremacy or predominance of law as against arbitrary powers, that of the ideal of a government of laws and not of men: "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." Another is that the rule of law may represent the equality of every person, without exception, before the law: "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 amenable to the jurisdiction of ordinary tribunals." Lastly, based on the English experience, the rule of law is a recognition of the fact that the law of the constitution was not itself the source of the rights of the individuals but only a codification of such rights: "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."<sup>17</sup>

These three perspectives primarily influenced the International Commission of Jurists in their "Act of Athens" characterization, wherein the jurists perceived the rule of law as entailing that:

- (1) The State is subject to the law;
- (2) The Government should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement;
- (3) Judges should be guided by the Rule of Law, protect and enforce it without fear or favour and resist any encroachments by governments or political parties on their independence as judges; and

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<sup>15</sup> Carmelo Sison, *The Supreme Court and the Constitution*, 67 PHIL L.J. 309 (1993).

<sup>16</sup> Muyot, *supra* note 1, at 141.

<sup>17</sup> *Id.*

- (4) Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.<sup>18</sup>

Regala, in turn, interpreted the aforementioned "Act of Athens" as establishing the important elements of the rule of law: separation of powers and checks and balances, objectivity in the law, limitations on the government in its relation to individuals, fair procedures in the application of law to the individual, and an independent judiciary and an independent bar. In summary, he observed that "the rule of law signifies a state of affairs in which legal barriers to government arbitrariness and legal safeguards for the protection of the individual must be observed."<sup>19</sup>

Applying the concepts of constitutionalism and the rule of law to actual governance, Altman describes a constitutional government (or a democracy, as the two terms have been used interchangeably<sup>20</sup>) as one which abides by the "principles of legality" or the principles of the rule of law,<sup>21</sup> that is, certain principles which place vital restrictions on how government is permitted to operate and how political power may be exercised. These principles are:

- (1) A government should not exercise its power in an arbitrary manner;
- (2) A 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; and
- (3) The general and authoritative rules through which 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.

Government must give all persons charged with violating the authoritative rules a fair chance to defend themselves against the charges.<sup>22</sup>

Observation of such principles of legality distinguishes a constitutional government from an arbitrary one.<sup>23</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> CARL FRIEDRICH, CONSTITUTIONAL GOVERNMENT AND DEMOCRACY 571 (1965).

<sup>21</sup> ALTMAN, *supra* note 11, at 3.

<sup>22</sup> *Id.* at 3-6.

<sup>23</sup> *Id.* at 3.

Constitutionalism and the rule of law have been regarded as crucial parts of any morally defensible political system from the beginning of Western civilization in ancient Greece, more than 2,500 years ago.<sup>24</sup> In other words, for a constitutional government such as ours to survive and to attain maturity, the rule of law must be upheld. The rule of law requires that the law's decision be accepted even if it violates one's sense of moral justice.<sup>25</sup>

## II. PEOPLE POWER

For a phrase that has been embedded so deeply into the Filipino psyche, "people power" astonishingly has no clear-cut definition. Nevertheless, it is widely known that Estrada's ouster was referred to by many as "People Power II," that is, the "sequel" to the bloodless people's revolution in 1986 which drove Marcos out of Malacañang.<sup>26</sup> It is not clear exactly how the term was coined, but it has been used interchangeably with such concepts as "popular participation," "empowerment of people," and "community organizing and mobilization." It bears reference to the general term "people's power" which refers to the "involvement of a significant number of persons in situations or actions which enhance their well-being."

A few months after the EDSA Revolution in 1986, psychologist Licuanan analyzed the "anatomy" of people's power and discussed its apparent basic elements or characteristics.<sup>27</sup> She surmised that there were six elements of people power:

- 1) awareness of a problem;
- 2) initial powerlessness;
- 3) number;
- 4) concrete involvement;
- 5) human and social development; and
- 6) psychological transformation.<sup>28</sup>

The first element, awareness of a problem, involves that aspect of human nature which reveals that people are motivated to act only when they actually feel a subjective threat that comes from physical danger, imminent eviction from one's home, death of a loved one, etc. Licuanan stresses that "the ordinary person is angered less by the knowledge that unjust structures exist in Philippine society than from firsthand experience with injustice."<sup>29</sup> This assertion will be of utmost

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<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 19.

<sup>26</sup> *People Power II: History Repeats Itself*, PHIL. DAILY INQUIRER, Jan. 20, 2001.

<sup>27</sup> Patricia Licuanan, *People's Power: A Socio-Psychological Perspective*, 23<sup>rd</sup> Annual Convention of the Psychological Association of the Philippines (Aug. 5-7, 1986), at 22-31 (transcript available in the University of the Philippines Main Library).

<sup>28</sup> *Id.* at 23-26.

<sup>29</sup> *Id.*

significance in differentiating the People Power that drove Marcos out of the country and that which ousted Estrada.

During the 1986 EDSA Revolution, the economic crisis, the murder of Ninoy Aquino and the election fraud during the snap elections combined to serve as the proverbial last straw that led the passive Filipino,<sup>30</sup> the Filipino whose margin of tolerance for stress and suffering is rather wide,<sup>31</sup> to say *sobra na, tama na* (enough is enough). While poverty and injustice were long part of Philippine society, something concrete had to take place in order that such injustice becomes real and immediate to people and thus lead them to take action against the dictatorial government. Such action leads to the fourth element listed above, concrete involvement. Concrete physical activities at the micro level such as rallies, marches, boycotts and pickets enable the transition from passive to active participation. These micro activities reap the first fruits of power and are instrumental in maintaining the morale and confidence necessary to sustain a long-term struggle.

Subsequently, concrete involvement of a large number of people leads to the sixth element, psychological transformation. Active participation and a sense of being able to make a difference in society leads to an enhanced self-concept, self-confidence, self-reliance and a sense of dignity. In fact, people's power served as a cure to the sense of helplessness which had infected majority of Filipinos during the Marcos years. The censorship and oppression carried out by the Marcos regime created a situation wherein most Filipinos had little control over what happened to them, making them passive, fearful and depressed. In short, the abuses of the Marcos dictatorship led to a cycle of suppression and despair which served to perpetuate Marcos' monopoly of power. It took something as drastic as people's power to break this cycle.<sup>32</sup>

People's power necessarily involves people who are initially powerless; people's power is not associated with those who already possess economic, political or social power. The wonder of people's power is that these initially powerless individuals are able to overcome more powerful groups. Licuanan points out that so-called people's power in the hands of the powerful is a farce and is in reality a form of bullying. Closely associated with this is the element of number. Initially powerless people are able to overcome power cliques through strength in numbers. Large numbers provide objective strength as well as the subjective feelings of strength. Objectively, it is obviously more difficult to quell unrest involving

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<sup>30</sup> *Id.* at 23.

<sup>31</sup> Alfredo Lagmay, *Cultural and Philosophical Dimensions of the February Revolution*, 23<sup>rd</sup> Annual Convention of the Psychological Association of the Philippines (Aug. 5-7, 1986), at 32-39 (transcript available in the University of the Philippines Main Library).

<sup>32</sup> Licuanan, *supra* note 27, at 24-25.

multitudes than a handful of people. Subjectively, a member of a large group feels protected by the law of averages or feels the comfort of shared consequences.<sup>33</sup>

The fifth element of people's power is human and social development. The phenomenon of people's power is grounded upon the interests of the common good. It cannot be manipulated to serve the interests of a powerful few or to maintain unjust structures.

Particularized in the present context, people power refers to a spontaneous, peaceful, spiritual and widespread civil disobedience movement<sup>34</sup> that effects an extra-constitutional<sup>35</sup> change of leadership in government. While People Power I and II essentially correspond to this broad definition, there are significant differences between the two.

#### COMPARISON OF PEOPLE POWER I AND II

While the removal of Marcos (People Power I) and of Estrada from power (People Power II) both led to questions of legitimacy regarding the resultant governments, the legitimacy of the Aquino government was resolved on the basis of the extra-constitutional nature of its establishment while that of the Arroyo administration was decided on the basis of the existing 1987 Constitution. The Aquino government was held to be "revolutionary in the sense that it came into existence in defiance of the existing legal processes" and in violation of the provisions of the 1973 Constitution since the Batasang Pambansa had previously declared Marcos as the winner in the 1986 presidential election.<sup>36</sup> The Freedom Constitution declared that the Aquino government was established via a direct exercise of the power of the Filipino people "in defiance of the provisions of the 1973 Constitution, as amended."<sup>37</sup> The people of the Philippines had judged and consequently accepted Aquino as president and had thus rendered her administration

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<sup>33</sup> *Id.* at 24.

<sup>34</sup> CONRADO DE QUIROS, "People Power" and the Paradigm of Salvation, in FEBRUARY REVOLUTION: THREE VIEWS 13-15.

<sup>35</sup> Rose Marie King, *The Legal Status of the Aquino Government: Foundations for Legitimacy*, 61 PHIL. L.J. 137 (1986).

<sup>36</sup> Letter of Associate Justice Reynato S. Puno, 210 SCRA 598-599, 29 June 1992.

<sup>37</sup> *Estrada v. Desierto*, G.R. No. 146710-15, 2 March 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, 2 March 2001.



a de jure government.<sup>38</sup> While this pronouncement may not have been entirely correct, it is what the Supreme Court at the time declared.<sup>39</sup>

<sup>38</sup> Joint Resolution, Lawyers' League for a Better Philippines and/or Oliver A. Lozano v. Pres. Corazon C. Aquino, et al., G.R. No. 73748; People's Crusade for Supremacy of the Constitution, etc. v. Mrs. Cory Aquino, et al., G.R. No. 73972; and Councilor Clifton U. Ganay v. Corazon C. Aquino, et al., G.R. No. 73990, 22 May 1986.

<sup>39</sup> In King, *supra* note 35, it was pointed out that a de jure government is a "government of right, a government established according to the constitution of the state and lawfully entitled to recognition and supremacy and the administration of the state" while a de facto government "assumes a character very closely resembling that of a lawful government." The latter is established when "a usurping government expels the regular authorities from their customary sets and functions and establishes itself in their place, and so becomes the actual government of the country." The basic distinction is thus that a de jure government is "founded on existing constitutional laws of the state" while a de facto government is not.

King goes on to mention that a de facto government may be of three kinds:

- (1) that government that gets possession and control of, or usurps by force, or by the voice of majority, the rightful legal government and maintains itself against the will of the latter such as the government of England under the Commonwealth, first by Parliament and later by Cromwell as protector;
- (2) that established as an independent government by the inhabitants of a country who rise in insurrection against the parent state such as the government of the Southern Confederacy in revolt against the Union during the war of secession; and
- (3) that which is established and maintained by military forces who invade and occupy a territory of the enemy in the course of war and which is denominated as a government of paramount force, such as the case of Castine in Maine, which was reduced to a British possession in the war of 1812 and of Tampico, Mexico, occupied during the war with Mexico by the troops of the United States.

King points out that the Aquino Government actually fell into the mold of the first type of de facto government and not of a de jure government. The government fulfilled the criteria of a de facto government which are:

- (1) actual possession of supreme power over the territory in consideration;
- (2) acquiescence as evidenced by the habitual obedience to the de facto government's authority; and
- (3) recognition of the government as either de facto or de jure by the community of nations.

Nevertheless, the Supreme Court unequivocally held that the Aquino Government is "in fact and law a de jure government. (Joint Resolution, Lawyers' League for a Better Philippines and/or Oliver A. Lozano v. Pres. Corazon C. Aquino, et al., G.R. No. 73748; People's Crusade for Supremacy of the Constitution, etc. v. Mrs. Cory Aquino, et al., G.R. No. 73972; and Councilor Clifton U. Ganay v. Corazon C. Aquino, et al., G.R. No. 73990, 22 May 1986)" These cases held that "the legitimacy of the Aquino Government is not justiciable matter. It belongs to the realm of politics where only the people of the Philippines are the judge. And the people have made the judgment." Secondly, they invoked the doctrine of acquiescence, saying that "the people have accepted the government of... Aquino." Thirdly, it was noted that the new government had already taken up the reins of administration and was "in effective control of the entire country." Finally, it was pointed out that the Aquino government had been recognized by the community of nations.

King is quick to discern that the elements of a de jure government as identified by the Supreme Court were identical to the elements of a de facto government except for the point of origin. King, however, reconciles this conflict by resorting to the hair-splitting opinion of Bernas, that "for so long as the government is in possession; it is the only law and it is legal within the context of its structures." King goes on to say that "the question of a government being either de jure or de facto comes into play only when that government is

finally ousted." As such, Bernas explains that "once a government is ousted, however, for the purpose of determining the validity of the actions taken by the ousted government, it becomes necessary to ask whether it was merely *de facto* or *de jure*."

King thus concludes that "for all intents and purposes, the Aquino Government as it exists at this point in time, is a *de jure* government." She follows up this conclusion with the confusing quote from *Philips v. Payne* [92 U.S. 130, 133 (1875)] that "a government *de facto* in firm possession of any country, is clothed, while it exists, with the same rights, powers and duties, both at home and abroad, as a government *de jure*."

Agnes Maranan, in *The Dilemma of Legitimacy: A Two-Phase Resolution*, 61 PHIL. L.J. 154 (1986), argues that there can be no basis for labeling the Aquino government as revolutionary for the following reasons:

- (1) It did not come to power through violent means; and
- (2) There was no overthrow of the existing legal order, as evidenced by the absence of radical change in the laws or the structure of government

Similar to King, Maranan agrees with the Supreme Court that the Aquino government was a *de jure* government, but not for the reasons stated by the Court. She stresses that "international recognition is not synonymous to legitimacy" and that "express recognition by the community of nations is not sufficient to pronounce a government *de jure*." She differentiates between the meanings of "*de jure*" and "*de facto*" in the constitutional law sense and in the context of international law. In the former, a *de jure* government is synonymous with "legitimate" or "constitutional" government, while a *de facto* government is equivalent to an "actual" or "usurping government." In the latter, however, "*de jure*" and "*de facto*" refer merely to *recognition*, rather than the actual legal status of the government. A government is recognized as *de jure* when it is exercising "unrivaled control over the whole of the territory of a State," although said government may not necessarily be regarded as the sovereign of the territory. As such, "a government may be *de facto* in the constitutional law sense, and still enjoy *de jure* recognition by the community of nations. The grant of international recognition is not a grant of constitutional legitimacy."

Maranan concedes that the Aquino government fulfilled the two-fold test in determining the existence of a *de facto* government, at least superficially: effective control and popular acquiescence. However, Fenwick and Houghton add the requirement of permanence or stability as essential to the *de facto* character of a government, wherein people render "habitual obedience" to the government's authority. Oppenheim added further that "[a] government which enjoys the habitual obedience of the bulk of the population with a *reasonable expectancy of permanence* can be said to represent the State in question and as such to be entitled recognition." Maranan posits that while the Aquino government was initially *de facto*, its ability to maintain stability was questionable. She pointed to the "spirally tension and unrest that currently grips the country in the face of bombings, kidnapping cases and murder, as well as the deepening conflict among officials in government." She concludes that "the government's inability to keep the country stable implies that, using the standard of permanence, the Aquino government cannot claim a *de facto* legal status."

Maranan arrives at a quandary: by any principle of constitutional and international law, the Aquino government cannot be properly classified as *de jure* or *de facto*. As such, she proposes a two-phase resolution, by dividing the government's term into the period from *Proclamation to Promulgation of the Provisional Constitution*, and the period *After Promulgation to the Present* (the article was published in June 1986). She suggests that during the first phase, the Aquino government was a *de facto* government, but the act of Promulgation transformed it into a constitutional government, but one under the 1973 Constitution as amended, and not under the Provisional Constitution. The latter assertion is founded upon the fact that the assumption of power by a *de facto* government in contravention of the provisions of the constitution does not imply automatic abrogation of the same. She suggests that a more theoretically sound proposition would be that at the time a *de facto* government assumes power, the constitution it defied is merely suspended but continues to exist. She believes that the act of promulgating a Provisional Constitution produced the dual effect of reviving and amending the 1973 Constitution, thus rendering the Aquino government a *de jure* government.

The Arroyo administration, on the other hand, is not revolutionary in character and claims its legitimacy from the 1987 Constitution. Arroyo stressed that she was discharging the powers of the presidency under the authority of the present Constitution.<sup>40</sup>

Some foreign journalists, while correct to a certain extent, have oversimplified the comparison of the two administrations. Overholt, for one, points out in the *International Herald Tribune* that People Power I was the validation of the 1986 snap elections wherein Aquino was the clear winner, regardless of the pronouncements of the Batasang Pambansa, while People Power II was the invalidation of Estrada's election, wherein he garnered more than 10 million votes,<sup>41</sup> the largest in Philippine history.<sup>42</sup> For veterans of the first People Power, such a statement may strike sensitive chords. People Power I was not merely the validation of an election but the culmination of twenty years of tyrannical martial law rule. As was pointed out earlier in this section, election fraud, along with the worsening economic crisis in the eighties and the assassination of Ninoy Aquino, were merely part of the proverbial "last straw" that broke the camel's back, that pushed Filipinos over the edge and led them to declare *sobra na, tama na* (enough is enough).<sup>43</sup> Contrary to Overholt's assertion, the electoral contest merely provided the framework and organizing principle for the uprising. It produced an unchallenged focal point of leadership for the broad anti-dictatorship forces.<sup>44</sup>

On the other hand, Overholt's statement that People Power II invalidated Estrada's election is comparably more palatable than his views concerning the 1986 EDSA Revolution. While the fraudulent election results and the pitiful Senate vote may have been equally dubious, there lies a significant difference. The former was a process wherein cheating was obviously taking place, by virtue of the harassment and intimidation of voters who intended to vote for Aquino, vote-buying, ballot box snatching and outright murder which were carried out in broad daylight.<sup>45</sup> The Batasang Pambansa was forced to declare Marcos the winner.<sup>46</sup> There was an objective basis to the public clamor for the proper counting of votes for Aquino.

The Senate vote, on the other hand, was not fraudulent. Rule VI of the Rules of Procedure in the Senate on the impeachment trial supports the procedure

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<sup>40</sup> Estrada v. Desierto, G.R. No. 146710-15, 2 March 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, 2 March 2001.

<sup>41</sup> *Id.*

<sup>42</sup> Larmer & Meyer, *supra* note 4, at 13; Overholt, *supra* note 4, at 13.

<sup>43</sup> Licuanan, *supra* note 27, at 23.

<sup>44</sup> Alex Magno, *The Anatomy of Political Collapse*, in FEBRUARY REVOLUTION: THREE VIEWS 8-9 (1989).

<sup>45</sup> PEOPLE POWER, THE PHILIPPINE REVOLUTION OF 1986: AN EYEWITNESS HISTORY outside back cover (1986).

<sup>46</sup> Magno, *supra* note 44.

that led to the 11-10 vote preventing the opening of sealed bank documents. Such documents, House prosecutors said, would prove that Estrada had amassed P3.3 billion in a secret account with the Equitable PCI Bank.<sup>47</sup> The rule simply states that “the President of the Senate or the Chief Justice when presiding on the trial may rule on all questions of evidence including, but not limited to, questions of materiality, relevancy, competency or admissibility of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, *unless a Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision after one contrary view is expressed.*... Rules of evidence and procedures shall be liberally construed.” [Italics supplied.] Then-Senator Tatad called for a vote and Senator Enrile seconded the motion. Chief Justice Davide thus had to submit to the vote of the senators.<sup>48</sup> While the 11 senators who voted to refrain from opening the second bank envelope may have done so according to party affiliations, they nevertheless had a logical basis for their vote. The existence of the President’s secret bank accounts was not included in the crimes alleged against the President in the Articles of Impeachment<sup>49</sup> and was thus immaterial and irrelevant.<sup>50</sup> Nowhere in said Articles of Impeachment was there mention of such bank accounts. To then introduce evidence regarding secret bank accounts under the charge of graft and corruption and to require Estrada to answer to such charges are violative of his constitutional right to be duly informed of the accusations against him in order that

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<sup>47</sup> Juliet Javellana & Martin Marfil, *Senate votes to reject P3-B bank evidence*, PHIL. DAILY INQUIRER, Jan. 17, 2001, at A1.

<sup>48</sup> *Id.*

<sup>49</sup> Dona Pazzibugan, *Velarde account: From P1 to P3B in 11 months*, PHIL. DAILY INQUIRER, Jan. 18, 2001, at A16.

<sup>50</sup> Javellana & Marfil, *supra* note 47. Furthermore, in the Impeachment Complaint against President Joseph Estrada filed by Private Persons, which when transmitted to the Senate comprised the Articles of Impeachment, as reproduced in IMPEACHMENT Q & A 102 (Carmelo Sison & Florin Hilbay eds., 2000), under the charge “that respondent committed graft and corrupt practices,” the only supporting pieces of evidence indicated were the following:

President Joseph E. Estrada violated the Constitution and stands guilty of graft and corruption when he directly or indirectly requested or received for his personal benefit P130 Million out of the P200 Million released by Secretary Benjamin Diokno of the Department of Budget allocated under R.A. 7171 in violation of Section 3[c] of R.A. 3019, as may be seen from the affidavit of Luis C. Singson, Provincial Governor of Ilocos Sur, dated Sept. 25, 2000 (Annex “B” hereof).

President Joseph E. Estrada violated the Constitution and stands guilty of graft and corruption when he participated directly in the real estate business thru a family controlled corporation which constructed 36 townhouses in Vermont park, Executive Village, Antipolo City as shown in the PCIJ in the article on President Estrada’s Family and Financial Interest. He also violated the Anti-Graft Law he is sworn to uphold. He filed his Statement of Assets and Liabilities for the year 1999 stating therein that he and his wife and children have business interests in only three (3) corporations. The President by that sworn statement also committed perjury and the offense of unexplained wealth because records show that he and his wife and mistresses and their children have other interests in other companies outside of the three firms listed in his statement of Assets and Liabilities (Annex “C” hercof).

he may prepare an adequate defense.<sup>51</sup> All the citizenry could do was to try and influence the senators to “vote according to their conscience” through mass protests. The Senators, however, possessed the independence to vote whichever way they reasonably wished. It must be stressed that the impeachment trial is a politico-legal process and is a *sui generis* proceeding; it is not bound by the conventional rules governing criminal, civil and administrative proceedings.<sup>52</sup>

Thus, People Power II had no legal basis to remove a president. People Power II was simply a mass protest in accordance with the individual’s constitutionally protected right to peaceably assemble and air their grievances against their government.<sup>53</sup> While the people had the right to express their disgust over the vote of the 11 senators, they were obliged to accept the vote because the senators simply performed their duties as senator-jurors in the casting of their votes.

Another fundamental difference between People Power I and II is that the former was the result of 20 years of pent-up outrage against the oppression and excesses of the Marcos dictatorship, while the latter was more of a blown-up civil disobedience movement centered on the corruption-laden 31-month term of Estrada that just happened to win the support of the military. People Power II lacked the subjective threat encompassed in the element of “awareness of a problem” that People Power I possessed to such a great extent. As discussed above, it is difficult for the average person to become truly angry about unjust structures that exist in Philippine society by simply knowing such structures exist; one must have firsthand experience with injustice.<sup>54</sup> The tyranny of a 20-year dictatorship provided such firsthand experiences which generated deep-seated emotions while Estrada’s corruption-ridden administration did not. Estrada may have been corrupt but he was never accused of the widespread brutality that Marcos was blamed for.<sup>55</sup> The civil disobedience campaign of Aquino, aggravated by the assassination of Ninoy Aquino and the blatantly fraudulent 1986 snap elections provided the impetus for the people to have the courage to finally release all their pent-up emotions.<sup>56</sup>

The 1986 EDSA Revolution which served as the *coup de grace* installing Aquino as president of the country involved the efforts of people from all sectors of society. Initially, the Marcos dictatorship enjoyed the support of the business community, the middle classes and the Church hierarchy. Martial law guaranteed order and industrial peace which provided the ideal environment for capital

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<sup>51</sup> CONST. art. III, sec. 14 (2).

<sup>52</sup> IMPEACHMENT Q & A 3-4 (Carmelo Sison & Florin Hilbay eds., 2000).

<sup>53</sup> CONST. art. III, sec. 4.

<sup>54</sup> Licuanan, *supra* note 27, at 23.

<sup>55</sup> *The Philippines: Enveloped*, THE ECONOMIST, Jan. 20, 2001, at 28.

<sup>56</sup> Magno, *supra* note 44.

expansion, thereby winning over the business community. No complaints were made when peasants were dislocated to cultivate agribusiness and when workers' wages were artificially depressed. Businesses "looked the other way" when resisting peasants were massacred and when militant trade unionists were abducted and murdered. Suburban communities became complacent as the white-collar class prospered as a result of the expanding economy during the seventies. The bishops making up the Church's conservative hierarchy disapproved of the handful of priests who identified with the armed revolutionary movement. The Marcos regime had secured its urban bases.<sup>57</sup>

Nonetheless, support for the dictatorship began to dwindle in the eighties. Businessmen were suffering financial losses from the cronyism and capitalism of the government. The middle class was experiencing a tapering off of prosperity and was beginning to be shocked by widespread injustices. The Church hierarchy was similarly scandalized by the scale of human rights violations. The working class grew even more disenfranchised as incomes fell and unemployment rose.<sup>58</sup>

Thus, when the civil disobedience movement that eventually would become known as People Power gained momentum, all spectra of society participated in calling for Marcos to make way for Aquino to become president. People Power II never had such all-encompassing participation. As mentioned earlier, unlike Marcos, Estrada clearly still retained his popular mandate, as evidenced by "People Power III," the show of support for the deposed president at EDSA which took place shortly after Arroyo became president. While students, professionals and members of the clergy were present at EDSA during People Power II, very few members of the lower-class stratum were there. One homeless individual in the North Triangle area in Quezon City provided a glimpse into the thinking of the masses. He shared that Estrada was "the only President who visited us, the urban poor." He added, "We appreciated Erap (Estrada's moniker) for what he thought of us and tried to give us."<sup>59</sup> Estrada was simply unfortunate that the minority who disliked him was composed of the elite, the business community and the clergy. He had never been popular with the wealthy; they were never comfortable with a president who boasted of his middle-class origins and who was proud of his "capacious" appetites. They considered him an "uncouth impostor" in the palace who was mentally ill-equipped to rule the country. And true enough, Estrada's brief term as president spelled economic disaster for the country: the Manila Stock Exchange plummeted 6% and the peso traded at an all-time low of 55.75 to the dollar.<sup>60</sup> These views, however, were limited to the minuscule, economically privileged sector of Philippine society.

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<sup>57</sup> *Id.* at 11.

<sup>58</sup> *Id.*

<sup>59</sup> Burton, *supra* note 7, at 18.

<sup>60</sup> *Id.*

Thus, they did not bear much weight in the presidential elections against the multitudes of impoverished masses who viewed Estrada as a hero of the poor, as the only President who truly cared for their sorrowful plight. Manila's elite thus took advantage of Ilocos Governor Chavit Singson's political bombshells linking Estrada to illegal gambling kickbacks to boot out an incompetent leader they never voted for in the first place. Unfortunately, this is contrary to the essence of a democracy. As Licuanan pointed out, so-called "people's power" in the hands of the powerful can only be considered "bullying." As such, in addition to the element of awareness of a problem, the elements of number and initial powerlessness were lacking in People Power II.<sup>61</sup>

Lastly, People Power II was not a necessity when compared to People Power I. Elections, which were scheduled four months after Estrada's ouster, could have been used to select a more principled Senate to check on the president's excesses. And if all else failed, Estrada's term would have ended in 2004.<sup>62</sup> Not only that, in a last-ditch attempt to preserve his hold on power, Estrada announced in a televised statement that he would be holding snap presidential elections concurrent with the local and congressional May 2001 elections, wherein he would not run and the results of which he would respect.<sup>63</sup> Constitutional obstacles to a snap presidential election aside, it was clear that Estrada's rule would have ended in due time, in one way or another. In contrast, the Marcos regime had no expiration date, and as such there was no other way to boot him out.<sup>64</sup>

### III. A THREAT TO CONSTITUTIONAL DEMOCRACY

People Power per se, it must be stressed, is not harmful to a democracy; in fact, under extreme circumstances, it may be the only tool available to enable the survival of a democracy. As exemplified by the 1986 EDSA Revolution, People Power may be a nation's only recourse to end the tyrannical rule of a dictator and to usher in a new age of democracy. People Power, however, must not be abused. It is only to be sanctioned as a mode of replacing leaders in a democracy in the select few instances when the legal institutions in place have been subverted to such an extent that they can no longer be relied upon to uphold the common good.

As stressed earlier, People Power was not necessary to oust Estrada. Even with the apparent failure of the impeachment process to remove Estrada from

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<sup>61</sup> Licuanan, *supra* note 27, at 24.

<sup>62</sup> Rigoberto Tiglao, *A Better People Power, Yes But...*, PHIL. DAILY INQUIRER, Jan. 21, 2001, at A7.

<sup>63</sup> *People Power overcomes*, PHIL. DAILY INQUIRER, Jan. 19, 2001, <http://www.inq7.net/issues/jan2001/jan19/index.html>.

<sup>64</sup> Tiglao, *supra* note 62.

office, other legal processes promised to limit his reign as president. He did not attempt to perpetuate himself in power as Marcos did; his term would have ended in 2004 whether he liked it or not. It could be argued that the failure of the impeachment process was not due to inherent weaknesses of the system, but rather, was due to the haste with which the impeachment complaint was filed and eventually transmitted to the Senate. With more deliberation, the impeachment complaint could have been more comprehensive as regards the pieces of evidence supporting the charges, and thus the infamous Senate vote would not have taken place.

Thus, when former Presidents Ramos and Aquino, and Cardinal Sin, key figures in People Power I, urged Filipinos to essentially disregard the Constitution, not because it was flawed, but because it wasn't getting rid of Estrada fast enough,<sup>65</sup> the sovereign will was subverted.<sup>66</sup> It is the opinion of some that such an ambivalent attitude towards the Constitution, adhering to it and disregarding it whenever it suits one's purpose, was developed when Aquino "tore up" the 1973 Constitution when she ousted Marcos, claiming that he had rewritten it too many times to legalize his dictatorship. Such an act was said to have planted the "seeds of constitutional disregard."<sup>67</sup> No matter how noble the end of removing Estrada from power may have been, unconstitutional means of doing so will never be justified. And it must be emphasized that the nobility of doing so is largely a matter of opinion, and in a democracy which was responsible for installing Estrada as president with the largest vote total in Philippine history,<sup>68</sup> arguing for such nobility would be a seemingly impossible task.

Indeed, the Supreme Court itself has stressed that "adoption as a government policy of the theory of 'the end justifies the means' brushing aside constitutional and legal restraints, must be rejected, lest we end up with the end of freedom."<sup>69</sup> A democracy that has no respect for its own Constitution is bound to be unstable for, as expounded upon in Part I, the very essence of such a form of government is its adherence to constitutionalism and the rule of law. While a Constitution is a "pulsing, living law attuned to the heartbeat of a nation,"<sup>70</sup> it must attain a semblance of permanency in order to be an instrument effective at fulfilling the elements of the rule of law. Particular procedures for amendment and revision were laid out in the Constitution to prevent arbitrary changes or subversions of its provisions. The methods of initiative and referendum<sup>71</sup> are in place to determine

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<sup>65</sup> Anthony Spach, *Oops. We Did it Again*, TIME, Jan. 29, 2001, at 22.

<sup>66</sup> Cortes, *supra* note 9, at 347.

<sup>67</sup> Spach, *supra* note 65.

<sup>68</sup> Larmer & Meyer, *supra* note 4; Overholt, *supra* note 4.

<sup>69</sup> *Gonzales v. Hechanova*, et al., G.R. No. L-21897, Oct. 22, 1963.

<sup>70</sup> ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 13 (1998).

<sup>71</sup> CONST. art. XVII; Anna Maria Abad & Evalyn Ursua, *Initiative and Referendum: An Experimentation at People Empowerment*, 63 PHIL. L.J. 382-383 (1988). Pursuant to the constitutional mandate, Congress enacted



whether majority of the constituency agrees with the proposed changes, in tune with the democratic nature of the instrument. These provisions are meant to block any arbitrary attempts by a select few to change the Constitution in accordance with their own needs and desires. Legitimizing any subversions of the Constitution, such as what the Supreme Court did in declaring the Arroyo administration as legitimate (and arguably what the Supreme Court did in legitimizing the Aquino administration as a *de jure* government<sup>72</sup>), will be, and already is being,<sup>73</sup> interpreted as an approved way of violating the Constitution. If the Constitution, as the fundamental law of the land, can be legitimately violated, what is there to prevent the violation of other laws which are merely subordinate to the Constitution? Strict enforcement of the Constitution is a must if our nation is to become a true constitutional democracy in practice and not simply one in name.

#### A. CONSTITUTIONAL MEANS OF SUCCESSION

The problem with the assumption of Pres. Arroyo to office is that it did not abide by the process indicated in the 1987 Constitution. Article VII, section 8 of the Constitution indicates the four ways by which Arroyo, as vice president, could have assumed the presidency: death, permanent disability, removal from office or resignation of President Estrada. Following the rules of statutory construction, it is apparent that the four modes of succession of the vice president to the presidency are exclusive. The only direct mode of removing the president from office is

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R.A. 6735 entitled "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor." R.A. 6735 defines initiative as "the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose. There are three systems of initiative under the Act:

- (1) Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
- (2) Initiative on statutes which refers to a petition proposing to enact a national legislation; and
- (3) Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance.

The Act also provides for an *indirect initiative* which is the exercise of initiative through a proposition sent to the Congress or the local legislative body for action.

Referendum, on the other hand, is "the power of the electorate to approve or reject a legislation through an election called for the purpose." Its subject may either be an act passed by the Congress, or a law, resolution or ordinance enacted by regional assemblies and local legislative bodies. The submission of a law to a referendum is by petition of the people. Approval by the people in a referendum is not required under R.A. 6735 for the effectivity of laws. In effect, the power of referendum is only a power to reject laws.

<sup>72</sup> Rose Marie King, *The Legal Status of the Aquino Government: Foundations for Legitimacy*, 61 PHIL. L.J. 137 (1986); Agnes Maranan, *The Dilemma of Legitimacy: A Two-Phase Resolution*, 61 PHIL. L.J. 154 (1986). See note 39.

<sup>73</sup> *Estrada allies mass at EDSA*, PHILIPPINE DAILY INQUIRER, April 27, 2001, <http://www.inq7.net/nat/2001/apr/27/text/nat>.

through the process of impeachment.<sup>74</sup> Although the country was initially hopeful that the near-miraculous initiation of the impeachment trial would be “a great advance in maturity for the country’s democracy,”<sup>75</sup> it became clear that Estrada still had enough friends in the Senate to prevent his conviction. Thus, thousands of people took to the streets to demand the resignation of the president.

In spite of mounting pressure for him to resign, Estrada stubbornly and emphatically repeated his refusal to step down. Indeed, the press statement he issued upon vacating the palace simply indicated that although he had “strong and serious doubts” about the “legality and constitutionality” of Arroyo’s proclamation as president, he was leaving Malacañang since he did not want “to be a factor that will prevent the restoration of unity and order in our civil society.”<sup>76</sup> Nowhere in such press statement did he indicate that he intended to resign. In addition, Estrada claims that he sent a letter dated January 20, 2001 to Senate President Pimentel and House Speaker Fuentebella indicating that he was taking a temporary leave of absence due to his inability to govern, thereby rendering Arroyo an Acting President.<sup>77</sup> For an act to be considered a resignation, there must be a clear intent to resign and such intent must be accompanied by acts of relinquishment.<sup>78</sup> Estrada is adamant that he did not resign for he never formally did so.<sup>79</sup> Even the Supreme Court admits that Estrada did not write any formal letter of resignation before leaving the presidential palace on the day of Arroyo’s oath-taking as president.<sup>80</sup>

The Court, however, in what appeared to be a desperate attempt at legitimizing the Arroyo administration, rationalized that Estrada could still be deemed to have resigned by virtue of the “totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue.”<sup>81</sup> The Court’s reasoning could have been plausible had it been able to properly establish the evidence supporting this conclusion. All that the Court presented were newspaper articles and Edgardo Angara’s diary which supposedly opened an “authoritative window on the state of mind” of Estrada.<sup>82</sup> It is highly doubtful whether such secondary sources of evidence may be the sole basis of the

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<sup>74</sup> CONST. art. XII, sec. 2.

<sup>75</sup> Deidre Sheehan, *More Prayer to the Powerful*, FAR EASTERN ECONOMIC REVIEW, Feb. 1, 2001, at 18.

<sup>76</sup> Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, 2 March 2001; *New President Vows Leadership by Example*, PHIL. DAILY INQUIRER, Jan. 21, 2001, at A1.

<sup>77</sup> *Id.*

<sup>78</sup> Gonzales v. Hernandez, G.R. No. L-15482, 2 SCRA 228 (1961), *cited in* Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, 2 March 2001.

<sup>79</sup> *Showdowns in South-East Asia*, THE ECONOMIST, Jan. 27, 2001, at 16.

<sup>80</sup> Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, 2 March 2001.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

resolution of such a crucial issue.<sup>83</sup> Angara never appeared in court attesting to the authenticity of his diary which was published in the *Philippine Daily Inquirer* nor were copies of the diary ever submitted as evidence by the complainants. Moreover, the Supreme Court has repeatedly held that it is not a trier of facts but of law.<sup>84</sup>

It is for the lower courts to deal with questions of facts; but in the case of Estrada, the Supreme Court acted as a trial court, beyond its original jurisdiction,<sup>85</sup> in considering the “totality of circumstances” of Estrada’s acts as indicative of his intention to resign as president.

Neither was Estrada permanently disabled, for Estrada had no health problems nor mental illnesses<sup>86</sup> to speak of which would prevent him from carrying out his duties as president. Lastly, he was very much alive when Arroyo took over as president.

The highly questionable decision of the Supreme Court notwithstanding, it is evident from the above discussion that none of the four preconditions for the succession of the vice president were present. Instead, seeing that they could no longer count on the political institutions in place to immediately replace Estrada, people spilled out onto the streets counting on mere moral suasion to force Estrada to resign. These people were hoping to replicate the People Power that had occurred back in 1986, peacefully yet forcefully evicting Marcos and his family from Malacañang. And to everyone’s surprise and many people’s jubilation, it worked. The point of no return for Estrada came when Armed Forces of the Philippines (AFP) Chief General Reyes and Defense Secretary Mercado joined the crowd at EDSA in the afternoon of Friday, January 19, 2001 while Philippine National Police (PNP) Head General Lacson likewise indicated that the police would be protecting the crowd at EDSA.<sup>87</sup> With no military to back up his orders, Estrada no longer possessed any authority. Indeed, military might is a vital component of the

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<sup>83</sup> RULES OF COURT, Rule 132, sec. 20. Proof of private document. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- a) By anyone who saw the document executed or written; or
- b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

RULES OF COURT, Rule 132, sec. 21. When evidence by authenticity of private document not necessary. – Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given.

<sup>84</sup> CRUZ, *supra* note 70, at 275. The Supreme Court is guaranteed appellate jurisdiction where the case involves “only an error or question of law.”

<sup>85</sup> CONST. art. VIII, sec. 5 (1).

<sup>86</sup> CRUZ, *supra* note 70, at 193.

<sup>87</sup> Herrera et al., *supra* note 3.

sovereign nature of governments.<sup>88</sup> Thus, Estrada had no choice but to leave Malacañang.

### B. ROLE OF THE MILITARY

The role of the military in the ouster of Estrada raised yet another question regarding the legitimacy of the Arroyo administration. Due to the vital role that the military played in ousting Estrada, many foreign journalists have described People Power II as a “de facto military coup”<sup>89</sup> rather than a peaceful revolution that the first EDSA Revolution embodied. Strict adherence to the Constitution would not have allowed the AFP and the PNP to have so capriciously and whimsically withdrawn support from Estrada. As president, he was commander-in-chief of all armed forces of the Philippines<sup>90</sup> and he likewise possessed authority over the PNP.<sup>91</sup> The AFP is sworn to uphold and defend the Constitution<sup>92</sup> and is not supposed to engage directly or indirectly in any partisan political activity, except to vote.<sup>93</sup> Likewise, the supremacy of civilian over military authority<sup>94</sup> entailed that the AFP was subordinate to the President as long as he has not died, become permanently disabled, resigned or been impeached. While the military is the authority on military strategy, tactics and logistics, it is not the competent judge of legitimacy of governments.<sup>95</sup> If military support is the determining factor in power struggles in Philippine politics, then we would have no right to call ourselves a democracy; rather, our system of government would be more appropriately termed a military junta.

### C. SOVEREIGNTY OF THE PEOPLE

Article II, section 1 of the 1987 Constitution, which states that “sovereignty resides in the people and all government authority emanates from them,” was constantly used as a justification for the series of mass protests which led to Estrada’s replacement as president. This reasoning indicated that even if a leader was rightfully elected, he could be removed from his position through whatever

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<sup>88</sup> Perfecto Fernandez, *Understanding Law as a Social Phenomenon*, 65 PHIL. L.J. 40-41 (1990).

<sup>89</sup> Overholt, *supra* note 4.

<sup>90</sup> CONST. art. VII, sec. 18.

<sup>91</sup> CONST. art. XVI, sec. 6.

<sup>92</sup> CONST. art. XVI, sec. 5, par. 1.

<sup>93</sup> CONST. art. XVI, sec. 5, par. 3.

<sup>94</sup> CONST. art. II, sec. 3.

<sup>95</sup> Carolina Hernandez, *The “Military Mind”: Its Implications for Civil-Military Relations in the Philippines*, 23<sup>rd</sup> Annual Convention of the Psychological Association of the Philippines (Aug. 5-7, 1986), at 60 (transcript available in the University of the Philippines Main Library).

means available, even if such means were in contravention of the removal processes enumerated in the Constitution.

A written constitution is said to represent the supreme will of the people. Having promulgated it, the people themselves are bound by its limitations.<sup>96</sup> If they feel that the provisions of the Constitution are inadequate, there are acceptable ways of amending or revising the instrument<sup>97</sup> rather than going out onto the streets to skirt around its limitations simply because it wasn't getting rid of Estrada fast enough.<sup>98</sup>

In addition, the use of the term "the people" with regard to People Power II was never fully elucidated. Cardinal Sin had repeatedly declared that Estrada had lost the "moral ascendancy" to govern by virtue of his womanizing, gambling, corruption and cronyism and thus "the people" demanded that he step down.<sup>99</sup> Indeed, a "bad national habit" of replacing leaders through the parliament of the streets had been formed.<sup>100</sup> A precedent was set that if more than a million people were amassed at EDSA and the military was won over, a change in leadership could legally be effected. In such a situation, one could always reason out that the incumbent leader resigned as ascertained from the "totality of circumstances"<sup>101</sup> surrounding the situation. In fact, the supporters of Estrada used this argument in justifying "People Power III," the amassing of Estrada supporters at EDSA to call for the return of their idol into power. Senator Miriam Defensor Santiago commented that People Power III would have to be legitimized by the Supreme Court for "what is sauce for the goose is sauce for the gander...What was decided (by the Supreme Court) under one set of facts must be repeated in a case presenting the same set of facts."<sup>102</sup>

Moreover, the show of support for the deposed president tagged as "People Power III" heaped even more doubt on the assertion that Estrada had lost his electoral mandate and affirmed the proposition that People Power II was a machination of the elite and the middle class.<sup>103</sup> As discussed earlier, the more likely explanation is that the elite and the middle class, who never wanted him as president in the first place, took advantage of the situation to place a more competent person

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<sup>96</sup> Cortes, *supra* note 9, at 339.

<sup>97</sup> CONST. art. XVII.

<sup>98</sup> Spaeth, *supra* note 65.

<sup>99</sup> Larmer & Meyer, *supra* note 4, at 11.

<sup>100</sup> Spaeth, *supra* note 65.

<sup>101</sup> Estrada v. Desierto, G.R. Nos. 146710-15, 2 March 2001; Estrada v. Macapagal-Arroyo, G.R. No. 146738, 2 March 2001.

<sup>102</sup> Estrada allies mass at EDSA, *supra* note 73.

<sup>103</sup> Sheehan, *supra* note 75, at 16.

in power.<sup>104</sup> These were the “people” referred to in People Power II, not the majority of the voting population of the country. Estrada clearly retained his electoral mandate among the poor masses, who comprise more than seventy percent of the population. Indeed, the notion of “the people” has been said to be a “political fiction designed to rationalize a political power grab by some particular segment of society,”<sup>105</sup> “too broad a term,” serving as a “cloak” for revolutionaries who wish to destroy the constitution and the constituent power.<sup>106</sup> Moreover, “the people” has been referred to as a “constitutional anachronism.”<sup>107</sup> Justice Brennan has constantly warned against this “unabashed enshrinement of majority will” and “blind faith” in democracy.<sup>108</sup>

#### D. VACANCY OF THE PRESIDENCY

Another question which continues to puzzle many legal minds is how Arroyo was sworn in as president. She could only have been sworn in as president if there was a vacancy. The Supreme Court, in a mere administrative matter,<sup>109</sup> effectively declared that there was a vacancy in the presidency by authorizing Chief Justice Davide to administer the oath of office to Arroyo. What is noteworthy about this administrative matter is its pronouncement that “this resolution is without prejudice to the disposition of any justiciable case which may be filed by a proper party.” This could be interpreted as an implicit acknowledgment that such resolution was inherently problematic and would thus spark much controversy which should be threshed out in court. Nevertheless, those who tried to have the Court tackle such issues failed due to various technicalities.<sup>110</sup>

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<sup>104</sup> Burton, *supra* note 7, at 18.

<sup>105</sup> ALTMAN, *supra* note 11, at 7.

<sup>106</sup> FRIEDRICH, *supra* note 20, at 143.

<sup>107</sup> David Williams, *The Militia Movement*, 81 CORNELL L.R. 879, 952 (1996).

<sup>108</sup> Lino Graglia, *It's Not Constitutionalism, It's Judicial Activism*, 19 HARVARD J. L. & PUB. POL'Y 293 (1996).

<sup>109</sup> A.M. No. 01-1-05-SC cited in *Estrada v. Desierto*, G.R. Nos. 146710-15, 2 March 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, 2 March 2001.

<sup>110</sup> Joint Resolution, Jaime N. Soriano et al. v. Joseph Ejercito Estrada, G.R. No. 146528; In the Matter of the Declaration of Her Excellency, Gloria Macapagal-Arroyo as the Constitutionally Instituted 14<sup>th</sup> President of the Republic of the Philippines, G.R. No. 146549; Concerned Citizens for Effective and Responsible Government, Inc., et al., Petitioners, G.R. No. 146579, and Oliver O. Lozano v. Gloria Macapagal-Arroyo, G.R. 146631, 6 Feb. 2001. The Court dismissed the petitions for three reasons. One, the Court pointed out that the four petitions were for declaratory relief, over which it had no original jurisdiction. Second, the petitioners were deemed to have no legal standing to file the suits. They did not show any “direct and personal injury as a result of President Arroyo’s oath-taking.” Petitioner Lozano’s alleged interest as a taxpayer was considered “far too detached from the ultimate objective of his Petition, *i.e.*, to nullify the oath-taking of Arroyo and declare Estrada as ‘President-on-leave.’” Lastly, none of the petitions could be treated as actions for *quo warranto* as such may only be commenced by (1) the Solicitor General, (2) a public prosecutor, or (3) a person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another. The petitioners were not among these three categories of persons qualified to file an action for *quo warranto*.

The first defect of the administrative matter is that the Supreme Court is not the proper party to determine whether there was a vacancy in the presidency. Such a decision would involve a purely political question, that is, a question which, “under the Constitution, is to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.” It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.<sup>111</sup> The judiciary, not having been elected by the people but simply appointed by the president, is not in a position to determine the existence of a vacuum in leadership. In fact, it has been pointed out that judicial review constitutes control by an unrepresentative minority of an elected majority, an act which may seriously weaken the democratic process.<sup>112</sup> This would definitely be a question for the political branches of government to decide. While the power of judicial review has been described as a “political weapon” wielded by the Supreme Court,<sup>113</sup> the authority to determine the vacancy of the presidency is obviously beyond such power, no matter how expanded such power of review has become. Furthermore, a perusal of article VII, section 11 of the 1987 Constitution would indicate that the determination of the President’s incapacity can come only from three sources: the President himself, his Cabinet and Congress. This bolsters the contention that the judiciary has no role to play in this determination.

In addition, the court is not a dynamic entity; it can only act if there is a petition filed before it by a proper party.<sup>114</sup> Arroyo wrote a letter dated January 20, 2001 to the Chief Justice requesting that she be sworn in as the president,<sup>115</sup> and that very same day she administered her oath. Such a letter can hardly be considered a proper petition.

Assuming *arguendo* that the court did have the authority to resolve the issue, such resolution could not simply have been treated as an administrative matter. Hearings would have to be held and the requirements of procedural due process in judicial proceedings would have to be followed. Judicial due process entails that:

- (1) There must be an impartial court or tribunal clothed with judicial power to hear and determine the matter before it;
- (2) Jurisdiction must be lawfully acquired over the person of the defendant and over the property which is the subject matter of the proceeding;
- (3) The defendant must be given an opportunity to be heard; and

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<sup>111</sup> *Tañada v. Cuenco*, 100 Phil. 1101, cited in *CRUZ*, *supra* note 70, at 82 (1998).

<sup>112</sup> *Sison*, *supra* note 15, at 311.

<sup>113</sup> Pacifico Agabin, *The Politics of Judicial Review Over Executive Action: The Supreme Court and Social Change*, 64 *PHIL. L.J.* 189, 190-191 (1989).

<sup>114</sup> *CRUZ*, *supra* note 70, at 257.

<sup>115</sup> A.M. No. 01-1-05-SC cited in *Estrada v. Desierto*, G.R. Nos. 146710-15, 2 March 2001; *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, 2 March 2001.

(4) Judgement must be rendered upon hearing.<sup>116</sup>

The lack of judicial power of the Supreme Court to decide the existence of a vacancy in the presidency has already been expounded upon. The court did not acquire jurisdiction over Estrada for jurisdiction over a defendant is acquired by a court by his voluntary appearance or through service of summons.<sup>117</sup> No such appearance was made nor was any summons served upon Estrada. Estrada was not given any opportunity to defend his presidency. With no hearing, judgement could not have been lawfully rendered.

The Court likewise forwarded the legal maxim *salus populi est suprema lex*, that is, the welfare of the people is the supreme law, in justifying the administration of the oath of office to Arroyo. This principle is inappropriate for the particular situation. A perusal of applicable jurisprudence on the matter will readily indicate that this principle was used in justifying the exercise of the police power of the state rather than rationalizing the interference of the judiciary in political matters.<sup>118</sup> To apply this reasoning to issues aside from police power would set a dangerous precedent. The Supreme Court may then interfere in practically any controversy with this legal maxim as their shield. And since it is the highest court in the land, no other body in the government may review their decisions, no matter how erroneous these decisions may be.

It is thus evident that Arroyo's assumption of the presidency was extra-constitutional, and ultimately unconstitutional.<sup>119</sup>

### CONCLUSION

The thirteenth President of the Republic of the Philippines Joseph Ejercito Estrada may have indeed been unfit to rule. The millions of people who protested in EDSA last January 17 to 19, 2001, the author included, possessed a constitutionally protected right to be there and to express their indignation at the Senate vote which seemed to guarantee Estrada's acquittal in his impeachment trial. While the country may have been entitled to short-term jubilation at his removal from power, it will have to face long-term democratic weakness and political instability. "People Power

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<sup>116</sup> CRUZ, *supra* note 70, at 106.

<sup>117</sup> *Id.*

<sup>118</sup> Calalang v. Williams, G.R. No. 47800, 70 Phil. 726 (1940); In re Edillon, A.C. No. 1928 (1978); Villacorta v. Bernardo, G.R. No. L-31429, 143 SCRA 480 (1986); and Binay, et al. v. Domingo, et al., G.R. No. 92389, 201 SCRA 508 (1991), to name a few.

<sup>119</sup> Agnes Maranan, *The Dilemma of Legitimacy: A Two-Phase Resolution*, 61 PHIL. L.J. 154 (1986). See note 39. The mere fact that the Aquino administration assumed power through non-constitutional means does not imply immediate abrogation of the fundamental law.



III” came as a very early warning signal of the dire events that may take place as a result of the grave error that had been committed during People Power II.

While People Power I will forever be praised as a triumph of democracy over authoritarianism, “as close as the twentieth century has come to the storming of the Bastille,”<sup>120</sup> People Power II opened the Pandora’s box of “constitutional disregard”<sup>121</sup> leading to “People Power III”. It should be remembered that “public respect for the law is essential to preserving the rule of the law.”<sup>122</sup> “People Power III” and any succeeding uprisings of such scale should serve as very potent reminders of how vital it is for a democracy to abide by constitutionalism and the rule of law.

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<sup>120</sup> PEOPLE POWER, THE PHILIPPINE REVOLUTION OF 1986: AN EYEWITNESS HISTORY outside back cover (1986).

<sup>121</sup> Spaeth, *supra* note 65.

<sup>122</sup> ALTMAN, *supra* note 11, at 23.



**ABSTRACT:**

**THE STATE OF REBELLION AND  
THE RULE OF LAW**

EDSA III was one of the most harrowing events in modern Philippine history. Class lines were apparently drawn, as the months-old Arroyo administration seemed to totter towards its downfall. Now that the street actions have been quelled and the threat to government stability thwarted, many questions continue to linger as to the legality of government actions done during EDSA III.

In this article Atty. Daniel C. Gutierrez, counsel for Sen. Gringo Honasan in the case of *Honasan v. De Villa*, asserts that the Supreme Court chose to hide behind the doctrine of “moot and academic” cases rather than to decide squarely on the constitutionality of Proclamation No. 38 and General Order No.1 and the subsequent acts under its authority. The article points to the lack of legal basis for the term “state-of-rebellion” in the 1987 Constitution. It also emphasizes that the proclamation of a “state-of-rebellion” is contrary to the “Rule of Law” doctrine since it amounts to an action to suppress “lawless violence” that is not within the powers of the President, as mandated by law.

Atty. Gutierrez also theorizes that Proclamation No. 38 and General Order No. 1, taken together, were in essence, a declaration of martial law. However, during the effectivity of these orders, the writer argues that Constitutional rights were violated, including the right against illegal searches and seizures and the freedom of speech. All these issues were raised in *Honasan v. De Villa*, but were left undecided by the Supreme Court with the dismissal of the case on the ground of mootness.