THE LEGAL STATUS OF THE AQUINO GOVERNMENT: FOUNDATIONS FOR LEGITIMACY

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The unprecedented advent to power of the Aquino Government has provided modern jurisconsults with a "novel" question. In the light of its revolutionary origins, what is the new dispensation's standing in our legal order?

There is some debate as to whether the much vaunted "miracle at EDSA" was a revolution in the first place. A revolution has been defined as "the complete overthrow of the established government in any country or state by those who were previously subject to it."[1] It has also been described as "a sudden, radical and fundamental change in the government or political system, usually effected with violence or at least some acts of violence."[2] Thus, it is argued that the February Revolution was not one to begin with for two reasons: first, it did not employ violent means; and, second, it did not seek to make radical change in the prevailing politico-legal structure but rather sought only to restore the civil liberties and to enforce the democratic features ignored or violated by the previous government.

But this is an exercise in splitting hairs. It is the fact of political change brought about by extra-constitutional means, that is the spanner in the works; we can permit the term "revolution" to be so defined, at least for purposes of this paper.[3]

In dealing with the legal status of the Aquino Government, this article employs two schools of legal thought — the natural law theory and legal positivism. It is more than probable that as these major schools of thought are founded upon assumptions largely at odds, their respective interpretations of the political phenomenon at issue shall also be divergent. But it is hoped that we shall be able to identity an area of convergence, and, therefore, a resolution to satisfy adherents of both legal theories.

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1 Kitlow v. Kiely, 44 F. 2d 227, 232.

2 State v. Diamond, 202 P. 988, 991.

3 But State v. Diamond has held the word "revolution" to include "all forms of revolution, accomplished by peaceful means or otherwise and not to be limited to revolution by force of arms."

Natural Law v. Positive Law

Frameworks of analysis arise from "the need of people to organize mentally their experiences."[4] The workings of the legal order has been especially susceptible to this need, and the tenets of the natural law theory particularly responsive.

The law of nature, eternal justice, right reason, higher law — the phrase has changed from thinker to thinker, the concept anent, from era to era, but, that the laws promulgated by man-made institutions are shaped and limited by superior principles, has remained one of the most durable of all ideas in the history of legal theory. From Aristotle, who once bade advocates that when they had "no case according to the law of the land" they should appeal to the law of nature,[5] to Justice Cardozo who recognized the operation of the theory in the common-law system,[6] it has survived the onslaught of competing schools of thought.

Notwithstanding its several versions, the basic assumptions of the natural law theory may be summarized as follows:[7]

1. Natural law usually consists of one or several generalized, but nevertheless essentially concrete, moral or legal values or "value judgments."

2. These value judgments are in accordance with their absolute source. What this absolute source exactly is, appears to be a permanent X-factor, not only because the concept changes[8] but also the various concepts themselves are not entirely satisfactory analytical frames. For instance, the formulation of a "common good" as one of the normative standards by which law is gauged, has been criticized as an erroneous premise considering the impossibility of a harmony of interests among different societal classes.[9]

3. They are within the reach of human reason properly employed, and therefore, the objects of ratiocination.

4. Once perceived in their absoluteness and pure rationality they overrule every form of positive law.

A law is therefore valid when it conforms with the "absolute source," as an act is lawful when in accordance with the same. This independence

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[4] T. GURR, WHY MEN REBEL 199 (1970).

[5] E. CORWIN, LIBERTY AGAINST GOVERNMENT 12 (1948).

[6] C G. HAINES, THE REVIVAL OF NATURAL LAW CONCEPTS 326 (1965).

[7] The basic enumeration is taken from Chroust, *On the Nature of Natural Law*, in INTERPRETATION OF MODERN LEGAL PHILOSOPHIES 72 (P. Sayre ed. 1947).

[8] As observed by Perfecto Fernandez, "This is the ambiguity of the moral code which supposedly overrides the inconsistent norms of positive law. It turns out that the content of the moral code varies with each proponent. The supposedly objective and external standard proves, upon inquiry and analysis to be highly variable personal preference." Fernandez, *Reconstruction in the Legal Order (Towards a Model of Decisional Rationality)*, 52 PHIL. L. J. 47, 47 (1977).

[9] De la Cruz, *A Scientific Approach to the Understanding of Law: Focus on the Philippines*, 53 PHIL. L J. 421, 422 (1978).

of positive law is the reason why revolutionary governments, and in fact movements of a similar nature, find their most straight-forward defense in nature law.

> "The final test [Lloyd writes, in his *Idea of Law*] of the usefulness of the natural law as means of resolving the tension between law and morality, arises in those contexts where one section of a community is imposing a regime of terror or oppression on another section in pursuance of an idealogy . . . in such contexts it is often urged that natural law alone can resolve the legal predicament.[10]

Although the "embryonic form of the notion that the individual be somehow protected . . . against the abuse of power" may be found in the womb of the ancient past of primitive slave societies,[11] it was only in the seventeenth- and eighteenth-century that the doctrine of the right of revolution found full fruition in the concept of the social contract.[12]

While the Hobbesian model has been unfairly used to justify totalitarianism, Locke's version and that of Rousseau [whose writings are said to have guided the drafting of the French Revolution's *Declaration of the Rights of Man and of the Citizen*][13] are clear in their support of the "natural and indefeasible rights of man" even as against a duly constituted government.[13]

Locke in his *First Tract on Government* postulates that

> all things not comprehended in that law are perfectly indifferent and as to them man is naturally free, but yet so much a master of his own liberty, that he may by compact convey it over to another and invest him with the power over his actions.[15]

Thus, the contract is made but the conveyance is by no means absolute. "For do but once grant that the magistrate hath the power to impose," Locke cautions, "and we lie at his mercy how far he will go."[16] When the government abuses its powers, it breaks the contracts, and the latter may be abrogated. Perforce, although the power to govern is entrusted in the magistrate, it is merely obtained from, and may be recalled by, the citizen population.

The right of revolution has therefore been defined as

> an inherent right of a people to cast out their rulers, change their polity or effect radical reforms in their system of government or institutions by force or a general uprising when the legal and constitutional methods of

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10 D. LLOYD, THE IDEA OF LAW 94 (1976).
11 Z. PETERI, CITIZEN'S RIGHTS AND THE NATURAL LAW THEORY 86.
12 *Id.* at 96-97.
13 C. G. HAINES, *supra* note 6 at 63.
14 Art. 1, Declaration of the Rights of Man and of the Citizen.
15 J. LOCKE, TWO TRACTS ON GOVERNMENT 124 (1967).
16 *Id.* at 157.

> making such change have proved inadequate or are so obstructed as to be unavailable.[17]

Thus, did the plaintiffs argue in *Luther v. Borden,* which partly involved the legitimacy of a "People's Government" established in defiance of the charter government of Rhode Island. They identified the locus of positive law-making power in the people of the state, and

> emphasized the conceptual and normative distinction between "the people" and their ruling institutions, and argued for the sovereignty of the former over the latter. From the normative priority of the will of the people over a "subsisting constitution", they derived the right of the people "to abolish, to reform, and to alter any existing form of government, and without regard to the existing constitution.[18]

From the point of view of the natural law theory, the Aquino Government may easily claim legitimacy. It purpost after all to take its mandate from "a direct exercise of the power of the Filipino people,"[19] "the heroic action of the people . . . in defiance of the provisions of the 1973 Constitution, as amended. . . ."[20] It has repeatedly invoked sovereignty, both popular and divine, outraged at the handmaidens of tyranny and oppression, to overcome its lack of constitutional foundations. For as Dean Sinco writes in his classic discussion of direct state action, "from the point of view of an existing constitutional plan, that act [revolt] is illegal," but considering that the State is an ideal and distinct entity, not bound to employ a particular government, revolution is an act of the State itself and "whatever is attributable to the State is lawful."[21]

Legal Positivism, however, is not as kindly to revolutions. In fact, the centuries-old debate between natural law theory and legal positivism has been said to revolve around the following question:

> Whether the citizen's right should be considered as rights accorded by the state, which means that they can at any time be amended, withdrawn or even totally cancelled by legislation or on the contrary should be appraised as eternal values, "natural" and inate in man which are above all state intervention, and their infringement invariably involves the simultaneous violation of the idea of justice which is the central principle of law.[22]

While the natural law theory "posits a moral order external to and independent of human action and volition, to which positive law must conform, otherwise it ceases to be law,"[23] legal positivism challenges this and

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17 H. BLACK, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW 11 (4th ed. 1927).
18 Note, *Political Rights as Political Questions: The Paradox of Luther v. Borden,* 100 HARV. L. REV. 1125, 1133 (1987).
19 Proclamation No. 1 (1986).
20 Proclamation No. 3 (1986).
21 V. SINCO, PHILIPPINE POLITICAL LAW 7 (11th ed. 1962).
22 Z. PETERI, *supra* at 83.
23 Fernandez, *supra* note 8.

counter-posits that it is impossible to find "an absolute standard or norm outside the legal system itself by which the validity of a rule may be tested."[24]

Hart writes that a law may be identified by using a "rule of recognition."[25] Rules of recognition, "specify some, feature or features possession of which is taken as a conclusive affirmative indication" that the law being vested is valid.[26] Legal validity is therefore the "satisfaction of all the criteria provided by a rule of recogntion."[27]

In the Philippine case, law is that which has been duly enacted by the legislative or executive branch, or embodied in the decisions of our courts.

It may be pointed out that the question of the validity of a law is often a question of the latter's membership in a particular legal order. The point gains significance in the problem of competing governments.

In any case, we must make a partial verdict. Within the basic positivist framework, the Aquino Government can find no succor. It has no basis in law. It gained power through acts outside the ambit of the existing legal order, and in a less fortunate scenario, punishable with the penalty of reclusion perpetua to death.[28] The United States Supreme Court put it succinctly when it observed that "whatever theoretical merit there may be to the argument that there is a right to rebellion against dictatorial governments is without force where the existing structure of government provides for peaceful and orderly change."[29]

Yet we have not arrived at an impasse; only, we must throw the hook farther.

For example, when we say "the existing legal order" to which do we refer? And (following a totally different tack) since we must abandon all hopes of finding a positive law or legal doctrine that plainly sanctions the uprising against an oppressive government, might we use analogous or related concepts such as the *de jure-de facto* distinction to make some positivist headway? Some wit will now remark, "curioser and curioser", but the point of the exercise is to continue to test the legitimacy of the Aquino Government strictly using a positivist approach. And so, we begin again.

A Change in Legal Order

We had already said that the validity of a law in positivist thought is necessarily determined with reference to a legal order to which such law

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24 LLOYD, *supra* note 10, at 112.
25 H. L. A. HART, THE CONCEPT OF LAW 97 (1961).
26 J. RAZ, THE CONCEPT OF A LEGAL SYSTEM 198 (2nd ed. 1980).
27 H. L. A. HART, *supra* note 24, at 100.
28 Rev. Penal Code, Art. 135.
29 341 U.S. 494.

belongs. Not only are we therefore interested in the identification of a particular law, but also that of a particular legal order or set of laws. Finally we must inquire into the presence of that legal order within an existing political structure or polity.[30]

Consequently it is assumed that the legal order remains as a "culture system" of the polity as long as the latter endures.[31] A successful revolution constitutes a breakdown in polity. This may not be too evident in the wake of a peaceful transition from one government to another, but nevertheless present. Thus

> the point may be reached where the legal system ceases to be operative as a whole, that is, it is no longer obeyed by the population or enforced by the officials. In such a situation; the cutural system loses validity as a legal order and is transformed into a historical legal order.[32]

In which case, how can the validity of any norm be tested against a legal order that has become, what Fernandez quaintly calls, a "cultural artifact"?

> Where the legal order abruptly ceases as a whole to be applied, that is, it is no longer used as a criterion of validity of social action, the general cause is the extinction of the political system of which it is a part . . . in terms of the [old] legal order the situation is that power-holders not corresponding to the political organs described in the legal order are now exercising functions of government and that such power-holders did not attain power in accordance with the norms of legitimacy.[33]

But in terms of the new legal order, the new government is legitimate, in the sense that it need only test itself against the rules of recognition it now imposes because of the unalterable fact that it is able to do so. At this problematic juncture of historical reality, it appears positivists "give up" and consign to political analysis the question of succeeding legal orders. The situation unfortunately belongs to "a realm where power is taking ascendancy over law to a degree where it becomes impossible to disregard the actual factors of power and obedience in determining legal validity itself."[34] Put in another way, existence and validity are no longer determined by jurisprudence or legal considerations only, but by "considerations belonging to other social sciences."[35]

Even in the instances where the revolutionary government adopts several features of the constitutional one, such features are not valid legal rules

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30 Fernandez, *Law and Polity: Towards a Systems Concept of Legal Validity*, 46 PHIL. L.J. 371, (1971).
31 *Id.* at 422.
32 Fernandez, *supra* note 30.
33 *Id.*
34 D. LLOYD, *supra* note 10 at 183.
35 J. RAZ, *supra* note 26 at 188-189.

"prior to incorporation . . . it is through enactment [or] adoption by the successor system that once more, they acquire validity as legal rules."[36]

Will the Real De Jure Government Please Stand Up?

It has been noted that "a striking and perhaps surprising feature of our existing political system is that almost every one of them owes its origin to revolutionary action — that is, to a breach with strict legal continuity."[37] In Europe, the only government that does not follow this pattern is that of Denmark.[38] It is thus said that if the right to change rulers even in violation of constitutional law were to be denied, "the heirs of the Stuarts should now rule England; the Bourbon heir, the Comte de Paris, should be King of France . . . the United States should be a British dominion . . . history becomes a chaos, [for] the conservative of today is often only the descendant of the revolutionary of yesterday."[39]

It was a matter of necessity that legal concepts were evolved to grapple with the ubiquitousness of revolutionary action. Along with the concept of political questions,[40] the classification of governments into de jure and de facto types has been used to answer the problem of competing governments.

De jure means "by right" or "by lawful right,"[41] and *de facto* means, "in fact."[42] The distinction is an acknowledgment that certain events of consequence to legal relations take place outside the rules laid down by a legal order and must be translated into corresponding terms.

Thus, it was observed in the Tinoco Arbitration case that

> "to hold a government which establishes itself and maintains a peaceful administration, with the acquiescense of the people for a substantial period of time, does not become a de facto government unless it conforms to a previous constitution would be to hold that within the rules of international law a revolution contrary to the fundamental law of the existing government can't establish a new government. This cannot be and is not true."[43]

However, in *Etorma v. Ravelo,* the Philippine Supreme Court said that, "an organized government established in a territory must be either de jure or de facto, since no other class of organized government is known in political or international law."[44]

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36 Fernandez, *supra* note 30 at 423.
37 R. SOLTAU, AN INTRODUCTION TO POLITICS 123 (1952).
38 *Id.*
39 *Id.* at 422.
40 Escobido, *Judicial Review and National Emergency,* 50 PHIL. L.J. 457, 466 (1975).
41 J. BALLENTINE, BALLENTINE'S LAW DICTIONARY 326 (3rd ed. 1969).
42 WEBSTER'S NEW INTERNATIONAL LAW DICTIONARY 686 (2nd ed. 1950).
43 1 ABAD SANTOS, CASES AND OTHER MATERIALS IN PUBLIC INTERNATIONAL LAW 88 (1955).
44 78 Phil. 145, 153 (1947).

And in *Russian Reinsurance Co. v. Stoddard,* it was observed that the rule of a government may be "without lawful foundation; but lawful or unlawful, its existence is fact and that fact cannot be destroyed by juridical concepts."[45]

We can therefore say that a given set of facts corresponds to the legal concept of a de jure government and another set to a de facto one. In fact, we can alternately test a set of facts against both concepts, or more precisely test the validity of a government against a legal order which adopts a *de facto-de jure* distinction without need to "resort to an absolute standard outside the legal system."[46]

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 . . ."[47]

A *de facto* government on the other hand, "assumes a character very closely resembling that of a lawful government."[48] It 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."[49] It is one that "maintains itself by a display of force against the will of the rightful legal government and is successful, at least temporarily in overthrowing the institutions of the rightful legal government by setting up its own in lieu thereof."[50] The basic distinction is that a *de jure* government is "founded on existing constitutional laws of the state" while a *de facto* government is not.[51]

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;
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> (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;
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> (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

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45 147 N.E. 703, 705 (1925).
46 D. LLOYD, *supra* note 10 at 112.
47 H. BLACK, BLACK'S LAW DICTIONARY 382 (5th ed. 1979).
48 Thorington v. Smith, 8 Wall. 1, 8 (1869).
49 *Id.*
50 Wortham v. Walker, 128 SW 24 1138, 1145 (1939).
51 R. MARTIN, PHILIPPINE POLITICAL LAW 10 (1977).

> 1812 and of Tampico, Mexico, occupied during the war with Mexico by the troops of the United States."[52]

The government styled "Republic of the Philippines" established in 1943 by the Japanese military authorities would therefore be an example of the third type of de facto institution[53] while the revolutionary government of 1899 which had as its President, Emilio Aguinaldo and as its territory of influence "the northern provinces, including the province of Nueva Ecija" may correspond more closely the characteristics of the second type.[54]

The Aquino Government falls into the mold of the first type of *de facto* government which according to *Thorington v. Smith* is one that is "such a government in the highest degree."[55] Its criteria, which the present dispensation by and large fulfills 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;

(3) Recognition of the government as either de facto or de jure by the community of nations.[56]

It would appear that having tested the set of facts collectively termed as the "Aquino Government" against our legal order, the right to revolution still receives no sanction. For even if the *de facto-de jure* distinction recognizes the reality of revolutionary change, and indeed provides for its consequences, it still maintains that "from the point of view of the Constitution and the laws it has defied or violated, it may only be a *de facto* government by narrow definition."[57]

The post-February, 1986 Supreme Court, of course, disagrees with such a verdict. It has unequivocably held that the Aquino Government is "in fact and law a *de jure government*."[58] The ruling in *Lawyer's League for a Better Philippines and Lozano v. Aquino, et al.* was reiterated in an October resolution of a petition for declaratory relief.[59]

Firstly, both 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."[60]

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52 Co Kim Cham v. Tan Keh, 75 Phil. 113, 123 (1945).
53 Peralta v. Director of Prisons, 75 Phil. 285 (1945).
54 U.S. v. Pagaduan, 37 Phil. 90 (1917).
55 Torington, 8 Wall. at 8.
56 L. ORFIELD & E. RE, CASES AND MATERIALS ON INTERNATIONAL LAW 136 (1955).
57 V. SINCO, *supra* note 21 at 12.
58 G.R. No. 73748, May 22, 1986.
59 In Re Saturnino Bermudez, G.R. No. 76180, October 24, 1986.
60 *Id.*

Secondly, they invoked the doctrine of acquiescence, saying that "the people have accepted the government of . . . Aquino."[61]

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."[62]

Finally, it pointed out the recognition of the community of nations.[63]

If these are the elements of a *de jure* government, then, disregarding the difference as to point of origin, they appear to be the elements of a de facto government as well.

In the Tinoco Arbitration case, the criteria used to determine the de facto nature of the Tinoco government are similar, if not the same to those enumerated in the recent Supreme Court case.

> "The issue is not whether the new government assumes power or conducts its administration under constitutional limits established by the people during the incumbency of the government it has overthrown. The question is, has it really established itself in such a way that all within its influence recognizes its control, and that there is no opposing force assuming to be a government in its place? Is it discharging its functions as a government usually does, respected within its own jurisdiction?"[64]

There may be, of course, objections to these Supreme Court decisions in the first place. However, the problem we have chosen to be confronted with is an apparent identity equation between a de facto government and a de jure government. This does not seem to be possible. But let us consider in what situations the distinction between these two classes of government is a relevant or pivotal point.

Bernas is of the opinion 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."[65]

A perusal of jurisprudence, especially those involving acts of the Japanese occupation government,[66] [in American law] those which arose from the establishment of the Confederate government, and state succession cases in international law, show that the question of a government being either de jure or de facto comes into play only when that government is finally ousted.

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61 *Id.*
62 *Id.*
63 *Id.*
64 ABAD SANTOS, *supra* note 43.
65 Bernas, *If She Should Proclaim a Provisionanl Constitution*, Veritas, March 30, 1986, p. 5.
66 People v. Jose, 75 Phil. 612 (1945); De Castro v. Court of Appeals, 75 Phil. 825 (1945).

Bernas continues, "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."[67]

Thus, for all intents and purposes, the Aquino Government as it exists at this point in time, is a *de jure* government. "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*."[68]

Now it may be argued that this line of reasoning cannot obliterate the fact that a *de jure* arises from lawful beginnings and a *de facto* government does not.

It is not suggested that there is no difference at all between a *de facto* and a *de jure* government. What is being proposed is that the difference does not come into play except in certain situations, and outside of these, the classification is not useful. In other words, the classification of a government is to be identified in accordance with its effects on legal relations on a municipal level.

But granting that outside the situations we have mentioned, we may still set apart the Aquino Government as *de facto* by virtue of its foundations, does it remain *de facto* perpetually? As earlier mentioned, to answer "yes" is not only to say that Marcos shall perpetually remain the Philippine president but that the King of Spain still has the right to reign over Antwerp, The Hague and South America.[69] It would seem that at a certain point revolutionary governments become legitimate or constitutional governments. How does a *de facto* government become *de jure*?

In *Taylor v. Commonwealth*[70] the Virginia Constitution of 1902 was impugned for not having been submitted for ratification. The court held that despite this legal infirmity, the constitution is valid.

> "The constitution having been thus acknowledged and accepted by the officers administering the government and by the people of the state, and being, as a matter of fact, in force throughout the state, and there being no government existing under the Constitution of 1969 opposing or denying its validity, we have no difficulty in holding that the Constitution in question . . . is the only rightful . . . constitution of this state . . ."[71]

The *de facto* constitution was considered *de jure* upon ascertainment of the possession of characteristics which we find are but the same as those

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67 Bernas, *supra* note 65.
68 Phillips v. Payne, 92 U.S. 130, 133 (1875).
69 R. SOLTAU, *supra* note 37 at 422.
70 44 SE 754 (1903).
71 *Id.* at 755.

which identify a *de facto* government: acquiescence, actual control, and in some instances, international recognition.

We cannot help reiterate that the distinction between *de facto* and *de jure* governments [its extra-constitutional origin] is irrelevant at this juncture because the Aquino Government is still in power. The *sine qua non* of the distinction is abenst. Therefore, for all intents and purposes, the Aquino Government is a *de jure* government, based upon interpretation of legal doctrine and jurisprudence.

In Way of a Conclusion

All roads lead to Rome and, with a few, liberal short-cuts taken to forestall theoretical quagmires, to legitimacy as well.

While the precepts of the natural law theory has offered no resistance to the cloaking of a revolutionary government with legitimacy, the positivist approach presents more challenge. Positivist thinkers display a certain reluctance in dealing with the subject but rarely make the bald observation that such a government is illegal because of its defiance of an existing constitution, and leave it at that. The clearest analysis lies in the statement that a revolutionary government is lawful since its validity is not tested against the legal order of the government overthrown. As Austin wrote:

> In respect of the positive law of that independent community wherein it once was sovereign, a so-called government de jure but not de facto, is not and cannot be, a lawful government: for the positive law of that independent community is now positive law by the authority of the government de facto.[72]

But within the context of the positive law of the defunct legal order, the Aquino Government may still be deemed *de jure* because the distinction between *de jure* and *de facto* governments, as evidenced by jurisprudence, is irrelevant in interpreting the situation.

If the set of facts we are analyzing changes, our conclusions shall probably change also. It may be appropriate to say that ultimately, the true test of the status of the Aquino Government is not a legal one, but simply a test of time.

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[72] J. AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED AND THE USES OF THE STUDY OF JURISPRUDENCE 347 (1954).