The Philippines' Dalliance with Authoritarianism in Times of National Emergency

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The Philippines is remarkably familiar with national emergencies, having faced just in the past three decades alone two global financial catastrophes, a number of coup attempts, a couple of destructive volcanic eruptions, a slew of ravaging typhoons, deadly terrorist attacks, and a devastating earthquake. Notably, the national response at these moments of crisis is to give the President "emergency powers". Of course, this also comes with the admonition that citizens must fall in line and obey the commands of the government, which usually means temporarily "adjusting" adherence to human rights and respect for civil liberties.

Emergency Power Provisions in the 1987 Constitution

Like most constitutions in the world today, the Philippines' 1987 Constitution also contains provisions concerning national emergencies:

First, in times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. (Article VI, Section 23 (2))

Second, in times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest. (Article XII, Section 17)

And third, the President as Commander-in-Chief can call out the armed forces as may be necessary to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, the President can suspend the privilege of the writ of habeas corpus or impose a nationwide or partial martial law. (Article VII, Section 18)

The first two provisions are collectively called the emergency power clauses of the constitution. According to the Supreme Court, Congress is ultimately the repository of emergency powers. However, given that it may not be possible or practicable for Congress to meet and exercise its powers in times of a national emergency, the constitution authorizes Congress to grant emergency powers to the President, subject to the following conditions:

1. There must be a war or other emergency.
2. The delegation must be for a limited period only.
3. The delegation must be subject to such restrictions as the Congress may prescribe.
4. The emergency powers must be exercised to carry out a national policy declared by Congress.

The third provision outlines the authority of the President as the Commander-in-Chief. According to the Supreme Court, the three powers included here form a sequence of "graduated powers" from the most to the least benign 1) power to 'call out' the armed forces; 2) power to suspend the writ of habeas corpus; and, 3) power to declare martial law. But in the exercise of the latter two powers, the constitution requires the concurrence of two conditions, namely, an actual invasion or rebellion, and that public safety requires the exercise of such power.

Notably, the President has the prerogative to determine whether to call out the armed forces or whether the situation demands suspension of the writ of habeas corpus or whether it calls for the declaration of martial law. Such a decision will ultimately depend

on the exigencies or threats that endanger the nation as appreciated by the President.

More importantly however, the 1987 Constitution explicitly states that "A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ." (Article VII, Section 18) This provision affirms that in times of national emergency, regardless of the extraordinary circumstances, a constitutional government continues to be in charge and the rule of law is still in force.

Statute-Based Emergency Powers

President Rodrigo Duterte's immediate response to the COVID-19 pandemic was to implement emergency measures under the authority of two particular statutes. The first one was the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act which empowers the president to declare a state of public health emergency and mobilize governmental and nongovernmental agencies to respond to the threat. (Section 7)

This law was the legal basis for his Presidential Proclamation No. 922 issued 8 March declaring a state of public health emergency throughout the country and ordering the lockdown of the National Capital Region to stop the spread of the coronavirus. The entire country is in a state of health emergency until President Duterte says otherwise.

The second statute operationalized in this pandemic was the Philippine Disaster Risk Reduction and Management Act of 2010 which authorizes the president to declare a state of calamity (Section 16). This was the legal basis for Presidential Proclamation No. 929 issued 16 March declaring a nationwide state of calamity for 6 months and expanding the coverage of the lockdown to encompass the biggest island of the country, Luzon, which is also home to about 57 million Filipinos, accounting for more than half of the national population.

The lockdown directive effectively means home quarantine for all, suspension of public transportation, strict regulation of food distribution and of essential health services, and a heightened presence of uniformed personnel in checkpoints stationed in various areas of the huge island. One month into the lockdown police figures show that violators were either given a warning or fined on the spot, but there were also reports of some being detained.

However, these two executive directives were not enough. Congress, exercising emergency powers under the 1987 Constitution, enacted on 24 March the Bayanihan to Heal as One Act of 2020 (Bayanihan Act) with the sole purpose of giving "necessary special powers" to President Duterte to deal with the Covid-19 global pandemic.

This statute was swiftly enacted with virtually no opposition even though it contained provisions that give the president "fiscal leeway" to use public funds. However, as an oversight mechanism, it mandates the President to submit a weekly report to Congress. This law is in full force and effect only for three months unless extended by Congress.

Glimpses of Authoritarianism

President Duterte has taken on a patently autocratic mantel in this national emergency as command and control over the crisis is virtually centralized in his office. Yet, the president has not exactly become a dictator with unfettered power over the country. Congress is currently in recess, but lawmakers have committed to resume sessions next month with due consideration to physical distancing requirements. The lockdown closed courts, but the filing of complaints and posting of bail can still be done electronically. Indeed, to the greatest extent, constitutional rights and civil liberties still remain the norm. And more importantly, civil society is still free, albeit for the moment with limited physical mobility.

Nevertheless, there have been glimpses of authoritarianism in the way President Duterte and his administration have managed the COVID-19 health crisis. For instance, immediately after President Duterte declared a national public health emergency, one of

his most loyal lieutenants in government boasted in a radio interview that human rights and habeas corpus are no longer binding rules. This assertion was met by a howl of protest from various civil society organizations prompting another senior official in the administration to assure the public that the 1987 Constitution, specifically the Bill of Rights, is still in force full stop.

The Bayanihan Act has a provision punishing the spreading of fake news and under this fiat, the National Bureau of Investigation launched an investigation on several social media posts critical to the government. Human rights activists publicly branded this move as a violation of free speech prompting President Duterte himself to acknowledge that public criticism is only to be expected. But this policing operation has been allowed to continue given the level of disinformation about the coronavirus and the growing number of related cybercrimes.

Interestingly, a total ban on the deployment of overseas health workers abroad, which has no connection to the Bayanihan Act and the two presidential proclamations, was decreed by the Philippines Overseas Employment Administration. The Foreign Affairs Secretary used his popular social media platform to quickly criticize this move as unconstitutional. President Duterte himself conceded that he cannot stop Filipino health practitioners from working in other countries that urgently need them. Indeed, the president is inclined to modify the ban to cover only new contracts. Meaning, those with existing contracts will be free to leave the country.

Of course, the most newsworthy of these glimpses of authoritarianism was President Duterte's "shoot them dead" declaration during a television address, pertaining to how the police should treat recalcitrant violators of the lockdown order. Many Filipinos found this remark appalling because it disregards the fact that a significant portion of Metro Manila's population really have to go out of their homes to work to ensure their day to day survival. There was a strong social media backlash which compelled the head of the Philippine National Police to clarify that this statement from the president was just hyperbole and that no police personnel will ever have a shoot-first mindset in enforcing the lockdown order.

Clearly, civil society plays a key role in ensuring there are only glimpses of authoritarianism in the way President Duterte uses his "emergency powers". Civic activism is so evident online because the lockdown has afforded millions of social media savvy Filipinos the time and opportunity to closely monitor government action in this global pandemic. Without a doubt, this powerful and swift pushback from citizens (or netizens) has been a very potent check and balance mechanism.

Still a Dangerous Risk

Filipinos expect President Duterte, with "emergency powers", to decisively implement measures to protect the health and well-being of the millions of people in Luzon. However, mass testing is still in the process of being rolled out with around 23,000 tests conducted to date. The latest available data show 6259 covid-positive cases with 409 deaths and a fatality rate of 6.53% which is just below the world's 6.89%. Although from the global perspective, the Philippines has already been identified as one of the riskiest countries to be in during this coronavirus pandemic due to "inefficiency of government management".

Millions of internet-loving Filipinos have watched one world leader after another calm the fears of their people while also inspiring national solidarity in this grim time. Meanwhile, President Duterte's public addresses have been a mixed bag of inconsistencies, off-tangent anecdotes, unprovoked insults, prepared talking points, proforma promises and threats of violence. And worse, as local officials and civic leaders scramble tirelessly to help citizens cope with the lockdown, their efforts have been stymied by "policy missteps at the very top".

Now more than ever, this dalliance with authoritarianism in times of national emergency is proving to be far too dangerous for a young constitutional democracy like the Philippines. Indeed, the Filipinos' predilection to what Gore Vidal calls the most peculiar American religion, "President-worship", should not be underestimated. And neither should the very imperial

characterization that "there is one repository of executive powers, and that is the President of the Republic."

In this context, President Duterte's most recent public address raises the alarm a notch higher. Reacting to reports of increasing number of citizens flouting his community quarantine order, the president threatened to place the Philippines under a martial law-like lockdown. And while the legal and operational implication of this threat is still to be clarified, law enforcement authorities have already taken this as a signal to deploy more policemen to guard checkpoints and to execute "many arrests" to ensure strict compliance of the lockdown order.

Clearly, every flirtation with despotism, regardless of good intentions and constitutional safeguards, increases the risk of the country reverting to presidential totalitarianism. It is worth remembering at this point that 20 years of autocratic rule under the dictator, Ferdinand Marcos, left the Philippines in abject ruin. So far, Filipinos have been successful in preventing this from happening again. But this is demonstrably getting more difficult to do such as when the president eagerly pushes the limits of "emergency powers" and willingly emboldens law enforcers to overreach their authority. Good reasons indeed to revisit and reassess the national emergency prescriptions in the 1987 Constitution.

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