



People Power in the Philippines: Between Democratic Passions and the Rule of Law

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Introduction

When nations on the verge of a political transition wish to search for a model for democratic revolutions, they can look up to the Philippines' People Power, a defining moment in 1986 when Filipinos ousted a dictatorship through peaceful uprising. In fact, for East Germany, South Africa, and more recently, Yugoslavia and Indonesia, the 1986 "Yellow Revolution" became a benchmark for ejecting dictators without bloodshed.

Fifteen years later, in January 2001, Filipinos trooped to the streets and used the same means to oust a sitting President who was perceived to be corrupt and ineffective. But instead of gaining worldwide acceptance, People Power 2 is raising hard questions about democratic choices, rule of law, and stability and order. Although unrehearsed and nonviolent, such means are now looked down as representing the ambiguity of Philippine democratic practices. For many foreigners, it merely bears out the frailty of Filipino political institutions. There are fears that political convulsions, rather than dispassionate and reasoned policy-making, will become the centerpiece of the country's political experience.

Has the removal of Presidents by People Power become an unpleasant national pastime (Spaeth, 2001) for a nation that regards itself as an Asian democratic model? Admittedly, since 1965, only one normal succession

took place, which was in 1992. Is it true that its outcome is the wreckage of constitutional democracy that now lies strewn in Philippine institutions? Observers have suggested that the rule of law hardly finds support even in recent rulings by the country's Supreme Court, which seemed to have concerned itself with order and promulgating the "people's will".

Yet People Power is clearly a democratic alternative. But democratic actions made under fire look different in hindsight. The trauma of the moment can leave permanent gaps and contradictions in outlooks within the nation as a whole. Always there is both a firmness and an awkwardness in the way people address it, depending on whether one is for or against it.

It is not the intention of this paper to settle whose version is right and whose is wrong. Coming forward with a "statement of facts" might help but will not set the controversy to rest. Events never remain transfixed to any one historical conjuncture. They are always in flux, in relation to each other and to other happenings. History never stops being written. The need is to cut through the shifting views to get to a fresh perspective.

Perspective 1: Rule of Law

Suppose rules are hard to come by, and there is no device for making choices or assigning accountability. That would create a huge vacuum that can be exploited by unscrupulous groups. In Russia, lawless elements exploit the uncertainty for their own ends. Here, as Diokno (2001) suggests, governance becomes a dangerous game of chance, like Russian roulette.

Letting government officials exercise authority unchecked by law has the same effect, even if rules are easy to come by. One consequence is that the rules will not be successful in balancing clashing interests in a fair and open way. Of course, some very highly developed legal systems sometimes move too far in one direction, resulting in situations made dysfunctional by rules. Rigidities in the United States electoral system, for example, led to unusual results in Florida in the recent Gore-Bush presidential tussle.

Is rule of law that important? The World Bank argues that feeble and capricious state institutions usher in unpredictable, unstable courses of action. Without mechanisms of restraint, no accountability is established, inviting what David (2001e) calls as recurrent disorder and destructive conflict. Predictable rules are the bridge between overall goals and the policies needed to achieve them. Such rules are anchored in core state institutions, such as the judiciary, the legislature and the executive branch. Each has a number of veto points that can check arbitrary state action. Of course, such veto points themselves are double-edged weapons: they can make it as difficult to alter harmful rules as the good ones (World Development Report 1997).

A society ruled by law is said to attain stability with the use of *precedent*. When there is doubt, a decision or action which has already been repeatedly made can be used as a reason why a new action or decision should be taken. A dangerous precedent is frowned upon since it would allow a whole range of destabilizing changes to be introduced. Breaking with precedent is also hesitatingly done, since it connotes doing something that would depart from what experience shows as the correct or proper way.

Not all, however, are convinced of the assurances brought about by the rule of law. Policy analysts, for example, point to the need to be skeptical of the claims that the outcomes of established democratic rules provide unambiguous mandates for specific policies. The reliance on suffrage (interpreted as majority vote, whether through secret balloting or open voting), for instance, is undermined by the paradox of voting, first discovered by the Marquis de Condorcet during the Enlightenment. The electoral process is supposed to give fair and consistent results, but the paradox of voting suggests that voting patterns in democracies are cyclical and lead to arbitrary policy choices (Weimer and Vining, 1992). No rational decision comes out of majority rule—one of the cherished democratic procedures—even if all of the individuals made rational choices (see supplement below). Any policy could be approved and claim majority support in pairwise voting (Frolich and Oppenheimer, 1978).

Kenneth Arrow, a Nobel laureate in economics, went a step further by proving that any voting rule that satisfies a basic set of fairness conditions may bring about illogical results. Weimer and Vining summarize these fairness conditions which any rule for choice must satisfy: "First, each person is allowed to have any transitive preferences over the possible policy alternatives. Second, if one alternative is unanimously preferred to a second, then the rule for choice will not select the second. Third, the rule is not arbitrary in the sense that it will always select the same alternative when faced with the same collection of individual preferences and the same set of alternatives. Fourth, the rule must not allow any one person dictatorial power to impose his or her preferences regardless of the preferences of others."

For Arrow, any rule that satisfies the four conditions above will fail to ensure a transitive social ordering of policy alternatives. Cyclical (intransitive) social preferences can arise. On the other hand, any rule that insures transitivity of choice leads to decisions that are either imposed or dictatorial. No social choice procedure can satisfy all conditions.

Because cycles can happen with any fair voting scheme, those who control the agenda will have great chances of managing the sequence in which issues are put to vote, and of passing off a selected policy alternative as reflecting the will of the majority. A landslide victory may not necessarily represent a "mandate from the people" for the winner's proposed policies. What this strongly indicates is that established democratic courses of action, no matter how faithfully executed and enforced, will not always offer a true estimate of social values. A government apparently following the "will of the people" will not be always doing what is right or good (Weimer and Vining, 1992).

Perspective 2: Democratic Action

"When things go fine and everything is routinely good," declares Sen (1997), "the consequences of democracy may not be sorely missed. But it comes into its own when things get fouled up, for one reason or another." In this case, according to Sen, it is the political incentives supplied by democratic

governance which gain practical importance. They are often in the form of criticizing, protesting, peace marches, even spontaneous acts of resistance. Such exercise of political rights does make a real difference when it successfully puts pressure on government to quickly respond to crisis situations.

Democracy is always shaped by tortuous experience. Western countries, early in their aspirations for democracy, were rocked by convulsions of compelling proportions (e.g., storming the Bastille, the Civil War in the US). In more recent times, direct democratic action, such as peaceable assemblies, have acquired legitimacy as a substantial check on the abuse of power by giving people the chance to knock over unjust policies and oust autocrats and corrupt decision-makers quickly. It is a remedy for elections and referendums, which, because they are held infrequently, may not accurately reflect changing societal preferences.

Democratic practices may not lead to logical social outcomes, but participation in direct action may make citizens more willing to accept social choices since they now have an opportunity to be heard (David, 2001c). Direct action may not always produce good, let alone the best, decisions, but it offers a window for correcting the worst failings. It is this ability to quicken the pace of decision-making (otherwise frozen by institutional inertia) that basically makes democracy a politically redeeming system. Arguably, to focus only on institutional steadiness (which the legal system in part provides) while neglecting expeditious political responses (which “open” democratic systems provide) is to prefer a deeply unbalanced set of ground rules.

Of course, for direct action to be possible, the problem of collective action must first be hurdled. Unless people are organized, all common interests will not be fully satisfied. Also, the larger the unorganized group, the greater the deprivation (Frolich and Oppenheimer, 1978) and the greater the handicaps for concerted action.

Then too, there is a downside. Direct democratic action often opens up a Pandora’s Box of political risks and uncertainties. “One never knows where a crowd will go or what it will do when it is already out in the

streets. The chances are it may not stay within the parameters of its predetermined objectives.” (David, 2001c) People Power draws its strength from the intrinsic energy of crowds (David, 2001b). Indeed, the upshot of uprisings may be further instability, and of a more surly and violent nature. David suggests that this may be “the dark side of people power,” when “the genie is out of the bottle.” (Landler, 2001)

Conflict and Contradictions

What is haunting People Power 2 is the supposed conflict between direct democratic action and the rule of law. EDSA 2¹, as the latest popular uprising in the Philippines is known, ended a corrupt regime, restored confidence in the markets and increased the governance role of civil society organizations—all desired democratic objectives. So why is it considered a step over the line, a clear violation of law?

To many foreign (and local) observers, it was a case of looking the other way to justify accession to power. “In the heady days after Gloria Macapagal-Arroyo swept to power in January, the church and business elites that backed her were willing to overlook the means of her ascent: a popular uprising that short-circuited the legal process.” (Landler, 2000) Such remarks typify objections to the way matters were handled prior to and after EDSA 2.

To them, the suggested sequence for “due process” would have been like those followed in more stable democracies: (1) allow the constitutional process to prevail in impeachment hearings (even if it retained Joseph Estrada as President), and (2) hold the elections (as the means to throw out those who voted for Estrada’s stay). Yet, “neither the proper constitutional process (judgment by the Senate) nor the ballot box” was given due course (Bowring, 2001). Instead, critics of EDSA 2 noted the legal “flip-flopping”: whether to uphold or go around the constitution depended mostly on the circumstances (Spaeth, 2001).

A distinction between EDSA 1 and EDSA 2 should also be made, according to the critics. The La Liga Policy Institute (2001) notes, for

example, that EDSA 1 superseded the Marcos regime with a new state, an act that required a leader with an electoral mandate to implement it. Corazon Aquino, the consensus leader, declared a revolutionary government to rescind the legal framework laid down by the 1972 constitution. EDSA 1 not only changed the guards; it also changed the constitution to reflect the political consensus at that time on how the country will be governed under a restored democracy. By contrast, EDSA 2 was staged to replace one man, the President. Although the Supreme Court gave its stamp of approval to the legitimacy of the Arroyo administration, it “has also inadvertently legitimized this extra-parliamentary process of changing the country’s President.”

Curiously, even supporters of EDSA 2 admit that Arroyo’s rise to power is laden with constitutional ambiguities. Estrada’s removal, according to David (2001a), was *extra-constitutional*. To deny it, in the name of institutional stability, is to negate political reality: its legitimacy is not a justiciable issue but a political question. But that is where the crux lies, according to David (2001c). The legal system must reflect the current political circumstances. It is not the letter of the law where legitimacy is found: it resides in the political context of the law’s application. What the Philippine judiciary has done—to justify Arroyo’s succession—is simply to interpret and enforce the terms of the constitution in a context of a perceived power vacuum and to avoid bloodshed.

The law, according to David, should not be used to defend a corrupt social order. And if the law itself cannot reform institutions, extra-parliamentary pressure is needed to shake them up. People Power is a necessary means to correct “the major dysfunctional consequences of borrowed institutions.” Rather than change the constitution, as happened after EDSA 1, the Supreme Court ruling upholding EDSA 2 was a piece of creative judicial intervention, even if it appears to some, like Barican (2001b) as a judicial contortion needed to justify the legitimacy of an extra-constitutional means.

Besides, as Fabella (2001a) argues, constitutional methods, even if their intention is to protect public welfare, are difficult to carry out in soft

states where democratic institutions can be readily coopted. To the worry that street action might become a regular feature of Philippine democracy, one need only recall how great the collective action problem is. People Power is not something people can summon at will, or manipulate at whim (De Quiros, 2001).

EDSA 2 puts so much in context, especially the competing pulls of democratic outbursts and rule of law: why the nation never seemed entirely comfortable with one, why it kept being drawn back to the other. All things considered, People Power is as integral to democracy as rule of law. That is why, in the end, the hard questions remain. Has EDSA 2 come to define the way episodic concerns (such as the removal of a President) ought to be settled? Is the court ruling now a license for future upheavals? For all the arguments made, the contradictions are not resolved. The ambiguity mirrors the very nature of the democratic process.

Perspective 3: Equality and Justice for All

Both rule of law and democratic action must guarantee fairness. Here, Sen (1997) suggests searching “for the parts rather than the whole.” To illustrate the point, Sen takes on the notion of personal freedom *for all*. If it is considered important for society, it should be seen as consisting of two distinct elements: (1) *the value of freedom*: that it is important enough to be guaranteed for those who “matter” in a good society; and (2) *the equality of freedom*: that *everyone* matters, and thus freedom should be guaranteed, on a shared basis, for all.

Sen notes that in the Greek society in the past, as revealed in Aristotle’s writings, women and slaves were excluded and freedom was guaranteed only for the male aristocracy. Equality of freedom, reflected in modern democratic and liberal ideas, must be seen in terms of constitutive elements, rather than the whole.

Taking this cue from Sen, consider the idea of *education*. There is a distinction between (1) the value of education (or competence): that education

should be considered important for a good society; *and* (2) the equality of education: that education that is offered to some must be reasonably offered to all. The question of education or competence is critical to the understanding of fairness and justice in both democratic action and rule of law. It is a foregone conclusion that in unstable democracies, the law is stacked up against the poor. But is the outcome of democratic action fair? As Fabella (2001a) demonstrates, if decisions are done by the educated and the informed, they are made by the more competent judges. But if there is an education and information divide between rich and poor, then democratic action will be an exclusive possession of the educated and informed, and its outcomes may not accurately reflect societal preferences summed up from a one-person-one-vote procedure.

“EDSA 3”: A Parody of EDSA 2?

The so-called EDSA 3 exploded right after EDSA 2. “EDSA 3” had a patently poor people constituency. There were strong allegations that the crowd that constituted this Poor People Power were paid to be there. Still, it deserves to be seen as the obverse of EDSA 2. The poor were not meaningful participants of People Power 2, which they viewed as simply a brazen plot by the elite to get rid of a President elected by the poor. The ascendancy of Estrada itself, which happened earlier, was seen by poor people (who voted overwhelmingly for him) as their revenge against a succession of elite rule.

To many, however, “EDSA 3” represents the isolation and neglect of the poor; it is a political statement that the poor would continue to reject the institutions (including EDSA 2) that claim to speak for them (Barican, 2001a). The perception that they are being left behind—in terms of income, assets or employment—is a powerful source of frustration. Such a situation, according to the World Bank, can spill over into direct conflict if the lagging groups lack adequate means of representing their concerns. (WDR, 1997)

Even if they were unruly and unabashedly loyal to Estrada, the inchoate voices of “EDSA 3” asked for strict observance of constitutional process to resolve changes. For them corruption is a charge to be leveled against the system as a whole and not just against one person alone. For all the reproach that “EDSA 3” got, that it was a parody of EDSA 2—its farcical version, that it was burdened by despair whereas EDSA 2 was moved by hope (David, 2001d), a nagging issue is whether it was triggered by the absence of equality and justice perspectives in EDSA 2.

Suppose the focus is on competence, defined as the likelihood that a citizen will choose the “right” option (serving better the welfare of the people). In majority rule, with one-person-one-vote, every citizen is assumed to have a judgmental ability over a binary choice problem (A, B). A could be “Remove Estrada” and B, “Retain Estrada.” Only one is correct, but there is no prior knowledge about this (Fabella, 2001a).

Following Condorcet’s logic, Fabella says that if the odds of a citizen choosing “right” are better than even, then the likelihood that majority voting will choose the right option as the number of citizens voting becomes very large is a certainty, that is, majority rule is infallible. However, if the odds of choosing the right alternative are less than half, the majority rule winner will be “wrong” in all certainty as the number of voting citizens becomes large. Democracy and incompetence are incompatible, suggests Fabella.

The key is to view the citizenry as a set of juries. Based on surveys, “Retain Estrada” won among the poor voters but “Remove Estrada” won among middle class voters. Also, “Remove Estrada” won among middle class voters by a larger margin than “Retain Estrada” won among poor voters. But poor voters are more numerous than middle class voters. This is where competence becomes important. Rich voters, according to Fabella, are postulated to have better competence than poor voters. The reason is that valuable information is costly and the capacity to process relevant information even more so. If rich voters have more of both than poor voters, then the likelihood of Remove Estrada being correct is higher than

Retain Estrada. Since this separation between rich and poor voters is an information and education divide, rich voters are the better judges.

Fabella likens voters to shareholders who have as many votes as their shares. A higher stake means more incentive to invest in valuable information for correct decision. Fabella cites a particular theory that the maximum likelihood of a "correct" majority rule is attached to weighted voting (the weights being voter competence on the issue), not to one-person-one-vote. Unless the poor are educated, majority rule—arbitrary as it is—will always be a second best solution.

The Philippine Context: An Institutional Catch 22

The episodic character of People Power suggests a compelling institutional void. There is no institutional formation that embraces large dimensions of social existence. Instead, there is national failure to create a broader synthesis of common experience that gives institutions a solid footing, and simultaneously, to produce categories necessary to integrate newer frameworks (e.g., globalization, governance). The strength of nations is to bring institutional adaptiveness and political innovation together. The Philippines has intrepid political entrepreneurs capable of articulating political interests, but it does not have institutional articulators, those capable of bringing customs and tradition (rules) to bear on politics.

Political invention, without institutions derived from culture, will always more than make up for institutional deficiencies. Institutions inhibit; innovations release energies. But cataclysms also disrupt and destroy. The good fortune of Philippine politics is that so far it has survived despite having very little by way of strong cultural/institutional antecedents. The vigor and insurgency of People Power is made possible precisely because of institutional weaknesses; it is a Catch 22 situation. Its precipitateness, however, is a measure of its own boundaries: without institutional guarantees, its components cannot hang together.

People Power as “Virtual” Institution

Paradoxically, the failure of EDSA 1 has something to do with institutions and the rule of law. EDSA 1 fell short of expectations because it became a captive of the same people who built the complex legal machinery of martial law and deviated from the old democratic rules. It was also paralyzed by coup attempts. Both were responsible for stunting Philippine institutions and the country’s development as well. (Fabella, 2001b)

EDSA 2 has a chance to redeem that failure. After all, EDSA 2 is also about rules and institutions. As David (2001a) suggests, it is a demand for the nation to become ethically armed to compete in a world in which the rules of the game are steady and are never bent to accommodate cronies, relatives and other influentials; it is a demand for predictability and consistency in our laws and procedures. It is a repudiation of lawlessness—the use of public office for personal enrichment and the collusion of institutions in corrupt practices.

But to push forward, EDSA 2 must prosecute and bring to justice the fugitives from the law. That would be the start of “re-empowering” Philippine institutions (Fabella, 2001b). The danger the nation is facing is that EDSA 2 will not strengthen the institutions that it fought for—justice, fairness, equality before the law (De Quiros, 2001).

All things considered, it is People Power itself which can “guard the guardians of the law.” Unlike the instruments of government, this “virtual” institution cannot be easily corrupted and manipulated (Fabella, 2001b).

Conclusion

To understand the events that lead to People Power is one thing, to “operationalize” it is something else, requiring a clarity that is almost never available to people at the moment of tumult. It is a clarity our nation still does not have at this time.

There is a great deal to be learned from studies of upheavals within democratic settings, but they do not support the thesis of a grand dichotomy between democratic passions and the rule of law. Ideas of People Power have taken their particular form only recently, and it is hard to see them as “institutionalization” of upheavals.

The recognition of diversity within democratic cultures is extremely important today, since there is constant bombardment by oversimple generalizations about “rule of law”. These unfounded generalizations are not only intellectually shallow, they also add to social divisiveness. The dichotomy adds little to the understanding of democratic practices, and much to the confounding of the normative basis of true freedom and democracy.

Note

- 1 EDSA is the place in Manila where people congregated both in 1986 and in 2001 to denounce the *regime*. EDSA 1 refers to the 1986 revolution; EDSA 2 refers to the 2001 uprising.

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