



## PERSPECTIVES

### The Arroyo Administration: Assessment of the Crisis of Legitimacy

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With the overhang of public cynicism and amidst abundant conspiratorial talk, confession is conveniently the first thing to do—that I was elected representative as *Lakas ng EDSA-Christian Muslim Democrats (Power of EDSA-CMD)*, the dominant administration party; that I graduated from Ateneo de Manila and President Gloria Macapagal Arroyo was my teacher in economics; that I currently provide inputs on economic policy and public financial strategy to the president; that, luckily, I was the principal conduit of policy advice of the University of the Philippines School of Economics to Arroyo in the formulation of the fiscal reform program; and last, that I am not a lawyer. I am not morally certain whether such admissions sufficiently prepare you for my political biases but my Phenomenology professor taught me that it was the only way to start on a perilous intellectual endeavor.

Looking back to the last four years, it becomes clear that the seeds of the current discontent were really sown by the rise in global oil prices from USD 25.00 to USD 61.60/barrel, the punishing succession of nine-upward adjustments in Federal rates, the Pacman-like competition from China and India, and four successive credit downgrades. These factors finally pricked the balloon of public debt and precipitated a full-blown fiscal crisis early in Arroyo's new term. All these drove her to

unpopularity, associated with, or as a consequence of, the measures needed to solve the fiscal crisis. Social expenditures were compressed and disabled the newly elected president to comply with the high expectations engendered by her campaign promises. This resulted in the collapse in presidential satisfaction ratings to an all-time low of 33 percent by March, according to the Social Weather Stations, which coincided with the expiry and nonrenewal of some eight million “*card sa masa*” (for the masses) of the Philippine Health Insurance Corporation (PhilHealth), possibly the largest wholesale betrayal of a campaign commitment or the biggest victim of the fiscal crisis.

A skilled opposition cannot resist such a rare break to go for the kill via a shock-and-awe show of force in *jueteng* (illegal numbers game) and tape investigations to escalate the crisis in confidence. Lingering doubts about her accession in 2001, her turnaround on her earlier pronouncement not to run coupled with her constitutionally unique status as an incumbent running for president already provided ample fuel to questions on her legitimacy.

Did she win? Cheating did not dictate the final outcome of the elections. The bottom line is that Arroyo was legitimately elected in the 2004 elections and was rightfully proclaimed by Congress. First, even if we consider the minority report and deduct the controverted votes, she would still lead by at least 457,000 votes, which could be validated by uploading election results. Second, the economic conditions were favorable to the incumbent administration with gross domestic product (GDP) in the first quarter of 2004 rising by 6.4 percent, the highest quarterly growth in the past 18 years. Over the past four presidential elections (1985, 1992, 1998, 2004), the first-quarter GDP growth had been a consistent predictor as to whether the administration would be reelected. Moreover, in January 2004, right before the elections, the Bureau of Labor and Employment Statistics showed that the economy produced 1.47 million jobs. Third, the *Iglesia ni Cristo* (Church of Christ), which commands at least a 2.4-million voting bloc, selected her and, surprisingly, at a very early point of the campaign. Fourth, surveys immediately prior to the elections invariably showed her leading her rivals, and coming from lagging ratings, the trajectory of the momentum pointed to her eventual electoral triumph. Since the tapes cast serious doubts, then the only way to resolve this would be to first tabulate the election results or even recount all the votes, a suggestion that the administration is already amenable to.

On this note, there is an interesting Biblical case—Esau and Jacob. The latter was anointed through the deceitful maneuvering of the

mother who asked him to put on a goat's skin while Esau, the older and hairier sibling, was away. Esau could no longer regain his rightful place since someone had already been anointed by the old and blind Isaac. In President Arroyo's case, if it could be proven that she really lost, then it would be very easy for Congress to impeach her.

Did she break the law? We can explain this using a theory of the anxious candidate. Even if the president was legitimately elected, we must still confront the issue of whether she violated the constitution and broke the law as apparently suggested by the tapes. From a more "forgiving" reading of the Paguio transcripts, it could be reasonably argued that the conversations between President Arroyo and Commission on Elections (COMELEC) Commissioner Virgilio Garcillano portray an excited candidate who wanted to ensure that there would be no unnecessary hitches in the congressional canvassing.

The president was probably anxious that if Congress would be forced to yield to the minority's demand to resort to the election results, she wanted to ensure that the results were consistent with the statements of votes (SOVs) and certificates of canvas (COCs), which were the bases for the canvassing then in progress. Would her numerous conversations with congressmen and senators who composed the canvassing board during the canvassing be equally violative?

The conversations occurred when all COCs had been submitted to Congress, and it would be a ridiculous, stupid or foolish move to alter them since other parties already had copies of the said results. The last COC, that of Cotabato City, was submitted on May 24, 2004. In fact, the COMELEC had proclaimed 11 senators based on 173 COCs where she already commanded a lead of 1,062,782 votes, with only Lanao del Sur, Lanao del Norte, Cotabato City, and Sarangani remaining, three of which were mentioned in the tapes. These were submitted by May 25, with her lead reaching 1,118,844—still before May 26, when such conversations had begun to be recorded in which she asked about Tawi-tawi and Sulu, both already submitted to Congress.

There are limited insinuations in the tape directly implicating the president with electoral fraud, and that she sanctioned, tolerated, or failed to dissuade cheating and other criminal and immoral behavior during the 2004 elections. The two most suspicious approximations of dysfunctional behavior are "*Natanggap mo ba 'yung* (Did you get my) text about Tipo-tipo (Rashma Ali)" and "*Irereport ko 'yung mga* (I will report the) problems so we can employ the appropriate remedies." However, except for the Rashma Ali text, there is nowhere we could

reasonably infer that she had asked Garcillano to alter the results in her favor. But the thought that there were prior unrecorded conversations could not be resisted by an aroused public imagination, nay speculation, given the current atmosphere. On the widely mentioned “will I still lead by one million; *pipilitin namin* (we will work hard on it)” conversation, it could be attributed with some malice to the fear, probably well founded, that a small lead would have led to protracted proceedings with no proclamation by June 30, thus placing the country in a constitutional limbo.

Since the president has already admitted to the conversations and has asked the nation for forgiveness, then punishment and restitution are now the key issues. In my honest appreciation of the events and of the evidence, including its implied circumstances, it is morally defensible that the proportional punishment that the Filipino people could mete is to subject her to a six-month probation period, during which we could scrupulously judge her for good behavior. This would be a reasonable time for the president to demonstrate her sincerity in seeking forgiveness and to implement reforms and to deliver on her 10-point agenda.

As full compliance with the requisites of the sacrament of penance, President Arroyo must implement vital reforms as constructive restitution. Arroyo and her administration would be under extreme pressure to perform particularly well in the next six months. As an ordinary citizen, nothing amazes me more than that we had had three cathartic events since World War II, or two after Martial Law, which hardly prompted positive consequences for the ordinary citizen. That is because we just change faces but not the system. So, the nation must seize this chance characterized by a profound and vigorous pressure for dramatic changes and drastic reforms. Even if we assume that she would eventually be replaced, constitutionally or otherwise, the new leader must still deal with these long-overdue changes. Interestingly, it is such frustration that fundamentally underpins the urban middle class’s lack of appetite for street protests to secure a change in administration. But we take such apparent fatigue for people power as a manifestation of the growing political maturity that would impose a higher standard of governance.

On the basis of the foregoing, I find the following preliminary conclusions reasonable:

1. It is empirically verifiable that cheating did not dictate the final outcome of the 2004 elections and that she was rightfully proclaimed as winner.

2. Therefore, it is legally tenable and politically plausible that she should remain in power but face the serious allegations in constitutionally mandated processes and accept the appropriate penalties that may ensue.
3. While such constitutional processes are in progress, it is morally defensible in the meantime that the proportional punishment is to give her a six-month probation where she could reform and perform.
4. Looking forward, it is fundamentally viable that even with the current administration, the nation could accelerate long-overdue societal changes.

The road map to political normalcy in the next six months is composed of three options: 1) reformation under probation, 2) independent fact-finding probe by a truth commission, and 3) impeachment. For the first option, think about the next months as a probation period for President Arroyo. She needs to embark on profound changes, drastic measures, and radical reforms in the political and economic system. Profound changes are designed to recover her capacity to launch initiatives in the economy in the short term. This includes sacrificing First Gentleman Mike Arroyo and her son Mikey Arroyo, and a wholesale revamp of the cabinet and the management of the strategic business units of the government. Removing those who erode her ability to lead is just a partial strategic benefit. The larger strategic benefits are rebuilding the Arroyo technocracy and infusing the bureaucracy with modernizing expertise, thus creating space for substantial participation by the minority in government. This would serve as a built-in control mechanism, and the sheer impact of fresh faces and talents should inspire fresh hopes among the populace.

Drastic measures pertain to areas that do not require congressional action but entail the enforcement of existing laws and programs resolving the CAP pre-need mess, traffic, improving the delivery of 1.5 billion pieces of mail, oil price mitigation, renewal of eight million PhilHealth cards, acceleration of flagship infrastructure projects and electoral computerization. Such initiatives could be pursued even within the negative atmosphere of political animosity. The near-term target is to reduce the dissatisfaction ratings from -33 percent to zero, i.e., increasing the satisfied by 17 percent or roughly 2.7 million households. Finally, radical reforms involve the calling of a constitutional convention to implement two fundamental changes: 1) political, which involves a revision of the constitutional order from the current

dysfunctional and degenerate bicameral, unitary and republican form to a more modernizing unicameral, federal and parliamentary system; and 2) economic, which is a final push on economic liberalization to ease restrictions on the entry of foreign investments into utilities, natural resources, land ownership, media and education that make the country uncompetitive, breed oligopolies and harm consumer welfare.

Given the profound pressure for change, Congress would have the impetus to enact a law that would call for Constitutional Convention elections by December 2005, a plebiscite ratifying a new constitution by December 2006, and the election of the first unicameral parliament by May 2007. Thus, given that the president is not inclined to resign in the prevailing circumstances, this track actually provides the people three opportunities to judge her: the election to the Constitutional Commission where delegates opposed to the president may be predominantly elected and possibly cut her term short, the plebiscite on the constitution itself, and the election of an initial parliament where, again, anti-Arroyo members of parliament could be elected.

The president has not indicated any current predisposition to cut her term short. However, in my view, there can be no constitutional solution to the current political crisis without this as an integral ingredient, whether as a supreme sacrifice or a graceful exit. Sometime in September 2002, National Security Adviser Norberto Gonzales suggested that among the contenders, Arroyo could be a transition president—a suggestion she did not deny. Apparently, as a result of the Oakwood mutiny in July 2002, the president changed her mind and ran again in 2004, which she subsequently announced in November 2002.

For the second option, given widespread skepticism there is need for an independent process at arriving at the truth, particularly and principally the extent of the presidential mistakes so we can find the basis for “proportional punishment.” It would require as a necessary step establishing the authenticity of the tapes. It would also determine the truth about the elections—the behavior of the National Movement for Free Elections (NAMFREL), the COMELEC, the military, the Philippine National Police (PNP), the political parties, the polling firms (especially the inaccurate exit survey in Metro Manila). It can also delve into a recount of the controverted areas, a suggestion already pronounced by the administration. Despite pervasive skepticism about the appointing power, just like the Agrava Fact-Finding Board, it is still better to create an official body that would have the power to

subpoena officials and documents. Moreover, there are critical lessons that must be learned with respect to such obvious breach of national security.

Finally, the results of the fact finding provide a vital input to the impeachment process. But, given the expediency of the political atmosphere and the severity of partisan animosity, the two processes could be initiated and pursued simultaneously, reinforcing each other along the way. However, the two Houses are dominated by the administration, making a successful impeachment attempt unlikely at this point. Thus, the opposition hesitates to use this option. But that was the same initial assessment when the jueteng scandal broke out in the Estrada administration. Nonetheless, even if it is a long shot, there are still positive dividends from this process as it may draw out empirical data, especially since the tapes are a rich source of leads and there are enough modes of discovery. Besides, a 59 percent dissatisfaction rating could readily elicit public outrage.

Let me end with another biblical case—King David, who sent his general to the front line so he could marry the eventual widow. For this he had to atone, and as punishment he was ordered to dance naked on the streets of Jerusalem and to build the temple. Thereafter, his reign was the most glorious and prosperous for Israel. Arroyo remains possessed of the idea that history will remember her kindly for leaving three legacies—fiscal turnaround; shift to federal, unicameral parliamentary system; and final push in economic liberalization. Incidentally, in the Bible another King was punished with insanity for many years before being restored to the throne.

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**Wilson Fortaleza**

*President*

SANLAKAS

When SANLAKAS raised the “Resign All” slogan at the height of the anti-Estrada struggle, it was based on the belief that simply replacing Joseph Estrada with Gloria Macapagal Arroyo would not be enough. Sadly, however, while many agreed to the premises we laid down at the time, it was in fact the more “critical minds” of some civil society groups, including the most radical group among the Philippine Left, which raised a howl against it. Not because they saw it off beam, but

mainly because they found it too radical, if not so complicated, to suit their built-in strategy and tactics in advancing their struggles. As such, the “Erap out, Gloria in” formula became the common stand of the supposedly broad and progressive anti-Estrada front. The “critical minds” even rejected our proposal that the *Kongreso ng Mamamayang Pilipino* (KOMPIL [Congress of the Filipino People]) II, the middle-class forces behind Estrada’s ouster, which traces its roots to the first People Power, maintain itself as an independent and a platform-based coalition to push for the people’s agenda even after the fall of Estrada and the succession of Arroyo to power. Thus, as expected, KOMPIL II died on the day Arroyo was inaugurated at the EDSA Shrine.

Why do I have to reminisce the past and sound like a griping radical? It is because the political questions that confronted us before are exactly the same questions that are being posed on us now.

How weird and ridiculous we were before in the eyes of many when we pushed for the resignation not only of Estrada and Arroyo, but also those in the next line of succession. To complete the picture, what we wanted then as a progressive alternative to Estrada was a transitional “caretaker government,” the main task of which was to craft major and urgent political and economic reforms, institutionalizing them through a constitutional convention; after this, general elections would be held once the new constitution was ratified. Unfortunately, the whole picture was never completed, the fall of Estrada coming more swiftly than the rise of new alternatives.

It was pretty obvious that as early as 2000, even before the onset of the second People Power, Estrada’s political rivals, including Arroyo, who emerged only when Estrada’s downfall became more imminent, had already arrived at a consensus on the eventual Arroyo takeover. But is it not more disgraceful for the supposedly more critical “civil society,” political leaders, and conscientious members of the Church and the press to have failed to see the more obvious? That a simple Arroyo takeover without the corresponding changes in the rotten political and economic system would lead us nowhere. And, indeed, it has brought us to where we are right now.

The only reason why I have to go back to this part of our history is because I see the need to link EDSA 1, 2, and the current crisis. We firmly believe that it is not only Arroyo, but also the post-EDSA regimes, which are collapsing in the eyes of the masses. The high level of pessimism among our people, as confirmed by many surveys, reveals the extent of the political, economic, and social crisis the country is



facing now. The recent survey by Pulse Asia, which showed Arroyo's approval rating plunge to -53 and the previous surveys of other polling agencies showing Filipinos' low regard for our institutions are previews to a sinking ship and a dying socioeconomic and political system.

So where do we go from here? Are there enough reasons to remove Arroyo from office? Is there a better alternative? Positions vary, depending on which group is putting forward an alternative. More so, on the question of what course of action should be taken. But it is good to note that as of late, the "Hello Garci" tape provided the spark that polarized many forces for taking the "Oust Gloria" stand. There are the likes of General Fortunato Abat, for instance, who is calling for Arroyo to step down in order to set up a junta-type "revolutionary council" with him as its leader, and thereafter work on the transition to a federal-parliamentary system. His movement, he claimed, has the backing of retired and active generals. On the other hand, the main opposition camp (Estrada, Fernando Poe Jr., and Panfilo Lacson factions combined) has yet to lay down a more coherent position. As of now, they are still playing on several options, such as resignation and impeachment, but reject an outright takeover of the vice president. Senator Aquilino Pimentel Jr., for instance, is pushing for Senate President Franklin Drilon to take charge; Drilon's defined role would be to call for a special election. Former presidential candidates Bro. Eddie Villanueva and Raul Roco are open to a transitional setup and a snap election, respectively. The "constitutionalists," of course, are leaving the resolution of the case to what is written in the books.

Now, how do we read this variety of calls? Is there a better pick from this array of leaders that can be proclaimed now as the viable alternative? For us, it is none of the above. Arroyo's resignation would simply mean a takeover of her vice president. Snap elections conducted under the same setup will only produce the same traditional politicians that already abound. We also reject the junta-type council formula. Our position today, consistent with our position before, is for the people and the progressive movement not to become mere appendage to any of the factions of the ruling elite but be themselves the author of an independent alternative pole. This is our principle. This is our thrust.

The alternative to this kind of crisis has never been so complicated than the crisis itself that we are facing now. This requires not a simple rub-on-the-surface alternative. Remove Gloria from the frame and the same picture of hopelessness and despair will appear. Let us, rather,

take this opportunity as a chance to move forward rather than get perpetually drowned in this pathetic sense of immobility due to lack of better alternatives. And we are therefore glad to announce that on June 29, more than one hundred organizations and progressive individuals have come together in the University of the Philippines (UP) to launch the *Laban ng Masa* (Struggle of the Masses) coalition, now headed by former UP president Francisco Nemenzo. The coalition now serves as the independent pole of the struggling people nationwide who are fighting not only for the ouster of Arroyo but also for a change in the country's rotten political system. Its alternative is the setting up of a transitional revolutionary government (TRG) as opposed to a simple vice-presidential takeover or the ascendancy of another *trapo* (traditional politician) government. The main task of the transition government is to pave the way for the effective transition from elite rule to genuine democracy, which is going to be done through far-reaching political, electoral, and economic reforms before the conduct of a fresh election.

The Filipino people, especially the poor, have more than enough reasons to fight for this kind of alternative. Even without the wiretapped conversations, Arroyo's track record in improving the plight of the poor is despicable. The problem is, therefore, beyond the presidency and election fraud. People have had enough of poverty and crisis. We have had enough of corrupt governments and institutions. We have had enough of elite rule that has prevailed for more than one hundred years now. We have no doubt that this statement of fact is shared by the majority of the Filipino people such as the workers, farmers, urban poor, and youth—they who most suffer the brunt of the economic crisis and political domination of the elite. It is them who constitute the backbone of our movement. Enough of Arroyo, but her ouster is not enough.

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Gloria Macapagal Arroyo has said that Filipinos have a penchant for shooting themselves in the foot. This is a sweeping statement as she was probably referring only to traditional politicians. National Security

Adviser Norberto Gonzales has been saying that even if Arroyo steps down, her successor will have to face the same wrath of the masses as president. He is, therefore, considering a scenario in which an EDSA 3, 4, 5, and so forth are highly probable. Maybe we will get it right in EDSA 20. I do not think that there is anything wrong in making our leaders accountable even in a very constitutional sense.

My concern is actually the reference made by a lot of personalities to a “constitutional process” as the best solution to the crisis besetting the Arroyo administration. There is a spin to this, which is “constitutional is equal to impeachment.” That is, a reading of just one clause in Article 7, Section 8. “Constitutional” can mean a lot of other things and let me go through some of the flexibilities that are provided in the constitution. On September 21, 1972, a president desperate for power proclaimed Presidential Decree (PD) 1081 and declared martial law. The ostensible reason was that the New People’s Army (NPA) was getting stronger. But the reality was that the NPA comprised only a few squads and they were stuck in Region 2, unable to get out because their arms had been interdicted.

He announced Proclamation 1081 while the constitutional convention was in process and he started to arrest the people in the convention so that the entire project of drafting a constitution could not be concluded. He was rushing in order to finish his entire project before the Senate could convene in January of that year. Therefore, he came out with a PD 73, which allowed the constitution, which had already been drafted by the constitutional convention, to be ratified. When he came with a PD 73, a group of lawyers filed a suit in the Supreme Court of the Republic of the Philippines, questioning the process by which Marcos wanted to submit the constitution for ratification through the *barangay* (village) assembly and not through secret balloting. People had to raise their hands for fear of getting shot. The result of that plebiscite was 14 million voting for “Yes,” when the electorate at the time was registered at only 12 million.

Ferdinand Marcos, maybe not yet sure about the majority in the Supreme Court, issued General Order 20 postponing the plebiscite and, therefore, the cases were declared moot and academic. Afterward, a series of presidential decrees were issued: PD 86, again calling for referendum; PD 86a, in which Marcos inserted some questions to be subject to the referendum. The first question was on whether the people would want a new constitution. Second, if the people wanted him to call the ratification of the new constitution. Javellana et al. filed

a case in the Supreme Court, after which Marcos issued Letter of Instruction and Proclamation 1102, declaring that the new constitution had already been ratified. The Supreme Court was caught with a *fait accompli*.

This became the dilemma of the Supreme Court because the 1935 Constitution said that the only way to ratify a constitution was by election through secret balloting. The Supreme Court, therefore, had to come out with a decision, considering that it was already the “New Society.” In March 1973, one volume of the Supreme Court reports annotated one of the longest decisions of the Supreme Court.

The first question they asked was whether it is a political question to actually tackle the issue. The Supreme Court said that it was not a political question so they could tackle it. The second question was whether the constitution was validly ratified. Majority of them said that it was not validly ratified. Next question, was there acquiescence by the people? Four voted “Yes”; another four voted that they did not know because it was Martial Law. Two said there was no such thing as acquiescence as a doctrine. There was no majority, hence, the Supreme Court put an imprimatur on a constitution that came not from the 1935 Constitution, and therefore said that this constitution is in full force. In effect, there was no further legal obstacle to it. That is formula number one.

Notice, here it is one person clinging to power and using the constitution in order to cover his tracks. This is different from 1986 when the constitution came after the “revolutionary forces or those in that coup were able to gain power.” There was already a balance of political and social power. And they started to write the constitution. You would see the balance in the Constitutional Commission that wrote the 1987 Constitution. You had people like Lino Brocka, Rene Sarmiento, Chito Gascon, and those from the Anthropology Department of the University of the Philippines. These were people who, if they ran for an election, would not win; if they ran for a constitutional convention would not win either. But that represented the balance at the time. They rewrote the constitution and did not pretend that it came from the 1973 Constitution. They declared a provisional revolutionary government after which they had the constitution ratified.

A group of intrepid lawyers called the Lawyers League for a Better Philippines filed a case with the Supreme Court and said this constitution was not ratified in accordance with the 1973 Constitution

of Marcos, hence, it was unconstitutional. The case's reply was when sovereign Filipinos had already spoken, whatever the result of that kind of a speech would no longer be justiciable and therefore the constitution was valid. That was a Supreme Court that declared that the 1987 Constitution, although it did not come from the 1973 Constitution, was in full force and effect. That is formula number two.

Formula number three—we are all familiar with this—Gloria Macapagal Arroyo ascending into power because President Joseph Estrada either resigned or took a leave of absence. The problem was that the Supreme Court was reading the provision resignation but there was no resignation letter. In fact, there was a letter of leave from the president, informing the senate president and the speaker of the house that he was temporarily vacating the Office of the President. The Supreme Court, once again, came up with a lengthy decision and said in *Estrada vs. Disierto* that, yes, the president had already resigned.

What am I driving at? The legitimacy of a constitution actually depends not principally on what is now written in it but on how it is going to be interpreted by some people in the Supreme Court under the circumstances when they are about to read it. Difficult cases make very bad law but it is still law. So this concept of a revolutionary government, I think, is just the configuration that we are talking about. It is possible and, yes, it is constitutional.

Let us look at the text of this present constitution. This present constitution is highly flexible. It says, "Resignation is an option for the president." It does not say that resignation is shame. "The vice president may be acting president if the president dies"—but that is a remote possibility—"or there is permanent disability," that is, physical not mental. Then the last one is removal by impeachment. There is nothing in the constitution that tells us what the reasons could be in the resignation. It is an option granted to her and the succession is very clear. There is no ambiguity in the succession: the vice president takes over. If the vice president dies, becomes permanently disabled, resigns or is also impeached, then the senate president takes over but only temporarily. While waiting for the result of the special election, however, the senate president may also call for, or ask his allies to convene a constitutional convention. That is also possible because as a sitting president you have to attend to a lot of things. There are other powers of the president that are embedded in it. Now, if the senate president cannot make it or decline (like in the case of Bolivia), then it is the speaker of the House of Representatives that becomes the

president. However, if the speaker has a flash of insight and suddenly realizes that it is his/her historical role to decline then, according to law, it is the chief justice of the Republic of the Philippines who takes over.

But there is a weakness in that kind of a process. You have the COMELEC, which is independent. Article 9, Section 1 states that there are independent commissions, one of which is the COMELEC. This is the provision that the UP College of Law used when President Arroyo called a recently appointed and most junior commissioner, which might make you wonder. The mere phone call is a breach of her oath of office under Section 5, which is to defend and protect the constitution, and Section 1, Article 11—utmost fidelity, integrity—therefore it is a culpable violation of the constitution. So you have an independent commission. The president cannot ask you to resign. However, with the pressure going on right now, it might be possible for them to resign and there is a possibility to have some fair elections. Those are some of the options available under the constitution.

Impeachment: is that possible? Let us look at the legal ground and then look at the process. There are six legal scenarios. Among the six, I counted four that can be used against this sitting president; two do not need authenticity and miscibility. One is culpable violation of the constitution. The mere act of calling a commissioner is already, to us, a culpable violation. It is not a lapse of judgment. How can you be president of the Republic of the Philippines, charged with the full implementation of all the law? How would you not know that you are not supposed to call?

Well, now a lot of politicians have admitted to having called a COMELEC commissioner at one time or other. It does not change the fact that a law has been violated. There are a lot of thieves but the law on theft has not been amended just because there are so many robbers and thieves. First, culpable violation, which is a ground for impeachment. Second, which is a little bit broader, is betrayal of the public trust. What is betrayal of the public trust? It is sufficiently to allow whoever will sit in judgment to determine. That is also a problem. The third is bribery, and I would say that the president is liable. Listening to the tapes, if these were actually authenticated and admissible, would be proof of violation of Article 210 and Article 21215 of the Revised Penal Code—direct bribery and collusion to commit corruption.

She has also violated the fourth ground, graft and corruption. Look at Republic Act 1390, the Anti-Graft and Corrupt Practices Act

Section 3 Paragraph A: "Persuading another official to do something which is contrary to law." What is contrary to law? Section 261 of the Revised Election Code states that "anything from tampering with election returns to actually doing something which will cause undue disadvantage to another private individual, which can be another candidate to an election." Some of the candidates who ran were not able to call COMELEC officials but she apparently had cellphone numbers of the COMELEC officials and hence, on that score alone she could have violated it.

The grounds are very clear. Now, your constitutional order has removed the power to make judgment on this from the court system and put it into the political department by tradition of a liberal democratic order. And hence it has to go to the House of Representatives and from there, the case goes to the Senate. The House of Representative still have to talk about the impeachment rules because there are some provisions that were declared as unconstitutional and they are going to sit as a committee. You see, committee hearings can drag and, therefore, as these progress, alliances can change. In the Philippines, for so long as you see that the coattails of the president is not large enough you will see people changing alliances. Therefore, it might become a possibility. So I am saying that constitutional change is also possible and radical changes can also be viable under the constitution.

Why am I insisting on this? Because, number one, the legitimacy of a next government, whether revolutionary in form and substance, the problem would be to make the alliances and the balance of political and social power whole. Now, without law, the only thing that will hold it will be coercive force. We are a multiethnic Third World country. We are very pluralistic and there are so many classes and so many occupants of the lower class. The point is, you cannot have a full consensus supporting the next balance of political power. At this point, determining who will sit in the transition council is difficult. Therefore, you would have to have something that will support the next elite. It may not be economic. It should not be economic, but, on the other hand, without that you need coercive powers. The insurgency forces may bond together but I do not know if they can hold against the Armed Forces of the Philippines. Junior officers might turn around but they will demand a say in the council, so that is one option. The second option is the legitimacy covered in Javellana. The revolution stopped with the Supreme Court. In the case of Lawyers League for a Better Philippines, it did not continue further.

The constitution is a statement reflecting some form of balance among those who have become the political elite. And it is either you used that as a clout for legitimacy of the next government, or you would have perhaps a coercive force behind it, or anything or both. My point is, you do not have a revolution overnight. You will have radical changes. In the next administration, you will still have your own problem. When President Arroyo resigns, Noli de Castro will have to take over if he wants to. It is entirely his option. If he takes that option and if his cabinet is not strong enough, then he will get the cracks. If he cannot form the alliances then his government might not be able to hold. He might have to call for a constitutional convention just to perpetuate himself for a few more months. Now, of course, after that, when people are not satisfied, then there will be another option under the next constitution.

My point is: why are we so scared about getting someone to answer and be accountable? Is it because of the economic crisis that will happen? Well, it is already an economic crisis anyway and the only problem we have is to try to fix our political system. Maybe in EDSA 20, we will get it right. But right now it is a process of experimentation. President Arroyo said last night that the international community will laugh at us. But the international community is laughing at us and has been laughing at us.

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