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# What Happens When Institutions Do Not Work: *Jueteng*, Crises of Presidential Legitimacy, and Electoral Failures in the Philippines\*

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## Abstract

In the Millennium Development Goals discussion, the question of how we eliminate bad institutions that perpetuate global poverty often arises. Democracy and participatory institutions are proposed as meta-institutions that are meant to create better ones. Democracies, however, also stumble. We study two episodes of crisis of presidential legitimacy in the Philippines: one arising from perceived electoral failure and the other from involvement in an illegal numbers game called *Jueteng*. A crisis of legitimacy can arise because the “declared winner” may not be the “true winner” because of the compromise of mechanisms of recall and accountability, or because the “true winner” reveals himself or herself exposed to be the “incorrect choice,” or both. The ensuing crisis of legitimacy, in turn, robs the executive of political mandate and momentum for reform. In the struggle to survive, executive autonomy is traded away as the power brokers of the status quo are enlisted for the defense. Thus, democracy’s march to good institutions may be blocked or even reversed.

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## I. Introduction

That “institutions matter” has become virtually canonical in economics due to evidence from numerous confirming country and cross-country studies (e.g., Acemoglu, John-

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son, and Robinson 2001; Easterly and Levine 2002; Rodrik, Subramanian, and Trebbi 2002). The ties that bind economic success to good institutions take many familiar forms. The most fundamental is that vigorous market exchange is predicated on a modicum of enabling property rights and enforcement of contracts (North 1990; North and Weingast 1989). Another route goes through the allocation of resources and talent (Murphy, Shleifer, and Vishny 1991; Fabella 1996). Where rules and enforcement are subject to trade, rent seeking drives out value adding as the primary source of wealth and the destination of talent and investment. Those whose talents lean toward technical competence take to friendlier climes. Finally, good institutions boost the polity's capacity for collective action, which is so precious in nation building.

Institutions are, however, endogenous (Rodrik 1999; Root 1999; Acemoglu 2002; Aghion, Alesina, and Trebbi 2002), and the crucial question is how one acquires good institutions (Rodrik 1999; La Porta et al. 1998). The initial position is usually not a blank slate, but one beset by a slew of bad institutions, which perpetuate themselves through the rents they generate. Bad institutions persist because they are consistent with the dominant group's drive for wealth and power. This in turn may be crucially related to public accountability. Root (1999) suggests that accountability to the broad public rather than a narrow one serves to tilt the incentives toward better institutions. The first challenge of economic development is political, because it is to build institutions that make the leadership accountable to citizens. These mechanisms emphasize the provision of "voice" à la Hirschman (1970) to the broad polity.

In practice, the mechanisms of accountability are themselves targets of incessant assault. These mechanisms must depend after all on other institutions that enforce laws. The compromise of the institutions responsible for legal adjudication and legal enforcement inevitably leads to the compromise of the mechanisms of accountability, rendering the latter unable to confer the executive legitimacy and autonomy, which are needed to anchor reform.

One of these institutions is a free press, which, as Sen (1981) argued, has been robustly associated with the ability of society to avert widespread death by famine through its role as conduit of timely information and forum of competing alternatives. Another mechanism emphasizing public accountability is democracy, which Rodrik (1999) calls a "meta-institution for building good institutions." As a mechanism of voice and recall, electoral democracy offers a window for the tunneling out of bad stable equilibrium. Bad institutions tend to deliver poor outcomes that generate social and economic crises leading to electoral defeat and renewal. The story is

simple and appealing. Rodrik (1999) thus views democracy as the legitimate target of multilateral agencies' institutional conditionality. However, democracy has many forms, and some democracies stumble.

The free press may prostitute itself (known pejoratively as "envelopmental journalism") to well-entrenched vested interests. Indeed, vested interests maintain broadcast and television networks that pay their way only during electoral exercises. Journalists who are not for sale can get the bullet treatment. The Philippines boasts one of the highest rates of violent fatalities among journalists. Mancur Olson's (1965) "tyranny of the minority" is an all-too-common democratic quagmire.

The electoral exercise may be vitiated by numerous frauds that spawn electoral failures. Electoral failures are especially potent triggers of crises of legitimacy. Even with a well-meaning chief executive, meaningful reforms in democratic regimes still require a painstaking buildup of momentum and the judicious deployment of political mandate acquired in the wake of electoral victory. A crisis of legitimacy simply empties the treasury of political capital and destroys the momentum for change. Barzel (2002) cogently argues that the extent of delegation of political authority by the citizens depends on the effectiveness of the collective action mechanisms of recall and accountability.

These mechanisms also substitute for the required credible commitments that allow a limited political Coase theorem to operate (Nye 1997; Acemoglu 2002). Specifically, power may accrue to those who can best exercise it for the welfare of the polity, and therefore introduce better institutions, if credible commitments can be offered that deter abuse of power. Compromise these mechanisms, and the allocation of power will be largely determined by initial conditions, namely, the slew of existing bad institutions.

In the delegation of political authority, the citizenry as principal accepts a fundamental gamble (Nye 1997; Barzel 2002; North 1990; Aghion, Alesina, and Trebbi 2002): the true behavioral type of the delegate (ranging from benevolence to predation) is not observable. Mechanisms of screening, voice, and recall are thus set up *ex ante* to reduce the likelihood of a recall. A crisis of legitimacy can also arise *ex post*, either because the true winner reveals his type by exhibiting unaccustomed predatory tendencies or more frequently because the true winner insists on violating the boundaries of long-accepted ideological compromise. A recent example of the latter is Hugo Chavez of Venezuela. It is the empowered citizenry's answer, however feeble, to the age-old conundrum: *quis custodes custodiet* ("Who guards the guardians of the law?")

The Philippines has, since independence in 1946, had the formal trappings of a free press and of an electoral democracy. It has three co-equal and independent branches of government serving the check-and-balance function. The president, the vice president, and members of the Philippine senate are elected at large. The president is limited by the constitution to one six-year term in order to avoid the cost of an incumbent candidacy. The idea of a one-term limit became compelling after the authoritarian regime of Ferdinand Marcos collapsed in 1986. This was followed by 20 years of stormy democracy.

The economic outcome has not been flattering to democracy advocates. The Philippines is rated by Transparency International as the second-most-corrupt country in Asia. Lee Kuan Yew occasionally cites the Philippines as the horror story that comes with freewheeling democracy. The World Bank's *The East Asian Miracle* (1993) studiously omitted the Philippines from the ranks of Asian high performers. The deprecatory description "a Latin American country in Asia" now even discomfits Latin Americans.

This paper focuses on how nonideological crises of presidential legitimacy in the Philippines have sprung largely from electoral failures and complicity with an illegal numbers game called *Jueteng*. Both of these involve laws (the election law and the antigambling law) that are lightly enforced, if at all, largely because of the capture in both cases of the enforcement organs. What is novel is the height of power it has touched and the degree of disorder it has wrought. On the *Jueteng* prohibition, prescient, indeed, was Adam Smith's observation in *The Wealth of Nations* (1776, book IV, chapter II): "every such regulation introduces some degree of disorder into the constitution of the state which it will be difficult afterwards to cure without occasioning another disorder." When the state overreaches, the wage is disorder. This Smithian "disorder" translates into loss of executive autonomy and the consequent loss of momentum for change and reform.

This paper is organized as follows. Given the great importance of the role that the illegal numbers game *Jueteng* has played in recent Philippine history, section 2 explains the *Jueteng* operation as a nexus of contracts despite, and in defiance of, the country's antigambling law. This enterprise allows large rewards provided that these contracts succeed in reducing ex post opportunism and keeping the law at bay. This latter requires the capture of the state enforcement apparatus by the *Jueteng* lords. This capture, in turn, not only protects the operator from the law but also grants him a *quasifranchise* to operate in his territory. This unfortunate situation is produced by a weak state, where laws and the organs of enforcement are for sale. The fact is that the illegalization of *Jueteng* has led to progressively deeper involve-

ment by the enforcement hierarchy in the illegal activity and the erosion of already weak governance.

Section 3 outlines the good start given to the reform process in the Ramos presidency. Sections 4 and 5 analyze the gradual erosion of legitimacy and eventual onset of the crisis of legitimacy in the presidencies of Estrada and Arroyo, respectively, by focusing on the roles played by *Jueteng* and by electoral failure. Section 6 explains how the interaction between the two defects increased fragility. Section 7 discusses possible remedies in light of their prospects for adoption. Section 8 concludes the paper.

## 2. *Jueteng*: The poor man's numbers game

Estimates of *Jueteng* gross revenue vary widely, but \$500 million appears to be the ceiling (Coronel 2000). About 30 percent of this is paid out as protection money (*intelihensiya*) to key enforcement and political figures. Another 30 percent represents the operator's surplus. The rest pays for the winnings, the employee shares, and other expenses. Unlike other gambling activities, *Jueteng* caters to the poorest in society. This excites the moralists, who claim to protect the helpless by ensuring *Jueteng*'s illegal status. This, in turn, anchors the many special features of *Jueteng* as an institution and an enduring entity.

The following stylized facts are critical for understanding *Jueteng*:

1. *Jueteng* bets are low, down to P1.00 by some accounts and to P0.25 by others. By contrast, legal gambling activities start at P10.00. Bettors choose any two numbers from 1 to 37. A person can win from P400 to P1,000 depending on the number of winners and total revenue.
2. It is extremely bettor-friendly: bet collectors (*cobradors*) come in the morning to blighted communities and work sites, deliver winnings or news of winnings of the previous night's draw, collect bets, and exchange pleasantries. Unlike those associated with most forms of gambling (e.g., *sabong*, bingo, and *novenas*), a *Jueteng* transaction takes hardly any time.
3. It is local in the extreme. Winners are usually local persons whose tales of good fortune are woven in the fabric of local lore. To the local mind, numbers and number combinations map mysteriously onto local events like dreams, births, deaths, and peccadilloes.
4. Unlike the antisocial nature of many legally prohibited activities (e.g., use of alcohol and cocaine), *Jueteng* traffics "hope" of relief and of the rare chance to strengthen community bonds through *balato* (sharing of good fortune).
5. A *Jueteng* operation requires minimal fixed cost and assets. *Bola* (draw) can be

- done in a garage or the back of a van, and the paraphernalia can be spirited away to safety at a moment's notice. This means there is little economic barrier to entry. However, it does require as initial condition an adequate capacity of the operator to enforce implicit relational contracts. Repeat business is the operator's only incentive to honor winnings, because no claim stubs are issued.
6. The extent of the operation depends on who is the operator's *padrino* (protector). The *padrino* acts as franchiser and determines the operator's turf. He collects *intelihensiya* as quid pro quo, keeps his share, and passes the rest to his superiors. The person sitting at the top of the enforcement hierarchy can collect from all the areas. Turf disputes and takeovers are more often resolved at the level of the *padrino* than by shoot-outs on the street.
  7. *Jueteng* profits finance local social safety nets, maintain local media as retainers, and keep local clergy in tow. Local government executives figure heavily among operators. In many provinces, towns, and cities, the duly elected local executive is the *Jueteng* operator. Mayor Hagedorn of Puerto Princesa, a much-admired local executive, is a self-confessed former *Jueteng* lord. In one town, San Jose, Batangas, the Association of Barrio Captains (Alday 2005) openly ran *Jueteng* with the mayor's blessing. The notorious Mayor Sanchez of Calauan, Laguna, now in prison for rape and murder, was a feared *Jueteng* operator. The local executive who refuses the opportunity puts his (or his wife's) election bid in jeopardy. In one Pangasinan town, the "*cobrador* corps" numbered 2,000, easily the biggest industry and a formidable election machinery (Coronel 2000). Quipped one mayor, "If we don't do it, our enemies will do it."
  8. *Jueteng* as a virtual "guerilla industry" enjoys a wide popular local support. Well-meaning local enforcers whose wives and mothers may also bet are in a bind. Popular support for sustained clamping down on *Jueteng* is hardly visible. The anti-*Jueteng* noise is a distant rumble that calls only occasionally because there are many more serious crimes (e.g., drugs, felonies, thefts) whose resolutions earn greater local gratitude.
  9. Thus, the dominant attitude is summed up in the Casablanca formula: "Round up the usual suspects." When the distant rumble comes knocking and demands local action, the charade starts. Token crackdowns are announced, photo-ops are contrived over reconfiscated paraphernalia, and operators go for much-needed vacations to parts unknown. The pliant press then trumpets the elimination of *Jueteng*. The fury soon exhausts itself, and business-as-usual returns.
  10. That *Jueteng* will survive the current frenzy, including the appointment by President Arroyo of an anti-*Jueteng* czar in the person of Mayor Hagedorn, is a sure bet.

The legal prohibition of *Jueteng* amounts to raising the cost of a *Jueteng* operation. Where the state is strong, this leads to the erosion of operating surplus and forces

marginal operators out of business. In weak states, operators simply vertically integrate into enforcement-prevention by contracting the services of the enforcement organs and capturing the local political powers. A side benefit to the operator is enforcement distortion: the operator is granted a quasi franchise in his or her partners' sphere of influence. To reduce transaction costs further, the operator himself or herself often runs for and captures the local executive mantle. This ensures stability of operation but must be weighed against the probability of losing the election and incurring the enmity of the victorious rival. Once the operation has been established, it is likely that the victorious rival will take over rather than stop *Jueteng*. It is helpful to view the *Jueteng* operation as a nexus of contracts among several players (Fabella 2005b).

### 3. The Good Start by Fidel Ramos: Reforms and executive autonomy

When one thinks of reforms in the Philippine economy, the Ramos presidency (1992–97) stands out. It was an era of aggressive deregulation, privatization, and trade liberalization unlike previous market reforms, which were grudging concessions to multilateral creditors' conditionality. Such past liberalization had little local support. The Ramos reform program had a number of favorable tailwinds: the collapse of the Soviet bloc marginalized objections to market economics, direct foreign and portfolio investors were lining up to reward pro-market reforms, and the ASEAN Common Effective Preferential Tariff Agreement lent courage to trade liberalization.

The political arena was also favorable to Ramos. The coup rumors and military restiveness that beleaguered the Aquino presidency had died out. General Ramos won the presidency only by a plurality (about a quarter of the votes), and without much rancor. The firm belief was that, if there was cheating, it was due to the incompetence of the Comelec (the Commission of Elections), which oversaw the conduct of the elections. Ramos was not an incumbent, and outgoing President Corazon Aquino, though supportive, was viewed as protecting the democratic process rather than the players. While President Ramos had a small electoral mandate, he engineered for himself a degree of executive autonomy not seen since 1986. Untouched by legitimacy questions, he embarked on bold reform initiatives. He speedily wangled emergency powers to address the severe power crisis and pushed quick deregulation of the telecoms and transport sectors. He met with world leaders and successfully cultivated the image of a statesman. He empowered technocrats and, as evidenced by the privatization of metro Manila water services, he personally cleared bureaucratic hurdles. What was viewed initially as improbable happened in 1997 (see Fabella 2005a).

While there were some glaring mistakes (e.g., the exchange rate policy and the over-generous take-or-pay concessions to power investors), the consensus is that the Ramos presidency was a high point of reform. Democracy seemed to have found a winning formula. Unfortunately, it proved to be an exception.

#### 4. The First *Jueteng* Crisis: The predatory ways of Joseph “Erap” Estrada

In 1998, Joseph Estrada became the 13th president of the Philippines after winning a landslide election victory as an opposition candidate. He assumed office at the onset of the Asian crisis and assembled an able and respected economic team, which for starters succeeded in dissuading the IMF from insisting on its orthodox monetarist prescription for the Philippines. Things looked promising. He was, however, forced to leave after only serving three years of his six-year tenure. The immediate trigger was the “*Jueteng* 2000 scandal” (see, e.g., Coronel 2000; Fabella 2001a). How did this happen?

Under the guise of legalizing *Jueteng*, an Estrada crony, Charlie “Atong” Ang, devised the game “Bingo-2 Ball.” Bingo-2 Ball was to be operated by the Philippine Amusement and Gaming Corporation (known as Pagcor)—the state gaming agency that runs legal gambling activities. This play would cleverly take *Jueteng* out of the pall of the antigambling law without the need for a new law. Bingo was already a legal and widely played gambling pastime. The strategy was to recognize an active *Jueteng* operator in a region or locale and grant him a legal franchise. As legal franchisees, these operators no longer needed the protection of local officials and enforcement operatives. The franchise contract stipulated that 27 percent of gross collections was to be paid to a private entity awarded the franchise without bidding by Pagcor to run Bingo-2 Ball. Ang owned this private entity, fronting, some say, for President Estrada. The franchise fee was close to the standard 30 percent share of protection money in gross collection in the prefranchise era.

The result was that the whole previously dispersed protection payoff would be centralized. Government, as a whole, took its cut by way of the franchise fee paid by the private entity to Pagcor and the corporate income tax (32 percent) on its income. The owners of the private firm would have enormously increased their share, assuming that they were already on the take before that. This ploy effectively transferred the shares of the local enforcement, officialdom, and the military in the protection pot to the private entity and the government.

The enfranchisement of some, however, inevitably meant the disenfranchisement of many other rival operators. This also meant huge revenue losses to local police, local



ected officials, the military, and even congressmen. The franchisees would demand that the local (provincial or regional) police force prosecute illegal rivals, thus forming a local political and financial constituency against illegal *Jueteng*. These rivals might opt to become subfranchisees at thin margins or continue the usual arrangement with local police, who would then be under the gun from the Office of the President, which appoints or monitors them. Nonfranchisees would have simply lost a monumental *padrino* war and eventually have run dry.

This was too much to swallow for one important scorned operator, Luis “Chavit” Singson. He was the provincial governor of Ilocos Sur, a national figure in the influential tobacco lobby, and rumored to be the premier *Jueteng* operator in the Ilocos Region. Chavit Singson did not get the franchise in his region. It was given to his brother and chief rival “Bonito” Singson, disenfranchising Chavit Singson unceremoniously. Why Chavit Singson, who claimed to be Estrada’s *Jueteng* bagman between 1998 and 2000 before the Bingo-2 Ball scheme was crafted, was left out in the cold is not clear. The plausible reason could have been a rift between Ang and Chavit Singson, both vying for Estrada’s anointment as chief *Jueteng* liaison.

Chavit Singson began threatening to denounce the clever Bingo-2 Ball project as an odyssey of presidential greed. He said he would expose President Estrada as the premier *Jueteng* protector, whose share had been delivered by none other than Chavit himself, and he claimed he had detailed pre-2000 records to prove it. Estrada’s henchmen panicked and responded by, in Chavit’s view, an attempted abduction preparatory to “salvaging” (summary execution) in a famous postmidnight incident. Chavit, in retaliation and to save his life, went public on 3 October 2000 with his detailed ledgers, bank account records, and bombshell confessions as Estrada’s bagman. A subsequent senate impeachment trial investigation into the allegations unearthed other incriminating evidence, namely, the “Jose Velarde account” at the Metropolitan Bank, to which Estrada’s shares were allegedly deposited. It also uncovered eyewitnesses to Estrada himself opening the account. The tipping point was the televised brazen refusal of Estrada’s senate allies to open a second envelope said to contain damning evidence against Estrada. (The first such envelope, also alleged to contain incriminating evidence, had turned out to offer nothing crucial.) The senate, one important mechanism of voice and accountability, had decided against truth and transparency. The rest is history.

Estrada no doubt had a clear electoral mandate, so garden variety electoral failure cannot explain the collapse. He managed to assemble a capable set of technocratic and economic teams, and he could blame others for the Asian crisis hardships, so the economy was not a factor. The Philippine economy was modestly on the mend from 1999 to 2000.

Estrada did not fit the accepted mold of chief executive. The educated public, who largely voted against him, nevertheless expected that Estrada, a movie idol before entering politics, would be transformed by the majesty of the office. Instead, he appeared to take special pleasure in repeatedly dragging the office into the gutter. He imported the impunity of a small town mayor to Malacañang (the presidential palace). He maintained a midnight cabinet of his close cronies in which over expensive drinks (Petrus was a favorite), daytime cabinet decisions might be undone. His favorite circle of intimates was shadowy and thuggish. He recognized and maintained six mistresses and one estranged wife. Stories of the “wives” quarrelling over lucrative government contracts and hounding cabinet secretaries abounded. A sordid stock market manipulation scandal (the “BW scandal”) implicated close Estrada cronies Dante Tan and Lucio Co and pointed toward Malacañang itself in view of a lucrative tenancy agreement between Dante Tan’s BW Resources and Pagcor, now run by Estrada’s cronies, and a substantial and questionable P600 million loan from the state bank, the Philippine National Bank (PNB) (Pascual and Lim 2001). Estrada appeared to have made public his own homey ethics of corruption: theft from thieves cannot be bad because only theft from the public coffers is bad. Also excluded from the “bad” category were insider-trading profits facilitated by cronies; financial favors by close cronies, such as Estrada’s winnings from state-owned Pagcor casinos now run by his own appointees; and the bloated purchase prices of land procured from political allies (Mendoza 2001).

All these ethical transgressions slowly eroded Estrada’s legitimacy as president. The middle and upper classes, critical from the get-go, increasingly considered him a disease and a social affront even as they were amused by his foibles. This appeared to be an electoral failure of a subtler variety, one directly descended from the famous Condorcet jury theorem, which results when the electors in a majority-rule regime lack the requisite competence. Condorcet jury theorem suggests that in the case of an incompetent electorate, the true winner will likely be the wrong choice (Fabella 2001b). If Estrada was the “d and e” (lowest-income classes) voters’ revenge on the elite, he did not disappoint. However, unlike Hugo Chavez of Venezuela, his spat with the elite was not ideological. *Jueteng* and the ugly internal squabble for its spoils finally broke the camel’s back.

On 20 January 2001, Estrada was driven from office by a popular uprising known as “EDSA II” (for *Epifanio delos Santos Avenue*), which was triggered by the *Jueteng* 2000 scandal (Fabella 2001a; Coronel 2000). The dominant interpretation, including that of the Philippine Supreme Court, was that President Estrada resigned following a spate of cabinet resignations. These occurred in the wake of the refusal, previously noted, of many Estrada allies in the Philippine senate (who were conducting the impeachment trial) to open the key second envelope. The public spectacle of naked

cover-up sent the citizenry to new heights of frenzy and to EDSA II. An alternative interpretation is that what really happened was a coup d'état signaled by the shift in loyalty of the then-Armed Forces Chief-of-Staff Angelo Reyes, which carried along the military establishment. Whichever the case, President Estrada's tenure was cut short by three years. The crisis of legitimacy had its first victim.

Scuttled in the *Jueteng* 2000 scandal was the rare promise of competent governance riding on a massive electoral mandate that neither Aquino nor Ramos enjoyed. Estrada had leveraged this by attracting a stellar economic team. This momentum came to naught in the sordid affair, a fitting parable of the Philippine policy landscape: good ideas are hijacked for sinister ends and are disemboweled.

### **5. The second *Jueteng* crisis: The troubled odyssey of Gloria Macapagal Arroyo**

Arroyo's tenure as President of the Republic has been a walk through a minefield. The first explosion, the Oakwood Mutiny (when a handful of junior military officers and their charges took over the Oakwood Apartments) in 2001, forced upon Arroyo's constitutional but unelected presidency a bunker mentality in the next three years, until the 2004 elections. The second explosion was the "Jose Pidal" scandal in 2002 when the existence of a bank account belonging to a certain "Jose Pidal" and containing an unaccounted-for hundreds of millions of pesos (US\$8 million) was exposed. Allegedly, the account belonged to First Gentleman Miguel "Mike" Arroyo, and was rumored to have been sourced from a payoff to then-Senator Gloria Arroyo to decline to run for president and to instead become the vice presidential running mate of Lakas presidential candidate Jose de Venecia in the 1998 election. The brother of the First Gentleman, Ignacio "Iggy" Arroyo, however, came forward to claim the "Jose Pidal" identity and now faces a tax evasion charges. That he subsequently won a seat in the lower house of Congress speaks volumes about Philippine politics. A legal maneuver effectively ended the scandal. At its height, President Arroyo, in a nationally televised New Year's Eve interview, solemnly promised that she would not run in the upcoming 2004 election. She, of course, broke that promise and ran as an incumbent with the concurrence of the supreme court. The constitutional anti-incumbency ban was circumvented.

Comelec declared Arroyo the winner of the 2004 presidential race. Her winning margin, unlike Estrada's, was narrow (1 million votes) amid mounting accusations of irregularities. However, electoral irregularities in nationwide elections are par for the course in the Philippines, and so is the futility of a costly electoral protest. In any case, the main protestor candidate, actor Fernando Poe, Jr., soon died. A Congress-

sional Electoral Tribunal quickly declared a protest by a dead man to be moot. However, the brazen use of government and state resources to advance Arroyo's incumbent candidacy inflicted severe blows to her legitimacy.

On 30 May 2005, *Jueteng*, which had triggered Estrada's downfall, resurfaced on the national scene. Erstwhile *Jueteng* operators in the Bicol region suddenly crawled out of the woodwork denouncing *Jueteng* payoffs to the "three Ms": M1 (Mike Arroyo, the president's husband), M2 (Mikee Arroyo, her son), and M3 (Iggy Arroyo, her brother-in-law). Allegedly, the election victory emboldened Arroyo power brokers to give their blessing to central Luzon *Jueteng* kingpin Bong Pineda (whose wife Lilia was previously, and whose son is presently, the mayor of Arroyo's hometown, Lubao) to displace the entrenched *Jueteng* operators in the Bicol region. This was partly accomplished by replacing, or threatening to replace, the Philippine National Police regional command chain, thus, stripping the old entrenched players of their *padrinos* and protection. The flow of protection money was redirected to those with power to promote and assign police enforcers.

The turf war took an unfamiliar turn. Instead of resorting to violence, the displaced *Jueteng* operators volunteered to stand as witnesses in congressional hearings. The outcome was a series of sensational hearings in a nationally visible forum that implicated the Arroyos. The weakening of the Arroyos by this scandal led to their protégés' being successfully repelled from invading other areas. President Arroyo, in an attempt at damage control, declared on 27 June 2005 that her husband Mike Arroyo would now live in exile. While President Arroyo was not linked directly to *Jueteng*, her poll ratings plummeted to their lowest, and her legitimacy eroded even further.

The exile ploy came too late, however, as by then the "'Hello Garci' tapes" had become public. These tapes apparently recorded (using an illegal wiretap) a call to Comelec Commissioner Virgilio Garcillano, a highly controversial Arroyo appointee, at the height of the previous election's vote counting. The female caller appeared to demand that she win by 1 million votes, and Commissioner Garcillano appeared to assure her that she would. The tape was damning as the woman's voice had the unique tenors of President Arroyo's. After some apparent but futile maneuvers to discredit the tape (including a presentation by Malacañang of "true" and "doctored" versions of the tape on 6 July 2005) as well as to outlaw it, President Arroyo finally admitted on national television that she did call a Comelec official and apologized for what she called her "lapse of judgment." Her claim that calling an elections commissioner does not constitute cheating and that one has the right to

protect one's votes was rightly perceived to be disingenuous. The surreal is banal in Philippine politics.

Arroyo had appointed Garcillano despite wide public consternation on 7 February 2004, three months before the fateful May 2004 election. He was already considered in knowledgeable circles as the nerve center of a massive vote count fraud known as *dagdag-bawas* (see section 5.1). Allegedly, Pineda's *Jueteng* money bankrolled the Garcillano machinery in the 2004 elections, and this became the subject of a senate inquiry. To Arroyo's opponents, testimony and affidavits given before the senate in this inquiry proved presidential election fraud. Meanwhile, Garcillano was in the same tapes heard negotiating other vote count fraud deals with senatorial candidate Robert Barbers, who had mysteriously disappeared from view. This raised speculation as to how far the corruption had spread throughout the senate. Then in early July 2005, 10 high-profile cabinet-level officials suddenly announced their resignation at the Hyatt Hotel (the "Hyatt 10" incident). The cumulative outcome was that many of the forces that once allied to oust Estrada were once again arm in arm in the "GMA Resign" (GMA for Gloria Macapagal Arroyo) movement.

Former president Fidel Ramos, being titular head (emeritus) of the lower house majority Lakas Party, commanded considerable power with respect to the impeachment proceedings initiated against Arroyo in the lower house, where his party could kill any motion for impeachment. The condition that Ramos imposed to save Arroyo's presidency was that Arroyo declare a fast-track charter change (known as "Cha-cha") process, taking the Constitutional assembly track toward a parliamentary system of government as her priority legislative initiative. If Cha-cha is accomplished in two years' time, President Arroyo, in effect, steps down before her legal tenure expires in 2010. Her term again will have been shortened, but by a huge face-saving process which, in public, she herself initiated.

Ramos's rescue of Arroyo is viewed by some observers, especially those in the business community, as the price he had to pay for the transfer of real power to Ramos himself. This to them is a much more satisfactory state of affairs than the constitutional transfer of power to even less regarded Vice President Noli de Castro. After all, the Ramos-engineered heyday of the Philippine economy in the 1990s is still fresh in people's minds.

Whether Arroyo will finally suffer a fate similar to her immediate predecessor's appears to depend on the saving vote of the military. The decision by Ramos to lend Arroyo conditional support may be keeping the military on the sidelines for the moment. It is observed meanwhile that Ramos's men appear to be moving in to take over sensitive positions vacated by the Hyatt 10 (e.g., Customs, Department of

Budget, and Department of Trade). Thus, it is argued, but also counterargued, that what transpired was a virtual Ramos coup. The crisis of legitimacy continues unresolved.

We make three observations about the economic situation during the process leading to the Arroyo turmoil. First, the Philippine economy appeared in 2004 to be on the mend. Much of the country's fiscal recovery, however, was in the form of expenditure compression, which began to raise the primary surplus by 1 percent. However, signs have not been encouraging since the crisis. The proposed 2006 budget (which was never passed by Congress) reflected the postimpeachment realpolitik, restores congressional pork, and grants the highest increases to the military budget, which are the crucial survival cogs for President Arroyo.

Second, one of the few bright spots in the pre-crisis Arroyo administration was the scrutiny directed at large and high-profile taxpayers. The Bureau of Internal Revenue had succeeded in building and pressing cases against tax-evading companies and celebrities. The high-powered bureau leadership responsible for this success resigned, however, in the Hyatt 10 incident. The negative fallouts include

- a re-embracing by the Department of Justice of its traditional aversion toward prosecution and a reversion to potentially graft-laden amicable settlements;
- the loss of reform momentum in the tax administration;
- a cooling off in the Office of the Ombudsman of its unaccustomed enthusiasm for investigations of unexplained wealth.

Third, 2005 saw the pre-crisis passage of the expanded value-added tax, which was intended to be the cornerstone for fiscal renewal. This is the one bright spot in the economy as the country's fiscal picture and credit rating begin to improve. Whether the revenues from this tax will be properly spent remains to be seen. The dangers of misuse are real.

## **6. The twin roots of fragility**

The legitimacy issue of the last two Philippine presidents appears to have sprung from two important state failures: the failure of the electoral process, due to the capture of the custodians of electoral exercise; and the failure of the state to protect its autonomy from the underworld, as exemplified by illegal Jueteng. Both are symptoms of the "soft state," where laws, policies, and enforcement are subject to truck and barter. These failures together greatly decrease the chances for presidential survival.

## 6.1 Electoral process

It is said that half of the spending for nationally elected positions in the Philippines occurs after the polls close on election day. This sets Philippine elections apart. The outcome of the electoral exercise depends on provincial and regional counts that, in many crucial provinces, are for sale to the highest bidder. The highest bidder gets a *dagdag* (addition) to his or her votes; the losing bidders get a *bawas* (deduction) from their votes. The overall vote tally remains unchanged. This is known as the *dagdag-bawas* scheme. Frantic solicitation for election contributions by contending parties intensifies after the polls close. The per vote sale price after the polls close trebles that before. Those with a ready pipeline to the underworld are in a good position to raise the required amounts quickly.

Syndicates of national and provincial Comelec officials, conspiring with local government officials, deliberately delay the vote count in pivotal provinces to induce bidding by candidates with some chance of winning. As noted previously, the “Hello Garci” tapes recorded a senatorial candidate negotiating the price (P2 million) for the commissioner’s “help” in altering a vote count. Winning the actual vote is nothing in the Philippines; winning the vote count is everything. Losers may challenge an election’s outcome after the winner is proclaimed, but the recount process can take forever and can cost the protestor a bundle.

*Dagdag-bawas* can fail, though, if the vote is a “landslide” everywhere, as was the case in the Estrada victory. Then the battle shifts to reducing the lead in certain territories to manageable levels so that it can be overturned by *dagdag-bawas* in key rogue provinces. The capture of Comelec becomes crucial. This, supporters claim, was the fate of Arroyo’s rival, Fernando Poe, Jr., who was a clear landslide draw before the voting. All these stratagems involve violations of one or more provisions of the election laws, but no one expects successful prosecution in the courts because bribes are prevalent.

The winner, now having incurred huge indebtedness, needs to launch a repayment expedition. Legal donations are repaid by awarding lucrative contracts or preferential treatment such as government appointments. Protection from prosecution is given to illegal money donors and the appointment of “friendly” police chiefs not only in one’s own territory, but in others as well. This is the commonality that has emerged in the “Hello Garci” and *Jueteng* hearings. None of these things would be possible if the state enforced the election laws diligently.

## 6.2 The underworld connection

*Corruptissima republica plurimae leges* (“The greatest number of laws characterize the most corrupt republic”), the Romans used to bemoan. Weak states generally substi-

tute a multiplicity of prohibitory laws for weak enforcement. While their enactment humors the noisy morality lobbies, no one has the illusion that these laws will be enforced. Instead, once enacted, they become convenient funnels for protection money to key enforcers and their promoters. Where the power to promote or assign is local, the ravages of capture remain local, as was the case in 19th-century America (Johnson 1981). In the Philippines, the power to promote individuals within the hierarchy of enforcers becomes a massive national illegal rent attractor. This power emanates from the chief executive of the Republic. A few key favorable appointments can quickly recoup election expenses. It is an implicitly accepted election payback scheme with no paper trail and no risk of hassle from unpredictable state auditors or the media.

### 6.3 A lethal combination

Where national election counts are up for sale to the highest bidder, money rules. At crucial bidding junctures, legal contributors have two drawbacks: they generally hedge by contributing to all the contending parties in order to escape the ire of the eventual winners, and their contributions may be subject to some transparency and accounting rules (though these are seldom enforced). Underworld money does not suffer from these drawbacks. Underworld contributions are quickly disbursed and considerable. Underworld connections are rendered more valuable and tempting for incumbents because of the prospect of electoral failure. Furthermore, the system of payoffs is already so well entrenched that a new president can reward his backers by just looking away. There is no paper trail. Underworld money is money on a silver platter.

While the system normally runs smoothly, the equilibrium can be disturbed by attempts to redirect revenue flows by those in the enforcement hierarchy. In Estrada's case and perhaps Arroyo's, the new directive seemed to have emanated directly from the top, instigated by close and imaginative henchmen. Although neither Arroyo nor Estrada could run again because of term limits, their bargaining power could be maintained somewhat (and post-tenure problems mitigated) by placing family members in the senate. President Estrada succeeded in placing a wife and a son in the senate *after* being run out of office. This is a proven post-tenure strategy that a sitting president with something to hide cannot ignore. A more plausible storyline is that the green light to Bong Pineda to invade other territories was the payoff for the bankrolling of the Garcillano *dagdag-bawas* machinery.

Addressing these twin problems of electoral failure and underworld resource flow could go a long way to restoring some stability to the Philippine presidency.



## 7. Suggested remedies

### 7.1 Voting machines: The perfection syndrome

It is axiomatic that the fundamental requirement for a healthy democracy is the capacity to count. Failure to count votes credibly leads to legitimacy problems from the very exercise that is supposed to confer legitimacy. One obvious proposal is to computerize the voting process (see, e.g., Selker 2004). This seems obvious, but the proposal has been languishing for a decade now. Because of the low credibility of Comelec, contracts that have been awarded for this purpose have had to be rescinded for various frailties such as perceived overpricing and lack of safeguards.

President Arroyo slowed the computerization reform process by appointing two suspect commissioners, one of which was Virgilio Garcillano. Both officials torpedoed the Comelec-approved computerization plan by questioning its reliability before the supreme court, which then rejected the computerization plan. The plan's failure seems to critics to be premeditated, because the simplest way to beat a landslide threat is through vote count fraud. Many parties have established relationships with Comelec's rogues and do not feel any urgency in regard to cleaning up the vote count process.

The public, on the other hand, felt that new initiatives, sold as reformist, were nothing but more sophisticated cheating schemes and so demanded absolute guarantees. After all, Estrada's Bingo-2 Ball was also a good reform idea but was hijacked for a sinister purpose. The supreme court, presumably riding on this sentiment and beholding the spectacle of a divided Comelec, decided to stop the use of voting machines on the eve of the last presidential election. These machines were supposed to automatically transmit the vote count from each precinct to the central office and complete the count in 36 hours. However, their safeguards were deemed inadequate. Since absolute certainty was not attainable (see, e.g., Selker 2004), new incremental improvement initiatives were blocked. While "the worst enemy of the possible is the perfect," the best friend of the perfect is immense credibility deficit.

### 7.2 The parliamentary route

Even when computerization has been installed to mitigate vote-count-originated electoral failure, it can still fail to address incompetent-electorate-originated electoral failure. This raises a debate on "choosing how to choose."

The parliamentary system proposed by Fidel Ramos during the "Hello Garci" scandal could partly be a remedy to the current legitimacy crisis. The main political obstacle is the senate, whose members are certain to suffer an effective demotion to

mere parliamentarians with the change. Some deals will have to be made in order for the proposal to pass. The fast-track proposal of converting the Philippine congress into a constitutional assembly to change the constitution with congressmen's automatic assumption to parliamentary membership is deeply disturbing to the segments of the intelligentsia who view this path "as entrusting one's soul to a can of maggots." Advocates counter that *carpe diem* is the only way forward and waiting for "more favorable circumstances" is a prescription for no change.

One important but hardly discussed attraction of the parliamentary system is that it makes all elections local. Local elections in the Philippines, though still "dirty," have a much better record in terms of quicker count to proclamation. Thus, postelection fraud, which needs time to be implemented, will be somewhat hampered. Furthermore, if people are more competent at electing local leaders who in turn will elect national leaders, this localization may also address the Condorcet electoral failure. The most confidence-sapping electoral fraud and legitimacy questions occur in elections at large for the senate, vice presidency, and presidency.

Another attraction of the parliamentary system is the capacity to diffuse mounting disillusionment via early elections following a no-confidence vote. Currently, tensions of this sort invite extraconstitutional responses and military adventurism when the problem arises early in a president's six-year term.

Finally, its superior capacity to sieve aspirants to the premiership based on many more dimensions of leadership (organizational skill, management capability, coalition building, vision for and knowledge of the national project) than the single dimension of popularity means that national media and showbiz denizens will find it harder to attain the highest offices. Of course, the parliamentary system has its own well-known drawbacks (e.g., gridlocks and the tyranny of the minority), which we will not dwell on.

### 7.3 Legalization of *Jueteng*

Since competent governance is a scarce resource in most less-developed countries, Garnaut (2005) argues persuasively that it must be used with economy. As with the alcohol prohibition laws between 1920 and 1933 in the United States, economizing on governance in the case of *Jueteng* means legalization. Moralists, led by the Catholic Church, are against the legalization of *Jueteng* in the name of protecting the poor from the *Jueteng* predators, even though such protection has clearly failed. It is instructive to remember that not so long ago, these moralists foisted a similar defend-the-poor rhetoric to preserve the anti-usury law. When the law was overturned in 1982, a competitive loan market emerged and offered lower interest rates on loans to

the poor. Legalization of *Jueteng* is so patently economically rational, and yet it is so distant in the tangle of beliefs and politics.

The most potent, if latent, opponents of legalization are the local government officials who depend on *Jueteng* payola for their social funds. Their own objection is not moral but pragmatic. Without it, how will they raise money? This is not an insurmountable problem for local finance. Several proposed bills for legalization attempt to address this local social fund issue. For example, franchises can be awarded by auction to local operators and the local government and the central government can share the fee. Part of the central government share can go to the military social funds to assuage the loss of protection money currently going to the military. All these will be legitimate and subject to relevant laws.

Politically speaking, indirect legalization may be the way to go. In September 2005, the Arroyo camp floated the idea of “Bingo-Combo,” which is a rehash of Estrada’s “Bingo-2 Ball.” It will be also be run by the legal gaming agency Pagcor. Another Arroyo plan of recent vintage is the “LGU (Local Government Unit) Lotto” to be conducted under the auspices of the state-run Philippine Charity Sweepstakes Office.

The most potent argument for legalization, direct or indirect, is the Smithian “disorder” wrought by illegal *Jueteng*. The wages of state overreaching are a disordered state. The *Jueteng* crises in the Philippines are clear cases of the Smithian disorder brought about by certain state regulations. The unintended consequences of the prohibition, the unhinging of enforcement and governance, in time have come to dominate the outcome.

## 8. Conclusion

The two crises of presidential legitimacy in the Philippines in the last 10 years demonstrate how a democracy may fail to advance the cause of good institutions. The Estrada crisis of legitimacy appears to be wholly founded on the mounting evidence of predatory tendency. He won the presidency, but he did not prove himself deserving of it—a clear case of Condorcet failure in which the “true winner” is also the incorrect choice when electoral competence is inadequate. Estrada, who collected the rents made possible by the many institutional failures, wanted to collect even more by attempting to monopolize the gravy train. Under the Estrada regime, the process of institutional reform certainly never left the station.

The erosion of Arroyo’s legitimacy appears to have come primarily from perceived electoral failure consequent to the capture and compromise of Comelec. A *Jueteng*-

gate scandal that implicated Arroyo family members also seriously weakened the Arroyo administration. The first event suggested that Arroyo might not have won the election. The second event suggested that even if she won, she should not have won. The imperatives of survival meant keeping the legislators, the military, and other power brokers better off with the status quo, which, in turn, meant keeping the spigot of rents flowing from bad institutions. The momentum for meaningful reform under the Arroyo administration pretty much evaporated upon her coming into office.

This paper shows that, in a weak state, the many legal prohibitions only serve to weaken the state further because of the progressive capture of the organs of enforcement. This is the realization of Adam Smith's "disorder." The better part of wisdom is legalization. In these cases, the retreat of the state serves economic rationality. The proposed remedies (voting machines, legalization, and conversion to a parliamentary system) have to overcome difficult hurdles of political economy due to public cynicism and strident opposition. Some of these remedies may need to be prescribed by multilateral agencies as institutional conditionality in their aid negotiations with the Philippine state.

How much of a beating the Philippine economy is poised to receive is difficult to say. President Corazon Aquino survived the era of military restiveness, but her watch missed the Japanese foreign direct investment tsunami subsequent to the Plaza-Louvre Accords. Estrada's crisis, blessed with a quick resolution, by contrast, did not seem to rattle business. Already, the signs of an economic slowdown are palpable, but the effects of the oil price shock and fiscal adjustments cannot be disentangled. The unseen benefit on the economic front is that the passage of the Expanded Value-Added Tax Law before Arroyo's crisis of June 2005 is stemming the country's fiscal imbalance.

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