

# PHILIPPINE DEMOCRACY AND ITS DISCONTENTS: THE FAILED PROMISE OF SOCIAL JUSTICE UNDER THE 1987 PEOPLE POWER CONSTITUTION\*

*La democracia filipina y sus descontentos:  
la promesa fallida de la justicia social bajo  
la Constitución del poder popular de 1987*

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## **Resumen**

Filipinas tiene una de las tasas más altas de desigualdad del sudeste asiático, y no para de crecer. La desigualdad aparece en distintas formas. Hay desigualdad entre las áreas urbanas y rurales; también en cuanto a la etnicidad. Pero la forma más grave de desigualdad es la estratificación de clases, que puede remontarse al pasado precolonial y colonial del país. Para rematar, los niveles de pobreza también son altísimos. Si bien es cierto que el concepto de justicia social ya estaba presente tanto en la Constitución de 1935 como en la de de 1973, no es hasta la Constitución de 1987 cuando se

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convierte en el foco de atención. No obstante, como veremos, ello no ha sido suficiente para poner fin a la desigualdad y erradicar la pobreza.

### ***Palabras clave***

Filipinas; desigualdad; pobreza; justicia social.

### ***Abstract***

The Philippines has one of the highest rates of inequality in Southeast Asia, and it is growing. Inequality in the Philippines takes various forms. There is the inequality between urban and rural areas. There is also the inequality borne out of ethnicity. But the most serious form of inequality is class stratification, that can be traced to the country's pre-colonial and colonial past. To top it off, the levels of poverty are also very high. While the concept of social justice was already present in the 1935 and 1973 Constitutions, it was in the 1987 Constitution that it became the "centerpiece". However, as we will see, this has not been enough to put an end to inequality and to eradicate poverty.

### ***Keywords***

Philippines; inequality; poverty; social justice.

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## I. THE WELFARE STATE AND SOCIAL JUSTICE

First of all, I wish to thank the University of Malaga for the opportunity to visit your country and to exchange experiences and insights on issues that are of common interest and concern to our respective countries.

The theme of this III Scientific Congress on the Law of the Philippines and Spain is “Globalization and the Welfare State: Current Constitutional Debates in Europe and Asia.” This paper is in response to this panel’s theme “Crisis of the Welfare State and new democratic challenges.”

The Philippines is, in principle, a democracy, and is in fact the oldest democracy in Asia. However, it is not a Welfare State the way Spain is, and was never intended to be one.<sup>1</sup> While health care,<sup>2</sup> social security,<sup>3</sup> housing,<sup>4</sup> and free public education<sup>5</sup> – the elements of a Welfare State – are guaranteed in the Philippine Constitution, these are not so much entitlements as they are means of empowerment. The Philippine Constitution is premised on the principle of social justice which seeks to diffuse wealth and eradicate inequality by giving Filipinos economic and political power:

“In a nation where more than half of the people are below the poverty line, the first target of a social justice measure should, therefore, be provisions, direct and indirect, for adequate responses to these basic needs such as health, shelter, and education. *It is not the intent, however, that the State will take away the initiative from the people and will do everything.* This is against the principle of enhancing human dignity. *The State should only provide, in most cases, the necessary and sufficient condition for the people to take the active role*”.<sup>6</sup> (italics supplied)

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<sup>1</sup> Muyot 1996: 310-355.

<sup>2</sup> Art. XIII, Sec. 11, 1987 Constitution.

<sup>3</sup> Art. XV, Sec. 4, 1987 Constitution.

<sup>4</sup> Article XIII, Sec. 9, 1987 Constitution.

<sup>5</sup> Article XIV, Sec. 2, 1987 Constitution.

<sup>6</sup> Commissioner Nieva, Record of the 1986 Constitutional Commission: Proceedings and Debates, Volume II, 606-607 (hereinafter “II Record”).

Be that as it may, the systems of our respective countries have enough in common to afford a meaningful discussion on this topic. The Filipino concept of social justice and the Western ideal of the Welfare State share the same underlying premises: (1) the state plays a key role in the protection and promotion of the social and economic well-being of its citizens; and (2) the state's role is to provide equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. Both our countries have undergone and felt the effects of globalization, and we are now grappling with the democratic challenges that have resulted from the economic and political fallout.

This paper will discuss President Rodrigo Duterte's rise to power and the democratic challenges that his presidency poses within the context of globalization and the Philippines' failure to fulfill the mandate of social justice and socio-economic reforms promised by the 1986 EDSA People Power Revolution. The Philippines provides a cautionary tale of what can happen to civil and political rights when socio-economic rights are neglected or ignored.

## II. THE PHILIPPINE COLONIAL PAST

At the onset, it may be helpful to give a brief background on the Philippines as a nation. We are an archipelago situated in Southeast Asia in the western Pacific Ocean, consisting of about 7,641 islands and a population of over 103 million people.<sup>7</sup> With our topography consisting of great stretches of mountain ranges and coastal plains, volcanoes, and river systems across the 3 major island groups of Luzon, Visayas, and Mindanao, we have tremendous ecological biodiversity<sup>8</sup> in both forest and marine life. The wide differences in topography have resulted in a culturally diverse people: we have more than 100 ethnolinguistic groups with distinct languages, cultures, and traditions throughout the archipelago.

In 1521, Portuguese explorer Ferdinand Magellan arrived on our shores and claimed these islands for Spain, but was killed in the Battle of Mactan. In 1544, Spanish explorer Ruy Lopez de Villalobos, a native of Malaga, gave the archipelago the name *Las Islas Filipinas* in honor of Philip, the crown prince of Asturias, who later became King Philip II of Spain. Spanish colonization finally began in earnest in 1565 with the arrival of Miguel Lopez de Legazpi and the establishment of the first Hispanic settlements in Cebu. For

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<sup>7</sup> Asian Development Bank (2017), ADB Basic 2017 Statistics. Available at <https://www.adb.org/sites/default/files/publication/298061/basic-statistics-2017.pdf>.

<sup>8</sup> The Philippines is one of the 17 "megadiverse" countries identified by Conservation International. A country is considered "megadiverse" if it has at least 5,000 species of endemic plants.

the next 333 years, Spain ruled our islands and our people, until the Philippine Revolution from 1896-1898 forced Spain to cede the Philippines to the United States of America under the Treaty of Paris. The Americans would go on to rule us for the next five decades until it granted the Philippines its independence in 1946, after the ravages of World War II.

National Artist Nick Joaquin famously quipped that the Philippines spent “300 years in a convent, then 50 years in Hollywood.” For better or for worse, this colonial history has left an indelible imprint on the Filipino psyche and continues to influence our country’s development as a nation and as a people.

### III. PHILIPPINE INEQUALITY AND CLASS STRATIFICATION

The Philippines is a country of contradictions. Despite our tremendous abundance in biodiversity and cultural diversity, more than 20% of our people live below the national poverty line<sup>9</sup> and almost 50% of the population consider themselves “poor”.<sup>10</sup> Of greater concern, however, is the widening gap between the rich and the poor. The Philippines has one of the highest rates of inequality in Southeast Asia, and it is growing.<sup>11</sup>

Inequality in the Philippines takes various forms. There is the inequality between urban and rural areas. Income poverty in the Philippines is a largely rural phenomenon, with nearly 2/3 of the rural poor being dependent on agriculture for employment and income.<sup>12</sup> Many rural folk migrate to major urban centers like Metro Manila, Metro Cebu, and Metro Davao where wealth, opportunities, infrastructure, and social services are more plentiful. Analysts have pointed to the large variation in access to infrastructure and social services between major urban centers and rural areas as one of the main reasons for the poor performance of the Philippine economy from the 1970’s to the turn of the century.<sup>13</sup> Over the years, development policy has favored the main island of Luzon and discriminated against the Visayas and most especially Mindanao, creating a wide disparity between “Imperial Manila” and the rest of the country.

There is also the inequality borne out of ethnicity. It is not a coincidence that many of the poorest provinces are not only located outside Luzon and/or

<sup>9</sup> Asian Development Bank, *supra* note 8. As of 2015, 21.6% of Filipinos live below the national poverty line.

<sup>10</sup> This is based on the Social Weather Stations survey on self-rated poverty conducted in the 3rd quarter of 2017.

<sup>11</sup> Throughout the years, the Philippines has consistently had high Gini coefficients ranging from 40% to 60%.

<sup>12</sup> Balisacan 2003: 341.

<sup>13</sup> Balisacan, *supra* note 13: 323.

are remote mountainous areas, but are also inhabited by indigenous peoples or Muslim communities that never came under Spanish colonial rule.

But the most serious form of inequality is class stratification, which provides “the framework in which all of the other inequality happens.”<sup>14</sup> It “enters into all interpersonal relations, economic arrangements, and political leadership”, and all other types of social inequality are either “extensions of the class system to particular settings” or the class system “in which one dimension is emphasized.”<sup>15</sup>

Class disparity in the Philippines is a “daily, tangible experience” that “can be seen, heard and felt as forms of bodily and social experience”<sup>16</sup>:

“The labels of poverty, propertylessness, and uncertain employment are inescapable – they are embedded in one’s speech and language skills, in one’s command of etiquette and bureaucratic procedure; they are evident in the texture and usually the color of one’s skin, or in the condition of one’s teeth, dentures, and hair; they can often be seen in one’s posture and gait, or in the quality of one’s attire, jewelry, and makeup, in the type of food one buys, in the location of one’s home, workplace and school, or in the company one keeps. In Manila, both rich and poor have an acute sensitivity to these signs and symbols of human value.”<sup>17</sup>

This class stratification which is embedded in Philippine society can be traced to the country’s pre-colonial and colonial past. Prior to the arrival of the Spanish conquistadores in 1521, pre-colonial Filipino communities known as *barangays* consisted of a few thousand people bound together by blood, intermarriage, trading partnerships, or subjugation through conquest.<sup>18</sup> Society was stratified into “divinely sanctioned orders” of *datu*, *timawa*, and *oripun/alipin*<sup>19</sup> who were bound together by ties of patronage and debt. *Datus* were of royal blood who ruled by birthright and commanded fealty from the other social classes. *Timawa* were members of a warrior elite

<sup>14</sup> Robert Fletcher Manlove, *Social Inequality in Urban Philippines*, Kroeber Anthropological Society Papers No. 89/90, 76. Available at [http://digitalassets.lib.berkeley.edu/anthpubs/ucb/text/kas089\\_090-007.pdf](http://digitalassets.lib.berkeley.edu/anthpubs/ucb/text/kas089_090-007.pdf).

<sup>15</sup> Manlove, *supra* note 15, at 76.

<sup>16</sup> Caroline S. Hau (2017), *Elites and Ilustrados in Philippine Culture*, Ateneo de Manila University Press: Quezon City, 3, citing Fenella Cannell, *Power and Intimacy in the Christian Philippines*. U.K.: Cambridge University Press (1999), and Michael Pinches, “*The Working Class Experience of Shame, Inequality, and People Power in Tatalon, Manila*” in *From Marcos to Aquino: Local Perspectives on Political Transition in the Philippines*, edited by Benedict J. Tria Kerkevliet and Resil B. Mojares. Quezon City: Ateneo de Manila University Press (1991).

<sup>17</sup> Hau, *supra* note 17, at 3.

<sup>18</sup> Scott 1992: 86.

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

who swore voluntary oaths of allegiance to a given *datu* and served as his comrades-at-arms and personal bodyguards. Everyone else was *oripun/alipin*: commoners who were basic producers in society and obligated to serve and support the *non-oripun* elite usually through agricultural labor (which *datus* and *timawa* did not ordinarily do).<sup>20</sup>

While substantial social and economic inequalities existed between the classes, the client-patron ties that bound them were not susceptible to violent upheaval for as long as the social exchanges were not patently unjust.<sup>21</sup>

“With their basic needs and surpluses so mutually attuned, each giving and each receiving in turn what they can most afford and least provide, small wonder that the wealthy and the poor, the patrons and the clients of the Philippines, have lived in symbiotic union through the centuries ... One side offers an assurance of subsistence, help in times of crisis, protection from danger, mediating influence with the powers that be, and occasional good times. The price for all this is labor on the farms or elsewhere and a multitude of varied services, rendered with proper deference and loyalty to the patron-partner. For centuries, untold multitudes of Filipinos have found these terms of exchange both acceptable and desirable. And until something comes along which is provenly better, this attitude will persist.”<sup>22</sup>

This system of exchange was altered, however, with the advent of Spanish colonial rule. Pacification of the islands entailed co-opting *datus* and turning them into local officials for the Spanish Crown. Former *datus* and members of local elites were tapped for the position of *cabeza de barangay* which had a 3-year term and was passed on from father to son.<sup>23</sup> While it eventually became an elective office from 1786 onward, those entitled to vote were restricted to the local *principalia*. Moreover, both civil and religious powers used local elites as go-betweens in the local government (*gobernadorcillos*) as well as in agrarian administration (*inquilinos*, who leased land from the friars and then sub-leased them to the actual tillers).<sup>24</sup>

These arrangements drove a wedge in class relations, with the elites identifying more with the Spanish than with their own race. Moreover, intermarriage among the *indio* elite and the Spanish resulted in the emergence of a *mestizo* group that was linked to the ruling class both racially and economically and occupied a separate social layer of its own.<sup>25</sup>

<sup>20</sup> Scott, *supra* note 19: 99.

<sup>21</sup> Mangahas 1988: 82.

<sup>22</sup> Mangahas, *supra* note 22: 83, citing Frank Lynch.

<sup>23</sup> Hau, *supra* note 17: 22.

<sup>24</sup> Hau, *Id.*

<sup>25</sup> Mangahas, *supra* note 22: 86.

Cleavages were also created between those communities which submitted themselves to Spanish rule (described in historical documents as *dociles*) and those which resisted (*feroces*).<sup>26</sup> Most of the island of Mindanao and the mountainous regions of the archipelago, notably the Cordillera region in Northern Luzon, were never conquered by the Spanish because the Muslim communities and indigenous peoples fought so fiercely. Over time, these “non-Christianized” tribes evolved separately, retaining most of their culture, ethnicity, and physical features while their Hispanicized, “lowlanderK Christian counterparts became more and more Spanish, assimilating and intermarrying with their colonizers. By the end of the Spanish regime, those who changed most became today’s Filipino majority while those who changed least became “cultural minorities” through “the magic of colonial alchemy.”<sup>27</sup>

#### IV. CLASS STRATIFICATION AND LAND OWNERSHIP

These social cleavages became even more firmly rooted in terms of land ownership during the colonial period. At the time, land and natural resources were the most important form of economic wealth, and land usurpation was one of the most effective ways of amassing wealth.<sup>28</sup>

The Spanish colonial regime initially recognized two types of private property rights. The first consisted of customary property rights of the natives which were predicated on usage and possession.<sup>29</sup> Native landholdings frequently rested on the venerable phrase “from time immemorial”, i.e., from before the arrival of the Spaniards,<sup>30</sup> and were contingent on actual use. They were generally known to be “communal in character, with the actual title to the lands vested in the communal *barangay*.” and could not be alienated under pain of law.<sup>31</sup>

The second type consisted of *terrenos realengos* or Crown lands. These comprised all areas not used or occupied by the natives pursuant to customary laws,<sup>32</sup> and “symbolized the largesse which the Crown and its authorized subordinates could bestow on those deemed to be deserving.”<sup>33</sup> These royal

<sup>26</sup> Scott 1982: 29.

<sup>27</sup> Scott, *supra* note 27: 41.

<sup>28</sup> Mangahas, *supra* note 22: 86.

<sup>29</sup> Lynch, Jr. 1988a: 83.

<sup>30</sup> Lynch, *supra* note 30: 86.

<sup>31</sup> Lynch, *supra* note 30: 85-86.

<sup>32</sup> In his instructions to Legazpi, King Philip II emphasized that “while land could be apportioned among the colonists, ‘you shall not occupy or take possession of any *private property* of the Indians.’” Lynch, *supra* note 30, at 85.

<sup>33</sup> Lynch, *supra* note 30, at 87.



grants resulted in the creation of private estates owned by Spanish colonists and religious orders – what would later be known as *encomiendas* and “friar lands”, respectively – and introduced the concept of private (individual) ownership of land which profoundly changed native perceptions of natural resource allocation.<sup>34</sup>

Despite the recognition of communal landholdings, procedures for securing official documentary registration of such holdings by the natives were never promulgated by the Spanish colonial government.<sup>35</sup> On the other hand, the Spanish regime created and administered a system for documenting and registering private, individual land rights. The friars and *encomenderos* expanded their landholdings by encroaching on both communal and Crown lands, with local native elites eventually following suit.<sup>36</sup> Such land usurpation increased dramatically with the rise of the tobacco monopoly and sugar production in the late 1700s and saw the emergence of the great rural estates known as *haciendas*.<sup>37</sup> Over time, control over agricultural land resources became increasingly concentrated in the hands of a few.

The Spanish land titling decrees of 1880-1894, which introduced the land registration system in the Philippines, effectively legalized past usurpations and facilitated new ones. Large landowners were able to take advantage of the process whereas the “large majority” of natives were either not aware of these laws for various reasons – illiteracy, lack of information, abuses or negligence by colonial officials – or could not access the registration process due to lack of money, knowledge about the process, effective representation, or a combination of all these factors.<sup>38</sup> The disenfranchisement of millions of natives was completed with the Royal Decree of February 13, 1894, commonly referred to as the Maura Law, which provided that:

“... the ‘title to all agricultural lands which were capable of adjustment under the Royal Decree of ... 1880, but the adjustment of which has not been sought at the time of promulgation of this decree ... will revert to the State. Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the above mentioned date, will not avail themselves in any way nor at any time.’”<sup>39</sup>

<sup>34</sup> Lynch, *supra* note 30: 90.

<sup>35</sup> Lynch, *supra* note 30: 86.

<sup>36</sup> This is extensively discussed by Lynch, *supra* note 30.

<sup>37</sup> The *haciendas* had their own social order, with the *hacenderos* (landowners) at the top, the *inquilinos* (fixed-rent tenants) in the middle, and the *kasamas* (sharecroppers and landless laborers) at the bottom.

<sup>38</sup> Lynch, *supra* note 30: 107.

<sup>39</sup> Lynch, *supra* note 30: 108.

The Maura Law empowered the Spanish colonial regime to deny legal recognition of customary property rights, and provided the U.S. colonial regime with the legal basis to do the same.<sup>40</sup> The inequality that existed during the Spanish era not only continued but was even exacerbated by the American colonial regime.

In the 1898 Treaty of Paris where Spain relinquished Cuba, Puerto Rico, Guam, and the Philippines to the United States,<sup>41</sup> both countries agreed to maintain the private property rights and relations that had been established during the Spanish era. Article VIII of the Treaty declared that the Philippine cession

“cannot in any respect impair the property or rights which by law belong to peaceful possession of property of all kinds, of provinces, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire or possess property ... or of private individuals, of whatsoever nationality such individuals may be.”

The Taft Commission headed by William Howard Taft – who would eventually become President of the United States – chose to interpret Article VIII in an “extremely narrow manner.”<sup>42</sup> Using the Regalian doctrine, the Commission assumed that lands that had not been registered during the Spanish colonial regime were public lands. Moreover, it grossly underestimated the number of indigenous peoples and migrant farmers who had undocumented rights to their land, and claimed that Article VIII vested ownership of 92.3% of the total Philippine land mass in the U.S. government as lands of the public domain.<sup>43</sup>

To add insult to injury, the American colonial regime proceeded to nullify titles and conveyances by unhispanicized peoples through Act No. 718 of April 4, 1903, which provided that all conveyances by “Moro sultans or dat-tos, or (by) Chiefs of the non-Christian tribes” were to be considered “illegal, void and of no effect.”<sup>44</sup> This law effectively dispossessed the Moros of their ancestral landholdings.<sup>45</sup>

<sup>40</sup> Lynch *supra* note 30: 108-109.

<sup>41</sup> Treaty of Peace (Treaty of Paris) between Spain and the United States of America, December 10, 1898. A copy of the treaty is available at <https://www.loc.gov/law/help/us-treaties/bevans/b-es-ust000011-0615.pdf>.

<sup>42</sup> Lynch, Jr. 1988b: 251.

<sup>43</sup> Lynch, *supra* note 43: 251.

<sup>44</sup> Lynch, *supra* note 43: 307. This law was upheld by the Philippine Supreme Court in the case of *Cacho vs. United States*, 28 Phil. 616 (1914).

<sup>45</sup> Janess Ann J. Ellao, *The Crux of the Moro Problem*, BusinessWorld, August 18, 2007.

Act No. 926 or the Public Land Act of 1903 sought “to ensure that long-term occupancy of ostensibly public lands would no longer vest any right in the occupants.”<sup>46</sup> Chapter VI, Sec. 67 of the Public Land Act provided:

“No title to, or right or equity in, any public lands in the Philippine Islands may hereafter be acquired by prescription or by adverse possession or occupancy, or under or by virtue of any laws in effect prior to American occupation, except as expressly provided by laws enacted or provided since the acquisition of the Islands by the United States.”

Moreover, the Public Land Act encouraged migration to the “public domain,” awarding land to American and Filipino homesteaders of previously “unoccupied, unreserved, and unappropriated agricultural public land.”<sup>47</sup> The mass migration of predominantly Christian settlers to Mindanao and the resulting displacement of Moro communities “is to this day one of the major grievances behind the armed struggle of the Filipino Muslims.”<sup>48</sup>

The American colonial regime also made it easier for Americans and local Filipino elite to appropriate mineral and forest lands for their exclusive use and ownership through the Forest Act of 1904, the Mining Act of 1905, and the Cadastral Act of 1907.<sup>49</sup> The old Spanish religious elite may have been displaced by American policy, but they were quickly replaced by a *nouveau-riche* comprised of American citizens and corporations and Filipino elites.<sup>50</sup>

As in the Spanish period, the modernization of the land registration system during the American colonial regime served as a weapon against the traditional land rights of indigenous peoples and peasants,<sup>51</sup> entrenching a political and economic oligarchy that professed democracy while enriching itself at the expense of millions of marginalized rural Filipinos. More than 70 years after Philippine independence from American rule, this highly skewed distribution of power and wealth continues to be seen in our class relations and our economic and political structures.

## V. THE FILIPINO STRUGGLE FOR JUSTICE AND THE 1986 EDSA PEOPLE POWER REVOLUTION

Former Senator and human rights lawyer Jose W. Diokno observed that Philippine history is “a continuous and continuing struggle to create a just

<sup>46</sup> Lynch, *supra* note 43: 263.

<sup>47</sup> Chapter I, Section 1, Act No. 926, October 7, 1903.

<sup>48</sup> Mangahas, *supra* note 22: 91.

<sup>49</sup> Batongbacal 2010: 313.

<sup>50</sup> Batongbacal, *supra* note 50: 312-313.

<sup>51</sup> Mangahas, *supra* note 22: 90.

society.”<sup>52</sup> The decades-long agrarian unrest and armed struggles of communist and Muslim insurgents are but some of the manifestations of that continuing struggle.

There is empirical data to show that the poor “do not begrudge richness per se, but are resentful if the rich do not share the burden of hard times.”<sup>53</sup> Most Philippine elites live in an “enclave society” where they live their social and professional lives with minimal physical contact with the poor. Because of this social distance, they are psychologically insulated from poverty and its effects and are largely unable to see how they contribute to the problem.<sup>54</sup> Over the years, the Philippine oligarchy has been criticized as “neither interested in sharing its wealth and power with the rest of the Filipino people nor capable of putting the welfare and well-being of the nation ahead of its own selfish, clannish interests.”<sup>55</sup>

In formulating a Filipino concept of justice, Diokno described a just society as one which: (1) is “not only independent but in which the people are sovereign”, (2) “respects the freedom and the equal dignity of all,” (3) “protects workers and tenants, opposes oppression, exploitation and abuse, and seeks to eliminate poverty,” (4) “is united in brotherhood and relies on itself”, and (5) “is moral.”<sup>56</sup> It might also be added that a just Filipino society must achieve both unity and peace “as an outcome of both a sense of compassion and shared social life.”<sup>57</sup>

The 1986 EDSA People Power Revolution which deposed President Ferdinand Marcos after fourteen years of Martial Law rule was not merely about removing a dictator and restoring human rights. It spotlights a “longer, cumulative history” of “contested democracy” in which “large sections of the poor and marginalized classes, sectors and communities, and some sections of the middle and upper classes as well, work and fight for a participatory and egalitarian democracy.”<sup>58</sup> The elites who had traditionally been absent from post-war rallies and demonstrations showed up in droves at EDSA. Fair-skinned urbanites and matrons, businessmen, professionals, and members of the religious figuratively and literally locked arms with students, workers, and the urban poor. In a rare moment in Philippine history, both rich and poor evoked the revolutionary fervor of the

<sup>52</sup> Diokno 1987: 14.

<sup>53</sup> Mangahas, *supra* note 22: 101.

<sup>54</sup> Clarke and Sison 2005: 57-90.

<sup>55</sup> Hau, *supra* note 17: 44.

<sup>56</sup> Diokno, *supra* note 53, at 14-16, paraphrasing the writings of national heroes Apolinario Mabini and Emilio Jacinto.

<sup>57</sup> Batongbacal, *supra* note 50: 305.

<sup>58</sup> Hau, *supra* note 17: 169.

Philippine Revolution of 1896,<sup>59</sup> sharing “strong feelings of solidarity, camaraderie, community, and euphoria”<sup>60</sup> as they united behind a common cause that was larger than themselves and succeeded by working together.

## VI. THE 1987 PEOPLE POWER CONSTITUTION AND SOCIAL JUSTICE

Shortly after President Corazon Aquino assumed power, a Constitutional Commission was convened to draft a new Constitution for the Philippines. Commissioner Ma. Teresa F. Nieva, Chairman of the Committee on Social Justice, articulated in her sponsorship speech the aspirations of Filipinos who had been struggling for justice:

“Our Committee hopes that social justice will be the centerpiece of the 1986 Constitution. The rationale for this is that social justice provides the material and social infrastructure for the realization of basic human rights, the enhancement of human dignity and effective participation in democratic processes. Rights, dignity and participation remain illusory without social justice.

Our February 1986 Revolution was not merely against the dictatorship nor was it merely a fight for the restoration of human rights; rather, this popular revolution was also a clamor for a more equitable share of the nation’s resources and power, a clamor which reverberated in the many public hearings which this Constitutional Commission conducted throughout the country.

If our 1986 Constitution would enshrine the people’s aspirations as dramatically expressed in the revolution and ensure the stability, peace, and progress of our nation, it must provide for social justice in a stronger and more comprehensive manner than did the previous Constitutions.”<sup>61</sup>

While the concept of social justice was already present in the 1935 and 1973 Constitutions, it was in the 1987 Constitution that it became the “centerpiece”. An entire chapter (Article XIII) entitled “Social Justice and Human Rights” was included for the very first time, in addition to other provisions that were embedded in other chapters of the Constitution. Social justice was identified as one of the basic ideological principles underlying the 1987 Constitution:

“The State shall promote social justice in all phases of national development.”<sup>62</sup>

<sup>59</sup> Hau, *supra* note 17: 84.

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

<sup>61</sup> Commissioner Nieva, II Record 606.

<sup>62</sup> Article II, Section 10, 1987 Philippine Constitution.

“The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”<sup>63</sup>

The Constitutional Commission recognized the intimate relationship between poverty and inequality, and the role of unjust structures in perpetuating such poverty. Social justice was necessarily about democratizing productive resources:

“In a very real way, inequality in the sharing of the fruits of development can be traced to the concentration of productive resources in the hands of a very small minority, and this is especially true of land and capital resources. Therefore, access to these resources must be democratized if the nation is to permanently achieve social justice. Here, the State must go beyond merely affirming the social character of property or the concept of stewardship for the common good. It must also promote measures to realize this democratization ...”<sup>64</sup>

Because of this, social justice necessarily had to go beyond mere economic prosperity – the scope of social justice in the 1935 and 1973 Constitutions. The 1987 Constitution delved into sociopolitical matters and even cultural inequities,<sup>65</sup> as can be seen in paragraph 1 of Article XIII, Section 1:

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

The rationale for the expansion of the scope of social justice was explained in this wise:

“In speaking of social justice, we deal with justice not as practiced among individuals but justice as embodied in the structures and institutions of society; namely, its system of law such as regulating the relationship between the owner and the worker of the land; or the relationship between the man who sells his labor and the manager of the company or the owner of that business enterprise. It is distribution of wealth and political power. I mention this precisely because one of the insistent points throughout this whole Article is that if we were to have justice, there will have to be a redistribution of not only economic wealth but also political

<sup>63</sup> Article II, Section 9, 1987 Philippine Constitution.

<sup>64</sup> Commissioner Nieva, II Record 606-607.

<sup>65</sup> Commissioner Bernas, IV Record 864-865.

power. What we intended to say when we spoke of power is that political power must also be in the hands of the majority so that they can help shape the future that affect their lives.”<sup>66</sup>

This must necessarily be done by the State which had been “a major source of injustice”<sup>67</sup> in the past but which can be an “agency of change” by ordering its resources to favor the majority of the poor.<sup>68</sup> These duties of the State can be seen in paragraph 2 of Article XIII, Section 1:

“To this end, the State *shall regulate* the acquisition, ownership, use, and disposition of property and its increments.” (italics supplied)

as well as Art. XII, Section 6:

“The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations shall have the right to own, establish, and operate economic enterprises, *subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.*” (italics supplied)

Poverty and inequality in the Philippines have been widely perceived to be political problems largely caused by the inequitable distribution of resources and persistence of semi-feudal/oligarchic politics.<sup>69</sup> The framers of the Constitution sought to address these historical inequalities by redistributing economic wealth and political power more equitably while “growing the size of the pie”. This can be seen in Article XII, Section 1:

“The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given opportunity to develop. Private enterprises,

<sup>66</sup> Commissioner Garcia, II Record 620.

<sup>67</sup> Commissioner Bennagen, II Record 661.

<sup>68</sup> Commissioner Bennagen, II Record 616.

<sup>69</sup> Clarke and Sison, *supra* note 55, at 67.

including corporations, cooperatives, and similar collective organizations shall be encouraged to broaden the base of their ownership.”

The preferential option for the poor and marginalized is articulated in provisions that recognize the rights of indigenous peoples<sup>70</sup> and protect their ancestral lands,<sup>71</sup> provide for the creation of autonomous regions in Muslim Mindanao and the Cordilleras,<sup>72</sup> afford full protection to labor,<sup>73</sup> provide land for landless farmers and enable farmworkers to receive a just share of the fruits,<sup>74</sup> protect the rights of subsistence fishermen and fishworkers,<sup>75</sup> and afford decent housing to and protect the rights of the homeless and urban poor.<sup>76</sup>

The intent of the Constitutional Commission to distribute wealth and opportunities for development can be seen in the emphasis on rural development and the establishment of an agrarian reform program,<sup>77</sup> the decentralization of the powers of the national government to the local governments,<sup>78</sup> the regulation of monopolies and combinations in restraint of trade,<sup>79</sup> the prohibition on political dynasties,<sup>80</sup> and the recognition of the people’s right to effective and reasonable participation at all levels of decision-making.<sup>81</sup> The Constitution further empowers citizens against oppression through the Bill of Rights,<sup>82</sup> the right to strike,<sup>83</sup> the right to information on matters of public interest,<sup>84</sup> and the power of the judiciary to review abusive acts of the political branches of government through the power of judicial review.<sup>85</sup>

Basic entitlements for living are contained in the provisions on the right to health,<sup>86</sup> the right to education,<sup>87</sup> the right to a “family living wage”,<sup>88</sup> and State programs for social security.<sup>89</sup>

<sup>70</sup> Art. II, Sec. 22, 1987 Constitution.

<sup>71</sup> Art. XII, Sec. 5, 1987 Constitution.

<sup>72</sup> Art. X, Sec. 15, 1987 Constitution.

<sup>73</sup> Art. II, Sec. 18; Art. XIII, Sec. 3, 1987 Constitution.

<sup>74</sup> Art. XIII, Sec. 4, 1987 Constitution.

<sup>75</sup> Art. XII, Sec. 2; Art. XIII, Sec. 7, 1987 Constitution.

<sup>76</sup> Art. XIII, Sec. 9-10, 1987 Constitution.

<sup>77</sup> Art. II, Sec. 21; Art. XIII, Sec. 4, 1987 Constitution.

<sup>78</sup> Art. X, 1987 Constitution.

<sup>79</sup> Art. XII, Sec. 19, 1987 Constitution.

<sup>80</sup> Art. II, Sec. 26, 1987 Constitution.

<sup>81</sup> Art. XIII, Sec. 16, 1987 Constitution.

<sup>82</sup> Art. III, 1987 Constitution.

<sup>83</sup> Art. XIII, Sec. 3, 1987 Constitution.

<sup>84</sup> Art. III, Sec. 7; Art. II, Sec. 28, 1987 Constitution.

<sup>85</sup> Art. VIII, Sec. 1, 1987 Constitution.

<sup>86</sup> Art. II, Sec. 15; Art. XIII, Sec. 11, 1987 Constitution.

<sup>87</sup> Art. II, Sec. 17; Art. XIV, Secs. 1-2, 1987 Constitution.

<sup>88</sup> Art. XV, Sec. 3(3), 1987 Constitution.

<sup>89</sup> Art. XV, Sec. 4, 1987 Constitution.



The 1987 Constitution also enshrined a “Filipino-first” policy, which is significant in light of the country’s colonial history. This is articulated in the policies that the State “shall pursue an independent foreign policy”<sup>90</sup> and “shall develop a self-reliant and independent national economy effectively controlled by Filipinos.”<sup>91</sup> This is deepened further by provisions that restrict the following activities to Filipinos: the ownership of land,<sup>92</sup> the practice of professions, the use and enjoyment of the nation’s marine wealth, and the grant of rights and privileges pertaining to the national economy and patrimony.<sup>93</sup> The Constitution also articulates the preferential use of Filipino labor, domestic materials, and locally produced goods.<sup>94</sup>

The social justice provisions of the Constitution were approved but only after “rough sailing”<sup>95</sup> and intense, even heated debates during the course of the deliberations. One particularly debated point was the issue of the right to property vis-a-vis the redistribution of wealth. The lawyer-members of the Commission found the proposed revisions to be “socialist”, even “communist” and were “alarmed” by its possible constitutional impact.<sup>96</sup> One commissioner even went so far as to say that he opposed the idea of redistribution of wealth,<sup>97</sup> and that compulsory land expropriation was “illegal and unconstitutional”.<sup>98</sup> The lawyers were concerned about overturning previously established legal doctrine and had to be reminded that they were writing a new Constitution.

This tension between social justice and protection of property rights, between instituting social change and preserving the status quo would continue to be played out in the post-EDSA years in the halls of Congress, Malacanang Palace, and the Supreme Court.

## VII. EDSA MEETS GLOBALIZATION

Sociologist and analyst Walden Bello observed that “the key tragedy of the EDSA Republic was that it came into being right at the time that neoliberalism was on the ascendant as an ideology and globalization became the flavor of the month for capitalism.”<sup>99</sup> Neoliberalism’s goal of increased

<sup>90</sup> Art. II, Sec. 7, 1987 Constitution.

<sup>91</sup> Art. II, Sec. 19, 1987 Constitution.

<sup>92</sup> Art. XII, Sec. 7, 1987 Constitution.

<sup>93</sup> Art. XII, Sec. 10, 1987 Constitution.

<sup>94</sup> Art. XII, Sec. 12, 1987 Constitution.

<sup>95</sup> Bernas, S.J. 1995: 909.

<sup>96</sup> Commissioner Suarez, II Record 676.

<sup>97</sup> Commissioner Padilla, II Record 678-680.

<sup>98</sup> Commissioner Padilla, II Record 699-700.

<sup>99</sup> Walden Bello, “*EDSA, Neoliberalism, and Globalization*,” 18 de marzo de 2017. Discurso Ateneo de Manila University.

foreign investment and its policy prescription of an almost exclusive reliance on the market for resource allocation<sup>100</sup> directly clash with the Constitution's social justice directives of the Filipino-first policy, the preferential option for the poor, and the mandate of the State to take an active role in distributive justice. In the post-EDSA years, social justice would repeatedly yield to the pressures of globalization and the interests of the elite.

### *(1) Debt servicing and the Automatic Appropriations Act*

Under the administration of President Corazon Aquino, repayment of the foreign debt, including onerous debts incurred by President Marcos, became the top national economic priority.<sup>101</sup> Twenty-five percent (25%) to forty percent (40%) of the national budget was allocated for debt servicing pursuant to Presidential Decree ("P.D.") No. 81, P.D. No. 1177, and P.D. No. 1967.<sup>102</sup> In the 1991 case of *Guingona vs. Carague*,<sup>103</sup> Senators Teofisto Guingona, Jr. and Aquilino Pimentel, Jr. questioned the constitutionality of the automatic appropriation for debt service, citing the Constitutional directive for the State to assign the highest budgetary priority to education.<sup>104</sup> The Supreme Court dismissed the petition on the ground that it was a political question, stating that "it does not follow that the hands of Congress are so hamstrung as to deprive it of the power to respond to the imperatives of the national interest and for the attainment of other state policies or objectives." In effect, the Supreme Court held that debt servicing takes precedence over the funding of education and other social justice measures. For the next 3 decades, this automatic appropriation would cripple the government's capacity to fund important social justice measures, provide essential social services, and stimulate economic growth.<sup>105</sup>

### *(2) The Philippines' entry into the World Trade Organization*

In 1994, the Philippines joined the World Trade Organization ("WTO") as a founding member, with the goal of improving Philippine access to foreign markets through the reduction of tariffs. In the case of *Tanada vs.*

<sup>100</sup> McCarthy 2007: 38-50.

<sup>101</sup> Bello, *supra* note 100.

<sup>102</sup> These are all presidential decrees issued by President Marcos during Martial Law when he was exercising executive and legislative powers.

<sup>103</sup> *Guingona vs. Carague*, G.R. No. 94571, April 22, 1991.

<sup>104</sup> Art. XIV, Section 5(5) of the Constitution provides: "The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment."

<sup>105</sup> Bello, *supra* note 100.

*Angara*,<sup>106</sup> Senators Wigberto Tanada and Anna Dominique Coseteng, along with members of civil society, questioned the constitutionality of the Philippines' accession to the WTO on the ground that the parity provisions and national treatment clauses of the WTO agreements violate Article II, Section 19 of the Constitution which directs the State to develop a self-reliant and independent national economy effectively controlled by Filipinos, and the Filipino-first policy. In dismissing the petition, the Supreme Court said that Article II, Section 19 is not a self-executing principle that can be enforced through the courts, and that economic nationalism should be read with other constitutional mandates to attain a balanced development of the economy. The Court added that "the WTO remains as the only viable structure for multilateral trading and the veritable forum for the development of international trade law. The alternative to WTO is isolation, stagnation, if not economic self-destruction."

### (3) *The challenge to indigenous peoples' rights*

In 1997, the landmark Indigenous Peoples' Rights Act (IPRA) was passed.<sup>107</sup> The IPRA Law aims to correct the historical injustices committed against our indigenous peoples by (a) recognizing their rights to their ancestral domains which they have occupied or possessed since time immemorial, (b) recognizing the applicability of customary laws within their ancestral domains, (c) recognizing their right to self-governance, (d) ensuring equal protection and freedom from discrimination, and (e) recognizing their cultural diversity and protecting their right to cultural integrity.

While the IPRA goes a long way in protecting the rights of indigenous peoples, it carries the seeds of its own destruction. Section 56 provides for "existing property rights regimes", stating that "property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected." This section was included presumably to placate legislators who were concerned about the protection of property rights.

Not long after its passage, the IPRA Law was constitutionally challenged on the ground that it violated the rights of private landowners and unlawfully deprived the State of its ownership over lands of the public domain as well as the minerals and other natural resources therein.<sup>108</sup> The Supreme Court was evenly split on the matter, voting 7-7 in this case. The petition was dismissed on the ground that it did not obtain the number of votes necessary to declare the IPRA Law unconstitutional.

<sup>106</sup> *Tanada vs. Angara*, G.R. No. 118295, May 2, 1997.

<sup>107</sup> Republic Act No. 8371, October 29, 1997.

<sup>108</sup> *Cruz vs. National Commission on Indigenous Peoples*, G.R. No. 135385, December 6, 2000.

In later years, the rights granted to indigenous peoples under the IPRA Law would be challenged further with the passage of the Mining Law of 1995,<sup>109</sup> the affirmation of its constitutionality by the Supreme Court,<sup>110</sup> and the preference of the State for foreign mining interests at the expense of our indigenous peoples.

#### (4) *The failure of agrarian reform*

But perhaps the most glaring evidence of the capitulation of social justice to elite interests can be found in the failure of the Philippine agrarian reform program. Despite the historic opportunity and popular public clamor to reform what was notoriously known as one of the most inequitable rural sectors in Southeast Asia, President Corazon Aquino left the drafting of the Comprehensive Agrarian Reform Program (CARP) to a Congress that was dominated by landowning elites. The result was a law that was steeped in contradictions.<sup>111</sup> Landowners could evade the substantive redistribution of their landholdings through legal loopholes such as voluntary land transfer, corporate stock sharing mechanisms, deferment schemes on new commercial farms, and unclear guidelines on land use conversions, among others.<sup>112</sup> Moreover, under the law, landowners could legally challenge CARP implementation on matters ranging from land valuation, to target beneficiaries, the manner of acquisition, and the actual distribution of lands.<sup>113</sup>

Moreover, President Aquino's administration was marred by controversies and contradictions. Her family undertook the "distribution" of their 6,000 hectare Hacienda Luisita by way of stock distribution instead of actual land transfer, an issue that would continue to hound her son, Benigno Aquino III when he assumed the presidency in 2010. Her administration came to be defined by the 1987 Mendiola Massacre: an otherwise peaceful mobilization of farmers and peasants that turned bloody and resulted in the death of 13 farmers.<sup>114</sup>

<sup>109</sup> Republic Act No. 7942, March 3, 1995.

<sup>110</sup> *La Bugal B'laan Tribal Association vs. Ramos, Secretary of the Department of Environment and Natural Resources*, G.R. No. 127882, December 1, 2004; *Didipio Earth-Savers' Multi-Purpose Association, Inc., vs. Gozun, Secretary of the Department of Environment and Natural Resources*, G.R. No. 157882, March 30, 2006.

<sup>111</sup> See An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes (Comprehensive Agrarian Reform Law of 1988), Republic Act No. 6657, Section 20 and 31 (1988).

<sup>112</sup> D. Cruz y Manahan 2014: 934.

<sup>113</sup> Cruz and Manahan, *supra* note 113: 935.

<sup>114</sup> No one was held accountable for the deaths, and no compensation was given to the survivors and heirs.

Subsequent administrations, notably that of President Fidel Ramos, made tangible gains in agrarian reform, but fell far short of what was envisioned by the framers of the Constitution. In 2009, the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) Law was passed,<sup>115</sup> extending the program for distributing agricultural lands to the farmers for another 5 years. However, the program languished during President Noyoy Aquino's presidency due to presidential indifference and the lack of political will. When CARPER ended in 2014, "about 700,000 hectares of the best private land in the country remained in the hands of landlords, violence against land reform beneficiaries was common, and rural poverty remained stubbornly high."<sup>116</sup> Yet again the ruling elite had managed to defeat agrarian reform: corporate and commercial agribusiness and elite landowners emerged as winners at the expense of peasant lessors, share tenants, and landless rural workers.<sup>117</sup>

#### (5) *The non-passage of the anti-political dynasty law*

The failure to implement Article II, Sec. 26 of the Constitution<sup>118</sup> through the passage of anti-political dynasty legislation is another serious failing in the post-EDSA era. In Philippine society, political power is concentrated in the hands of those who control the economic resources, especially at the local government level. Studies show that with all things being equal, the welfare of the poor tends to be lower in provinces governed by political dynasties than in those characterized by competitive politics.<sup>119</sup> Political dynasties restrict the access of the poor to basic services, prevent qualified candidates from running for public office, and constrain local economic growth and opportunities for better public governance. Post-EDSA Congresses, being dominated by dynastic families, have successfully blocked attempts to legislate on this important political reform measure.

### VIII. THE FAILED PROMISE OF EDSA AND DUTERTE'S RISE TO POWER

The EDSA spirit was rekindled briefly with the election of President Benigno "Noyoy" Aquino III, who rode the wave of public sympathy

<sup>115</sup> Republic Act No. 9700, August 7, 2009.

<sup>116</sup> Bello, *supra* note 100.

<sup>117</sup> Cruz & Manahan provide a comprehensive discussion on the history of agrarian reform in the post-EDSA administrations. *See* note 113.

<sup>118</sup> Art. II, Sec. 26 provides that "the State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law."

<sup>119</sup> Balisacan, *supra* note 13: 335; Mendoza, Beja, Jr., Venida y Yap 2016: 189-201.

following the death of his mother, President Corazon Aquino. He came to power promising honest governance (“Daang Matuwid” or the “Straight Path”) – a direct rebuke to President Macapagal-Arroyo’s corrupt 10-year presidency – and the Filipino people had high hopes for his administration. He enjoyed high approval ratings for the first half of his term, but public support eroded over time as the hypocrisy and elitism of his administration became apparent.

What turned out to be President PNoy Aquino’s major sin was the perceived insensitivity and lack of empathy of his administration towards the common people. This was highlighted in the aftermath of Supertyphoon Haiyan which devastated the province of Leyte,<sup>120</sup> the worsening traffic problems of Metro Manila,<sup>121</sup> and the killing of transgender Jennifer Laude by American soldier Joseph Scott Pemberton.<sup>122</sup> But what proved to be the proverbial straw that broke the camel’s back was the Mamasapano encounter in 2015 which resulted in the death of 44 members of the Special Action Forces (SAF) of the Philippine National Police. The president was conspicuously absent during the arrival honors ceremony for the fallen SAF officers as he chose to instead attend the inauguration of a new car manufacturing plant. The president’s actions spoke volumes about the regard that he held for the SAF officers and their relatives. By the time President PNoy Aquino ended his term in 2016, whatever goodwill people had for him had long shifted to disillusionment, frustration, and anger.

The EDSA People Power Revolution ultimately failed to deliver on its promise of social justice and societal change. Thirty years after EDSA, the Philippine Republic was still very much a feudal society despite being democratic in name and appearance. While the economy had grown as a result of neoliberal and pro-globalization policies, such growth had failed to “trickle down” to millions of Filipinos who remain poor and marginalized. Wealth and political power remained in the hands of a few families which were more interested in protecting their own privileges than in promoting the welfare of the country. Angry and resentful at the failure of the

<sup>120</sup> When President Aquino arrived in Tacloban City three days after Supertyphoon Haiyan totally devastated the city, he reportedly remarked to a Leyte businessman who had been shot at during a looting attempt “*Eh buhay ka pa naman, di ba?*” (Well, you’re still alive, aren’t you?) President Aquino also inexplicably stopped the body count of casualties from Supertyphoon Haiyan even when search and rescue operations were still ongoing. The official government death toll stands at over 6,300 dead but it is estimated that the actual number of casualties could range from 15,000-30,000 dead.

<sup>121</sup> In response to criticisms of the administration’s inability to solve the worsening traffic, President Aquino reportedly said that it is “a sign of economic growth”.

<sup>122</sup> When asked whether he would visit Laude’s wake, President Aquino responded by saying “I don’t attend the wakes of people I don’t know.”

EDSA Republic to live up to its promise, the Filipino masses were ready for change.

Sociologist Randy David observed that “a people besieged by extreme poverty, persistent injustice, and lack of social mobility will always feel it has nothing to lose by betting on a forceful figure who presents himself as a social reformer.”<sup>123</sup> This is exactly what accounts for the unprecedented victory of Rodrigo Duterte during the 2016 presidential elections. Correctly sensing the people’s hunger for change, the tough-talking mayor of Davao presented himself as a “man of the masses”, an outsider to national politics, a social reformer, and an alternative to the traditional elites. His platform “Change is coming” stood in stark contrast with that of Mar Roxas who promised to continue President PNoy’s “Daang Matuwid” (“Straight Path”). People from all walks of life, but most especially the poor, gravitated towards the firebrand who had managed to transform the murder capital of the Philippines into one of the most progressive cities in the country.

President Duterte’s landslide victory at the polls represents a disruption on several levels. For the first time, a son of long-neglected Mindanao has been elected to the presidency and is poised to disrupt the workings of Imperial Manila. His crass politics has “shed light on the citizens’ anxieties, exposed powerful institutions’ hypocrisies, and provided the vocabulary to capture the public’s brewing anger against the unfulfilled promise of elite democracy.”<sup>124</sup> His victory, which was secured with the support of people across different geographies, age groups, and socio-economic classes, can also be viewed as a protest vote against mainstream politics and the ruling EDSA regime.<sup>125</sup>

Walden Bello points out that the conditions for President Duterte’s success were created by the failure of EDSA:

“What destroyed the EDSA project and paved the way for Duterte was the deadly combination of elite monopoly of the electoral system, the continuing concentration of wealth, and neoliberal economic policies and the priority placed on foreign debt repayment imposed by Washington. By 2016, there was a yawning gap between the EDSA Republic’s promise of popular empowerment and wealth redistribution and the reality of massive poverty, scandalous inequality, and pervasive corruption.”<sup>126</sup>

<sup>123</sup> David 2004: 160.

<sup>124</sup> Curato 2017: 5.

<sup>125</sup> Curato, *supra* note 125: 11.

<sup>126</sup> Bello 2017: 79-80.

## IX. POPULISM AND NEW DEMOCRATIC CHALLENGES

The populist victory of President Duterte poses new and dangerous challenges to Philippine democracy. Despite being a lawyer, President Duterte has repeatedly shown his disdain for human rights, accusing human rights lawyers of being coddlers of criminals. His “war on drugs” has resulted in extra-judicial killings running into the tens of thousands, making President Marcos’s Martial Law human rights record pale in comparison. In Congress, there have been moves to revive the death penalty – this despite the Philippines’ accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights – and to lower the age of criminal responsibility to 9 years of age. Misogyny is also on the rise.

Freedom of speech and expression is also under threat. Fake news and trolls were used during the Duterte campaign with great success and continue to create a toxic environment both online and offline. Freedom of the press is under attack, too, as journalists who are critical of the administration are trolled, cyberbullied, and harassed.

President Duterte has also managed to politically capture the various branches of government, practically nullifying the checks-and-balances that are supposed to be afforded by the separation of powers. The president currently has a super-majority in the lower House and a majority in the Senate. The Supreme Court, which is supposed to be the impartial third branch of government, is perceived to be partial to the president judging from how it voted in the Marcos burial case<sup>127</sup> and the Martial Law cases.<sup>128</sup>

What is particularly troubling is how the Duterte administration has fostered a culture of division and fragmentation along political lines. There is a prevailing mindset that if you are not for the president, then you are against him. Attempts to engage in constructive critical discourse are shot down through labels such as “yellowtards” and “dilawan” (pro-Aquino/pro-EDSA) versus “Dutertards”. There is much infighting within and among families and friends over political matters, and some have gone to the extent of blocking or unfriending people on Facebook and other forms of social media. Instead

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<sup>127</sup> In the case of *Ocampo vs. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, and 226294, 8 November 2016, nine (9) Justices voted to allow Ferdinand Marcos to be buried in the Heroes’ Cemetery while five (5) Justices opposed.

<sup>128</sup> In the case of *Lagman vs. Medialdea*, G.R. Nos. 231658, 231771, and 231774, July 4, 2017, eleven (11) Justices found factual basis for the declaration of Martial Law over the entire island of Mindanao and declared Proclamation No. 216 to be constitutional. In the subsequent case of *Lagman vs. Pimentel III*, G.R. Nos. 235935, 236061, 236145, and 236155, February 6, 2018, the Supreme Court upheld the one-year extension of Martial Law in Mindanao by a vote of 10-5.



of enabling the country to unite, President Duterte is instead proving to be a disruptive, divisive force.

## X. THE WAY FORWARD

The phenomenon of President Rodrigo Duterte poses important lessons for us. First, it shows that the masses are hungry and impatient for change. Having been neglected and marginalized for so long, they will latch on to leaders who promise definite and decisive change. The elite ignore the poor at their own peril.

Second, the politicization of the poor, as evidenced in their mobilization of support for the Duterte campaign, can produce lasting social change and economic growth if property harnessed.<sup>129</sup> The key is to “redress historic inequalities by redirecting resources toward meeting basic needs, and to rebuild social trust by re-establishing our society’s structure of opportunities.”<sup>130</sup>

Third, we must recognize that socio-economic rights have a legitimizing function on political rights and that the enjoyment of civil and political rights is not possible without socio-economic rights. Democracy cannot thrive in a society that is hungry and poor.

Social justice is therefore not an option: it’s a necessity! If we are to continue to enjoy the fruits of democracy, we must make sure that no one is left behind. We must create a more just and compassionate society where the benefits of the rich and the burdens of the poor are shared by all and not just by a few.

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