

CONSIDERING 'PEOPLE POWER' THROUGH THE IDEA OF REVOLUTIONS UNDER INTERNATIONAL LAW

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In *David v. Macapagal-Arroyo*⁶¹⁷, the Philippine Supreme Court referenced an oft-quoted phrase usually invoked in debates on defining terrorism: "One country's terrorist is another country's freedom fighter." What follows is an inventory of contexts- and individuals who have been dubbed by state authorities as terrorists, when they have been remembered more widely as revolutionaries or freedom fighters. The list includes Nelson Mandela, who was incarcerated for his anti-apartheid activism before becoming the first democratically elected president of South Africa. Today, Mandela's imprint on international law is undeniable; the "soft law" instrument known as the Nelson Mandela Rules⁶¹⁸ prescribe the minimum standards for the treatment of persons deprived of liberty.

The Philippines' democratic politics in the last forty years have been framed by the political legacy of EDSA or the People Power Revolution of 1986. Whichever nomenclature is used, the word 'revolution' appears as a description of what transpired when the brutal regime of Ferdinand Marcos Sr. was toppled by popular action. The mode of regime change that happened in the People Power Revolution is always described as "peaceful" or "non-aggressive"⁶¹⁹ as it did not involve armed hostilities.

"Revolution" is a word that we find in the realm of politics and a term undefined by law. Academic studies of revolutions are mainly found in political

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⁶¹⁷ *David v. Arroyo*, G.R. No. 171396, 3 May 2006 (Phil.), available at: <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/41473>.

⁶¹⁸ UNGA Res. 70/175, annex, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 17 December 2015, available at: https://www.un.org/en/events/mandeladay/mandela_rules.shtml.

⁶¹⁹ Fernando Gonzaga, "People Power as Immanent Collectivity: Re-Imagining the Miracle of the 1986 EDSA Revolution as Divine Justice", *Kritika Kultura*, Vol. 12, No. 12, 2009, available at: <https://doi.org/10.13185/1656-152x.1055>.

science⁶²⁰ and have been a central preoccupation of political theory, from Karl Marx to Hannah Arendt.⁶²¹ This lack of a definition inheres in the concept of revolutions itself: revolutions signal change and reconstitution of the social and political order. In these moments of rupture, law itself is in the process of profound transformation. A product of this re-constitutive action is the 1987 Constitution, ratified after the People Power Revolution. Yet despite the lack of a legal definition of revolutions, it is a significant concept that intersects with more recognizable ideas and doctrines of international law.

The “legal notion of recognition”⁶²² is one such concept. Newly declared states, especially those that fought against regimes of occupation or colonization, have sought recognition as a way to become subjects of international law formally. Historically, revolutions or wars were seen as ineffective ways of conferring titles to such entities without the imprimatur of the former colonial power. People Power was not such an instance. Instead, the Supreme Court itself characterizes it as an “extra constitutional”⁶²³ overthrow of a government. The court concedes the extraordinary circumstances of 1986, and on those parameters, ascribed it the nomenclature of a revolution.

From the scholarly tradition of critical approaches to international law, conceived broadly, political and legal categories must be examined in terms of how they intersect with history and politics. In the work *Revolutions in International Law*,⁶²⁴ various scholars contend with the far-reaching implications of two events in 1917: the Bolshevik Revolution and the adoption of the

⁶²⁰ Raymond Tanter and Manus Midlarsky, “A Theory of Revolution”, *Journal of Conflict Resolution*, Vol. 11, 1967, p. 264, available at: <https://backend.production.deepblue-documents.lib.umich.edu/server/api/core/bitstreams/f8567776-b67a-4331-98b2-22eb12789b8f/content>.

⁶²¹ Kathleen B. Jones, “On Revolution”, *Amor Mundi*, 8 July 2013, available at: <https://hac.bard.edu/amor-mundi/on-revolution-2013-07-08>.

⁶²² Jochen A. Frowein, “Recognition”, in *Max Planck Encyclopedia of Public International Law*, December 2010, available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1086>.

⁶²³ *Estrada v. Desierto*, G.R. No. 146710-15, 2 March 2001 (Phil.), available at: <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/50524>.

⁶²⁴ Kathryn Greenman et al. (eds), *Revolutions in International Law: The Legacies of 1917*, Cambridge University Press, Cambridge, 2021, available at: <https://www.cambridge.org/core/books/revolutions-in-international-law/34C7110EDAFB049BD5E9D0F1A47BB29>.

revolutionary constitution in Mexico. They likewise take these revolutionary moments as instances of profound, radical change. While international law does not regulate the term “revolutions,” these scholars scrutinize the implicit ways in which international law establishes “authorized” ways of enacting radical change. In this vein, membership in the international community must comply with “acceptable parameters,” to the exclusion of other forms of revolutionary struggle. The “unfinished” project of decolonization and enduring struggles against the lingering effects of colonial rule are complicated by this idea. Relatedly, the content of the right to self-determination becomes a zone for negotiating the idea of such acceptable parameters for profound social change. The right to self-determination—a legal articulation of a powerful idea tied to human freedom—becomes subject to forces that narrow its scope.

When analyzed against the matrix of “acceptable parameters,” People Power could visibly fit the allowable modes of regime change. People Power is remembered as a peaceful event, with a civilian government installed shortly after. However, People Power itself did not occur out of a vacuum. The Philippines experienced years of brutal dictatorship, prompting political struggle through various means, including armed revolutionary action. Under conditions of political oppression, peaceful regime change becomes increasingly challenging to pursue.

In our contemporary landscape, some of these forms of struggle have been legally foreclosed and instead dangerously labelled as acts of terrorism or wanton violence. And while the current regime of counterterrorism has mostly passed the scrutiny of the Supreme Court—even partially through reasoning based on international law—foundational questions remain on how we view acts that aspire to fundamental social change.