

# In Duterte’s Perfect Storm: A Rule of Law Dispatch in the Dire Days of Philippine Liberal Democracy

Ruby Rosselle L. Tugade\*

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## I. INTRODUCTION

Lamentations and eulogies for the Philippines’ liberal democratic order have permeated scholarship that attempts to explain the rise of Rodrigo Roa Duterte into national prominence and the consolidation of his brand of “populist” politics.<sup>1</sup> The numbers and visceral impact do not lie — Mr. Duterte’s bloody “war on drugs” and crackdown on dissent have severely strained the Philippine political landscape.<sup>2</sup> The term “illiberal” has been used to articulate the normative content of Mr. Duterte’s governance.<sup>3</sup> While

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\* ’20 LL.M., University for Peace & United Nations Interregional Crime and Justice Research Institute; ’16 J.D., University of the Philippines College of Law. The Author was the Vice Chair for Volume 88 of the Philippine Law Journal. She is currently a lecturer at the University of the Philippines College of Law and at the Department of Political Science of the Ateneo de Manila University.

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1. Ronald A. Pernia, *Human Rights in a Time of Populism: Philippines Under Rodrigo Duterte*, 19 ASIA-PAC. SOC. SCI. REV. 56, 58-59 (2019).
2. *Id.* at 62-65.
3. See generally Mark R. Thompson, *The Rise of Illiberal Democracy in the Philippines: Duterte’s Early Presidency*, in FROM AQUINO II TO DUTERTE (2010-2018): CHANGE, CONTINUITY — AND RUPTURE 39-40

indeed helpful as a descriptive handle, exploring that which festers at the heart of this political order reveals much more. The question of how the law figures in all of this is inescapable.

Consciously introducing the notion of the rule of law, both as a standard and an ideal, was essential in the immediate aftermath of ousting a dictatorship in 1986.<sup>4</sup> No less than the 1987 Constitution ratified by the Filipino people a year after affirms this in its Preamble.<sup>5</sup> Textually, the rule of law is *primus inter pares* in the conditions that embrace the Philippines' democratic government.<sup>6</sup> There is no dispute as to its conceptual significance in Philippine law.

This Article attempts to pursue an inquiry into the fate of the rule of law in the Philippines during a period when its associated norms and traditional indicators appear to have suffered considerable atrophy. The Author examines how the Duterte regime has transformed the concept beyond recognition.

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(Imelda Deinla & Björn Dressel eds., 2019) & Gemmo Bautista Fernandez, *Rise of Illiberal Democracy, Weakening of the Rule of Law, & Implementation of Human Rights in the Philippines*, 36 AM. U. INT'L L. REV. 181, 193 (2021).

4. See Julio C. Teehankee, *Weak State, Strong Presidents: Situating the Duterte Presidency in Philippine Political Time*, 32 J. DEVELOPING SOC'YS 293, 299 & 300 (2016) (citing Mark R. Thompson, *Populism and the Revival of Reform: Competing Political Narratives in the Philippines*, 32 CONTEMP. SOUTHEAST ASIA 1, 7 (2010)).
5. The final form of the Preamble to the 1987 Constitution of the Philippines reads

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

PHIL. CONST. pmbl.

In the deliberations of the 1986 Constitutional Commission, the word “rule” was a substitute for the original “regime” — that is, to originally read “regime of law” — which the framers saw as a conscious break from possible association with the Martial Law regime. See 1 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 7, at 102 (1986).

6. The Preamble speaks of a “democracy *under the rule of law*[.]” PHIL. CONST. pmbl. (emphasis supplied).

The task that follows is not so much the rule of law's rehabilitation as it was before Mr. Duterte. It is by no means prescriptive in this sense. Instead, this Article considers different conceptions of the rule of law in a manner attentive to historical and material considerations often overlooked in its analysis.

## II. THE PAST AS PROLOGUE

The Philippines is charting the waters well beyond the temporal label of “post-EDSA.”<sup>7</sup> It is important to identify this as the point of departure, as it marks a shift in political time to an era of “neo[-]authoritarianism.”<sup>8</sup> Mr. Duterte, in this scheme of things, represents a break from the liberal democratic promise of the first People Power Revolution.<sup>9</sup> His rise into national prominence and subsequent consolidation of power was a rebuke of the post-EDSA system that only represented elite continuity.<sup>10</sup>

But what is the post-EDSA order anyway, and why was its rebuke from the people almost inevitable?

The underlying normative assumption common to all governments elected after the People Power Revolution is the need to uphold popular sovereignty as the centerpiece of democratic rule.<sup>11</sup> Fidelity to democratic values and the rule of law — or at least its performance — was the cornerstone of each political project in the aftermath of martial law.<sup>12</sup> Statecraft in a post-dictatorship Philippines contained a commitment to consciously uphold democracy and human rights.<sup>13</sup> This is what the post-EDSA order stood for

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7. Official Gazette, A History of the Philippine Political Protest, *available at* <https://www.officialgazette.gov.ph/edsa/the-ph-protest> (last accessed Nov. 30, 2021) [<https://perma.cc/W3YY-Z7LV>]. During the first People Power Revolution, Filipinos marched along the roads of Epifanio de los Santos Avenue, more popularly known as EDSA. Thus, the movement is also often called the EDSA Revolution.

8. Teehankee, *supra* note 4, at 293.

9. *Id.*

10. *See id.* at 308.

11. *See* Liberty Orbe-Taruc, *Legitimacy Strains in Post-People Power Philippines*, 1 DALUMAT E-J. 68, 77 (2010).

12. *See* Teehankee, *supra* note 4, at 300.

13. *Id.* at 305.

in principle: (1) upholding a democratic way of life,<sup>14</sup> (2) respect for human rights,<sup>15</sup> and (3) the rule of law.<sup>16</sup>

The 1987 Constitution,<sup>17</sup> as the fundamental law ratified during the process of democratic transition, enforced this commitment.<sup>18</sup> In judicial pronouncements, the 1987 Constitution “signaled the return to normalcy of the political situation in the Philippines.”<sup>19</sup> Further, it serves as a charter “borne of the conviction that people power can be trusted to check excesses of government.”<sup>20</sup>

Political realities that unfolded after the first People Power Revolution once again revealed the deep-seated and structural problems of the country.<sup>21</sup> While the ouster of Mr. Ferdinand Emmanuel E. Marcos, Sr. and his associates paved the way for democratic institution-building, elite interests and influence continued to dominate the political arena.<sup>22</sup> Inequality persisted, especially in the countryside, where the marginalized sustained armed resistance as a response to State violence and oppression.<sup>23</sup> Deposing the previous regime alone did not produce a systemic response to the complex web of societal ills afflicting most Filipinos.<sup>24</sup>

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14. Eduardo T. Gonzalez, *People Power in the Philippines: Between Democratic Passions and the Rule of Law*, ASIAN STUD., Volume No. 39, Issue No. 1-2, at 155.

15. Teehankee, *supra* note 4, at 305.

16. ABRAHAM F. SARMIENTO, JOURNEY OF A RETIRED SUPREME COURT JUSTICE 87 (2008).

17. PHIL. CONST.

18. Ruby Rosselle L. Tugade, *Beyond Legal Transformation: Assessing the Impact of Transitional Justice Mechanisms in the Philippines*, 93 PHIL. L.J. 77, 82 (2020).

19. Romualdez v. Sandiganbayan (Third Division), G.R. No. 161602, 625 SCRA 13, 19-20 (2010).

20. Garcia v. Commission on Elections, G.R. No. 111230, 237 SCRA 279, 282 (1994).

21. See Gonzalez, *supra* note 14, at 160.

22. Ben Reid, *Historical Blocs and Democratic Impasse in the Philippines: 20 Years After 'People Power'*, 27 THIRD WORLD Q. 1003, 1009 (2006).

23. See generally Rommel A. Curaming, *The End of an Illusion: The Mendiola Massacre and Political Transition in Post-Marcos Philippines*, in STATE VIOLENCE IN EAST ASIA 210-11 & 223-24 (Narayanan Ganesan & Sung Chull Kim eds., 2013).

24. Pernia, *supra* note 1, at 64. See also Leni Robredo, *The Essence of EDSA: Change Begins with Us*, RAPPLER, Feb. 25, 2017, available at <https://www.rappler.com/voices/thought-leaders/162479-leni-robredo->

Analysts of post-EDSA politics approach the topic diversely. A significant portion of the literature on the matter appears to be “restorationist,” such that the first People Power Revolution is often analyzed with reference to the authoritarian rule of the late Mr. Marcos, Sr. and as an event which heralded the return of liberal democracy.<sup>25</sup> Meanwhile, later works that reflect on the emergence of Mr. Duterte’s brand of populism acknowledge that Philippine liberal democracy post-EDSA is “elite-captured” and “neo[-]liberal” as a common discursive thread.<sup>26</sup>

At the very least, there is observation among scholars that Mr. Duterte carried a brand of politics that tapped into collective frustration over primary issues of law and order, especially among the middle-class.<sup>27</sup> This discontent

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message-edsa-anniversary (last accessed Nov. 30, 2021) [<https://perma.cc/YDN7-6ZL4>].

25. Rommel Curaming & Lisandro Claudio, A Historicised (Re)Assessment of EDSA ‘People Power’ (1986), at 1-2, *available at* <https://ari.nus.edu.sg/wp-content/uploads/2018/10/201002-WPS-134.pdf> (last accessed Nov. 30, 2021) [<https://perma.cc/RH3T-CSQK>] (citing Paul D. Hutchcroft, *Oligarchs and Cronies in the Philippine State: The Politics of Patrimonial Plunder*, 43 *WORLD POL.* 414, 414 & 448 (1991); BENJAMIN N. MUEGO, *SPECTATOR SOCIETY: THE PHILIPPINES UNDER MARTIAL RULE* 8 (1988); Francisco Nemenzo, *From Autocracy to Elite Democracy*, in *DICTATORSHIP AND REVOLUTION: ROOTS OF PEOPLE’S POWER* 234 (Aurora Javate de Dios, et al. eds., 1988); ALFRED W. MCCOY, *THE YELLOW REVOLUTION* 22 (1986); Jose W. Diokno, *The Present Crisis*, in *THE PHILIPPINES AFTER MARCOS* 6 (Ronald J. May & Francisco Nemenzo eds., 1985); Francisco Nemenzo, *The Left and the Traditional Opposition*, in *THE PHILIPPINES AFTER MARCOS* 65-66 (Ronald J. May & Francisco Nemenzo eds., 1985); DAVID G. TIMBERMAN, *A CHANGELESS LAND: CONTINUITY AND CHANGE IN PHILIPPINE POLITICS* 168-69 (1991); & Benedict Anderson, *Cacique Democracy in the Philippines: Origins and Dreams*, I/169 *NEW LEFT REV.* 3, 24-25 (1988)).
26. Matthew David Ordoñez & Anthony Lawrence Borja, *Philippine Liberal Democracy Under Siege: The Ideological Underpinnings of Duterte’s Populist Challenge*, 39 *PHIL. POL. SCI. J.* 139, 143 (2018).
27. Mark R. Thompson, *Bloodied Democracy: Duterte and the Death of Liberal Reformism in the Philippines*, *J. CURRENT SOUTHEAST ASIAN AFF.*, Volume No. 35, Issue No. 3, at 58 (citing Randy David, ‘Dutertismo’, *PHIL. DAILY INQ.*, May 1, 2016, *available at* <https://opinion.inquirer.net/94530/dutertismo> (last accessed Nov. 30, 2021) [<https://perma.cc/D269-5KVA>]).

fueled a rejection of liberal governance embodied by the then prevailing system.<sup>28</sup>

It is worth noting that Mr. Duterte's support base is comprised of members of the middle-class.<sup>29</sup> Historically, the urban middle-class has been significant in shaping the EDSA narrative.<sup>30</sup> It was the urban middle-class — a silent majority — that was “shocked into political involvement” upon the death of the late Senator Benigno S. Aquino, Sr.<sup>31</sup> Decades later, the middle-class would perceive and experience exclusion in the democratic reformist agenda.<sup>32</sup> Mr. Duterte successfully mobilized for himself such sentiments of exclusion.<sup>33</sup>

Part of Mr. Duterte's character as an antithesis to the liberal establishment is his non-participation in events that commemorate the People Power Revolution as a political milestone of national significance.<sup>34</sup> Taking note of how Mr. Duterte has positioned himself with respect to this watershed moment in Philippine history is crucial — it shows how he has participated in meaning-making through its active rejection.<sup>35</sup> Sociologist Randolph S. David

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28. Thompson, *Bloodied Democracy: Duterte and the Death of Liberal Reformism in the Philippines*, *supra* note 27, at 42-43.

29. *Id.* at 41 (citing Julio C. Teehankee & Mark R. Thompson, *The Vote in the Philippines: Electing a Strongman*, J. DEMOCRACY, Volume No. 27, Issue No. 4, at 126).

30. Masataka Kimura, *The Emergence of the Middle Classes and Political Change in the Philippines*, 41 DEVELOPING ECONOMICS 264, 278 (2003). “During this period, the middle classes undoubtedly played their most significant political role in Philippine history.” *Id.*

31. PATRICIO N. ABINALES & DONNA J. AMOROSO, STATE AND SOCIETY IN THE PHILIPPINES 223 (2005).

32. Nicole Curato, *Flirting with Authoritarian Fantasies? Rodrigo Duterte and the New Terms of Philippine Populism*, 47 J. CONTEMP. ASIA 142, 150 (2017).

33. *See id.*

34. *See* Cleve Kevin Robert V. Arguelles, *Duterte's Other War: The Battle for EDSA People Power's Memory*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE'S EARLY PRESIDENCY 265 (Nicole Curato ed., 2017).

35. *Id.*

noted that Mr. Duterte has been “consciously ignoring whatever significance the event may still hold for some Filipinos.”<sup>36</sup>

People Power in the Philippines has come to be commonly understood as a specific form of mobilizing the people<sup>37</sup> that carries the distinct characteristics of nonviolence,<sup>38</sup> moralism,<sup>39</sup> and the aim of transitioning power from a “bad” to a “good” administration.<sup>40</sup> In *Marcos v. Manglapus*,<sup>41</sup> the Court did not hesitate to call the event what it is — “the case of a dictator forced out of office and into exile after causing [20] years of political, economic[,] and social havoc in the country[.]”<sup>42</sup>

The impact of People Power on national political discourse is evident, as various segments of society constantly reinterpret and invoke the concept. It has earned acceptance and legitimacy as a form of political expression and as “a means by which Filipinos can ensure the legal integrity of [their] government, as well as the moral and spiritual fortitude of [their] leaders.”<sup>43</sup> The potency and attractiveness of People Power to resolve an enormous political crisis is due to the perception that as an event, it forwards principles that transcend ideology and strategy, and has the purpose of delivering justice to the Filipino people who were “beset by years of despotic rule[.]”<sup>44</sup>

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36. Randy David, *Getting Past EDSA*, PHIL. DAILY INQ., Feb. 23, 2020, available at <https://opinion.inquirer.net/127551/getting-past-edsa> (last accessed Nov. 30, 2021) [<http://perma.cc/44FL-WU5Z>].

37. Kurt Schock, *People Power and Political Opportunities: Social Movement Mobilization and Outcomes in the Philippines and Burma*, 46 SOC. PROBS. 355, 362-64 (1999).

38. *Garcia*, 237 SCRA at 288.

39. Rommel Curaming & Lisandro Claudio, *(Re)Assessing the EDSA “People Power” (1986) as a Critical Conjuncture*, in CONJUNCTURES AND CONTINUITIES IN SOUTHEAST ASIAN POLITICS 39 (Narayanan Ganesan ed., 2013).

40. ROMUALDO E. ABULAD & ALFREDO P. CO, TWO FILIPINO THOMASIAN PHILOSOPHERS ON POSTMODERNISM 91 (2004).

41. *Marcos v. Manglapus*, G.R. No. 88211, 177 SCRA 668 (1989).

42. *Id.* at 682.

43. Julius Bautista, *The Rebellion and the Icon: Holy Revolutions in the Philippines*, 34 ASIAN J. SOC. SCI. 291, 299 (2006).

44. Fernando Gonzaga, *People Power as Immanent Collectivity: Re-Imagining the Miracle of the 1986 EDSA Revolution as Divine Justice*, KRITIKA KULTURA, No. 12, at 125.

Legally speaking, the Supreme Court has attempted to characterize People Power. The Court in *Estrada v. Desierto*<sup>45</sup> explained the distinction between “EDSA People Power I” and “EDSA People Power II.”<sup>46</sup> The first People Power was that of a “revolution which overthrew the whole government.”<sup>47</sup> On the other hand, EDSA II was “an exercise of people power of freedom of speech and freedom of assembly to petition the government for redress of grievances which only affected the [O]ffice of the President.”<sup>48</sup> The Court’s discussion was illuminating insofar as it gave an example of how institutions have assessed People Power with *imprimatur*. In any case, varied discourse on People Power has come to grip the national imaginary.

Functionally, People Power involves an “expression of outrage against a particular public official,” or “a withdrawal of allegiance from the official in favor of another.”<sup>49</sup> From this dual notion, Professor Dante B. Gatmaytan proposes a view of People Power that is not “burdened by the insistence that people power is or aspires to democratic revolution.”<sup>50</sup> This framework would even accommodate EDSA III as valid, even if the event has been treated dismissively in literature.<sup>51</sup>

One may posit that the excessive consecration of People Power for the longest time has inadvertently opened opportunities to question its very narrative. The “rise of [ ] moral politics” in democracies produces crises “characterized by repeat[ed] cycles of moral division ... and a reactive moral solidarity of the nation.”<sup>52</sup> The insistence on a puritan view of EDSA inattentive to material realities in the lives of many Filipinos has resulted in social exclusion with deep consequences. It may have very well contributed to the present decline of democracy and the increasingly contested appreciation of the rule of law.

Yet, what do we mean when we assert the rule of law? What is at stake when we come to its defense?

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45. *Estrada v. Desierto*, G.R. Nos. 146710-15, 353 SCRA 452 (2001).

46. *Id.* at 493.

47. *Id.* (emphasis omitted).

48. *Id.* (emphasis omitted).

49. Dante B. Gatmaytan, *It's All the Rage: Popular Uprisings and Philippine Democracy*, 15 PAC. RIM L. & POL'Y J. 1, 3 (2006).

50. *Id.*

51. See e.g., Bautista, *supra* note 43, at 307.

52. WATARU KUSAKA, MORAL POLITICS IN THE PHILIPPINES: INEQUALITY, DEMOCRACY AND THE URBAN POOR 254 (2017).



## III. THE RULE OF LAW, REVISITED

A. *Varied Conceptions*

Although widely revered as an ideal and a concept, notions of and attempts at defining the rule of law have always been the subject of contest and debate.<sup>53</sup> It has been appreciated in various ways across different contexts and across time.<sup>54</sup> What is clear and distinct, however, is that the rule of law “impressively bridges temporal, cultural[,] and ideological divides[.]”<sup>55</sup> The phrase may evoke ideas pertaining to justice and fairness, equality before the law, or due process.<sup>56</sup>

A pillar holding up the varied conceptions of the rule of law is the rejection of arbitrariness or pure discretion in the law’s application.<sup>57</sup> Under this idea, institutions of government “should operate within a framework of law in everything [they do], and ... should be accountable through law when there is a suggestion of unauthorized action by those in power.”<sup>58</sup> Hence, the oft-recited passage on an ideal government of *laws* instead of a government of *men*.<sup>59</sup>

Albert Venn Dicey, in his “Introduction to the Study of the Law of the Constitution,” theorized on the modern concept of the rule of law, although his frame of reference was the British legal tradition.<sup>60</sup> The essence of his

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53. Richard H. Fallon, Jr., “The Rule of Law” as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1, 1 (1997) (citing GEORGE P. FLETCHER, BASIC CONCEPTS OF LEGAL THOUGHT 12 (1996)).

54. Alberto T. Muyot, Jr., *Amendment No. 6 and the Rule of Law*, 59 PHIL. L.J. 139, 140 (1984) (citing Carlo A. Carag, *Malcolm and the Rule of Law: A Structured Recollection*, 56 PHIL. L.J. 169, 173-79 (1981)).

55. John Tasioulas, *The Rule of Law*, in THE CAMBRIDGE COMPANION TO THE PHILOSOPHY OF LAW 117 (John Tasioulas ed., 2020).

56. *See id.* at 117-18.

57. *See* Robert Stein, *Rule of Law: What Does It Mean?*, 18 MINN. J. INT’L L. 293, 298 (2009). “The idea of limiting judicial discretion was motivated primarily by the rule of law’s disdain for arbitrariness.” Stein, *supra* note 57, at 298.

58. Jeremy Waldron, *The Rule of Law*, available at <https://plato.stanford.edu/entries/rule-of-law> (last accessed Nov. 30, 2021) [<http://perma.cc/6A4X-NYPQ>].

59. *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 304-05 (1927) (J. Johnson, concurring opinion).

60. ALBERT VENN DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 179-80 (8th ed. 1915).

conception was that the rule of law is a restraint on the power of the State.<sup>61</sup> There are three interconnecting ideas in Dicey's conception of the rule of law. First, no one should be punished "except for a distinct breach of law established in the ordinary legal manner[.]" which pertains to the principle of legality.<sup>62</sup> Second, every person, regardless of status, is "subject to the ordinary law" and under the jurisdiction of ordinary tribunals.<sup>63</sup> Third, the rule of law ensues from judicial decisions, which pertains to the common law system.<sup>64</sup> The third feature pointed out by Dicey is obviously not applicable across all modern jurisdictions.

International instruments also contain some form of conception of the rule of law.<sup>65</sup> In fact, it occupies a central position in these fundamental documents. The Universal Declaration of Human Rights references the concept in the text of its Preamble, in that "human rights should be protected by the rule of law[.]"<sup>66</sup> However, there is no outright definition of the term. The rule of law

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61. *See id.* at 183-84.

62. DICEY, *supra* note 60, at 183.

63. *Id.* at 189.

64. *Id.* at 191.

65. *See* Machiko Kanetake, *The Interfaces Between the National and International Rule of Law: A Framework Paper*, in *THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS: CONTESTATIONS AND DEFERENCE* 15 (Machiko Kanetake & André Nollkaemper eds., 2016) (citing Benedict Kingsbury, et al., *The Emergence of Global Administrative Law*, 68 L. & CONTEMP. PROBS. 15, 46 (2005); Stefan Kadelbach, *From Public International Law to International Public Law: A Comment on the "Public Authority" of International Institutions and the "Publicness" of Their Law*, in *THE EXERCISE OF PUBLIC AUTHORITY BY INTERNATIONAL INSTITUTIONS: ADVANCING INTERNATIONAL INSTITUTIONAL LAW* 45-46 (Armin von Bogdandy, et al. eds., 2010); & Thomas Kleinlein, *Judicial Lawmaking by Judicial Restraint? The Potential of Balancing in International Economic Law*, in *INTERNATIONAL JUDICIAL LAWMAKING: ON PUBLIC AUTHORITY AND DEMOCRATIC LEGITIMATION IN GLOBAL GOVERNANCE* 255-56 (Armin von Bogdandy, et al. eds., 2012)).

"[T]he growth and reinvigoration of international [organizations] and international courts ... have brought the rule of law into the familiar language at the international level." Kanetake, *supra* note 65, at 15 (citing Kingsbury, et al., *supra* note 65, at 46; Kadelbach, *supra* note 65, at 45-46; & Kleinlein, *supra* note 65, at 255-56).

66. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, pmb., U.N. Doc. A/RES/217 (III) (Dec. 10, 1948).

is likewise integrated in the Charter of the United Nations, also in its Preamble.<sup>67</sup>

According to legal philosopher John Tasioulas, there are “serious objections” to broad conceptions of the rule of law.<sup>68</sup> The first objection is that the rule is only one among other legally relevant rules.<sup>69</sup> The second objection is that the phrase is a redundancy that only refers to the legitimacy of law itself.<sup>70</sup> A possible way to practicably appreciate the rule of law is to assess its attendant formal and procedural requirements.<sup>71</sup> It is in this light that the United Nations (U.N.) definition presented by the U.N. Secretary-General is instructive —

It refers to a principle of governance in which all persons, institutions[,] and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced[,] and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness[,] and procedural and legal transparency.<sup>72</sup>

This passage in the Secretary-General’s report, while certainly providing specificity, is more illustrative than a holistic definition. This formulation of the rule of law is helpful in an operational sense, but it does not totally escape the critique that the conception is still couched in general terms.

### *B. In the Philippines*

The rule of law made its first appearance in any Philippine constitutional text in the Preamble of the 1987 Constitution.<sup>73</sup> This is also its only appearance in the present Charter. The thicket of lofty ideas packed into the Preamble’s text

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67. United Nations, What Is the Rule of Law?, *available at* <https://www.un.org/ruleoflaw/what-is-the-rule-of-law-archived> (last accessed Nov. 30, 2021) [<http://perma.cc/YC6U-MW7X>]. *See also* U.N. CHARTER pmb. l.

68. Tasioulas, *supra* note 55, at 118.

69. *Id.*

70. *Id.* at 119.

71. *Id.* at 120.

72. U.N. Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 6, U.N. Doc. S/2004/616 (Aug. 23, 2004).

73. PHIL. CONST. pmb. l.

does little to shine light on what is meant by “the rule of law” in the 1987 Constitution.<sup>74</sup> It is mentioned towards the end of the text, apparently qualifying the “democracy” that is to be ushered in by the constitutional order.<sup>75</sup>

In *Mijares v. Ranada*,<sup>76</sup> the Court appropriated the restorationist narrative of post-EDSA politics and directly connected it with the rule of law —

Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. The cries of justice for the tortured, the murdered, and the *desaparecidos* arouse outrage and sympathy in the hearts of the fair-minded, yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the ill-wind of martial rule. *The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.*<sup>77</sup>

The rule of law is consciously referred to in this sense as a returning idea, implying that it is something that was lost during the previous authoritarian regime. Invoked in this manner, the rule of law is directly tied to the post-EDSA liberal democratic order and its accompanying institutions.

The centrality of the rule of law in the post-EDSA political and legal order is also well-entrenched in official acts. Proclamation No. 713,<sup>78</sup> issued by former President Maria Gloria M. Macapagal-Arroyo, declared September of every year as “Rule of Law Month,” mandating its observance and the conduct of relevant programs and activities.<sup>79</sup> This is in consonance with

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74. PHIL. CONST. pmb.

75. See PHIL. CONST. pmb.

76. *Mijares v. Ranada*, G.R. No. 139325, 455 SCRA 397, 399-400 (2005).

77. *Id.* (emphasis supplied).

78. Office of the President, Declaring September of Every Year as Rule of Law Month and for the Department of Education to Implement Programs and Activities in the Observance Thereof, Proclamation No. 713, Series of 2004 [Proc. No. 713, s. 2004] (Sept. 22, 2004).

79. *Id.*

Executive Order No. 361,<sup>80</sup> which forwards the policy of promoting awareness of and respect for the rule of law.<sup>81</sup> One may also assess these institutionalized measures as public performance of the liberal democratic values built into present political structures.

Meanwhile, jurisprudence is also replete with examples of how the Supreme Court has defined or used the rule of law as an idea and a concept. A vanguardist language is apparent in the Court's various pronouncements on the rule of law. By way of admonition, the Court has stated that "[o]bedience to the rule of law forms the bedrock of our system of justice. ... A government of laws, not of men[,] excludes the exercise of broad discretionary powers by those acting under its authority."<sup>82</sup> Here, the rule of law is treated as a constraint on power.<sup>83</sup>

The Supreme Court made compelling reference to the concept in *Re: Letter of Mrs. Ma. Cristina R. Corona*,<sup>84</sup> in that the rule of law was cast as the diametric opposite of the rule of the mob, hence, effectively functioning as a limit on the operation of the country's system of democracy.<sup>85</sup> Building an ecosystem of predictability and stability has also been cited by the Court as a function of the rule of law — "the Rule of Law allows the citizenry to reasonably assume that future conduct will be in observance of government regulations, and to conceivably expect that any deviation therefrom will not be countenanced."<sup>86</sup>

Legal scholarship prior to the ratification of the 1987 Constitution seems to recognize the idea that the rule of law may be equated with a constitutional

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80. Office of the President, Establishing the Policy of Promoting Awareness of and Respect for the Rule of Law in the Basic Educational System, Executive Order No. 361, Series of 2004 [E.O. No. 361, s. 2004] (Sept. 22, 2004).

81. *Id.* whereas. cl. paras. 4 & 5.

82. *People v. Veneracion*, G.R. Nos. 119987-88, 249 SCRA 244, 251 (1995).

83. *See id.*

84. *Re: Letter of Mrs. Ma. Cristina Roco Corona Requesting the Grant of Retirement and Other Benefits to the Late Former Chief Justice Renato C. Corona and Her Claim for Survivorship Pension as His Wife Under Republic Act No. 9946*, A.M. No. 20-07-10-SC, Jan. 12, 2021, available at <https://sc.judiciary.gov.ph/16873> (last accessed Nov. 30, 2021).

85. *Id.* at 24.

86. *SM Land, Inc. v. Bases Conversion and Development Authority*, G.R. No. 203655, 769 SCRA 310, 329 (2015) (citing *League of Cities of the Philippines (LCP) v. Commission on Elections*, G.R. No. 176951, 652 SCRA 798, 821-22 (2011) (J. Sereno, dissenting opinion)).

regime or constitutionalism.<sup>87</sup> More recent scholarship, however, provides a further nuanced take — that the “rule of law” is part and parcel of legal concepts transplanted by way of colonial imposition.<sup>88</sup> Constitutionalism, in this regard, may not be a value intuitively held by Filipinos.<sup>89</sup>

Looking at the rule of law through its domestic historical development might be a more promising and fruitful route. By examining its very historical and discursive production, one might be able to see how the rule of law is implicated across different political projects.

Perhaps it is in the perceivable inadequacy of proffered definitions that the rule of law's potency as a concept lies — it is as portable as it is seemingly universal. The concept of the rule of law reproduced in official acts and in discourse after the regime change in 1986 has always been incubated in a democratic space. Yet, one must be careful not to make the mistake of equating the widespread acceptance of liberal democratic rule with its universality.

At this juncture, it would be best to note that the “break” represented by Mr. Duterte is not so much an attack on the rule of law itself as it is a revelation. The Author postulates that instead of an erosion of the rule of law, the collateral effect of Mr. Duterte's actions has recharged the idea that there is nothing inherent in the rule of law to thwart authoritarian rule.<sup>90</sup> The spaces of social exclusion, which Mr. Duterte has wriggled his way through, carry their own version of the rule of law — that is, the supremacy of force, discipline, and order. When viewed this way, there will be a more nuanced appraisal of the task ahead.

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87. Carag, *supra* note 54, at 173 & Muyot, Jr., *supra* note 54, at 141 (citing Frederic S. Burin, *The Theory of the Rule of Law and the Structure of the Constitutional State*, 15 AM. U. L. REV. 313, 313 (1966)).

88. Dante B. Gatmaytan, *Constitutional Deconsecration: Enforcing an Imposed Constitution in Duterte's Philippines*, 62 ATENEO L.J. 311, 342 (2017).

89. *Id.* at 351.

90. Lynne Henderson, *Authoritarianism and the Rule of Law*, 66 IND. L.J. 379, 398 (1991).

## IV. RECKONING THE RULE OF LAW DURING DUTERTE

The human rights situation under Mr. Duterte's rule has garnered both domestic and international criticism and condemnation.<sup>91</sup> In June 2020, the U.N. High Commissioner for Human Rights published a report on the situation of human rights in the Philippines.<sup>92</sup> Chief among the findings in the report is that

[t]he human rights situation in the Philippines is marked by an overarching focus on public order and national security, including [ ] countering terrorism and illegal drugs. This focus has permeated the implementation of existing laws and policies and the adoption of new measures, often at the expense of human rights, due process, the rule of law[,] and accountability.<sup>93</sup>

Indeed, a centerpiece policy of eradicating criminality and illegal drugs has produced deadly outcomes.<sup>94</sup> There is evidence to show that the casualties of the so-called “War on Drugs” belong to the economic underclass.<sup>95</sup> The implications of the numbers reach far and wide — these staggering statistics equate to households torn apart and deeply affected on both an economic and social level.<sup>96</sup> Considering the morally reprehensible quality of these killings together with the fact that most victims are members of the poorer population, institutions like the rule of law, which guarantee stability, are greatly undermined.<sup>97</sup>

How human rights have been treated in the time of Mr. Duterte is embodied in a passage from his third State of the Nation Address — “[y]our

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91. See generally Sedfrey M. Candelaria & Brian Earl A. Leshen, *Tipping the Scales in Favor of the Accused: The Implications of People v. Sapla on the Philippines' War Against Drugs*, 65 ATENEO L.J. 831, 834-36 (2020).

92. U.N. High Commissioner for Human Rights, *Situation of Human Rights in the Philippines*, Human Rights Council, U.N. Doc. A/HRC/44/22 (June 29, 2020).

93. *Id.* ¶ 12.

94. See generally Candelaria & Leshen, *supra* note 91, at 834-35.

95. See Maria Karla Abigail Pangilinan, et al., *Examining the Effects of Drug-Related Killings on Philippine Conditional Cash Transfer Beneficiaries in Metro Manila, 2016-2017*, 2 J. ILLICIT ECONS. & DEV. 110, 122 (2021).

96. Matt Wells, *War on Drugs, War Against the Poor*, RAPPLER, Feb. 4, 2017, available at <https://www.rappler.com/voices/thought-leaders/war-on-drugs-war-against-poor> (last accessed Nov. 30, 2021) [perma.cc/73MM-BZ6N].

97. Ruby Rosselle L. Tugade, *An Unwinnable War: Locating the Value of Life in the Middle of the Philippines' Campaign Against Illegal Drugs*, 2 U. ASIA & PAC. L.J. 85, 97 (2019).

*concern is human rights, mine is human lives.*"<sup>98</sup> By carving out a false dichotomy between human rights and human lives,<sup>99</sup> Mr. Duterte effectively casts those who defend human rights as enemies of the attainment of a new kind of justice and a new way of enforcing the law — one that is marked by wanton and State-sanctioned violence.

Possible accountability measures over the various acts committed under the auspices of the "War on Drugs" have been largely dismissed by Mr. Duterte.<sup>100</sup> In response to the request of the Office of the Prosecutor of the International Criminal Court to open an investigation into the situation in the Philippines, Mr. Duterte openly declared defiance, stating, "*If you take me to the Netherlands, it will happen only because I'd be dead. You will have a carcass. I will never go there alive.*"<sup>101</sup> Much earlier, the Philippines withdrew from the Rome Statute of the International Criminal Court<sup>102</sup> and completed the requisite acts of withdrawal from the treaty.<sup>103</sup> The impetus, however, is political more than anything else.

Other examples of human rights violations have been attributed by watchdogs and academic writings in the time of Mr. Duterte. Take, for instance, the highly militarized response of the Philippines to the coronavirus

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98. Rodrigo Roa Duterte, President, Republic of the Philippines, *State of the Nation Address*, Address at the Session Hall of the House of Representatives (July 23, 2018) (transcript available at <https://www.officialgazette.gov.ph/2018/07/23/rodrigo-roa-duterte-third-state-of-the-nation-address-july-23-2018> (last accessed Nov. 30, 2021) [<http://perma.cc/8WTD-DCP9>]) (emphasis supplied).
99. Randy David, *President Duterte's Third Sona*, PHIL. DAILY INQ., July 29, 2018, available at <https://opinion.inquirer.net/114958/president-dutertes-third-sona> (last accessed Nov. 30, 2021) [<https://perma.cc/4D2F-CUYP>].
100. See generally Mario C. Cerilles, Jr., *Overcoming Obstacles to the Quest for Genuine Accountability for Drug-Related EJKs in the Philippines*, 65 ATENEO L.J. 535, 536–38 (2020).
101. CNN Philippines Staff, *Duterte: I Will Never Go to the ICC Alive*, CNN PHIL., Aug. 3, 2021, available at <https://cnnphilippines.com/news/2021/8/3/Duterte-will-never-face-ICC-probe-alive.html> (last accessed Nov. 30, 2021) [<http://perma.cc/2SAJ-Q9PG>] (emphasis supplied).
102. Rome Statute of the International Criminal Court, signed July 17, 1998, 2187 U.N.T.S. 90.
103. See Senator Francis "Kiko" N. Pangilinan, et al. v. Alan Peter S. Cayetano, et al., G.R. No. 238875, Mar. 16, 2021, at 3, available at <https://sc.judiciary.gov.ph/20238> (last accessed Nov. 30, 2021).



global pandemic.<sup>104</sup> There need not be an exhaustive repetition here of the publicly accessible accounts of human rights abuses under the regime.<sup>105</sup> Earlier legal scholarship in fact characterizes these acts as patently unconstitutional.<sup>106</sup> Suffice it to say, deep cracks have been caused not only in the system of human rights enforcement in the Philippines,<sup>107</sup> but in the greater constitutional order as well.<sup>108</sup> After all, the 1987 Constitution embodies a human rights ethos,<sup>109</sup> and the post-EDSA order takes exception to State abuse.<sup>110</sup>

By and large, Mr. Duterte has been able to renegotiate what it means to assert the rule of law. Other state institutions, however, are by no definition innocent bystanders. An early example of how state institutions have participated in Mr. Duterte's reworking of the rule of law is the case of *Ocampo*

104. U.N. News, 'Toxic Lockdown Culture' of Repressive Coronavirus Measures Hits Most Vulnerable, *available at* <https://news.un.org/en/story/2020/04/1062632> (last accessed Nov. 30, 2021) [<http://perma.cc/QD3S-67Y9>].

105. See John Eric Mendoza, 'Rate and Scale' of Rights Abuses Under Duterte 'Incomparable', 'Higher' Than Past Admins — CHR, PHIL. DAILY INQ., June 3, 2021, *available at* <https://newsinfo.inquirer.net/1441051/rate-and-scale-of-rights-abuses-under-duterte-incomparable-higher-than-past-admins-chr> (last accessed Nov. 30, 2021) [<https://perma.cc/7E58-9LX9>].

106. Gatmaytan, *supra* note 88, at 325.

107. HUMAN RIGHTS WATCH, WORLD REPORT 2021: EVENTS OF 2020 540-46 (2021).

108. See Mong Palatino, *A Brief History of Charter Change Attempts in the Philippines*, DIPLOMAT, Feb. 2, 2021, *available at* <https://thediplomat.com/2021/02/a-brief-history-of-charter-change-attempts-in-the-philippines> (last accessed Nov. 30, 2021) [<https://perma.cc/2NLF-F4CJ>].

109. See International Institute for Democracy and Electoral Assistance, et al., Bill of Rights and Justice System Reform Under a Federal Transition, at 7, *available at* <https://www.idea.int/sites/default/files/publications/justice-system-reform-under-federal-transition.pdf> (last accessed Nov. 30, 2021) [<https://perma.cc/74U4-G289>]. According to Professor Miriam Ferrer-Coronel, "[t]he 1987 Constitution enhanced the rights-based foundation of the country's constitutional order when it introduced a separate article on social justice[.]" International Institute for Democracy and Electoral Assistance, et al., *supra* note 109, at 7.

110. See Carolina G. Hernandez, *The Philippines in 1987: Challenges of Redemocratization*, 28 ASIAN SURV. 229, 231 (1988).

*v. Enriquez*,<sup>111</sup> where the Supreme Court saw no legal impediment to the hero's burial given to Mr. Marcos, Sr.<sup>112</sup> Instead of outrightly repudiating the bias for human rights embodied in the 1987 Constitution to justify the dictator's rehabilitation,<sup>113</sup> the Court did something more insidious. To the minds of the majority that denied the petitions in *Ocampo*, Mr. Duterte merely performed the faithful execution of the laws of the land, simply underscoring the rule of law.<sup>114</sup>

In subverting the legal infrastructure of human rights, Mr. Duterte has directly challenged a component of the modern understanding of the rule of law. To recall, fundamental human rights instruments rely on the rule of law as a framework for their enforcement.<sup>115</sup>

Another major pattern that emerged during Mr. Duterte's regime was the successful marshalling of State resources to produce political outcomes in favor of the further consolidation of power. Politically, dissent has become a dangerous practice. The exercise of democratic practices is undermined by the State's own supposedly democratic institutions.<sup>116</sup> The use of legal maneuvers to effectively limit press freedom,<sup>117</sup> utilizing obscure legal remedies to remove a sitting Chief Justice of the Supreme Court,<sup>118</sup> and a legalized crackdown on

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111. *Ocampo v. Enriquez*, G.R. No. 225973, 807 SCRA 223 (2016).

112. *Id.* at 324.

113. *Id.* at 265-66. One of the substantive issues in the *Ocampo* decision was whether the burial of Marcos in the *Libingan ng mga Bayani* violated certain provisions of the 1987 Constitution, including Section 11 of Article II. *Id.*

114. *Id.* at 269 (citing *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, 235 SCRA 506, 552 (1994)).

115. Kanetake, *supra* note 65, at 11-12.

116. Nicole Curato, *Toxic Democracy? The Philippines in 2018*, in *SOUTHEAST ASIAN AFFAIRS* 2019 266 (Daljit Singh & Malcolm Cook eds., 2019).

117. Reporters Without Borders, *Holding the Line Against Duterte's Attacks*, available at <https://rsf.org/en/philippines> (last accessed Nov. 30, 2021) [<http://perma.cc/WEH2-YYTX>].

118. *See Republic v. Sereno*, G.R. No. 237428, 863 SCRA 1, 564 (2018) (J. Leonen, dissenting opinion).

Granting a Petition for *Quo Warranto* against the Chief Justice — an impeachable officer — is not the right way to address her inability to gain the respect of the branch of government that she was entrusted to lead. This is clear from a deliberate, impartial, conscious, and contextual reading of the entirety of the text of the Constitution. This is the

dissent under the guise of counterterrorism<sup>119</sup> are only some of the major examples of how the law has been weaponized under the regime.

The Duterte administration has been able to achieve a systematic clampdown on political dissent through palpable dominance of State institutions. A supermajority in the House of Representatives has been secured by its allies since 2016.<sup>120</sup> During the 2019 midterm elections, not a single opposition candidate won a seat in the Senate.<sup>121</sup> By securing numbers in both houses of Congress, the Duterte regime has easily secured political power.<sup>122</sup> For the rule of law, this potentially translates to substantially weakened systems of checks and balances and the blurring of the separation of powers.<sup>123</sup>

Taken collectively, however, major political events during Mr. Duterte's time do not indicate that the Philippines under Duterte has transformed into an anarchic wasteland bereft of order. For instance, several policies of the government and actions of the President himself have passed constitutional muster when challenged before the Supreme Court.<sup>124</sup> Mr. Duterte, as chief

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unclouded conclusion if this Court appreciates the true value of judicial independence.

*Serenio*, 863 SCRA at 564 (J. Leonen, dissenting opinion).

119. Although the passage of the Anti-Terrorism Act of 2020 has allowed the government to reinforce its capacity to respond to militant threats, critics have argued that the “government was deliberately using the cover of counterterrorism to suppress rights.” Rebecca Ratcliffe, *Duterte's Anti-Terror Law a Dark New Chapter for Philippines, Experts Warn*, GUARDIAN, July 9, 2020, available at <https://www.theguardian.com/world/2020/jul/09/dutertes-anti-terror-law-a-dark-new-chapter-for-philippines-experts-warn> (last accessed Nov. 30, 2021) [<https://perma.cc/LLK2-LB6T>].

120. Alexis Romero, *Duterte Secures 'Super Majority' in House*, PHIL. STAR, June 8, 2016, available at <https://www.philstar.com/headlines/2016/06/08/1590856/duterte-secures-super-majority-house> (last accessed Nov. 30, 2021) [<http://perma.cc/H9QM-NE97>].

121. Mara Cepeda, *Opposition Bets Fail to Get in Magic 12*, RAPPLER, May 14, 2019, available at <https://www.rappler.com/nation/elections/no-opposition-bets-win-senatorial-race> (last accessed Nov. 30, 2021) [<http://perma.cc/ZF4L-6TMF>].

122. Walden Bello, *The Spider Spins His Web: Rodrigo Duterte's Ascent to Power*, 65 PHIL. SOCIOLOGICAL REV. 19, 32 (2017).

123. *Id.*

124. See Carmela Fonbuena, et al., *The Shrinking Gods of Padre Faura*, available at <https://pcij.org/article/5151/the-shrinking-gods-of-padre-faura> (last accessed Nov. 30, 2021) [<http://perma.cc/CSU5-54N5>].

enforcer of the law, turned to other compelling ideas to justify rule by might and brutality.

#### V. WHITHER THE RULE OF LAW?

Mr. Duterte has not attempted to ignore the rule of law as if it were a concept that did not exist at all. In fact, he has made very public pronouncements regarding the rule of law, in general —

What about the laws? What about the rule of law? The rule of law is good, if the rules are followed. Very easy to say rule of law. And it applies not only to the government and to us, it applies to all citizen[s].

You obey the law; we, in government[,] are admonished to say[,] follow the rule of law[,] and that is what makes it hard, because you follow the rule of law[,] sometimes it could lead to perdition for people. And always, the accountability of failing to protect the taxpayers and those who rely on the government for their safety and for their lives, they lose the gamble in the process.

...

I would like to follow the rule of law. It is rules which make up the law. But when *shabu* was coming in, strong and fast, we had to make a choice.

*We innovate the law, the rule of law[,] or we let our people suffer. That's the choice. The rule of law and the obedience of the law are just principles of the law[,] and they are really good if everybody follows.*

*The problem is, there is no obedience of the law and sometimes the rule of law becomes a stupid proposition.*<sup>125</sup>

This excerpt provides insight into Mr. Duterte's approach to the rule of law. Elasticity is attributed to the rule of law in order to accommodate Mr. Duterte's iron-fisted political style.<sup>126</sup> In this sense, the rule of law is infinitely

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125. Rodrigo Roa Duterte, President, Republic of the Philippines, Speech at the 80th National Bureau of Investigation (NBI) Founding Anniversary (Nov. 14, 2016) (transcript available at <https://pcoo.gov.ph/nov-14-2016-president-rodrigo-roa-dutertes-speech-during-the-80th-national-bureau-of-investigation-nbi-founding-anniversary> (last accessed Nov. 30, 2021) [<https://perma.cc/SUS7-63SL>]) (emphasis supplied).

126. See Amichai Magen, *Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU*, 54 J. COMMON MKT. STUD. 1050, 1058 (2016). In the context of the European Union,

[r]eliance on the rule of law is aided, first, by the inherent elasticity of the concept itself and lack of clear conceptual boundaries between it and other foundational values. This fuzziness permits interpreters of the rule

stretchable so as to render it meaningless. This way, it becomes a conceptual blank canvas that can be assigned different meanings.<sup>127</sup> Mr. Duterte has then been able to apply “amorphous and subjective”<sup>128</sup> standards in enforcing the Constitution.

Certainly, abuses of State power and the law have occurred. The regime, however, has still been held together by the legitimacy it maintains despite the strain. Mr. Duterte does not purport anymore to abide by the liberal democratic order that fell into his lap upon his assumption into power. Yet, his regime has been able to dominate political life and successfully deflect — to some extent — pressure and crisis. The law has continued to operate under his watch, but it has taken on a character that departs from that which was ordained by the post-EDSA order. Whereas the so-called “spirit” of People Power previously guided the form of liberal democracy in the Philippines,<sup>129</sup> Mr. Duterte has successfully mobilized a different vision of the law.

To suggest, however, that Mr. Duterte is abusing — rather than using — the law for his own political advantage<sup>130</sup> paints an incomplete picture. Similarly, to advance the idea that sheer institutional imposition alone accounts for the emergence of someone like Mr. Duterte in our history might be dismissive of political agency. Fatal flaws of liberal democracy in the post-EDSA order were somehow cut from the same cloth. In the end, material conditions that were not addressed at the moment of democratization have widened the social margins. There is, fundamentally, a gap in the sovereign Filipino people’s access and opportunity to participate in the institutions of power.

There should be little dispute at this point over the fact of shrinking civil liberties and weakened institutions. The analysis, however, should not simply stop at the claim that “[l]iberal-democratic institutions in the Philippines are

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of law to imbue the concept with content that can legitimately be considered better placed within the parameters of its sister notions, ‘democracy’ and ‘human rights[.]’

Magen, *supra* note 126, at 1058.

127. *Id.*

128. Gatmaytan, *supra* note 88, at 329.

129. See Teehankee, *supra* note 4, at 300.

130. Fernandez, *supra* note 3, at 202.

under attack[.]”<sup>131</sup> or that the 1987 Constitution “badly needs defending[.]”<sup>132</sup> The post-EDSA liberal democratic order may be no more. The rule of law has morphed into holding various meanings to different people in the time of Duterte. It comes with the acceptance that democratic and constitutional values were not uniformly nor universally appraised in the same way in the first place.

The Author posits that moving forward, the task is not just to rehabilitate the rule of law in a “restorationist” sense. One may advance the analysis by looking at how different perspectives and understandings of the rule of law are implicated in the complex processes of institutional politics, as well as the politics of everyday life. The underlying assumption of this frame of analysis is that the rule of law is never self-replicating. It is always historically, materially, and politically reproduced.

## VI. CONCLUSION

Having the formal and procedural requisites for the rule of law in a particular jurisdiction does not automatically translate to a transformation in norms and culture. The notion of the rule of law is intimately tied to norms and values. Mr. Duterte’s perfect storm was brewed with a particular understanding of the law in mind. A moment for one conception of the rule of law is all it takes to produce a domino effect on institutions and change the topography of politics as we know it.

For the law is not simply a set of rules in an enclosed system. Rather, it is a function of social and political forces that surround us.

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131. Björn Dressel & Cristina Regina Bonoan, *Southeast Asia’s Troubling Elections: Duterte Versus the Rule of Law*, 30 J. DEMOCRACY 134, 137 (2019).

132. *Id.* at 146.