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FERDINAND MARCOS: APOTHEOSIS OF THE PHILIPPINE HISTORICAL POLITICAL TRADITION

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Abstract
Nicole E. CuUnjieng, College '09, History The Regime of Ferdinand Marcos and the Role of the Supreme Court of the Philippines My research centers on the Philippine political tradition and contextualizing President Ferdinand Marcos's 1972-1986 dictatorship within that perspective. I wish to intervene within the existing academic debate on the nature of this tradition. Challenging the established scholarship, which presents Marcos's regime as the anomaly of the Philippine patronage system, I instead argue that Marcos is the perverse apotheosis of the system. I wish to argue that Marcos embodies all the ills already present in Philippine politics and merely brings them to their extreme conclusion. More recent scholars have also championed this reading and I wish to further develop the argument by examining the legitimizing role that the judiciary played in this history.

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BY

PROLOGUE

Gold surrounded Mrs. Imelda Marcos, the former First Lady who sat across me in her apartment explaining, "In terms of the Philippines, especially in the case of President Marcos and myself, we based ourselves on the role of man and woman, because of the cultural genesis of Adam and Eve."[1] She went on, clarifying, "From this there were doubts about whether women had souls; it was even suspected that Eve was the root for the word 'evil'."[2] Mrs. Marcos delineated the story of Genesis in order to introduce the framework through which she characterizes the roles that she and her husband assumed as First Man and Wife of the Philippines. These roles align with the essential gender and cultural conceptions she attributes to the Catholic Philippine mindset. She continued, outlining an inversion of the traditional story, "In the Philippines, the man was *malakas* (strong), the opposite of weak Adam, and the woman was *maganda* (beautiful), the opposite of evil Eve. During the term of Marcos's presidency, I was very criticized, but I followed the dream of Filipinos, to be beautiful while Marcos was strong."[3]

Indeed, Ferdinand Marcos's strength distinguished him from the preceding politicians, largely cut from the fabric of corruption, cronyism, patronage, coercion, and fraud that comprises Philippine politics. I believe, however, that this tradition, though endemic, results from the specific colonial shaping of Philippine history – not preexisting Philippine culture. Despite his nearly 20-year rule, upon closer inspection, Ferdinand Marcos does not look so dissimilar from his kin. Not the aberration of the system, he was

[1] Marcos, Imelda. Personal Interview. 12 Aug. 2008.

[2] Ibid.

[3] Ibid.

the apotheosis of the Philippine political tradition. Previous Philippine politicians had committed the same sins as Ferdinand Marcos, but never at such a national, prolonged, and vigorous level. Ferdinand Marcos was the perfection of the system, for he too is cut from the same cloth, born from the same political culture, and ascended through the same ranks of government. To his contemporary political class, Marcos departed from the mutual respect that accompanied the patronage system, where power merely passed back and forth in tacit agreement between the two political parties. To a cynic, however, he merely dared further than the rest to achieve the Philippine political dream.

Towards the end of his life when *lupus erythematosus* ravaged him, Marcos himself seemed very concerned with how history would remember him. In his diary, which William Rempel describes as "a decidedly odd document blending history and myth,"[4] Marcos wrote:

> I often wonder what I will be remembered in history for. Scholar? Military hero? Builder? The new constitution? Reorganization of government? Builder of roads, schools? The green revolution? Uniter of variant and antagonistic elements of our people? He brought light to a dark country? Strong rallying point, or a weak tyrant?[5]

Such self-flattery is not misplaced given that God, in a dream, told Ferdinand Marcos to save his country and that he was "the only person who can do it … nobody else can."[6]

Mrs. Imelda Marcos, who had initially characterized her husband as *malakas*, reminded me, "But at the same time, after Marcos became president, I asked him why he didn't institute the death penalty and he said, 'The art and use of power is that it should

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[4] Rempel, William C. Delusions of a Dictator: the Mind of Ferdinand Marcos as Revealed in His Secret Diaries. Boston: Little, Brown and Company, 1993: xiv

[5] Ibid., p. xii.

[6] Ibid.

never be used, only felt.'"[7] Such wise restraint seems ironic given Marcos's use of violence and coercion; however, it does ring true with regards to his treatment of the judiciary. I will argue that it is above all Ferdinand Marcos's delicate and skillful manipulation of the Philippine Supreme Court that proves him to be the perfection of the system, not the aberration.

Here, I do not primarily seek to assess what Marcos did for his country. I will assent that he did much good, particularly during the first three years of martial law. Nor will I deny that to many at the time, martial law seemed the proper response to the turbulent disarray of the 1970s Philippines, albeit repressive and heavy-handed. My research rests and is a comment on the particular historical tradition of Philippine politics, so I will contextualize President Marcos's 1972-1986 dictatorship within that perspective. I wish to intervene within the existing academic debate on the nature of this tradition and challenge the older scholarship, such as that of Carl Lande, which presents Philippine political history through a patron-client lens. Lande posits,

> In reflection of behavioral patterns rooted in the Philippine kinship system, the Philippine polity … is structured less by organized interest groups or by individuals who in politics think of themselves as members of categories … than by a network of mutual aid relationships between pairs of individuals. To a large extent the dyadic ties with significance for Philippine politics are vertical ones, i.e. bonds between prosperous patrons and their poor and dependent clients.[8]

Instead, with regards to the political system, I wish to side with more recent characterizations, particularly John T. Sidel's 1999 work on "bossism" and Juan J. Linz's 1998 version of Max Weber's "sultanism." Sidel and Linz's theories dethrone the patron-client framework, which places undue importance upon landholders, while also

[7] Marcos, Imelda. Personal Interview. 12 Aug. 2008.

[8] Lande, Carl H. Leaders, Factions, and Parties: The Structure of Philippine Politics. New Haven: Yale University, 1965.

emphasizing the role of American colonialism. Their vision is one of personalistic rule, with Marcos as the single, national "sultan" operating in a country of small, local "bosses."

I disagree, however, with Sidel's argument that Ferdinand Marcos is the aberration of the political tradition. The scholar Mark R. Thompson similarly argues, "Marcos broke the informal rules of Philippine democracy and later changed the game altogether by launching a dictatorship … it had survived until confronted with [Marcos]."[9] While, Sidel writes,

> A national oligarchy … has further reinforced factional competition for the presidency and thwarted national-state based monopoly … preventing the national economy from falling into the hands of a single predatory boss … Longtime president Ferdinand Marcos was the only boss able to overcome these obstacles under conditions strikingly similar to those enjoyed by the small-town, district-level, and provincial bosses examined in [my] previous chapters … Marcos began his first term (1966-69) to extend the prerogatives of the presidency.[10]

Though Marcos did achieve more than any other "boss," I believe it is important to distinguish Marcos as very much within the system. My interpretation shifts the blame away from one individual operating within a flawed yet, largely, healthy system and instead, draws attention to failures of the system itself.

Arguments that Marcos should be viewed as the master of the system do appear in the literature. The Philippine history scholar, Benedict Anderson, in his seminal work on "Cacique Democracy" reviews the formation of the Philippine democratic system and introduces Marcos as a historical inevitability. He writes,

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[9] Linz, Juan J., and H.E. Chehabi, eds. Sultanistic Regimes. Baltimore: the Johns Hopkins University Press, 1998: p. 211.

[10] Sidel, John T. Capital, Coercion, and Crime: Bossism in the Philippines. Stanford: Stanford University Press, 1999: p. 144.

> [I]t was only a matter of time before someone would break the rules and try and set himself up as Supreme Cacique for Life … From one point of view, Don Ferdinand can be seen as the Master Cacique or Master Warlord, in that he pushed the destructive logic of the old order to its natural conclusion.[11]

Anderson, however, also endorses the countervailing argument, writing, "But from another viewpoint, he was an original; partly because he was highly intelligent, partly because, like his grotesque wife, he came from the lower fringes of the oligarchy."[12] From there, Anderson explains Marcos's unique excesses as a result of his non-elite standing and his understanding that "wealth serves power, and the key card is the state."[13]

I side with the argument that Marcos is the apotheosis of the tradition and further it by focusing on the role that the judiciary played in the Marcos regime. I argue that the Supreme Court's legitimation confirms that Marcos did not break the Philippine political system, but that rather, the tradition bent to include him. Unlike Anderson, who presents Marcos as a historical inevitability, I argue that external forces provided him with the tools necessary to establishing a dictatorship. Even long after colonialism, U.S. interests remain a factor in Philippine politics. Were it not for the "special relationship" with the United States and the Cold War context, the Philippine people and their judiciary may not have tolerated Marcos's abuses or bent the political tradition to include him. Along with the Supreme Court, the Cold War and the contemporaneous Southeast Asian trend towards more authoritarianism states equally legitimated Marcos's regime.

Though Marcos's rule was far more extreme than any who had preceded him, the Supreme Court dutifully legitimated Marcos's every action. The judiciary was the most

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[11] Anderson, Benedict. "Cacique Democracy in the Philippines: Origins and Dreams." New Left Review I.169. (May-June, 1988): 3-31.
[12] Ibid., p. 20.
[13] Ibid.

respected branch of government prior to Marcos's reign and without destroying or reconfiguring the Supreme Court, Marcos was able to maneuver the judiciary and win their validation. Unfortunately, in times of crisis the judiciary is constitutionally weaker than the executive, however, even when Marcos gave them the chance to in *Javellana v. The Executive Secretary*, the Supreme Court did not defy him.

Previous politicians repeatedly subverted the rule of law, but the magnitude of their actions never required judicial approval in the way that Marcos's did. Because Marcos was the extreme, it was only under him that the judiciary was put in a position to define the limits of this tradition. For this reason, the judiciary was hailed as a "powerful and independent institution," despite the fact that corruption plagued Philippine politics.[14] Their inability to place the rule of law above Marcos, not only bends the Philippine political tradition to include Marcos, but also confirms what the Supreme Court never had to formally acknowledge before – that the system itself operates outside the rule of law.

Placing Marcos within the Philippine political tradition requires an examination of the decisive colonial history that built that tradition. Through the lens of my apotheosis framework, I will examine the martial law regime primarily, but will also provide a historical narrative of the early Marcos years and the formative colonial history. Then, leaving aside the economic, humanitarian, and military aspects, I will dedicate my investigation of martial law to Marcos's obsession with maintaining an appearance of constitutionality. To this end, I will review the role and actions of the Philippine Supreme Court under martial law. I will examine how Marcos cornered the judiciary so that it served less as a check on his power and, rather, as a legitimizer of his power both

[14] Del Carmen, Rolando V. "The Philippine Judicial System Under the New Constitution and Martial Law." Texas International Law Journal. 9. (1974): 143-155.

domestically and abroad. I will frame the larger implications of the judiciary's actions, both within the regime as a whole and as contextualized within the Philippine political tradition.

The existing literature on the Marcos years of 1972-1986 is largely politically focused. The research examines the maneuvers of President Marcos and rarely grants primary attention to the judiciary. I will review the most important of Marcos's legal tactics relating to martial law, securing unchallenged rule, and creating an appearance of constitutionality. I will then investigate the Supreme Court's response to these identified actions. In this way, I seek to understand the capacity in which the sole statutory institution that Marcos left intact, operated and served the Philippine president versus the Philippine people at its most pivotal moment. I believe that my unique interview access to key historical Filipino figures provides an opportunity to review the history, deliver a fresh and informed argument within the debate, and leave a rich record of oral history.

My contribution to the academic literature is not only my support for and development of the apotheosis framework, but also the oral history record I am leaving in the process. I conducted interviews with former President, Fidel V. Ramos, Ramos's daughter, Angel Ramos, Supreme Court Justice under President Corazon Aquino, Justice Florentino P. Feliciano, Congressman Teodoro Locsin, and the leading attorney, Ricardo J. Romulo, and leading constitutional scholar, Father Joaquin Bernas, who were both framers of the 1987 Constitutional. From the Marcos camp, I interviewed the former First Lady, Imelda Marcos, Justice Minister and Solicitor General under Marcos, Attorney Estelito Mendoza, Defense Minister under Marcos and the architect of martial law, Senator Juan Ponce Enrile, and Presidential Legal Counsel and Lawyer for the Office of

Government Corporate Council under Marcos, Hon. Manuel L. Lazaro. I've interviewed the technocrat and Finance Minister under Marcos, Cesar Virata and a Greek businessman who married into the elite Lopez family, was a close friend to Senator Benigno Aquino, and a fervent Marcos opponent: Steve Psinakis. I've also interviewed my father, who is from a pro-Marcos family, but was a strong critic and demonstrator against the Marcos regime: Stephen CuUnjieng. Lastly, from the U.S. diplomatic side, I interviewed the American Ambassador during the People's Power Revolution from 1984-1987: Ambassador Stephen W. Bosworth, and the Deputy Chief of Mission at the American Embassy in the Philippines: Ambassador Philip Kaplan.

I understand the complications of using non-academic sources as analytical tools; instead, I will present my interviews as records from involved persons, who have devoted a lifetime of contemplation to Ferdinand Marcos and his place in Philippine history. Additionally, I will rely on US periodicals as my contemporary martial law years newspaper resources, because the Philippine newspapers are far less reliable due to Marcos's control of the press. Indeed, during this time period, Filipinos themselves regularly turned to American newspapers in order to obtain more accurate information about events at home.

My personal family connection to the history continually reminds me that these were very much real events, not just the subject of academic debate, and demands that I ground the history. My grandparents, Ricardo and Helen CuUnjieng, were dear friends to Ferdinand and Imelda. Helen CuUnjieng was one of Imelda's "Blue Ladies," her group of twenty-five young, wealthy, high-society women, who assumed a political role during the campaign and continued to frequent the palace and political circles once Ferdinand

Marcos had been elected President. For some time Ricardo CuUnjieng used to play golf with Ferdinand every day, which was surely quite a feat given a dictator's demanding schedule.

My grandparents; however, were not Marcos's economic cronies and their loyalty was not founded on financial ties. Besides social embarrassment, the appearance of family disunity, and a demonstration of CuUnjieng disloyalty to the Marcoses, Ricardo and Helen did not stand to lose anything when Stephen began protesting against Marcos. Nevertheless, Stephen's family betrayal profoundly changed the CuUnjiengs, the legacy of which shaped my understanding of the history and sparked my life-long interest in the topic.

CHAPTER ONE: THE MARCOS QUESTION

FERDINAND E. MARCOS

Ferdinand Marcos was born in Batac, Ilocos Norte in 1917 to a family involved in local politics. Marcos pursued law at the University of the Philippines, but was brought to court in 1935, during his final year of study, for the suspected murder of Julio Nalundasan. Mr. Nalundasan had defeated Ferdinand's father Mariano Marcos's bid for the House of Representatives district in Ilocos Norte. Then, merely two days later, Nalundasan was shot dead while brushing his teeth by his bathroom window. Ferdinand Marcos was trained in firearms and a prime suspect on an assumed motive of family vengeance.[15]

Convicted by the Court of First Instance, Marcos studied for the bar examination while in jail and topped the bar – earning marks of 100 in criminal law, 100 in international law, 100 in legal ethics, 98 in civil law, 97 in procedural law, 97 in commercial law, and 95 in political law[16] – gaining many sympathizers and admirers. Ferdinand Marcos, merely 23 years old at the time, defended himself brilliantly and the Supreme Court acquitted him of the crime in 1940. Senator Juan Ponce Enrile, Marcos's protégé, Secretary of Defense, Secretary of Justice, and the architect of martial law, reflects on his dear friend Ferdinand Marcos's rise, describing,

> [A] brilliant student, bar top notcher, he was a barrister par excellence and he became famous, he was written about by all the newspapers and magazines … Then after that the war broke out, he became an officer in the Philippine army and then integrated into the United States Army for

[15] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 23.

[16] Scores recorded from the official, framed certificate in Mrs. Imelda Marcos's apartment.

> the Far East … went to Bataan … then he went through the death march[17] and was released and joined the underground again[18] and earned more medals. After the war he ran for Congress, became a young congressman and … a star in the House of Representatives and then he ran for the Senate and he shined all the way through … he was marked to become president.[19]

Beyond being a famed and tremendous legal mind, Ferdinand Marcos sought to paint himself as a war hero. He exaggerated his guerilla exploits and pitted himself as a courageous and proud nationalist against the postwar political backdrop of Japanese collaboration. Albert Celoza's account reports,

> [Ferdinand Marcos] had been awarded medals of recognition right after the war, but twenty years later he became the most decorated hero of the Philippines, eclipsing even the most recognized leaders of the resistance against the Japanese. It was contended that he received some nine medals in one day in 1963 from the President in order to dissuade him from running for the presidency himself.[20]

Ferdinand Marcos did indeed run for president and won two terms, after which he prolonged his stay in power by imposing martial law. The multi-dimensional, largely ad hoc character of Marcos's presidency, due to the anti-dogmatic nature of personalistic rule, has given rise to academic conflict over how to categorize Ferdinand Marcos's regime.

In 1988, David Wurfel, a canonical Philippine historian, characterized the early martial law years to be "authoritarian-technocratic," the middle years of the late 1970s as "neopatrimonial," and the end as a return to technocratic rule.[21] Scholars such as Robert Stauffer in 1979 and Robin Broad, present Marcos as representing foreign strategic and

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[17] The 1942 Bataan Death March was a horrendous Japanese war crime inflicted upon 75,000 American and Filipino prisoners of war.

[18] Ferdinand Marcos had been a guerilla fighter against the Japanese.

[19] Enrile, Sen. Juan Ponce. Personal Interview. 6 Aug. 2008.

[20] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 23.

[21] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988.

economic interests. As Gary Hawes observes, however, this framework fails to account for the opportunities Marcos gave to his cronies and the creation of export monopolies, which subverted the desires of the World Bank, IMF, and U.S. government.[22]

Various scholarship, such as that of Belinda Aquino in 1987, approaches Marcos as a unique actor within the Philippine political tradition. Aquino argues, "While corruption has always been part of Philippine political life, it reached epidemic and flagrant proportions during the Marcos years," and demonstrated "a certain pathological dimension," that she believes warrants viewing personalistic rulers as necessarily distinct from other actors within the tradition.[23] She explains that one must "look at the role of individual dictators themselves in the destruction of their own societies," underscoring the unique aspects to Marcos rather than laying blame on the system itself.[24]

Benedict Anderson's 1988 "Cacique Democracy" paper argues that "Don Ferdinand can be seen as the Master Cacique or Master Warlord, in that he pushed the destructive logic of the old order to its natural conclusion."[25] Anderson's interpretation, however, mixes the two sides of the debate and incorporates the role that he believes Marcos's non-elite background played in pushing him further than his elite predecessors. Anderson writes,

> But from another viewpoint, he was an original; partly because he was highly intelligent, partly because, like his grotesque wife, he came from the lower fringes of the oligarchy. In any case, he was the first elite Filipino politician who saw the possibilities of reversing the traditional flow of power … [A]lmost from the beginning of his presidency in 1965,

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[22] Hawes, Gary. The Philippine State and the Marcos Regime: The Politics of Export. Ithaca: Cornell University Press, 1987.
[23] Aquino, Belinda A. Politics of Plunder: The Philippines under Marcos. Quezon City: Great Books Trading and the University of the Philippines College of Public Administration, 1987.
[24] Ibid., p. 83.
[25] Anderson, Benedict. "Cacique Democracy in the Philippines: Origins and Dreams." New Left Review I.169 (May-June 1988): 3-31.

> Marcos had moved mentally out of the nineteenth century, and understood that in our time wealth serves power, and that the key card is the state.[26]

Anderson's framework presents Marcos as the inevitable conclusion of the historical political tradition. The historical political tradition, however, does not necessarily predict that a Ferdinand Marcos should eventually appear. Marcos came to power during a very precise moment in history; the Cold War gave rise to many similar authoritarian, military regimes in Latin America and elsewhere in Southeast Asia. That the Philippine people would have allowed Marcos to so extend the limits of their historical political tradition without this context, due to his sheer will alone, is far less likely.

THE PATRON-CLIENT LENS

Academic scholarship in the 1960s tended to frame the Philippine political tradition through a patron-client lens, Carl Landé being the preeminent scholar of this category. Landé examines the nuances of the patron-client relationship, which he believes determined the shape of the particular political tradition. He explains,

> The heavy reliance placed upon dyadic relationships, both vertical and horizontal (i.e. between unequals and equals), and the relatively slight use made of organized groups capable of pursuing common goals helps explain the strong emphasis in the Philippines on the pursuit of particular rewards, including exemption from the application of laws, and the relatively slight interest in the achievement of categorical goals, such as general legislation. This, in turn, affects the nature of relationships between politicians at various levels of government, between politicians and administrators, and between politicians and the public at large. It also explains why those organized interest groups found in the Philippines take pains to avoid permanent identification with either political party.[27]

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[26] Ibid.

[27] Landé, Carl. Leaders, Factions, and Parties: The Structure of Philippine Politics. New Haven: Yale University, 1964: 2-3

Later, political economy scholars of the 1970s, such as James C. Scott emphasized that patron-client relationships take root according to socioeconomic factors, highlighting the widening social inequality and failure of the state and villages to provide subsistence and security. Generally, however, the patron-client lens remained the dominant interpretation of Philippine politics, until more recent studies, which finally dared to break from this framework. These newer studies, such as "Bossism," remove the importance placed upon the landowning elite class[28] and pay fresh attention to the entrenched roles that violence, fraud, and local power monopolies have played over the last century.

BOSSISM

John Sidel's "bossism" successfully contextualizes Third World local strongman rule. Written in 1999, Sidel rests his theory on Joel Migdal's 1988 study of the local strongman. Migdal theorizes that these local bosses employ effective "social control," by "having themselves or their family members placed in critical state posts to ensure allocation of resources according to their own rules, rather than the rules propounded in the official rhetoric, policy statements, and legislation generated in the capital city."[29]

Sidel's theory, however, rejects the idea that the nature of Philippine society breeds local strongman rule. Sidel challenges such cultural analyses by evaluating the integral roles that state structures and violent coercion play in perpetuating this kind of governance. Sidel believes that the most "distinctive and decisive" force in the

[28] "More recent studies of the contributions of forest, mineral, and marine resource exploitation – and public land – to the process of capital accumulation in the Philippines cast considerable doubt on the centrality of private landownership in the generation of wealth." (Sidel, 10)

[29] Migdal, Joel S. Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World. Princeton: Princeton University Press, 1988: 256.

entrenchment of bossism in the Philippines was the colonial experience under the U.S. He describes, particularly, "the subordination of an extremely underdeveloped state apparatus to elected municipal, provincial, and national officials in the American colonial era."[30] Sidel argues that,

> Bosses have emerged and entrenched themselves when and where the local political economy has lent itself most readily and most fully to monopolistic control, through illegal activities, nodal commercial and transportation chokepoints, public lands, and heavily regulated crops and industries. Insofar as such monopolistic control over the local economy has hinged on state-based derivative and discretionary powers, single-generation mafia-style bosses have depended and heavily on superordinate power brokers for backing.[31]

With regards to the Philippines, Sidel notes that the established, inter-rivaled national oligarchy long fostered continual factional competition for the presidency and funded opposition candidates. This prevented a "single predatory boss" from capturing the economy. Sidel then reviews Ferdinand Marcos as precisely such a "single predatory boss" and presents Marcos as the anomaly of the political tradition. Sidel notes that Marcos was successfully different from temporary lower bosses and other previous politicians due to his heightened access to and dependence upon foreign loans, his exploitation of government "development" opportunities, and the elite's increased reliance on government loans and favors.[32] Sidel explains what Ferdinand Marcos single national-level bossism looked like from the declaration of martial law in 1972 to the People's Power EDSA Revolution in 1986, as follows:

> Freed from legislative interference, Marcos ruled by decree, centralizing national police forces under the Armed Forces of the Philippines, establishing quasi-government monopolies for major commodity exports,

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[30] Sidel, John T. Capital, Coercion, and Crime: Bossism in the Philippines. Stanford: Stanford University Press, 1999: 12.
[31] Ibid., p. 141.
[32] Ibid., p. 144

> and parceling out regulatory and/or proprietary control over the other strategic sectors of the national economy…among a close circle of family members, cronies, and frontmen.[33]

Though Marcos did all this to the greatest historical degree, however, none of these actions were new to Philippine politics.

SULTANISM

Max Weber first espoused the theory of sultanism and Juan J. Linz later developed it for application to the Marcos regime and others such as those in Cuba, Nicaragua, Iran, Haiti, and the Dominican Republic. Max Weber theorized sultanism to be an extreme form of patrimonial authority, explaining the relationship and distinction to be:

> Where domination is primarily traditional, even though it is exercised by virtue of the ruler's personal autonomy, it will be called patrimonial authority; where indeed it operates primarily on the basis of discretion, it will be called sultanism ... [and] consists only in an extreme development of the ruler's discretion. It is this[,] which distinguishes it from every form of rational authority.[34]

Then, elaborating, Juan Linz characterizes the ideal contemporary sultanistic regime to be when the rule is:

> [B]ased on personal rulership, but loyalty to the ruler is motivated … by a mixture of fear and rewards to his collaborators. The ruler exercises his power without restraint … unencumbered by rules or any commitment to an ideology or value system. The binding norms and relations of bureaucratic administration are constantly subverted by arbitrary personal decisions of the ruler, which he does not feel constrained to justify in ideological terms. As a result corruption reigns supreme at all levels of society ... The staff of such a ruler … [are] often … members of his family, friends, business associates, or individuals directly involved in

[33] Ibid.

[34] Weber, Max. Economy and Society: An Outline of Interpretive Sociology. Ed. Guenther Roth and Claus Wittich. Berkeley: University of California Press, 1978: 231-232.

> using violence to sustain the regime. Their position of authority in society derives merely from this relation.[35]

Essentially, sultanism is the developed case of personal rule, differentiated by the ruler's fusion of private and public roles, its lack of a guiding ideology, and the lack of a rule of law. Indeed, even sultanistic regimes break their own norms due to the inherently arbitrary nature of personal rule. The lack of a uniting programmatic purpose, moreover, often leads sultanist rulers, such as Ferdinand Marcos, to fabricate an ideology as propaganda and implement it by 'revolution' to remove the opposition and legitimize the regime.[36] Thus, after declaring martial law in 1972, in order to quell the Communist threat, which was effectively eliminated by 1976, Marcos then justified martial law as the only means to create the revolutionary, socially just, and economically equitable "New Society" he claimed to seek.[37]

The particular nature of the Marcos regime and its developmental context within the larger scope of local strongman rule in the Philippines, acutely resonate with sultanism and bossism, respectively. As Stephen CuUnjieng notes; however, "You have to understand, what in hindsight looks very logical or like progressive moves or steps … were improvised and were based on where there was push back and where there wasn't push back."[38] In this way, one should continue to evaluate debates and theories that attempt to explain history with a critical eye. There were no comprehensive, predetermined master plans for Marcos. He followed the letter of the law and the tradition, but continually pushed it further. For this reason, one recognizes the footsteps

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[35] Ibid., p. 7.

[36] Linz, Juan J., and H.E. Chehabi, eds. Sultanistic Regimes. Baltimore: the Johns Hopkins University Press, 1998: 24-25.

[37] Wurfel, David. "Martial Law in the Philippines: The Methods of Regime Survival." Pacific Affairs 50.1 (Spring, 1977): 5-30.

[38] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.

of past politicians in all of Marcos's action, which is what allows for a pattern of moves or thought to be discerned. Rather than a master plan, however, the pattern aligns with historical precedents that join Marcos to the tradition.

MARCOS IN RETROSPECT

In a personal interview, I asked Atty. Ricardo J. Romulo, one of the framers of the 1987 Philippine Constitution and a leading Philippine lawyer, whether he considered Ferdinand Marcos to be the extreme of the entrenched system, seeing in him the embodiment of all the ills already present in the political tradition or as an aberration of the system, breaking all the norms and departing from the tradition. Romulo concludes that Ferdinand Marcos truly was both, explaining, "[Marcos] was riding the course of history quite well and manipulated it to his advantage."[39] Analyzing the history and motives that led Ferdinand Marcos to declare martial law in 1972, Atty. Romulo recounts,

> He was a brilliant man and a very, very clever politician, and I think what he did was both to look at the trends and manipulate some of it to his advantage. 1) He could not run again because he had had two terms 2) the Communist threat really was increasing and that was the time for radicalism … So I think he could see that he could manipulate [the] protest and radicalism to show enough danger to invoke martial law. That's how I would look at Marcos, not so much that he was an aberration, but … [as] the leader … at the right place at the right time in so far as autocratic rule … But ... the course of history really was, after [World War II] … trending to [autocracy] because of the communist threat [and the] inability of the presidents to solve economic problems. President Roxas died so soon, President Quirino had an excellent economic plan, but he was not a good leader; the opposition could run circles around him … Then there was [the] overall issue of collaboration with the Japanese

[39] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2008.

> [during their wartime occupancy, which][40] emphasized nationalism … And Marcos, in the sidelines, having popularized himself as a guerilla leader, a hero, this and that, was able to take advantage … and present himself not only as a war hero but also as a nationalist.[41]

Such perversion of the rules to suit his self-interest, essentially characterizes Ferdinand Marcos. Atty. Romulo focuses primarily on the historical circumstances that gave Marcos the opportunity to go further than his predecessors, rather than pointing to larger systemic failures within the political tradition. One should note that the lucky opportunity of this particular Cold War moment in history also lies upon a backdrop of endemic corruption and a precedent of power grabbing, which together gave Marcos the necessary tools for and very possibility of establishing a personalistic dictatorship.

Substantiating Atty. Romulo's claims, Mark R. Thompson, a proponent of Juan J. Linz's sultanism and a recent scholar on the Marcos years, confirms that Ferdinand Marcos's lied about his "heroism and courage."[42] His tales about his experience as a guerrilla fighter against the Japanese were very much political tactics. Thompson ascribes this to the "Marcos style," in which "any type of dissimulation or chicanery or bribery or coercion is applicable."[43] Thompson elaborates on Ferdinand Marcos's war tales, stating that,

> During the war Marcos had organized an Ilocano[44] gang of 'forgers, pickpockets, gunmen, and racketeers' engaged in extortion and the black market. He transformed his guerrilla group into a political machine that built up a constituency by claming war benefits from the U.S. government and got him overwhelmingly elected to Congress in 1949. The fake war

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[40] Atty. Romulo listed President Jose P. Laurel and Sen. Claro M. Recto as two examples of those accused of collaboration.
[41] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2008.
[42] Linz, Juan J., and H.E. Chehabi, eds. Sultanistic Regimes. Baltimore: the Johns Hopkins University Press, 1998.
[43] Ibid., p. 214.
[44] President Ferdinand Marcos is from the Ilocos region of the Philippines.

> medals he received as a political favor a decade and a half later were evidence of how much influence he had gained in the legislature.[45]

When posed the same question as given to Atty. Romulo, Stephen CuUnjieng replied more decisively. Stephen had protested heavily against the Marcos regime until eventually the Marcoses personally requested that he leave the country in 1984. Reflecting on Marcos's position within the political context, Mr. CuUnjieng argues,

> He is the extreme of the system, because he came out of the system, he broke it after extending it, but he was a product of the system … and moved up legitimately … He wouldn't have been tolerated and accepted if he wasn't embodying qualities of the tradition.[46]

Ferdinand Marcos did not immediately establish a dictatorship upon coming to power. He served his first term and built a strategy to secure a second term, which was a historical first, only after which did he resort to more drastic measures to remain in power.

The former President, Fidel V. Ramos, who was the Chief of the Armed Forces, implementing martial law, and later the Secretary of National Defense, before ultimately becoming President of the Philippines in 1992, intimates a different inside opinion of Marcos. Ramos describes Marcos using language that strongly resembles that of Sen. Juan Ponce Enrile, demonstrating the country's uniform regard for Marcos's legal acumen, however, he then emphasizes the influence of the First Lady. Ramos explains,

> I think it is accurate [that Marcos is the apotheosis] in hindsight, because at the time [that] he was in wealth and power he appeared to be the most brilliant of all Filipinos in the 20th century ... As a young student, top-notcher of the Bar, he was brilliant and patriotic and as far as I can remember he was a good example for Filipinos, but then things changed after he assumed power. Now you may recall that in his first term … he really did a good job as President of the Philippines, then in his second term it was mixed in terms of the interest of the country as a whole, because he was already starting to plot how to prolong himself in power,

[45] Linz, Juan J., and H.E. Chehabi, eds. Sultanistic Regimes. Baltimore: the Johns Hopkins University Press, 1998: p. 214-215.
[46] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.

> the result of which was martial law. It was mixed because more and more he came under the influence of the First Lady … being in the corridors of power for four years … put all kinds of ideas into his head and I think that was part of it. Some people wrote books … about the conjugal dictatorship.[47]

Many believe that Imelda Marcos's desire to remain in power helped to drive Marcos down the path he eventually took. Mrs. Marcos's unabashed immoderation focused the spotlight on her. In contrast, Ferdinand Marcos was something of an ascetic, who did not indulge himself in the same fineries as his wife. However, one should also note that Marcos was very skillful at handling all those around him. In the same way that he married Imelda for political reasons, it has also been suggested that Marcos chose to paint her as the corrupt one to deflect attention away from himself.

Amb. Stephen Bosworth, the US Ambassador to the Philippines from 1984-1987, differentiates Ferdinand Marcos from the other Filipino politicians of his time and tradition. Putting aside all theories, Bosworth simply places primary importance upon Marcos's desire to stay in power. Bosworth states plainly, "Marcos was much smarter than his contemporaries and more ruthless than his contemporaries and by the mid 1970s he was at a point when he could not envision any future for himself beyond being president of the Philippines."[48] Power, indeed, drove Marcos, but presidents before him had been equally power hungry, nevertheless, Marcos was the first to even win reelection. Marcos was more successful at the playing the same game, not only because of his greater prowess and daring, but also thanks to the Cold War context in which he came into power.

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[47] Ramos, President Fidel V. Personal Interview. 2 Sept. 2008.
[48] Bosworth, Amb. Stephen. Personal Interview. 18 Sept. 2008.

Striking a very different note, Atty. Estelito Mendoza, Marcos's former Solicitor General and Minister of Justice, contextualizes Ferdinand Marcos, asserting,

> I think he practiced the same [patronage politics], but in a more sophisticated way. For example, it's because he was a leader and he's a dynamic leader and his leadership is real. He's not a leader simply because he's president, but because people believed in him. So he did not have to play the usual politics of patronage just like you have now.[49]

The leadership that Mendoza admires in Ferdinand Marcos is incontestable, however, his subsequent argument does not follow quite as clearly. Mendoza draws a comparison to the current president, Gloria Macapagal-Arroyo's, pithy 500 peso patronage handouts, which he deems a waste of money. Mendoza highlights instead Marcos's construction projects, which garnered him much support.[50] The Philippines is indeed indebted to Marcos for the vast infrastructure he built and improved, however, Mendoza's argument ignores the heavy patronage that was also a central tenet to Marcos's politics.

The former Presidential Legal Counsel to Ferdinand Marcos, Hon. Manuel Lazaro, who like Atty. Mendoza remains vigilantly pro-Marcos, also notes the superlative leadership that Ferdinand Marcos embodied. Lazaro goes still further to champion Marcos as a true aberration from the cycle, declaring,

> He was able to change the political and domestic landscape in so many ways … First of all, there were no elections for a long time … I have a strong feeling [that was because] he wanted people to have more discipline, so he could emphasize the value of good leadership. He was able to dismantle goons, armies … With his entry, there were no more warlords. Elections were only for local elections and this time anybody with talents, without money, could run.[51]

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[49] Mendoza, Atty. Estelito. Personal Interview. 13 Aug. 2008.
[50] Ibid.
[51] Lazaro, Hon. Manuel. Personal Interview. 11 Aug. 2008.

Lazaro's benevolent depiction of Ferdinand Marcos subscribes to the belief that Marcos was creating a "New Society," which Marcos himself presented in revolutionary terms. In this light, Marcos's true intent was not to prolong his stay in power, but to change and discipline Philippine society. Ultimately, despite his blatant desire for power, Marcos did too wish to instill a discipline that he believed Philippine society lacked.

Senator Juan Ponce Enrile shares Hon. Lazaro's understanding of Marcos's intent. Though Enrile eventually broke with Marcos immediately prior to the EDSA revolution, Enrile states that he did so "as a matter of self-protection, self-preservation."[52] Enrile explains that he feared an assassination attempt on his life should a military junta successfully overthrow Marcos, who was gravely ill at the time and unable to defend his position.[53] Despite his ultimate defection, it is evident that Marcos remains a hero to Senator Enrile. When posed the same question as to Marcos's place within the Philippine political tradition, however, Enrile evidences a far more realistic understanding of martial law than others from the Marcos camp. As Enrile explains,

> Well he was skillful in playing the game and he inserted himself into the elite group because he was not really a member of the elite. He cultivated the friendship of the elite, and inserted himself. He was accepted, and in a sense, for a while, he allowed himself to become a tool of the elite ... At the same time, he was also planning for himself and when the time came, that's why I suspect, I do not know this for a fact, but I would imagine that he wanted to try to control the elite in the country so then when he declared Martial Law it leveled off the political and social playing field. But, there are many imponderables in the life of men; he got sick and he wasn't able to accomplish his purpose. In the mean time, absolute power corrupts absolutely, [his] relatives started to enjoy power and they thought that it would be infinite and endless and so corruption set in and that eroded the popularity of Marcos, eroded the popularity of his regime, and it ended up in the EDSA Revolution of 1986 … [Due to his sickness, he was not able to complete his] control of the people around him. I think if

[52] Enrile, Sen. Juan Ponce. Personal Interview. 6 Aug. 2008.
[53] Ibid.

> Marcos had not suffered that sickness that early, he would have succeeded in pushing through his vision of the country … to make this country great.[54]

Senator Enrile's loyalty, in this way, resembles the brand of loyalty that most of the pro-Marcos camp maintains. Enrile was Marcos's right hand man, he was involved in almost all facets of Marcos's rule, thus, Enrile does not erase the facts of Marcos's corruption or self-interest from his memory. Similarly, others such as Hon. Lazaro and Atty. Mendoza remain clear eyed about the nature of Marcos's regime, but it does not destroy their intrinsic belief that Marcos is a hero and that he sought to make the Philippines great.

Asked what he judges Marcos's intention in declaring martial law to be, Mendoza replies, "I think … martial law, [though] initially, was only [enacted] to quell a rebellion … became an instrument of reform, because of his instant power to enact laws."[55] Then, pressed as to whether martial law lasted so long because it became an instrument of reform, Mendoza admits, "Well, let's just say, maybe, [it was also] what he thought … was necessary to keep [himself] in power."[56] Yet, this realization does not prevent Mendoza from championing the Marcos years as "the most productive [period] in good legislation."[57] Mendoza even asserts that, "it's … ironic that [Marcos is] called a dictator."[58] In this way, to those such as Lazaro and Mendoza, Marcos does not need to be forgiven for his sins and the fact that he committed sins does not negate his greatness.

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[54] Ibid.
[55] Mendoza, Atty. Estelito. Personal Interview. 13 Aug. 2008.
[56] Ibid.
[57] Ibid.
[58] Ibid.

Despite his hero status, Marcos cannot be held to unreasonable moral standards, contradictory to the historical political tradition.

THE NATURE OF POLITICS

Speaking from the staunchly anti-Marcos side, Congressman Teodoro "Teddy Boy" Locsin, Jr., descendant of a long active political family, a former journalist, a personal student of President Marcos,[59] and a speechwriter for several presidents beginning with President Corazon Aquino, believes that "Marcos is not the apotheosis of any system, he was just a guy who took advantage of the sense of limitations of every other member of the senatorial class."[60] Congressman Locsin elucidates the nature of the political culture, explaining,

> Our political tradition really was that of a senatorial class. There were families that were in politics and you knew [who they were]. I think they took advantage of their position more to protect what they had. There were some families who were clever and were able to take advantage of national policies like the reparations. The Madrigals may have made a fortune there, but remember they were not in politics[61] … Everyone waited for his turn in power, but there were things that you did not do to each other: you never shot each other, you respected each other's privacy.[62]

The grave toll that the Marcos years took on his family explains Congressman Locsin's position. His is a historically political family, therefore, rather than denouncing the entire political tradition that his family helped to build, he instead emphasizes its limits. Certain

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[59] Cong. Locsin's family supported Ferdinand Marcos during his 1969 election and due to Cong. Locsin's avid interest in political theory at the age of 21, Ferdinand Marcos would invite him to Malacañang Palace and Ferdinand Marcos directed an informal course of study on political philosophy and theory for Cong. Locsin.

[60] Locsin Jr., Cong. Teodoro. Personal Interview. 14 Aug. 2008.

[61] Many elite economic families in the Philippines rather than directly entering politics, instead ally with someone who can serve as their political actor, as the Madrigal family did with President Diosdado Macapagal, or the Aboitiz family in Cebu did with the Osmeñas.

[62] Locsin Jr., Cong. Teodoro. Personal Interview. 14 Aug. 2008.

rules did govern the political tradition: power tacitly passed back and forth between the elite factions and killings took place on a local, not national, level, but a true rule of law did not exist. Marcos thus differed from the rest only in superficial terms, but in kind, he very much resembles the others of the senatorial class.

Congressman Locsin recounts a story about Jaime "Banjo" Laurel, the son of the House Speaker Jose Laurel Jr. and the black sheep of the family, who had a "tendency to shoot people in nightclubs."[63] One day, Jaime Laurel's wife was shot dead and the Locsin family's publication *Free Press*, the oldest political newspaper in the Philippines, published part one of the story, but Congressman Locsin explains,

> [B]efore part two could come out, Speaker Jose Laurel, who was living two streets away, suddenly shows up at our breakfast table and we're supposed to be going to school, but my father's there having breakfast. So [Laurel] sits down [and eats]. And my father called up the office and said part two [would] not come out, because you can never attack a man who breaks bread at your table; that's just the way it was before. Sometimes that's good, sometimes that's bad, but I think overall it was good because nobody ever exceeded [his/her] limits. That was all destroyed by Marcos … [The others] would never dream of doing what he did, because it was out of the rules … that's why he was able to do it. He was able to get control of the army, he was able to build up a regional officer class – mostly Ilocanos – isolate the southerners, and lay the groundwork for military takeover, which is what he did and he destroyed the entire republican class. In thirteen years[64] it disappeared; the children of that class are not in politics anymore.[65]

Congressman Locsin also points to several lingering vestiges of this old republicanism in Ferdinand Marcos. In addition to being a legendary legal mind and wishing always to portray an appearance of legality to his rule, Congressman Locsin attests that Marcos continually went through the charade of fake elections, because he

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[63] Ibid.
[64] Martial law lasted from 1972-1981 and President Ferdinand Marcos was ousted in 1986.
[65] Locsin Jr., Cong. Teodoro. Personal Interview. 14 Aug. 2008.

inherently thought it was improper not to. This was not a move towards more sincere democracy, merely a superficial observation of tradition. Congressman Locsin further recounts,

> We later found out that he never actually touched the national treasury, although we overthrew him on that condition, that he was stealing from the government. He would take kickbacks from Japanese contractors etc., but we found out that he didn't touch the national treasury, that's another throwback of his, that you use your power to enrich yourself but you never put your hand in the public till, which is the way it was in the old Republic.[66]

Though this may be a specious definition of stealing, Congressman Locsin's point only further reveals Ferdinand Marcos as being within the system, rather than without. Marcos clearly was not trying to overstep certain traditional boundaries, though pushing the limits of what had been done before.

Amb. Philip Kaplan, the Deputy Chief of Mission and Charge d'Affaires to the Philippines' U.S. Embassy during the transition after Marcos to the Aquino administration, once asked President Marcos why he permitted all the corruption in his government. Kaplan confides that, in summary, Marcos explained that were he to remove of all of his so-called cronies, his whole support system would break down, and that he was effectively running a feudal operation.[67] Indeed, the former Senate President Jose Avelino admitted with shocking honesty, "We are not angels! What are we in power for? When Jesus Christ died on the Cross, He made the distinction between a good crook and the bad crooks. We can prepare to be good crooks."[68] While serving in her cabinet, Congressman Locsin says that President Aquino once told him:

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[66] Ibid.
[67] Kaplan, Amb. Philip. Personal Interview. 29 Jul. 2008.
[68] Seagrave, Sterling. The Marcos Dynasty. New York: Harper & Row Publishers, 1988, p. 137

> If you've never knelt with a rosary and prayed for every single vote, thinking you'll be cheated, you've never gone door to door begging for a vote, knowing you couldn't buy them all, then you don't understand what we politicians live.[69]

The Filipino people had no expectation that Ferdinand Marcos would follow the law. The apotheosis of the system, he extended the law, through complex legal and political tactics, to expand the definition of the entire political power game. In the beginning, the public largely supported him, though strong opposition built against him during his second term. When Marcos eventually declared martial law at the end of his second term, however, the public thanked him for doing so. The Supreme Court supported him in this and when he dared further, flagrantly violating the provisions of the Constitution, they were unable to challenge him. Rather than rejecting him as overstepping the boundaries of the political tradition, the Court's decision extended the limits to include him. The rule of law had never governed politician's actions. The Supreme Court's legitimation only continued to afford Marcos the same protection from constitutional constraints that previous politicians enjoyed for less excessive violations. Understanding the nature of Philippine politics requires revising one's understanding of politics altogether, for the government never played by its own rules.

[69] Locsin Jr., Cong. Teodoro. Personal Interview. 14 Aug. 2008.

CHAPTER TWO: THE DEFINING HISTORICAL CIRCUMSTANCES

AMERICAN COLONIAL POLITICAL TUTELAGE

To expose Marcos as the perfection of the Philippine political tradition requires an examination of the nature of the system, paying particular attention to its formation and entrenchment. To this end, academic articles on Philippine politics commonly begin with acknowledgment and praise of the country's long experience with democracy. Paul Hutchcroft writes, "No country in Asia has more experience with democratic institutions than the Philippines. Over more than a century … Filipinos know both the promise of democracy and the problems of making democratic structures work for the benefit of all."[70] However, Atty. Romulo contests that,

> Philippine democracy was always a façade. It worked at first because the Americans were always around, but it was built on the notion that if you had elections you had democracy, but the institutions were not there – it was always patronage. Family loyalty was number one, regional loyalty was number two – these were vestiges of feudalism … So it really was not a showcase for democracy, because from the very beginning the values were imported and didn't embed themselves in our culture.[71]

The former Minister of Education, Culture, and Sports, O.D. Corpuz, extensively studied Philippine colonial history and his work supports Atty. Romulo's view. Corpuz articulates the dissonance between the "suprastructure" of political values that the U.S. gave the Philippines and the "infrastructure" of traditional attitudes that the Filipinos applied to those values:

> In the suprastructure the dominant attitudes and values are: a confidence in the potency of the individual to solve his own problems; a high respect for individual achievement; stress on technical expertise and impersonal rationality in the social management of public affairs; and a technique of

[70] Hutchcroft, Paul D. and Joel Rocamora. "Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines." Journal of East Asian Studies 3 (2003): 259-292.
[71] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2008.

> enforcing social responsibility through impersonal legal rules. The infrastructure, on the other hand, has among its components a reliance upon primary groups, especially kinship groups, in the solution of the individual's problems; a high respect for social status rather than individual achievement or merit; an emphasis on primary interest-groups as against the interests of the individual or of the vague national community; and a style of social morality based on personal, traditional, or ethical (nonlegal) norms.[72]

Though there is always a certain disconnect between suprastructure and infrastructure, the lack of genuine democracy makes the difference between the American and Filipino cultures staggering and speaks to the difficulties of importing a political system, as Atty. Romulo notes. To this point, past executive positions in the Philippines prior to the U.S. influenced 1935 Philippine Constitution indicate that though the Philippine conception of the presidency was in keeping with that of the Americans, a separation of powers was not. Filipinos were as yet unaccustomed to separated branches of government. Filipinos, furthermore, generally distrusted executive power due to their strong historical reasons for doing so under the Spanish governor-generals who served the Spanish crown.[73]

At the beginning of the American colonial period in 1898, the Philippines had no meaningful experience with national democracy or political parties. The counter-Spanish revolutionary period produced the Malolos Congress and Malolos Constitution, the latter of which drew from both the American and English model and was an eighteenth-century Enlightenment influenced document committed to individual rights according to natural law.[74] William Howard Taft led the Second Philippine Commission,[75] establishing a civil

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[72] Muego, Benjamin M. Spectator Society. Athens: Ohio University, 1988.
[73] Romani, John H. The Philippine Presidency. Manila: University of the Philippines, 1956.
[74] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988: 8.
[75] The First Philippine Commission was a fact-finding mission, which determined that the Philippines wished to gain their independence, though this conclusion did not translate into policy. (Wurfel, 8)

government in 1901, wherein the commission acted as both the cabinet and legislature with Taft as the first governor-general of the Philippines.[76] President McKinley's "Instructions to the Philippine Commission" hollowly reminded Taft that "The Commission should bear in mind that the government which they are establishing is designed not for our satisfaction or for the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands."[77] Notably, President McKinley also stressed,

> The people of the Islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system … that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar.[78]

In practice, the colonists on the ground were in round agreement that the Filipino peoples were savage and ignorant. Thus, the colonists did not seek the Filipinos' consent or aim to adapt the American governmental system to their customs and traditions.[79]

The Americans built upon the Spanish governmental institutions and from 1900-1913, as the first Philippine governor-general, U.S. Secretary of War, and eventually U.S. President, William Howard Taft supported a "policy of attraction." This policy awarded political opportunities to the established economic elite while Taft encouraged the

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[76] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988: 8.
[77] Castañeda, Anna Leah Fidelis T. "The Origins of Philippine Judicial Review, 1900-1935" Ateneo Law Journal 46.121 (2001) : 121-156.
[78] Ibid., p. 127
[79] Ibid.

American model of strong local government.[80] Yet, the economic elite was not necessarily destined to inherit political prominence. As Benedict Anderson states, "It was above all the political innovations of the Americans that created a solid, visible 'national oligarchy.'"[81] Taft and other American colonials stated that "the masses [were] ignorant, credulous, and childlike" and they severely limited suffrage, protected elite dominance, and opposed potential popular mobilization against their established order.[82] In this way, it was the particular historical circumstances of the American colonial rule, rather than Philippine culture, that largely determined the subsequent political trajectory.

"A RAPIDLY 'FILIPINIZED' STATE APPARATUS"

In 1902, Philippine municipal officials elected the provincial governors, incorporating municipal politics into the larger provincial politics and new, intricate intraprovincial allegiances formed. In 1907, Taft's commission became an appointed upper house as an elected Filipino legislature came into being, dominated by the newly created Nacionalista party.[83] The electorate was elite and limited, amounting only to 3% of the population. The U.S. invited males at least twenty-three years of age, who had held municipal office before August 13, 1898, were literate in Spanish or English, and paid annual tax or owned at least $230 worth of property, to directly elect their provincial

[80] Hutchcroft, Paul D. and Joel Rocamora. "Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines." Journal of East Asian Studies 3 (2003) : 259-292.
[81] Anderson, Benedict. "Cacique Democracy and the Philippines: Origins and Dreams." New Left Review 169 (1988) : 3-33.
[82] Hutchcroft, Paul D. and Joel Rocamora. "Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines." Journal of East Asian Studies 3 (2003) : 259-292.
[83] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988: 8.

governors.[84] In doing so, the provincial loyalties and factions grew deeper still, forming what would become the premise for the later national assembly elections. The U.S. Congress enacted the Jones Law in 1916 authorizing a bicameral legislature to be elected by all literate males. Though the legislature was not yet fully elective, the Jones Law did expand the electorate. By 1920, the American colonists had effectively given up direct control of the Philippines, but preserved great economic, military, and foreign policy related influence.[85]

The political system was extremely exclusive but offered rapidly larger political positions, however, the American colonists failed to build a strong bureaucracy to accompany these expanding opportunities. Sidel describes the legislature gaining control over "a hastily constructed and rapidly 'Filipinized' national state apparatus."[86] The colonists focused on holding elections, forming representative institutions, and mobilizing nascent political parties. Without an effective bureaucracy, however, these institutions fell prey to the detrimental patronage system of the Philippine provinces. Sidel cites, moreover, that American colonial officials observed that the municipal police forces were merely "the political henchmen, and in too many instances the personal *muchachos* of the *presidentes* and local bosses."[87] This situation differs from the regional advances that took place in other Southeast Asian countries at the time, as in, for example, Indonesia's experience under the Dutch.[88] In Indonesia, the Dutch expanded the state, bureaucratized the apparatus, and centralized the entire governmental system with

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[84] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 16.
[85] Ibid.
[86] Sidel, John T. Capital, Coercion, and Crime: Bossism in the Philippines. Stanford: Stanford University Press, 1999: 16.
[87] Ibid.
[88] Ibid., p. 17.

greater tutelage and organization for their colonial subjects. After 1920, however, such centralization did give way to harsh authoritarianism in Indonesia.

Many Filipinos suffered and fought desperately for independence from Spain. When the Americans arrived, nationalism had been growing, particularly following the execution of the independence hero, Jose Rizal. The colonists sought to deafen this sentiment. Scholar Albert F. Celoza reports, "the display of the Philippine flag was banned and advocacy of independence was prohibited during the first years of American occupation, but through theater and music, anti-American feelings were expressed."[89] Atty. Romulo discusses both colonial powers, explaining,

> The struggle against Spain – that was genuine, blood was spent there, many died, many were persecuted – then the Americans came in, who we thought were liberators, and promptly double-crossed us … The trouble the Americans brought was [that] – though from a colonial power it [was] smart – they soon gathered the elite and made them collaborators and with that retained the old power structure that the Spanish had put in place. That was anti-democratic, but the colonial administrator is only interested in pacification. The elite had the power structure to resist [the Americans] some more if they wanted to, so [the Americans] quickly collared all of them and made them their own. So you really left a vast number of people outside of the system, which is the way it has always been even up to now.[90]

In this way, the Philippine political system developed, but it never matured past the impediments that colonialism placed upon it. Rather than building a popular, representative body to serve the will of the people, the elites further entrenched government as their exclusive domain.

Taft's government successfully dismantled the friar estates, while his civilian bureaucracy sought to win over the landed elite from their revolutionary fight. Dangling

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[89] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 15.
[90] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2008.

the bait of political power did, indeed, successfully enervate Philippine nationalism. Ultimately, however, the Americans created a political system that catered entirely to the elite. Collaboration with the Americans cemented the oligarchy's power and created a dependent economic relationship with the U.S. that discouraged Philippine economic diversification or industrialization.[91]

The American colonial period did, nevertheless, decouple the Catholic Church from politics, establish the importance of elections, create a strong presidency, and form political parties. The institution of a strong presidency resulted from its modeling after the role of the Commonwealth governor-general, which the first Commonwealth President, Manuel Quezon, would be able to exploit later in 1935.[92] Over time, the electoral process took root and conferred legitimacy upon the chosen leaders. Until 1901 when the U.S. established a civil government, no political parties had existed.[93] According to Wurfel, however, "Indigenous values entered the political process through parties and elections to a degree not possible in the bureaucracy and other formal institutions modeled on western lines."[94] The negative consequences of the elite-dominated process and the primacy upon kinship ties and patronage would only become apparent later. It was clear by the 1930s; however, that the party system had,

> [M]erely strengthened the political hold of dominant, landed families, which had used quasi-feudal techniques to gain an electoral following and could hold national power through a system of one-party dominance. At the national level, as a result, mass interests could not be articulated.[95]

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[91] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 16.
[92] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988: 11
[93] Ibid.
[94] Ibid.
[95] Ibid.

Thus, even when in 1951 the electorate expanded dramatically to 4.7 million registered voters due to the abolishment of the literacy requirement, as Wurfel writes, "the dominance of the newly created national oligarchy was so well entrenched that challenges from below – motivated by deep social injustices – faced monumental odds."[96]

[96] Ibid.

CHAPTER THREE: THEORETICAL FRAMEWORKS

PATRONAGE POLITICS

Utang na loob ("the exchange of services and goods between individuals belonging to two different groups."[97]) is the embedded social value of reciprocity that underlies Philippine culture and has colored much of Philippine politics. Such reciprocity is evident in underdeveloped, dependent community structures, and due to the halted development of the Philippines, continues to permeate political interactions there today. Ambassador Stephen Bosworth comments,

> There is a lot about Philippine culture that hasn't changed [throughout the history of the political tradition], the government in place now is evidence of that.[98] The reality of the Philippines is that it is … organized vertically; people on top take care of the people under them and the people under are loyal to the people on top. There is very little horizontal organization of society in the Philippines, so popular action is very difficult to mount. It happened to some extent in the 1986 revolution in that, that act of getting rid of Marcos brought together various classes and regions in a way that hadn't happened before ... But Filipino politicians try to take advantage of this vertical organization; political parties are ineffective and politics tends to be, by and large, personal- this is a classic example of *utang na loob*.[99]

This cycle of favor and debt is the currency for earning a living and socially advancing in the Philippines, because individuals must trade through the established system in order to progress.[100] Termed "dyadic alliances" in anthropology studies, in 1964 Carl Landé fleshed out their relevance to the nominal two party system of Philippine democracy. In

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[97] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 19

[98] Particularly referring to the current President Gloria Macapagal-Arroyo's corrupt administration, her machinations to remain in power, and the continued elite family dominance of Philippine politics.

[99] Bosworth, Amb. Stephen. Personal Interview. 18 Sept. 2008.

[100] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 19

this system, there are no ideological or programmatic differences between parties, merely rival alliances, which prove to be shallower still given the frequent turncoatism.

Without party loyalty or ideological counterpoints to shape policies, the branches of government remain truly separated as they are not accountable for leading "responsible party government" in order to win reelection. This renders the President unable to depend on legislative support from his party and he/she is thus severely weaker than the constitutionally vested powers suggest.[101] This observation rings true with regards to Ferdinand Marcos, who easily switched from the Liberal party to the Nacionalista party, in order to run for president. Such political action further conforms Marcos to the particular political tradition of the Philippines.

For their part, the electorate does not commit to parties and instead votes according to personality or loyalty. Eric Gutierrez views this in terms of class, explaining,

> Philippine politics has not yet reached that maturity where class interests are aggregated into political parties … People and political actors down to the grassroots level, regardless of class origin or interest group, usually align or identify themselves with political clans that could best dispense patronage and access to power.[102]

To this end, Albert Celoza writes, "Campaign slogans [took] the place of policies. Vote buying and bribery were rampant and worked effectively during elections. Promises of favors abounded. Pecuniary benefits were enough to induce desired behavior. In an economy of scarcity, the utmost concern is survival."[103] The majority of the electorate, however, will understandably have no taste for elevated policies so long as their chief concern remains daily survival.

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[101] Ibid.

[102] Gutierrez, Eric U. All in the Family. Quezon: Institute for Popular Democracy, 1992: 5.

[103] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 21-22

Mary Racelis Hollnsteiner's review of local Philippine politics describes the joys and disappointments that follow municipal elections. She writes that the supporters of the winning party become *utang na loob* creditors, collecting their reward.[104] The most vigorous campaigners can relax knowing that no punishment will follow should they conveniently forget to pay their taxes.[105] Then, the opposition predictably accuses the incumbent party of corruption and abuse of public office for personal and familial gains. Unfortunately, however, that is precisely what the general public had expected in the first place.[106] Thus, Marcos's heightened corruption and cronyism did not break the political system, but merely confirmed it.

THE FAMILY STATE

Utang na loob may provide the language to explain the political and economic transactions of the Philippines, but to appreciate the higher order that mandates Philippine politics, one must recognize the power of the Family State. This cultural lens forms a large component of the established scholarship on Philippine history and though essentialist cultural analyses are mostly flawed due to their determinism, the supreme role that the Philippine family plays is incontestable. Stephen CuUnjieng recounts that while protesting directly alongside Corazon Aquino, Mrs. Aquino herself, upon realizing who Stephen CuUnjieng was, asked, "What is he doing here? He should not be here."[107]

The CuUnjiengs were not financially, but merely socially, tied to the Marcoses, thus Stephen CuUnjieng's actions did not affect his family's welfare. Yet, Mr. CuUnjieng

[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.

explains, "The view of right and wrong in this country is only secondarily moral, it's primarily tribal. When I was demonstrating nine out of ten people said 'How could you?' not because it was wrong, but because my parents were close to Marcos."[108] Therefore, even Corazon Aquino, who eventually ousted Marcos and championed her cause on moral grounds, was, herself, unable to place morality above family. Aquino's comment demonstrates the classic Filipino understanding of loyalty, which dictates that, for right or wrong, it should in all circumstances lie with one's family. This particular limitation is not a product of American colonialism, but a cultural feature that matured under Spanish colonialism. Spanish familial ties bear a strong resemblance to that of Filipinos, but the nature of colonialism, with a limited, immature political system ruling a tribal country based on kinship ties, ultimately made such ties a handicap in the Philippines.

The paradigm of strong families and a weak state traditionally features in much of the academic scholarship on several Southeast Asian countries and extends to the former Spanish colonies of Latin America. Jean Grossholtz describes the family unit in the Philippines to be "the strongest unit of society, demanding the deepest loyalties of the individual and coloring all social activity with its own set of demands."[109] While the family reliably assures social survival, in the space of a century the Philippines experienced the tumult of five republics, three empires, and accompanying revolutionary and World Wars. This instability only further drove Filipino trust away from government. When the United States awarded the Philippines their long-awaited independence, the central government failed to seize and defend their power against the muscle of the local governments who delivered national politicians their votes. The local politicians

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[108] Ibid.

[109] McCoy, Alfred W. An Anarchy of Families. Quezon: Ateneo de Manila University Press, 1995: 1.

effectively became like the warlords that had long ruled the provinces and gained veritable autonomy while reigning over the provincial population with terror and abuse of the *utang na loob* understanding.

Thus, as Alfred McCoy notes, "After generations of experience Filipinos have learned to rely upon their families for the sorts of social services that the state provides in many developed nations."[110] In *An Anarchy of Families*, McCoy highlights the Articles of the Philippine Civil Code, which express the integral Filipino respect for the family unit. McCoy also notes the "curiously loving language" of Article 216, which states: "The family is a basic social institution which public policy cherishes and protects."[111] Article 219, additionally, delineates the supreme role that family plays in social welfare: "Mutual aid, both moral and material, shall be rendered among members of the same family. Judicial and administrative officials shall foster this mutual assistance."[112] The powerful Catholic Church also has its hand in both politics and social welfare, but it is the family that "provides employment and capital, educates and socializes the young, assures medical care, shelters its handicapped and aged, and strives, above all else, to transmit its name, honor, lands, capital, and values to the next generation."[113]

With regards to the elite families[114] that monopolize the political and economic landscape, it is believed that in tandem to wealth and privilege, the succeeding generations inherit the character and values long associated with their family name. National trust and respect, therefore, continues through generations alongside control,

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[110] Ibid., p. 7.
[111] Ibid.
[112] Ibid.
[113] Ibid.
[114] Conceptually, here "elite" describes the 60 to 100 families in the Philippines that are distinguishable not only through economic class and social status or prestige, but also enjoy authority, influencing and dominating the selection of elected and appointed officials. (Gutierrez, 4)

which only further advantages the politicians that descend from the country's most elite brands. Filipinos define family bilaterally rather than patrilinearly, joining a wife's family line to her husband's and with each generation the family network and consciousness only strengthens. This gives rise to the common belief among the elite that "everyone is related." Within politics, however, this extensive and flexible familial landscape gives an impression of volatility, wherein, "elections often assume a kaleidoscopic complexity of coalition and conflict" concerning factional inter-elite differences.[115]

Macroscopically, Filipino politics remain steadfast and stable, having resided in the hands of the elite for over a hundred uninterrupted years. Indeed, Carl Landé writes, "the two parties were essentially competing factions of actually only one 'party', a ruling elite that had the same social conditions, the same political norms and the same programs of government."[116] With the notable exception of six Democratic Alliance candidates elected in 1948, nearly all national elected officials from 1946 to Ferdinand Marcos's declaration of martial law in 1972, were from families possessing considerable influence over local elections in their respective provinces.[117] Even the exception proved to be tragedy. As punishment for the Democratic Alliance officials' foolish belief that they too could take part in politics, Congress expelled them on the grounds of alleged fraud and campaign violence. More tragic still, in 1948 the Supreme Court upheld their removal and denied them their seats in the House of Representatives.

The privatization of public resources empowers the dominant political and economic elite while diminishing the state apparatus and its resources. A legacy of the

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[115] McCoy, Alfred W. An Anarchy of Families. Quezon: Ateneo de Manila University Press, 1995: 10
[116] Gutierrez, Eric U. All in the Family. Quezon: Institute for Popular Democracy, 1992: 5
[117] Ibid., p. 7.

colonial bureaucratic mandates, the weak state provided for the entrenchment of the elite families in the economy and politics. In particular, this was due to the emasculation of the central government at the hands of their local counterparts and the growing share of "rents" within the national economy.[118] The theory of rent seeking describes the severe market entry restrictions and virtual monopolies that the state grants only to the few, which sparks elite competition or "rent-seeking". Due to the colonial context that established and directed the state's evolution, the national government is a feeble apparatus for economic development, thus rendering it beholden to the rent-seekers that it caters to.[119]

[118] McCoy, Alfred W. An Anarchy of Families. Quezon: Ateneo de Manila University Press, 1995: 10
[119] Ibid., p. 11.

CHAPTER FOUR: PAVING THE ROAD TO MARCOS

PROVIDING FOR MARTIAL LAW

Estado de sitio (state of siege) was the colonial Spanish equivalent of martial law, though on no occasion was it imposed.[120] Neither was it provided for in the Malolos Constitution of the First Philippine Republic, which only lasted a short six-month run. Section 21 of the Jones Law was the Philippines' true introduction to martial law. Shortly thereafter, in 1905, Governor-General James F. Smith, under the authority of the Philippine Bill of 1902, suspended the writ of *habeas corpus* for the first time in Philippine history.[121] The Jones Law ascribed such powers to the governor-general and the provision bears nearly the precise language later used in the 1935 Philippine Constitution's Article VII, Section 10, Paragraph 2:

> The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion, or imminent danger thereof; when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.[122]

Unlike the United States, the Philippines explicitly vested this power in the executive.[123] Congressman Locsin reasons that as a new country, the Philippines required more specific articulation of emergency powers than the U.S. Constitution delineated.[124] As a consequence, under Ferdinand Marcos, initially it was not that the Supreme Court was supine, but that in cases of martial law, the judiciary does not enjoy the same prerogatives as the executive.

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[120] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[121] Ibid., p. 31
[122] Constitution of the Philippines Manila: Bureau of Printing, 1969, p. 22.
[123] Romani, John H. The Philippine Presidency. Manila: University of the Philippines, 1956, p. 77
[124] Locsin, Cong. Teodoro. Personal Interview. 14 Aug. 2008

Though there was unanimous support among the 1935 Constitutional Convention delegates to grant the President the control of the armed forces in the case of danger, there was serious contention as to whether the power to suspend the writ of *habeas corpus* should reside with the executive or legislative branch.[125] In 1934 Delegate Salvador Araneta wished to amend the martial law provision to provide for the National Assembly to suspend the writ of *habeas corpus* when public safety required it. He proposed that the power reside with the President only if the National Assembly is not in session and a majority of the Supreme Court consents.[126]

Delegate Araneta warned that the martial law provision as it stood allowed only the President to determine the existence of "lawless violence, invasion, insurrection, or imminent danger thereof." In addition to the general Philippine distrust of executive power, Delegate Araneta feared that due to the existing judicial precedents in 1934, the Supreme Court would be unlikely to review the basis for the President's decision to suspend the writ of *habeas corpus*.[127] With regards to Ferdinand Marcos, it seems Araneta was right to fear the executive's abuse of this power. After each suspension of the writ of *habeas corpus*, beginning in 1905 with Smith, then again in 1953 with Quirino, and ending in 1971 with Marcos, the Supreme Court sustained the executive's decision. In this way, Marcos's relationship with the Supreme Court joins an unbroken historical precedent in Philippine history. He is not the aberration of the system, but merely a progression of the political tradition, pushing it still further to achieve truly executive dominated, personalistic rule.

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[125] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[126] Ibid., p. 30
[127] Ibid.

THE COMMONWEALTH

President Franklin Delano Roosevelt signed the Tydings-McDuffie Act in 1934, which provided for a ten-year Commonwealth that allowed the U.S. to retain the rights to emergency intervention, jurisdiction over foreign and defense affairs, as well as the authority to review Supreme Court rulings. Furthermore, the U.S. required that the Philippine Constitution be subject to U.S. approval prior to enactment.[128] The Commonwealth was inaugurated on November 15th, 1935, after one year and the easy acceptance of the 1935 Philippine Constitution, which bore the language and intentions of the Jones Law and U.S. Constitution.[129] Senate President Manuel Luis Quezon was elected the first Philippine Commonwealth President and Sergio Osmeña the first Vice-President. Congressman Locsin discusses President Quezon's post-colonial, political advantage, recounting,

> Not everybody liked him, but he was the one who was charismatic; he looked white, he looked handsome actually. He could carry the fight for independence in Washington without looking like an [indio] … These things matter. A Spanish man looks like an aristocrat; Americans will listen to an aristocrat. In fact, he wasn't, I understand he was poor, but he looked good. Some of the rich guys around look like natives – that's why he took the leadership; he knew how to deal with the foreigners.[130]

Remembering the Philippine's political tutelage, President Quezon's victory is consistent with the racist sentiments of the past colonial regimes. Under and as a result of colonialism, those of *mestizo* (mixed white) blood held greater privileges, respect, and power.

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[128] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988: 10.
[129] Ibid.
[130] Locsin, Cong. Teodoro. Personal Interview. 14 Aug. 2008.

Quezon's presidency veritably molded the strong executive office, which Marcos later extended to its extreme conclusion. Quezon enjoyed wildly expansive powers, which were lifted directly and almost in full from those of the colonial governor-general. Yet, Quezon had envisioned a strong executive branch even prior to his election and consistently pushed the constitutional convention to create a stronger president than that of the White House. While the American president presides over a large federation of distinct states, in the Philippines, provincial governments possess only delegated authority and power resides in the national branches. This arrangement naturally creates a president stronger than its American counterpart.

The 1935 Philippine Constitution ascribed to Quezon "the authority to disapprove individual items in appropriation bills, discretion over the disbursement of budgeted funds, and a supervisory control over local government units," a line item veto that the U.S. President does not have.[131] President Quezon applied his native use of patronage to national-level government resources and even leveraged his control over regulation agencies as favors and/or threats. Thus, as was true of Marcos as well as other Philippine presidents, President Quezon's power outstripped even that of the governor-general. Additionally, Quezon effectively secured the Nacionalista party's dominance in the legislature and dealt with provincial politicians to win local vote banks and outmaneuver other national politicians. Ultimately, Hutchcroft concludes,

> This strange political system, neither centralized nor decentralized, links powerful presidents and powerful local bosses in a relationship that is both symbiotic and highly variable … The effect of this system is illustrated in the fate of the elected administrations that could not afford to alienate the

[131] Sidel, John T. Capital, Coercion, and Crime: Bossism in the Philippines. Stanford: Stanford University Press, 1999: 16-17.

> local clans that controlled political factions (and often private armies) in the countryside.[132]

THE 'SPECIAL' RELATIONSHIP

A short ten hours after the attack on Pearl Harbor, the Japanese air force attacked the American military base, Clark Air Base, in Pampanga, Philippines, banding Americans and Filipinos together to fight side by side. Eventually, in April 1942 after less than a year of fighting, the American and Philippine forces surrendered. In 1946, after the conclusion of World War II, though delayed by a year, the Philippines finally gained its independence. All grievances against the United States were absolved and a new tone of gratitude for independence long sought, defense during the war, and a certain mix of allegiance, reverence, and fondness shaped Philippine feelings towards the U.S. and the future of their "special" relationship.

John T. Sidel and other students of Philippine history suggest that the Filipinos didn't shed enough blood; that independence was granted too easily. Sidel argues that as a result, "potentially 'state-building' phases of armed mobilization and military consolidation (*caudillismo*), as occurred in many former colonies during national revolutions, were preempted by the American intervention (in 1898-1901 and 1945-46)."[133] Stanley Karnow, the American author who won a Pulitzer Prize for *In Our Image: America's Empire in the Philippines*, notes,

> Filipinos also recoil from tarnishing their nationalist image by too close an association with the Americans. They seem to be trapped in a tangle of contradictions. History is responsible. Despite their own vague past, the

[132] Hutchcroft, Paul D. and Joel Rocamora. "Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines." Journal of East Asian Studies 3 (2003) : 259-292.
[133] Sidel, John T. Capital, Coercion, and Crime: Bossism in the Philippines. Stanford: Stanford University Press, 1999: 18.

> Filipinos might have forged their national personality had they been compelled to fight for freedom – as they were indeed doing in their conflict against Spain. By acceding to their aspirations for sovereignty so soon after conquest, the United States spared them a long struggle for independence. But, in a sense, their hopes were fulfilled too easily. America's acquiescence to their ambitions deflated the élan of their early nationalism, leaving them confused and ambivalent. From then on, their attitudes toward the United States vacillated between imitation and resentment, subservience and defiance, adulation and contempt, love and hate.[134]

Ambassador Bosworth reacted to Karnow's position, asserting,

> We had no choice, we had to give the Philippines independence, we were already late because of the war, we had committed to giving it earlier. Americans were never fully comfortable with their colonial position in the Philippines or anywhere else; we were a colony and didn't like it and the feeling was that it was immoral for us to be a colonial power.[135]

This perspective completely ignores the complexities of the situation on the ground. Spanish colonialism severely stunted the Philippines' growth and when the United States swept in, though harsh to declare that, "their hopes were fulfilled too easily," the Filipinos hadn't yet completed the lessons that a nation learns from the struggle for self-rule. The United States had the, admittedly dubious, luxury of coming of age during the struggle for independence from Britain, which the Philippines did not. Therefore, when the U.S. immediately placed the Philippines on a path to self-rule, without adequate or long-term minded political tutelage, it may have been in keeping with her principles, but it ignored the nation-building responsibilities she held as a colonial power.

Similarly, Ambassador Philip Kaplan also agrees with this, Ambassador Bosworth's, position on the colonial role of the U.S., asking of Karnow:

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[134] Karnow, Stanley. "In Our Image: America's Empire in the Philippines." Headline Series, Foreign Policy Association 288 (1989): 23-24.
[135] Bosworth, Amb. Stephen. Personal Interview. 18 Sept. 2008.

> What would he have us do after World War II? After [General] Macarthur came back? But Filipinos took over their own destiny and it wasn't easy. We were there to help. At the time the Philippines was the third or fourth largest aid recipient, after Israel and Palestine, which were in a class of their own, next was Turkey, and then it was the Philippines.[136]

Ambassador Kaplan is also quick to point out the pro-American sentiment in the Philippines, which after World War II, with the exception of the late 1960s and 1970s, during the Vietnam War, has been louder and more enduring. Ambassador Kaplan recounts,

> I spent all my diplomatic life with allies, I was part of the Cold War effort, and I was never in a country that was as pro-American as the Philippines. I think he over-stated the basic equation and [it] doesn't conform to my experience. I've represented the Philippine government from this law firm, I've just made my fortieth trip to the Philippines, I've probably visited more than any other American, and from a cold eyed perspective I don't recognize this. It wasn't [as such] even with the most nationalist people, [with whom] my personal relationships … were always extremely cordial … My wife went down to the embassy one day and there were people with signs that said 'Yankee go home,' but underneath it said 'and take me with you.' The relationship with the population as a whole was good. The U.S. was seen as a force to assist them in restoring democracy.[137]

Nevertheless, this pro-American sentiment was not a result of American colonialism, which embittered many Filipinos towards the U.S. Rather, it took shape only after fighting alongside the U.S. in World War II and as a result of the "special relationship" between the two countries after the war.

When presented the same quote, Atty. Romulo easily agreed with Karnow's statement, as do many Filipino intellectuals and professionals, save for the politicians who either do not or may not support the idea that "their hopes were filled too easily."

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[136] Kaplan, Amb. Philip. Personal Interview. 29 Jul. 2008.
[137] Ibid.

One such politician, Senator Juan Ponce Enrile, Marcos's right-hand man, reacted quite strongly to Karnow's statement, arguing,

> I don't think the people who loved our country were ashamed to associate with the Americans simply because they are Nationalist; I think we are enlightened enough [not to] … I don't think I can agree with that statement. Of course some people didn't want to be identified too closely with the Americans because at that time there was a growing feeling of anti-Americanism in the Philippines, so for political purposes they didn't want to be called American stooges.[138]

The heart of Senator Enrile's political career took place in a much more anti-American Philippines, the resentment of which remains with him still today. It is undeniable that the Philippines is largely, as Ambassador Kaplan attests, strikingly pro-American. Though interrupted by flashes of anti-American fashion, year after year Filipinos dream of moving to or visiting the United States and greatly idolize American culture, despite their colonial history. This demonstrates that, for the most part, the Philippines has come to view the U.S. not as their former colonial ruler, but their ally and mentor.

Tensions do remain, though they were much stronger in the beginning of the Marcos years due to the U.S.'s Cold War role and the lingering vestiges of colonialism. In particular, the latter centered on the military bases and parity rights agreements, which incited deep anger in Filipinos. Atty. Romulo also admits, however, that,

> There is that favorite theory that not enough blood was spent insofar as the Americans are concerned. I don't think [we] can say we truly had a war … [or] a real armed resistance against the Americans, though the only reason we had to give up was … no one was supplying us with arms from the outside to fight this new colonial empire coming in.[139]

The contours of such a special relationship were very much complicated and defined by the American colonial political tutelage. Though Mrs. Marcos feels deep respect and

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[138] Enrile, Sen. Juan Ponce. Personal Interview. 6 Aug. 2008.
[139] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2008.

kindness towards the U.S., there are still grudges that qualify her friendship. Mrs. Marcos complains, "We had no real freedom, we were only free to befriend the friends of America."[140]

MARCOS'S PREDECESSOR

At the close of World War II and with full grasp of their sovereignty and destiny, the Philippines elected Manuel A. Roxas to be president in 1946. President Roxas was an ardent American advocate who negotiated the PI-US Mutual Defense Treaty and the Military Bases Agreements, however, he died after two years in office.[141] Vice-President Elipidio Quirino finished Roxas's term as president and began the struggle against the Communist insurgency in the Philippines, fighting the evolved *Hukbo ng Bayan Laban sa Hapon* ("Army of the People Against the Japanese"), which had transformed into the Communist Party of the Philippines' new military wing.[142] The struggle against the Communists, like that against the Muslim separatists in the South of the Philippines, continues even after Marcos. Marcos's political struggles, in this way, only further entrench him in what are consistent cycles within Philippine history.

President Quirino was elected in 1950 and though his term was wild with graft, corruption, and electoral fraud, he is most remembered for his decision to suspend the writ of *habeas corpus*. President Quirino issued Proclamation 220 on October 22nd, 1950, in an effort to fight the Huk rebellion. This action came directly after the collapse of a

[140] Marcos, Imelda. Personal Interview. 12 Aug. 2008.
[141] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[142] Ibid., p. 47.

brief truce that the government had negotiated with the Huk leader, Luis M. Taruc.[143] President Quirino's suspension met widespread criticism and outrage despite the fact that the 1935 Philippine Constitution explicitly provided for the suspension as a corollary to martial law in Article VII, Section 10, Paragraph 2. In August of 1952, the Supreme Court ruled in *Montenegro v. Castañeda*, that the suspension was, indeed, constitutional. Marcos was, in this way, the last in a line of strong, post-colonial presidents, each of whom strengthened the executive branch alongside a weaker, complicit judicial branch.

JUDICIAL REVIEW

In *Barcelon v. Baker* in 1905, the Philippine Supreme Court affirmed the validity of the governor-general's basis for suspending the writ of *habeas corpus* and, more importantly, established the suspension of that writ as a political question over which the Supreme Court does not have judicial review. *Montenegro v. Castañeda* in 1953 echoed the language of *Barcelon v. Baker*, using the judicial precedent set in 1905 as the basis for the decision in favor of President Quirino. In *Barcelon v. Baker*, the Supreme Court ruled that, "The findings of the executive upon which he bases his order suspending the privileges of the writ of habeas corpus are conclusive and final upon the Courts."[144]

As it would in the subsequent investigations of the colonial period, Commonwealth period, and beyond, the Supreme Court "terminated" its investigation, bowing to the executive as "the sole and exclusive judge" as to whether a state of

[143] Ibid.
[144] Romani, John H. The Philippine Presidency. Manila: University of the Philippines, 1956, p. 79

"invasion, insurrection, or rebellion, or imminent danger thereof" existed.[145] Presidential Legal Counsel and Lawyer for the Office of Government Corporate Council under Marcos, Hon. Manuel "Lolong" Lazaro, justifies this, explaining,

> [The Supreme Court] cannot inquire into the wisdom. They can rule on the legality, but not on the wisdom of his acts … The only one who would know the wisdom of what he is doing … is the President … The judiciary … can only know [the] facts that are presented to the court; other facts [that are] not presented they are not privy to.[146]

The Philippine courts had been reviewing the validity of the acts of the legislature and executive branches of the American colonial period's Insular Government long before the concept of judicial review first gained expression in organic law.[147] Anna Castañeda, a Philippine legal history scholar, explains,

> When Congress transplanted provisions of the U.S. Constitution to the Islands, it also transplanted the interpretation given these provisions by the U.S. Supreme Court through its power of judicial review. The broader grant of oversight power to the U.S. Supreme Court … facilitated tutelage in U.S. jurisprudence.[148]

Formally, it was Article VIII, Sec. 2, Paragraph 1 of the 1935 Philippine Constitution that granted the judiciary jurisdiction over "all cases in which the Constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question."[149]

Jose A. Angara petitioned in the 1936 case *Angara v. Electoral Commission,* for a writ of prohibition to restrain the Electoral Commission from acting upon the protest filed by Pedro Ynusa to bar Angara from taking office in the National Assembly. Though the details of the case are not otherwise relevant here, Justice Jose Laurel's 1936 decision

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[145] Castañeda, Anna Leah Fidelis T. "The Origins of Philippine Judicial Review, 1900-1935" Ateneo Law Journal 46.121 (2001): 121-156

[146] Lazaro, Hon. Manuel. Personal Interview. 11 Aug. 2008

[147] Castañeda, Anna Leah Fidelis T. "The Origins of Philippine Judicial Review, 1900-1935" Ateneo Law Journal 46.121 (2001): 121-156

[148] Ibid., p. 135

[149] Constitution of the Philippines Manila: Bureau of Printing, 1969.

became the landmark definition of judicial review. Speaking to a separation of powers, Laurel wrote, "In cases of conflict, the judicial department is the only Constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral and constituent units thereof."[150] Castañeda observes, however, "the bold and confident assumption by the Commonwealth Supreme Court of its role as the 'final arbiter' was in stark contrast to its origins."[151] Castañeda explains,

> The Supreme Court of the Philippine Islands was neither so quick nor so eager to seize upon the opportunity to exercise its judicial prerogatives, be it to strike down legislation that violated individual rights or to play gatekeeper to the Executive and Legislative departments of the Insular Government. Indeed, early enunciations of the doctrine of judicial review display restraint and deference.[152]

Therefore, the later Supreme Court's passive deference to the executive and legislature had its roots in the American colonial period. The Supreme Court's legitimation of and submission to Marcos's rule, should, therefore, come as no surprise. Supreme Court deference to the wisdom of the executive branch appears to be characteristic to the historical Philippine political tradition.

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[150] Castañeda, Anna Leah Fidelis T. "The Origins of Philippine Judicial Review, 1900-1935" Ateneo Law Journal 46.121 (2001): 121-156.
[151] Ibid., p. 122
[152] Ibid., p. 123

CHAPTER FIVE: THE RISE OF FERDINAND MARCOS

DEMANDS FROM BELOW

The second World War severely impacted the Philippines, but with the close of the war came genuine self-autonomy for the Philippines. Furthermore, between independence in 1946 and Marcos's declaration of martial law in 1972, the Philippines' state and society developed and modernized quite significantly. The national government budget of 78 million pesos grew over 800 percent in constant pesos between 1930 and 1960. The budget more than doubled by 1972 and reached 4.03 billion pesos. The number of government employees, which had totaled 29,420 in 1930, also rose dramatically due to the strong public demand for government jobs. The new figure totaled to over 500,000 government employees in 1972. In fact, while the Philippine population had grown roughly 100 percent between 1930 and 1960, the number of government employees rose 1100 percent over the same period. [153]

Filipinos of the late 1960s and early 1970s were markedly dissimilar to those who lived under American colonial rule. Relieved of foreign tutors and constraints, Filipinos enjoyed an emancipated politics, grew reliant on a stable constitutional framework, and experienced increased political mobilization with the rise of organized interest groups in the 1950s and 1960s. Though politics was still firmly elite-dominated, Filipinos had become more educated and informed. In 1939, 1 percent of homes had radios and 43 percent of the population was literate. By 1968 over 60 percent of homes had radios and by 1970, 83 percent of the population was literate. [154] Accordingly, the more aware and articulate populace increasingly expressed dissatisfaction with the elite-run, but

[153] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988: 13.
[154] Ibid.

purportedly democratic, state. Riding the 1960s' global progressive movement, peasants in the Philippines advocated for agricultural reform and militant political mobilization against their former patrons. Meanwhile, Congressional economic nationalists blocked foreign investment.[155]

With great foresight, Senator Jovito Salonga declared in a speech to the League of Women Voters of the Philippines in 1964:

> [D]emocracy is on trial. It will face a greater crisis in the coming years. The "revolution of rising expectations" will mount with ever-increasing intensity. Popular education, the accelerated tempo and volume of mass instruments of communication … the sharpening appeal of mass advertisements – all these create wants and needs unknown to our forefathers … The problem of massive poverty, of the deterioration of morale in public service, the lack of social discipline … the increasing incidence of graft, the lack of respect for law and authority, and the revolution of rising frustrations … What can be done, what is needed? ... We need strong leaders … but they must be leaders devoted to the ideals of a free society … strong leaders can easily become brutal, savage despots.[156]

Rural and radical urban protest, thus, forced elected officials to hear the demands of the people. Therefore, in 1971, Congress finally responded to the calls of the Federation of Free Farmers for improvements to the land reform legislation. In a few scattered municipalities, additionally, the local elections of 1971 replaced established political family leaders with representatives from the new reform groups.[157] After the late 1960s and early 1970s, appealing to the powerless, disadvantaged masses was mandatory for all political platforms.

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[155] Ibid., p. 17.
[156] Ibid., p. 16-17.
[157] Ibid., p. 18

THE RISE OF FERDINAND MARCOS

Ferdinand Marcos had become the leader of the Liberal Party in the House of Representatives by 1957 and he quickly set his eyes on a seat in the Senate. Meanwhile, Vice-President Diosdado Macapagal, who courted U.S. government representatives, had been secretly feeding political information to the U.S. Central Intelligence Agency (CIA) for years. The agency had vigorously supported Macapagal's bid for vice-president.[158] Later, the CIA attempted to form a coalition under a splinter party called the Progressives. The coalition paired Vice-President Macapagal with other Liberals who were friendly to the CIA, among them Ferdinand Marcos. In 1959 this "Grand Alliance" produced a slate of senatorial candidates to oppose those of President Garcia's, which would pave the road for Macapagal's eventual presidency.[159] Infighting ultimately destroyed the Grand Alliance, and among their conflicts was whether or not Ferdinand Marcos should be allowed to run for Senate.

Seagrave reports that, "nobody trusted him." He explains,

> Leaders of the Progressive party were afraid of him, convinced he was the most dangerous man in the legislature. Among his peers he had a reputation for cutthroat tactics that frightened even the corrupt old lions in Congress.[160]

It seems that from the beginning, Marcos was the more extreme product of the political tradition. Seagrave gives the example of when a Central Bank official refused to authorize an import permit for an important Chinese businessman. This led Marcos to "burst into his office waving a revolver and pointed the muzzle at his head until the

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[158] Seagrave, Sterling. The Marcos Dynasty. New York: Harper & Row Publishers, 1988, p. 161.
[159] Ibid. p. 162.
[160] Ibid.

documents were signed and turned over to him."[161] The bank official resigned later that day, took his family, and emigrated to the United States.

There were other victims of Marcos's violent threats, but most were too scared to complain, choosing simply to emigrate instead. Indeed, there was little recourse for political victims, because such coercive and threatening tactics, though more overt with Marcos, existed throughout the government. Reports from the late 1950s revealed that the families of Marcos's victims were at times kidnapped and placed under solitary confinement until their husbands conceded to Marcos's desires. According to Seagrave, however, "these reports were not discussed openly because the victims were afraid to complain."[162] There was, thus, natural fear within Congress as to what would happen if Marcos were to gain more power, particularly given his confessed intention to become president.

VYING FOR PRESIDENT

Not only did Ferdinand Marcos win election to the Senate, but in April 1963 he also became president of the Senate. This particularly powerful position awarded Marcos control of the military budget, among other responsibilities. It was during this time that Marcos arranged for himself twenty war medals, with a string of affidavits as justification.[163] Moreover, "officers in the armed forces fell over each other to fawn on him. Careers were advanced. Ilocano officers rose fast in the army, and the

[161] Ibid.
[162] Ibid.
[163] Ibid., 171.

Constabulary."[164] Through favors, patronage, and the creation of national standing, Ferdinand Marcos advanced fast along the path to Malacañang Palace. Marcos recognized the need to inhabit the system and become part of it, which is why he took the pains to build up enough clout, fear, and honor, so as to equal that of the elite leaders he competed against.

Ferdinand Marcos's 1965 bid for the presidency took place amid the accelerated reformist rallies and demonstrations of Liberal Party President, Diosdado Macapagal's, third year as president.[165] At the time, Ferdinand Marcos was the Senate president as well as president of the Liberal party, but in a recurring maneuver of Philippine politics, Marcos switched to the Nacionalista party – and received no retribution – in order to capture the nomination and challenge the incumbent. Amb. Philip Kaplan describes Ferdinand Marcos, recounting, "He was a complicated man; he was the smartest Filipino I've ever met, not as an intellectual, but he was very agile on his feet … a very good politician."[166]

NINOY AQUINO

Ferdinand Marcos and Sen. Benigno "Ninoy" Aquino, Jr. were the two political heavyweights of the time, famed for their formidable intelligence and keen political sensibilities. As Stephen CuUnjieng reflects, "[Ferdinand Marcos] was a completely different breed, the only rival to him was Ninoy. Ninoy was the only one who could, with

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[164] Ibid.
[165] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 22.
[166] Kaplan, Amb. Stephen. Personal Interview. 29 Jul. 2008.

cold blooded political skill, still approach Marcos."[167] This matching of giants was the running thread throughout the Marcos years. Ninoy Aquino was the symbol of the opposition and Marcos's only serious and constant threat. Aquino, thus, became Marcos's obsession.

Born in 1932, when Ninoy Aquino ran for mayor of Tarlac he was underage for the office. But, he would be 22 by the time he took his oath, so the courts allowed him to run. This precise situation recurred when he ran for the Senate. Ferdinand Marcos's last constitutional term should have ended in 1973 and before ultimately deciding to declare martial law, Marcos had considered setting up Imelda Marcos to run for president. Senator Ninoy Aquino, however, would be 41 years old and eligible to run, and in no way could Mrs. Marcos mount a challenge to Aquino. Expectedly, upon declaring martial law in 1972, Ferdinand Marcos immediately jailed Senator Ninoy Aquino. Sitting in jail, Aquino would steady himself, assured that because he was 15 years younger than Marcos, his time would come and that he need just be patient and wait.[168]

MR. AND MRS. MARCOS

In the 1965 presidential campaign, above even his medals, Imelda Romualdez Marcos was Ferdinand's greatest political asset. Ferdinand Marcos first saw Imelda Romualdez in 1955 and married her but eleven days after their first meeting. She was the 1950s encapsulation of Filipina beauty, but better yet, she was a Romualdez, albeit from the less prestigious side. The Romualdez family was a political family from the South, an irresistible counterpart to Marcos's Northern family. Ferdinand Marcos could hope to

[167] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.
[168] Ibid.

draw an intersectional base of support with Imelda and he also stood to gain further standing due to the elite Romualdez family name. Mr. and Mrs. Marcos made an astoundingly charismatic couple that both instinctively played to and successfully captured the hearts of Filipinos.

Filipinos famously love entertainment and showmanship – song, dance, and romance – they fall in love with the darlings of the silver screen and actors often run for office and easily win. Ferdinand Marcos, though portrayed in America as courageous and, interestingly, "cute," was always portrayed in the Philippines as the athletic, dynamic man on horseback. Furthermore, Atty. Romulo recalls,

> Imelda … was just the right person for this kind of system … which is a little Peronista … She's glamorous, she has presence … She knew how to manipulate the public. And charming - the woman could sing! So with the hell campaigning against someone as dour as Macapagal and as ugly as Eva[169], well [there was] no competition and, again, Marcos was charismatic … he had leadership.[170]

Such statements speak to the inherent hollowness of the Philippine political tradition, wherein, as Congressman Locsin intimates from his own experience, "the quality of your looks is anywhere from 50-30 million pesos worth of campaigning."[171] However, given that politics is merely an elite game, which fails to meaningfully include the larger population, one can hardly begrudge the voters such superficiality.

President Macapagal was of humble origins, which effectively won over the more empowered general populace; however, his ineffectual administration was rife with graft and corruption. According to Seagrave, however, nobody wanted to run on Ferdinand

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[169] Dr. Evangelina Macaraeg-Macapagal was the wife of President Diosdado Macapagal
[170] Romulo, Atty Ricardo J. Personal Interview. 20 Aug. 2008.
[171] Locsin, Congressman Teodoro. Personal Interview. 14 Aug. 2008.

Marcos's ticket. Mrs. Marcos tearfully begged Fernando Lopez,[172] who had lost the nomination for president, to be her husband's vice-president. He finally consented, after which Imelda immediately produced a document for Lopez to sign and flashed him a huge smile.[173] Imelda Marcos also formed a group of twenty-five young, wealthy, socialite women called the "Blue Ladies." Their campaign responsibilities were to lavish attention on foreign journalists and host Tuesday and Friday political teas.[174]

Much of the public assumed that, after giving up on Vice-President Emmanuel Pelaez's presidential candidacy, the CIA was working to support Marcos. Ferdinand Marcos had been friendly to the CIA since his early days as a Congressman.[175] The intelligence organization seemed to be bolstering his reception abroad, as they had done for Diosdado Macapagal and Ramon Magsaysay, who was President from 1953-1957. Indeed, warm and excessive foreign media coverage of Philippine politics was often an indicator of CIA involvement.[176] Seagrave notes, "In cover stories and feature articles [Marcos] was portrayed as an authentic war hero, recipient of the U.S. Medal of Honor, and one whom America could depend upon to preserve democracy with his very life. The articles were almost without exception uncritical."[177] In the end, Marcos and Lopez defeated Macapagal in the 1965 election by 670,000 votes.[178] Ferdinand had campaigned furiously with Mrs. Marcos and they formed a vigorous, youthful pairing: the political

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[172] Fernando Lopez was a member of the highly prominent Lopez family whose business included sugar plantations, Manila Electric Company, newspapers, radio and television stations.
[173] Seagrave, Sterling. The Marcos Dynasty. New York: Harper & Row Publishers, 1988. P. 177.
[174] Ibid., p. 176
[175] Ibid., p. 177.
[176] Ibid.
[177] Ibid.
[178] Ibid., p. 180.

star and an innocent, provincial beauty queen. Marcos's anti-corruption stance also won over the Philippine electorate as did his slogan "This nation can be great again."[179]

THE FIRST TERM

As President, Ferdinand Marcos empowered the civilian bureaucracy and military. He placed them under his direct authority and increased their resources, which he then made readily available to himself.[180] Congressman Locsin provides an analysis as to how Marcos built up his military power. He relates that Marcos's strategy was to recruit officers from his home province to ensure top-level loyalty, but fill his infantry with the more experienced fighters, accustomed to fighting terrorist or separatist Muslims in the South of the Philippines. Locsin explains,

> He concentrated on Iloilo, injecting the Ilocanos[181] into the officer class. That's something that's easy to do because Ilocanos are basically hardworking and poor and there's the [physical] proximity to the Philippine Military Academy. The southerners are actually, so I'm told, better fighters in the field … they [a]re always in conflict with Muslims. But, Marcos knew what to do: get your southern soldiers, infantry, but the officers are all from the north and they're the ones who command the divisions. He set that military stage. And then, the communists really helped.[182]

Congressman Locsin thus draws attention to the fact that not only does power flow from wealth, but it also accompanies a monopoly of violence and protection, especially during times of crisis. Being a military man, Ferdinand Marcos never underestimated this second

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[179] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 24.
[180] Ibid.
[181] Ilocanos are the people from the Northern province of Ilocos, where Ferdinand Marcos was born.
[182] Locsin, Cong. Teodoro. Personal Interview. 14 Aug. 2008.

component, for even if power did not directly flow from it, military support could at the least defend his power.

President Fidel V. Ramos reflected on Ferdinand Marcos's early presidency and notes,

> During [Marcos's] first term, if you will recall, he [conducted] the miracle rise … He did the infrastructure program, connecting the Philippines as much as possible and putting the Philippines on a proper economic path.[183]

Marcos dedicated his first term to his infrastructure program, the legacy of which still remains today. The pro-Marcos camp often cite this as an example of the direction and progress that Marcos ushered in, while the anti-Marcos camp respectfully acknowledges the impact that the infrastructure had in the Philippines. Senator Juan Ponce Enrile lauds Marcos's program achievements, noting,

> Everything that we see today: roads, irrigation systems, even the rural electrification of the country, including the introduction of failed nuclear power system – failed [due to] the succeeding administration, not … Marcos – and all the modernization that you see here, the starting point of the modernization of our metropolis, the highways that you are seeing now, were products of the Marcos regime.[184]

The literature also uniformly marvels at what Atty. Romulo describes to be Ferdinand Marcos's knack for "putting the right people in the right places." These were the so-called technocrats of the Marcos years, the exemplar of which was Cesar Virata, the Finance Minister under President Marcos.[185] Justice Florentino P. Feliciano, a Supreme Court Justice under President Corazon Aquino, confirms, "I've mentioned … several times about Marcos's ability to choose administrators of some level of honesty

[183] Ramos, President Fidel V. Personal Interview. 2 Sept. 2008.
[184] Enrile, Sen. Juan Ponce. Personal Interview. 6 Aug. 2008.
[185] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2008.

and pretty good level of confidence, the archetypal example of this is Cesar Virata, Vicente Paterno … Gerardo Sikat."[186] For his part, Cesar Virata explains,

> Marcos selected a very good Cabinet … [Y]ou ask many people and [they agree] he really had a very good cabinet. His main instruction to us [was]: do your best in your own field, you let me know what you think is the best decision, and let me think about the political consequences of your decision, because we were not politicians … So, in a way he [was] really intellectually bright [in] that he can respond to you and give you [recommendations] that will make [decisions] more palatable politically, but [while still having] the same effect.[187]

Despite the many improvements, however, Marcos's administration suffered from the chronic ills of runaway inflation, unemployment, and corruption, and gave rise to unprecedented vocal popular dissent.[188]

The midterm election of 1967 greatly strengthened the Nacionalista party presence in both the House of Representatives and the Senate. In 1967, however, the Liberal Party senator, Ninoy Aquino, also won office.[189] In a 1968 article in *Foreign Affairs*, Aquino wrote about the Philippines as a land of "traumatic contrasts," charging,

> Here is a land where freedom and its blessings are a reality for a minority and an illusion for the many. Here is a land consecrated to democracy but run by an entrenched plutocracy. Here, too, are a people whose ambitions run high, but whose fulfillment is low and mainly restricted to the self-perpetuating elite. Here is a land of privilege and rank – a republic dedicated to equality but mired in an archaic system of caste.[190]

Like Marcos, Senator Aquino recognized the need to champion the interests of the masses, if not in earnest at least in rhetoric. Despite the lack of drastic improvement to these basic societal flaws, which Marcos had campaigned to fix, he won reelection in

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[186] Feliciano, Justice Florentino P. Personal Interview. 18 Aug. 2008.
[187] Virata, Cesar. Personal Interview. 20 Aug. 2008.
[188] Muego, Benjamin M. Spectator Society. Athens: Ohio University, 1988.
[189] Ibid., p. 51.
[190] Aquino, Sen. Benigno S., Jr. "What's Wrong with the Philippines?" Foreign Affairs 46.4 (1968): 770-779.

1969 in an infamous campaign, steeped in electoral fraud and terrorism.[191] Not long after beginning his first term, Marcos had already toyed with the idea of amending the official two term presidential limit set in the 1935 Constitution. Such early plotting should be taken in light of the fact that, at this point, no incumbent president had ever even won reelection.[192]

[191] Muego, Benjamin M. Spectator Society. Athens: Ohio University, 1988, p. 51.
[192] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: 24.

CHAPTER SIX: CRISIS MODE

1969 AND THE SECOND TERM

Despite the economic crisis that ravaged the Philippines from 1967 to 1968, in 1969, President Marcos ran the most expensive election campaign in Philippine history and used government funds to do so. He would take no chances on the 1969 election, which was a contest of personality, coercion, and patronage, with fraud, intimidation, violence, stolen ballot boxes, and pork barrel distributed to officials at the village level. Luckily for Marcos, the opposition was unable to produce a competitive candidate to oppose him; Senator Aquino was still too young. The Liberal party nominated the Cebuano Senator Sergio Osmeña Jr., the son of the former President Osmeña, alongside the brother of the former President Magsaysay, who was Osmeña's vice-president. President Marcos even went so far as to set aside departmental budgetary funds to support friendly politicians' congressional campaigns and to fund his own patronage distributions.[193]

Marcos portrayed himself as a nationalist and campaigned on the platform of greater independence from the United States, promising a renegotiation of the U.S. military air bases and accusing Osmeña of collaboration with the Japanese. Unfortunately, Marcos's exorbitant campaign spending plunged the Philippine economy further into crisis. He left the national treasury struggling to pay a daunting foreign debt and wild trade deficit, having bled it dry of all foreign exchange reserves.[194] By 1970, the demonstrations, rallies, walkouts, sit-ins, teach-ins, and the like, reached a new calamitous height. Demanding societal reform, the protesters denounced the United

[193] Ibid.,p. 25-26.
[194] Ibid.

States,[195] President Marcos, "fascism, imperialism, and bureaucratic capitalism," and created a veritable "parliament of the streets."[196]

UPRISINGS AND DEMOCRACY AS REVOLUTION

Fierce reaction to the 1969 election accompanied the other general calls for reform. The 1969 and early 1970 student protests, especially the "Battle of Mendiola" on January 30th, 1970 when hordes of students attempted to march on Malacañang Palace, brought about the eventual attempt for constitutional reform that would occur in November, 1970.[197] Marcos was also able to manipulate the restless revolutionary atmosphere to his own ends. After their dissolution, following the Huk rebellion that led President Quirino to suspend the writ of *habeas corpus* in 1950, the Communist Party re-established itself in December of 1968. Subsequently, their military arm, The New People's Army (NPA), emerged just a few months later on March 29th, 1969. They mobilized out of their shared belief with Mao Zedong that "political power grows out of the barrel of a gun."[198] Ultimately, this provided Marcos with the same justification for suspending the writ of *habeas corpus* that President Quirino gave 21 years before. First, however, in a brilliant political tactic, Marcos began by excoriating the oligarchs and blaming them for the Philippine's problems to defuse the radical militarism and social criticism mounted against him.

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[195] The United States was unpopular at the time, due to the Vietnam War.
[196] Ibid., p. 27.
[197] Ibid.,107.
[198] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: p. 28

Isabelo T. Crisostomo, a strong Marcos supporter in 1973, reflects on the effect that public demonstrations had on President Marcos. Crisostomo charts Marcos's evolution into a "revolutionary," which ultimately led him to declare martial law and champion his "New Society" program. Crisostomo pinpoints the public uprising as the starting point for Marcos, who had said that demonstrations "strengthen the hand of any man who wants to reform government."[199] Crisostomo writes,

> Marcos himself knew democracy in the Philippines had not been as successful as it should be. It had been a failure because it had not been flexible enough to allow the great majority of the people to share and enjoy the privilege and power monopolized by a well-entrenched oligarchy … He must offer the people a better alternative to lure them away from the Communists. That alternative was democracy itself, but democracy transformed.[200]

On January 25th, 1971, therefore, Marcos launched the "Democratic Revolution," which Crisostomo hails as "a revolution unique in history because it was to be constitutional, legal and within the framework of democracy."[201]

Surveying the thousands of Filipinos gathered outside Congress that day, desperate for change, Marcos said, "They demand a revolution in the tradition of our democracy. They fight a democratic revolution."[202] Crisostomo adeptly perceives that, "By thus identifying the revolution as democratic, Marcos succeeded, in one master stroke, in isolating the Communists from the rest of the revolutionaries, the great majority of whom were not ideologues."[203] Then to the joint session of Congress, President Marcos announced,

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[199] Crisostomo, Isabelo T. Marcos the Revolutionary. Quezon City: J. Kriz Publishing Enterprises, 1973.
[200] Ibid., p. 132-133.
[201] Ibid., p. 134.
[202] Ibid.
[203] Ibid.

> I come to speak of a society that is sick, so sick that it must either be cured now or buried in a deluge of reforms … For survival is no longer enough for our people … When the 'economic royalists' prove to be insatiable, when they use the combination of media and economic power to coerce and intimidate the duly elected leaders of the people and to advance their privileges and financial gains, there is no course left but to eradicate them.[204]

From there, President Marcos, Crisostomo summarizes,

> [P]rescribed an immediate reexamination of the postulates of Philippine society: the ownership of land, the place of the worker in industry in terms of security and dignity, the re-creation of an exploitative society into a cooperative one, and the broadening of the nation's horizons in the world community.[205]

Such revolutionary talk fell in line with the demands of the people, but the specific targeting of Marcos's criticism proved such overtones to be insincere. In particular, the Lopez family bore the brunt of Marcos's criticism, due to the scathing and courageous anti-Marcos editorials they printed in the *Manila Chronicle*. Even before the "Democratic Revolution," Vice-President Fernando Lopez resigned as secretary of agriculture on January 14th, 1971.[206]

Marcos had long envied the wealth and prestige of the Lopez family and had eyed their Manila Electric Company (Meralco). He therefore investigated Meralco as well as the other Lopez family holdings. After declaring martial law in 1972, the government took over the Lopez enterprise, but not all of the entrenched oligarchy suffered under Marcos. In keeping with the nature of past Philippine politics, Marcos could not afford to alienate all of the business elite. So, he chose his victims carefully and destroyed only those families he perceived to be a threat to him.

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[204] Ibid., p. 134.
[205] Ibid., p. 136.
[206] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997: p. 28

THE CONCON

The Philippines turned to the November 1970 constitutional convention (the "ConCon") to correct electoral evils, social injustice, heavy consolidation of power under Marcos, and the influence of partisan politics in all government decisions.[207] The delegates contemplated switching to the parliamentary system as the remedy. Given the nearing end of his second term, Marcos saw this as an opportunity to constitutionally prolong his stay in power. Indeed, later generations of frustrated Filipinos and power hungry Presidents[208] have again considered this solution to repair the political system and retain power, respectively, though to no avail. In 1970 there was also the deeper, general feeling that the time had come to replace the colonial 1935 Constitution. According to the ConCon's secretary-general, Jose Abueva, there were varied efforts by politicians to stall and end the idea of a constitutional convention. He credited student activist pressure for the fact that it was convened at all.[209] With regards to electoral reform, the revision of the laws increased the secrecy of the ballot, which was a welcome and needed change. Making it more difficult for politicians to track how their supporters voted, however, merely encouraged politicians to resort to more violent coercion and to paying off potential opposition voters.[210]

The election of ConCon delegates was one of the most peaceful and fair elections in Philippine history and succeeded in stirring a striking amount of debate on the

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[207] Wurfel, David. Filipino Politics: Development and Decay. Ithaca: Cornell University Press, 1988.
[208] The current President, Gloria Macapagal-Arroyo, is an example of this recurrence of history.
[209] Ibid. p. 107.
[210] Ibid., p. 106.

issues.[211] The majority of the delegates favored retaining a presidential system, wished to strengthen local governments, and opposed allowing either Ferdinand or Imelda Marcos to continue in office past the convention.[212] The "ban the Marcoses" resolution stipulated that no president, former president, nor any of their close relatives be eligible for executive office under the new constitution. According to the 1935 Constitution, President Marcos's final term had to end in 1973. Prior to the convention, Marcos had already frequently stated that Mrs. Marcos may one day have to run in order "to save the country from communism."[213] Unless, of course, the ConCon decided to switch to a parliamentary system, which President Marcos supported, and under which he hoped to become prime minister.

Despite the outward appearance that Marcos had no friends within the ConCon, he was able to exert considerable influence over the internal deliberations. Wurfel reports,

> According to a young attorney at Malacañang who later defected, presidential staffers in 1971 had been assigned to identify the 'needs' of delegates and then to provide them with governmental loans, civil service appointments for friends and relatives, special clearance through customs, and so forth.[214]

By 1972, the Marcoses adopted more direct tactics and even handed out envelopes of cash to pliable delegates. Eduardo Quintero, an elder delegate, was so appalled by this behavior that he exposed President Marcos's underhanded dealings on the convention floor. The press and public were infuriated and demanded the expulsion of the delegates that Quintero had named. When this didn't happen, public respect for the ConCon all but

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[211] Ibid., p. 109.
[212] Ibid.
[213] Ibid., p. 110.
[214] Ibid.

vanished.[215] As the ConCon deliberations dragged on, President Marcos was losing time if he was going to prolong his stay in power.

PLAZA MIRANDA- THE LAST STRAW

During the middle of the Constitutional Convention, on August 21st, 1971, Plaza Miranda was bombed. The plaza was a symbol of free expression, located in Quiapo district and contained by the Shrine of Jesus Christ, the Black Nazarene, and the Quiapo Church, which flanked the plaza. It was a busy downtown square and the site of frequent demonstrations and protests.[216] The Liberal Party was holding a rally for the midterm election, featuring eight senatorial candidates, when two grenades suddenly appeared on stage, killing eleven people and injuring ninety more. The prominent Liberal Party senators weren't spared and even Sergio Osmeña, Jr., Jovito Salonga, and Gerardo Roxas were severely injured. President Marcos's reaction was strong and swift. He denounced the crime and immediately suspended the writ of *habeas corpus*. He ordered high profile arrests, such as those of nationalist group leaders like Dr. Nemesio Prudente, the president of the Philippine College of Commerce, and four members of *Kabataang Makabayan* (Nationalist Youth), as well as 100 subsequent arrests of people allegedly involved in a Communist terrorist bomb plot.[217]

Senator Jose Diokno, a leading Nacionalista Party member, promptly resigned following the Plaza Miranda bombing. He claimed that, "military men trained by the military threw grenades, not Communists as charged by Marcos" and that "fragments of

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[215] Ibid.
[216] Celoza, Albert F. Ferdinand Marcos and the Philippines: The Political Economy of Authoritarianism. Westport: Praeger, 1997. p. 30.
[217] Ibid.

grenades found at the plaza indicate that it came from army armory."[218] This was not a surprising accusation. At first many believed that it had in fact been President Marcos's hand behind the plot, but no concrete claims were ever substantiated against him. As Stephen CuUnjieng explains, "it seems the Communists really were the likely culprits, but the blame placed upon Marcos demonstrates his unpopularity in 1971, a fact which many forget by 1972 when martial law was declared and welcomed."[219]

Marcos's actions did warrant suspicion, however. He very quickly seized the bombing as an opportunity to turn the situation on Senator Ninoy Aquino. Ferdinand Marcos accused Aquino of aiding the Communist threat by supplying weapons and ammunition. President Marcos also claimed that Aquino himself was a Communist. Selflessly, Marcos vowed that he would do all he could to block Aquino from ascending to the presidency, even if it meant offering Mrs. Marcos as a candidate.

Various events, however, which combined to paint the scene of lawless violence and radical uprising that President Marcos desired, were in fact staged. As early as the end of his first term, Marcos provoked political violence to secure his re-election.[220] Congressman Locsin reveals,

> Mrs. Marcos had a list of Leftist leaders on her payroll … she actually had them on a payroll and they would take part in demonstrations and Marcos would say the Communists were about to take over. I must say though, that was later … [T]hey got a grip on the Leftist demonstrations [which were genuine] and turned it around and used it for their purposes again. That's true, because I was a witness to that, [Mrs. Marcos] had many of them on the payroll.[221]

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[218] Ibid.
[219] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.
[220] Haynie, Stacia. "Paradise Lost: Politicisation of the Philippine Supreme Court in the Post Marcos Era." Asian Studies Review 22.4 (1998): 459-473.
[221] Locsin, Cong. Teodoro. Personal Interview. 14 Aug. 2008.

Much like Marcos took the advantage in painting the Communists as being on the side of disorder, and his "democratic revolution" on the side of radical reform *in addition* to order, he fomented the explosive climate to his own ends. When Senator Juan Ponce Enrile was attacked on September 22nd, 1972, Marcos boldly called it the "last straw," leading him declare martial law. In keeping with Congressman Locsin's claims, Enrile would later admit that the ambush had, in fact, been staged.

LANSANG V. GARCIA

Lansang v. Garcia tried the validity of President Marcos's suspension of the writ of *habeas corpus*. The case was the nail in the coffin for democracy under Marcos. Certainly, due to President Marcos's legal background, he was very careful to proceed only with full legal support. Later, when he declared martial law, critics maintained that the Supreme Court and lower courts were open and that Congress and the Constitutional Convention were both in session.[222] The *Lansang v. Garcia* case, however, which took place nine months prior to President Marcos's declaration of martial law, had already decided the constitutionality of the declaration.[223]

In a unanimous decision, the Supreme Court upheld President Marcos's suspension of the writ of *habeas corpus*, stating "We entertain … no doubt about the existence of a group of men who have publicly risen in arms to overthrow the government and have been and are still engaged in rebellion against the government of the Philippines."[224] The *Lansang v Garcia* case thus "abandoned the doctrine of non-inquiry into the factual basis for the President's suspension of the privilege of the writ of

[222] Ibid.
[223] Ibid.
[224] Ibid.

habeas corpus, a doctrine which the Court used in previous cases and which was justified on the basis of separation of powers."[225] This would seem to set a precedent for increased judicial activism, however, in practice, deciding upon political questions only placed the judiciary in the role of legitimizing Marcos's regime, for they were consistently unable to stand up to the executive branch.

Not only failing to challenge the President's judgment, now the Supreme Court also rubber stamped Marcos's actions. The decision had profound implications as it removed any obstacle to the President's declaration of martial law. With regards to the suspension of the writ of *habeas corpus*, Stephen CuUnjieng notes,

> Marcos tested to see if people would complain and when only the intellectuals and students did, not the masses, and the Supreme Court upheld its validity saying that it was the power of Marcos to suspend [the writ], guess what happens, the next year he says "the same provision that suspends the writ of habeas corpus also allows me to declare martial law."[226]

Indeed, Marcos would repeatedly invoke the *Lansang v. Garcia* case in his September 23, 1972 speech, in order to assert the constitutionality of his declaration of martial law. This fact only supports Mr. CuUnjieng's assertion that Marcos's actions were discrete pieces of a gradual, evolving strategy to remain in power. Atty. Romulo also supports this analysis, discussing *Lansang v. Garcia* and noting,

> [E]veryone feels that, that opened the door to Martial Law ultimately, because the Supreme Court believed … that the NPA [was] really a clear and present danger to the republic, so they allowed the suspension of the writ of *habeas corpus*, so with that, that's only one step away from martial law. When you say that there's an imminent danger, our constitution … [dictated that] you could then declare Martial Law … Marcos … very

[225] Ibid.
[226] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.

> smartly, knew that he couldn't declare Martial Law off-hand, so he laid the basis [first].[227]

Marcos only took this final step after September 22nd, 1972, when the Secretary of Defense, Senator Juan Ponce Enrile, was ambushed. Marcos's handwritten diary entry from that night reads:

> Secretary Juan Ponce Enrile was ambushed near Wack-Wack at about 8 p.m. tonight. It was a good thing he was riding in his security car as a protective measure. His first car, which he usually uses, was the one riddled by bullets from a car parked in ambush. He is now at his DND office and I have advised him to stay there. And I have doubled the security of Imelda [Marcos] in *Nayong Pilipino* where she is giving dinner to the UPI and AP as well as other wire services. This makes the martial law proclamation a necessity.[228]

Marcos's diary should not be taken at face value, for his admitted concern over how history would judge him is what compelled him to write it at all. Despite Marcos's feigned shock and worry, Senator Juan Ponce Enrile admitted at a press conference with Fidel Ramos in February 1986 that the ambush was staged.[229] The Philippine Inquirer further reports that "[Enrile] and Ramos were part of the 'Rolex 12,' the group of military advisers who had helped Marcos plan martial law."[230]

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[227] Romulo, Atty. Ricardo. Personal Interview. 20 Aug. 2008.

[228] Doronila, Amando. "Proclamation 1081 Recalled." The Philippine Inquirer. 21 Sept. 2007. 29 Jan. 2009. < http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=89818>

[229] "Fake Ambush of Enrile Ushered in Martial Law." The Philippine Inquirer Headlines/Nation: Timeline. 29 Jan. 2009. <http://services.inquirer.net/print/print.php?article_id=22225>

[230] Ibid.

CHAPTER SEVEN: HERE TO STAY

DECLARING MARTIAL LAW

Proclamation No. 1081 proclaimed the state of martial law. In it, Marcos listed the NPA's advancements and activities as an effort to "wage a full scale armed insurrection and rebellion in this country … vigorously pursuing a relentless and ruthless armed struggle against our duly constituted government."[231] Note the use of the word "insurrection," which appears ten times throughout the document and connects the country's situation to the one precisely described by the language of Article VII, Section 10, Paragraph 2 of the 1935 Constitution.[232] In addition, the term "lawless violence" appears three times in Proclamation No. 1081, while "rebellion" appears thirteen times. This is of course natural, for it is necessary to justify one's basis for declaring martial law in legal and constitutional terms.

Senator Juan Ponce Enrile, who was the architect of martial law, verifies that President Marcos had indeed been planning martial law for quite some time. There had been the frequent references to the possibility that Mrs. Marcos would "have to run" in order to save the country from Communism, Ninoy Aquino, and other "dangers." These, in addition to the early investigations into martial law and its relevant judicial precedents, as well as Marcos's suspension of the writ of *habeas corpus,* which occurred just before his constitutional elected term should have ended, point towards a premeditated strategy designed to prolong his stay in power.

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[231] "Proclamation No. 1081, September 21, 1972: Proclaiming a State of Martial Law in the Philippines." The Lawphil Project - Arellano Law Foundation. 29 Jan. 2009. <http://www.lawphil.net/executive/proc/proc_1081_1972.html>

[232] Constitution of the Philippines Manila: Bureau of Printing, 1969, p. 22.

When asked how early into 1971, when the Plaza Miranda bombing occurred, or 1972, the promulgation of Proclamation No. 1081, Ferdinand Marcos had first begun thinking about martial law, Senator Juan Ponce Enrile replied, "We started studying Martial Law December of 1969."[233] December 1969 was just one month after Marcos's second term began, a full year before the ConCon of November 1970, and a year and a half prior to his suspension of the writ of *habeas corpus*. Senator Enrile describes the preparation for martial law, recounting:

> We prepared a well-argued, well-written compendium of cases and articles bearing on the subject. And he asked me to prepare all the documents without any model and I did it. And I finished the preparation in the third quarter of 1970. I gathered all the facts, the incidents about the current rebellion at the time, the Communist Party of the Philippines, and the condition of law and order in the country, and I put them together and wrote out the proclamation. And the seven General Orders, seven Letters of Instruction, including the first document, [which] was prepared not by me, but by the Palace.[234]

Senator Enrile further intimates that in his preparation, he relied upon the 1905 *Barcelon v. Baker* case sustaining Governor-General James F. Smith's suspension of the writ of *habeas corpus*.[235] Governor-General Smith's suspension was the Philippines' first experience with the kind of authoritative executive action that President Quirino would later take and that Ferdinand Marcos would eventually bring to its extreme conclusion.

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[233] Enrile, Senator Juan Ponce. Personal Interview. 6 Aug. 2008.
[234] Ibid.
[235] Ibid.

JUSTIFICATION

President Marcos outlined in clear and persuasive terms the state of danger that existed, the necessity for martial law, and the legality of his actions. Proclamation No. 1081 of September 21st, 1972 begins by describing the NPA,

> [W]hose daring and wanton guerrilla activities have generated and sown fear and panic among our people; have created a climate of chaos and disorder, produced a state of political, social, psychological and economic instability in our land, and have inflicted great suffering and irreparable injury to persons and property in our society…[236]

Cleverly, Marcos then calls upon the people's allegiance to government, constitution, and rule of law, which not only paints his actions as necessary, but also non-radical and logical. His language divides the country into opposing sides, wherein the country has been victimized and Marcos's administration lies on the side of order, law, and history. Proclamation No. 1081 declares,

> Whereas, these lawless elements, their cadres, fellow travelers, friends, sympathizers and supporters have for many years up to the present time been mounting sustained, massive and destructive propaganda assaults against our duly constituted government, its instrumentalities, agencies and officials, and also against our social, political, economic and religious institutions, through the publications, broadcasts and disseminations of deliberate slanted and overly exaggerated news stories and news commentaries as well as false, vile[,] foul and scurrilous statements, utterances, writings and pictures…[237]

Proclamation No. 1081 continues, describing the NPA's actions as:

> [C]learly well-conceived, intended and calculated to malign and discredit our duly constituted government, its instrumentalities, agencies, and officials, before our people, making it appear to the people that our government has become so weak and so impotent…[238]

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[236] "Proclamation No. 1081, September 21, 1972: Proclaiming a State of Martial Law in the Philippines." The Lawphil Project - Arellano Law Foundation. 29 Jan. 2009. <http://www.lawphil.net/executive/proc/proc_1081_1972.html>

[237] Ibid.

[238] Ibid.

Heard by all, these pronouncements and their tone masterfully stir a desire for the government to retaliate swiftly, decisively, and forcefully. Such action, backed by the constant reminders of its constitutional provision and the judicial precedents of Philippine history, is what President Marcos promised to deliver.

Proclamation No. 1081 makes explicit the legality and logic to martial law, given the *Lansang v. Garcia* decision. The Proclamation outlines,

> Whereas, the Supreme Court in the cases brought before it, docketed as G.R. Nos. L-33964, L-33965, L-33973, L-33982, L-34004, L-34013, L-34039, L-34265, and L-34339, as a consequence of the suspension of the privilege of the writ of *habeas corpus* by me as President of the Philippines in my Proclamation No.889, dated August 21, 1971, as amended, has found that in truth and in fact there exists an actual insurrection and rebellion in the country by a sizeable group of men who have publicly risen in arms to overthrow the government…[239]

The document then goes on to quote at length from the Supreme Court's *Lansang v. Garcia* decision. The quotes take pains to reiterate history and the judiciary's recognition of the existence of "communist activities in the Philippines … from the late twenties to early thirties … aimed principally at incitement to sedition or rebellion."

The included *Lansang v. Garcia* excerpts continue to describe how these insurgent activities waned, but resurfaced in the late forties "with such vigor as to be able to organize and operate in Central Luzon an army … which clashed several times with the armed forces." The decision then states that those events caused "President Quirino to issue Proclamation No. 210, dated October 22, 1950, suspending the privilege of the writ of habeas corpus, the validity of which was upheld in *Montenegro v. Castañeda*."[240]

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[239] Ibid.
[240] Ibid.

The Supreme Court decision also substantiates the danger that the Communist army has historically posed, citing the June 20th, 1957 Republic Act No. 1700, also known as the Anti-Subversion Act. The decision specifically quotes the preamble to the Anti-Subversion Act, which states:

> [T]he Communist Party of the Philippines, although a purportedly apolitical party, is in fact an organized conspiracy to overthrow the Government of the Republic of the Philippines, not only by force and violence but also by deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a totalitarian regime subject to alien domination and control … the continued existence and activities of the Communist Party of the Philippines constitutes a clear, present and grave danger to the security of the Philippines; and … in the fact of the organized, systematic and persistent subversion, national in scope but international in direction, posed by the Communist Party of the Philippines and its activities, there is urgent need for special legislation to cope with this continuing menace to the freedom and security of the country ... [241]

The Supreme Court continues to list the Communist party's 1963 mobilization and 1969 reorganization into the New People's Army, which adheres to the Maoist concept of the "War of National Liberation."[242] Lastly, Proclamation No. 1081 then includes in full, the NPA's "Regional Program of Action 1972," a copy of which the 116th and 119th Philippine Constabulary Companies captured on June 18th, 1972. This Program of Action delineates alarmingly and in great detail, the NPA's goals and plans.

Despite the existence and gravity of a real Communist threat, however, it was ultimately *Lansang v. Garcia* that opened the doors to martial law. The Supreme Court's 1971 decision both verified the Communist threat and sustained President Marcos's invocation of Article VII, Section 10, Paragraph 2. For, Article VII provides for the

[241] Ibid.
[242] Ibid.

suspension of the writ of *habeas corpus*, then in the same breath, a corollary provision for the declaration of martial law.

A COURSE OF ACTION

Proclamation No. 1081 concludes with an evaluation of the courses of action open to the president. The document reads that first, President Marcos could "call out the armed forces to suppress the present lawless violence," second, "suspend the privilege of the writ of *habeas corpus* to make arrest and apprehension of these lawless elements easier and more effective," or third, "place the Philippines or any part thereof under martial law."[243] From there, President Marcos reminds the public that he had already committed almost fifty per cent of the entire armed forces as well as created specific task forces to combat the insurgency, in addition to suspending the writ of *habeas corpus*.[244]

"But in spite of all that," Marcos continued, "both courses of action were found inadequate and ineffective to contain, much less solve, the present rebellion and the lawlessness in the country."[245] Marcos then went on to once again prove the existence and gravity of the Communist threat. After which, Proclamation No. 1081 concluded with the President's final declaration:

> Now, therefore, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article I, Section 1 of the Constitution under martial law and, in my capacity as their commander-in-chief, do hereby command the armed forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws

[243] Ibid.
[244] Ibid.
[245] Ibid.

> and decrees, orders and regulations promulgated by me personally or upon my direction. In addition, I do hereby order that all persons presently detained, as well as all others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offenses committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative.[246]

In President Marcos's nationwide radio and television broadcast proclaiming martial law, he began with the assurance that his aims were democratic:

> The proclamation of martial law is not a military takeover. I, as your duly elected President of the Republic, use this power implemented by the military authorities to protect the Republic of the Philippines and our democracy.[247]

Marcos then rallied for the nation's support in favor of his democracy over Communism, and for cooperation in his decision to impose martial law. Marcos declared,

> A republican and democratic form of government is not a helpless government. When it is imperiled by the danger of a violent overthrow, insurrection and rebellion, it has inherent and built-in powers wisely provided for under the Constitution. Such a danger confronts the Republic.[248]

President Marcos then enumerated the new orders and rules of conduct under martial law. These first orders were that, first, "all public officials and employees whether of the national or local governments must conduct themselves in the manner of a new and reformed society." Second, government would "control media and other means of

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[246] Ibid.
[247] Crisostomo, Isabelo T. Marcos the Revolutionary. Quezon City: J. Kriz Pub. Enterprises, 1973.
[248] Ibid., p. 240.

dissemination of information as well as all public utilities" for the "meantime." Furthermore, all schools would be closed for a week, the "carrying of firearms outside residences without permission of the armed forces" would be punishable by death, a curfew would be in place from midnight to four in the morning, "departure of Filipinos abroad" would be temporarily suspended,[249] and lastly, rallies, demonstrations, and "strikes in critical public utilities" would be temporarily prohibited.[250] President Marcos explained, "It is my intention beginning tomorrow to issue all the orders which would attain reforms in our society."[251]

A New Regime for a New Society

President Marcos made his broadcast at 7:15 PM on September 23rd, 1972. The few who processed Marcos's opening words – "As of the 21st of September, I signed Proclamation 1081 placing the entire Philippines under martial law. This proclamation was to be implemented upon my clearance, and clearance was granted at 9:00 in the evening of the 22nd of September." – would have realized that there was a delay between the time that the declaration went into effect and when it was publicly broadcasted.[252] Marcos had purposefully done so in order to time his arrests. Journalist Amando Doronila of *The Philippine Inquirer*, who had been Editor-in-Chief of *The Manila Chronicle* in 1972 until martial law interrupted business, writes, "Arrest orders of targets, including

[249] With the exceptions of necessary official missions.
[250] Ibid., p. 242.
[251] Ibid.
[252] Ibid., p. 240.

opposition figures and newspapermen, were served beginning at midnight of Sept. 22, Friday, straddling Sept. 23."[253]

The last headline article for *The Manila Chronicle* reported Sen. Benigno Aquino, Jr. accusing President Marcos of "preparing the ground for an administration plot to liquidate [him]," which Marcos would then conveniently blame on the Communists.[254] Doronila recounts, "Troops descended on all newspapers, padlocked them and nailed the proclamation dated Sept. 21. Marcos trumped Aquino and shocked the country with superb use of the element of surprise by manipulating the dates of the proclamation."[255] This manipulation was unprecedented, but unfortunately, not explicitly illegal.

On September 23rd, Ferdinand Marcos wrote in his diary at 12:20 noon:

> Things have moved according to plans although out of the total 200 target personalities in the plan only 53 have been arrested, including the three senators, Aquino, Jose Diokno and Ramon Mitra and Chino Roces [publisher of The Manila Times] and Teddy [Teodoro Locsin Sr.], editor of the Philippines Free Press. Roces, Locsin, Max Soliven of The Manila Times, Napoleon Rama of the Free Press and Luis Mauricio of the Graphic were among the first to be arrested at midnight at their homes in the first round of arrests…I was surprised to hear [Executive] Secretary [Alex] Melchor say he was now in favor of martial law although he was against it a year and a half ago. And all [Justice] Secretary Jose Abad Santos said was, 'Let us not talk about it publicly.'[256]

Given the immediate arrest of his father Teodoro Locsin Sr., and the destruction of their family newspaper, Congressman Teodoro Locsin Jr. remains deeply impacted by the declaration of martial law. Congressman Locsin recounts the reaction of another of his relatives, Roberto "Bobby" Benedicto**,** who "was [a] notorious … crook … one of the

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[253] Doronila, Amando. "Proclamation 1081 Recalled." The Philippine Inquirer. 21 Sept. 2007. 29 Jan. 2009. < http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=89818>
[254] Ibid.
[255] Ibid.
[256] Ibid.

worst [Marcos] cronies."[257] Locsin reports that Bobby Benedicto used to tell him that when Marcos declared martial law, "he cried … [Benedicto] was so scared … it wouldn't work."[258] Congressman Locsin explains that the fear stemmed from the fact that the Philippine tradition wasn't one of heavy-handed, executive directed action, such as military rule, and that it simply wasn't anything the people "could conceive of." Locsin recalls,

> [Benedicto] thought he was going to die, that the army would not obey, that they'd turn around and kill him instead. So the reason Benedicto became close to the others is [that] they actually held him in his arms and comforted him in that seventy-two hour period … It took us all by surprise. And we believed all that rhetoric: we the people don't want this; we the people don't want that. Well "we the people" weren't us [Filipinos], we just don't do anything, and that was it, and that's all. I mean, that … [previous] political class lasted from before Independence to the eve of September '72, and it vanished overnight. It was just gone. I don't know what that says. [Then] Marcos just installed his own class.[259]

Despite the natural surprise, as Congressman Locsin points out, there was no widespread anger or retaliation, no demands for a restitution of citizens' rights. For, along with these arrests, Marcos immediately adjourned the National Congress, shut down most of the mass media, suspended civil liberties, and banned all political parties.[260] As Senator Juan Ponce Enrile notes, though, "there was a reason for [martial law]," which explains the initial lack of protest. He elaborates,

> It was the height of the Vietnam War, it was … the feeling at the time was that the wave of communist victories around the world was such that the next target of communism was the Philippines and the New People's Army was building its forces and in fact, they succeeded in importing into the country about 1,500 M14s plus rocket-propelled grenades, the, what

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[257] Locsin Jr., Congressman Teodoro. Personal Interview. 14 Aug. 2008.
[258] Ibid.
[259] Ibid.
[260] Tate, C. Neal. "Courts and Crisis regimes: A Theory Sketch with Asian Case Studies." Political Research Quarterly 46.2 (1993): 311-338.

> they call, RPG 40, which they used in Vietnam extensively. And we captured this shipment in Isabela.[261]

Martial law far outlasted its original purpose, however, lifted only in 1981 long after the Communists had been beaten back. In a *New York Times* interview on June 17th, 1974, President Marcos admitted that he had "largely 'neutralized' the 'public disorder and rebellion' that led him to impose martial law … nearly two years ago," in 1972.[262] He went on to explain, however, that, "he had not been able to complete the social and economic reforms that he said were necessary to prevent recurrence of the so-called rebellion."[263] Ferdinand Marcos himself would not be removed from power until the People's Power Revolution of 1986. For that whole time, Marcos would seek to, as Rolando V. del Carmen describes, "portray to observers at home and abroad … despite the realities of martial law, [that] constitutional procedures have not been abrogated and that the judiciary [was] alive and well."[264]

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[261] Enrile, Senator Juan Ponce. Personal Interview. 6 Aug. 2008.

[262] Schanbergn, Sydney H. "Marcos Says He Must Keep Martial Law." The New York Times. 17 Jun. 1974: p. 7. ProQuest Historical Newspapers The New York Times (1851-2005).

[263] Ibid.

[264] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.

CHAPTER EIGHT: THE MARTIAL LAW REGIME

PUBLIC REACTIONS

In 1972, the people were very scared of what was quite a serious Philippine Communist threat. Stephen CuUnjieng explains the nation's Cold War mentality, being a strong American ally and located very close to Vietnam. He explains,

> First, this is a very Catholic country, and [Communism] was the Godless heathen ... Two, at that time it was a real battle between the two systems. Socialism and Communism hadn't been intellectually discredited yet and people didn't realize the excesses of the Cultural Revolution … You were either a romantic believer in Communism or socialism, or you were just God-fearing, you know, scared of the heathen government state … Marcos played on that fear very well.[265]

In fact, neither was the Philippines nor Ferdinand Marcos alone in this situation and the trend within the larger Southeast Asian region was indeed moving towards more authoritarian and controlled states.

Echoing this sentiment, Secretary of Finance Cesar Virata was attending the World Bank Meeting in Washington, DC when martial law was declared. He recounts that a senior reporter from the Department of State called him at about four in the afternoon and asked him if he was aware of the recent events.[266] Mr. Virata had no foreknowledge of the declaration and when the reporter asked him how he felt, Virata replied, "We just joined the Asian people."[267] Virata clarifies, explaining, "Everything here [at the time] was Martial Law: Korea, China, Taiwan, Malaysia, Thailand,

[265] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.
[266] Virata, Cesar. Personal Interview. 20 Aug. 2008.
[267] Ibid.

Singapore. Malaysia had their internal security act. So I said, 'Well, we are now part of Asia as well.'"[268]

Therefore, despite Congressman Locsin's belief that it was not in the Philippine historical tradition to take so extreme an action, there was not only a history of strong executive action in the Philippines, but also within the larger context of Southeast Asia. This may have played into the Philippine people's justification of their situation. The Cold War context is precisely what gave Marcos the ability to so drastically extend the limits of the historical political tradition. Virata discusses the unique position that Marcos was in, explaining,

> [I]n 1966 … [the] war in Vietnam was raging. [Marcos] went on a State Visit to the U.S. and during the talks … they decided to call a SITO meeting here in the Philippines in 1966 [and] President Johnson came. He wanted … the Philippines to send fighting troops to Vietnam and Marcos resisted ... He did not [want] to send fighting troops, unlike [during] the situation in Korea in the early 50s, because during that time … we [were] under threat from the … Maoist group here, idolizing Chairman Mao with [his] revolutionary approach … [T]hen on the other hand, you have the Russians working largely through the East Europeans, getting in touch with our Leftist labor unions, and they [gave] rewards for striking, helping them, and so on ... So the pressures [were] really great and from a positional viewpoint … the Philippines … [was] unlike Japan, or Korea … [had] American bases [so] … we [were] not considered neutral.[269]

Stephen CuUnjieng further reflects on the economic and social circumstances that fed into the public acquiescence, explaining,

> [W]hen martial law was declared … there was a lot of unrest in the streets; it was the Vietnam era, with student protests and walk-outs. People felt that the hippies and radicals were chaos, to which, most people said "*Que horror*, this chaos." So people said lets have some order. Pre-martial law society was getting frayed, the rich were getting richer and the poor were getting poorer. It was not a healthy society that [Marcos] declared martial law into. The limits of the 1935 constitutional system of government were

[268] Ibid.
[269] Ibid.

> staring to show. We were starting to fall behind economically, then there was also the oil shock … Part of the economic problem was that Marcos was overspending and using government funds for his reelection. But, there was also legitimate economic hardship and social chaos, which played into that. Therefore, the more traditional, conservative side said we need order and, frankly, martial law was legitimately popular in the early days. [270]

Among those of the more traditional, conservative side at the time, Supreme Court Justice under President Corazon Aquino, Florentino P. Feliciano, reflects on the reaction to and popularity of martial law,

> [Martial law was] popular among certain segments, because they were frightened. I suppose they were giving Mr. Marcos the benefit of the doubt. And of course the street demonstrations stopped so the middle income sector [was] happy about that, but for the lower income bracket it [didn't] make much difference.[271]

With regards to his personal reaction, Justice Feliciano recounts,

> I remember my normal stance was, "this is something way beyond my power; there is nothing I can do." So I took the stance of a detached observer, but within a few years…either the original purpose, the concealed original purpose, began to emerge, or – just to give him the benefit of doubt – the figure of … our infirm humanity manifested itself. When you have a population under tight control, you can do anything you want, which means, you can steal anything you want, you can force other people to give you their property … Or you throw your opponents in jail … All the frailties, weaknesses, human weaknesses, manifest themselves. It was a highly authoritarian government. The problem with an authoritarian government [is that], while it produces calm and order, almost everything depends on who the Martial Law administrator is, who the dictator is, and who the people around him are, because he cannot maintain himself, by himself, in power. He needs to create allies around him, and to create allies you have to give them bones.[272]

Justice Feliciano's "detached observer" role became the nation's general code of conduct during the martial law years. Though regrettable and against the recent trend of

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[270] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.
[271] Feliciano, Justice Florentino P. Personal Interview. 18 Aug. 2008.
[272] Ibid.

demonstrations in the 1970s, this is not surprising given the Philippines' long history of apathy to and acceptance of the politicians myriad misgivings.

President Ramos explains, "In the beginning, those of us in the armed forces really supported the idea, but it lasted too long and became subject to abuse of power."[273] President Ramos frames his support for martial law in terms that extend beyond merely communism, which explains his early cooptation into Marcos's "Rolex 12" group:

> [To] those of us in the armed forces and law enforcement, it was something that we could support because we felt that it would … return … the rule of law. We would be able to go after the private armies of the warlords in the provinces. [Over the first three years] we collected so many loose firearms and jailed a lot of abusive politicians who were breaking the law.[274]

So it seems that from the beginning, Marcos – and to a degree, the "Rolex 12" – had intended for martial law to address a variety of issues, though they argued for it legally and to the public solely in terms of the Communist threat.

This is what led the lawyers and intellectuals to realize in hindsight, that the Constitution Marcos would later enforce, specifically its Transitory Provisions, were, as Stephen CuUnjieng says, "just a sham":

> Everything [was] just being doctored and contorted to fit what one man wants. It's a prostitution of the legal process where the letter of the law is followed but completely prostituting the spirit, which is to be frank very Marcos. You can't say anything didn't follow the rules, but it was sort of a perversion of the application of the rules, beyond any comprehension, then he changes how the rules apply so the next time he does something it's still valid.[275]

This prostitution only fully applies to the sham Constitution, which ultimately allowed Marcos to establish personalistic rule. The public's tolerance and, above all, the

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[273] Ramos, President Fidel V. Personal Interview. 2 Sept. 2008.
[274] Ibid.
[275] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.

Supreme Court's silence, however, justified and legitimized Marcos's actions. In this way, the citizens and, more importantly, the judiciary were the culprits for allowing Marcos to bend the political tradition for his means. For this was not immediately a dictatorship. The contours of Ferdinand Marcos's authoritarianism developed only gradually and with the protection of full, though perverted, legal backing throughout. As Stephen CuUnjieng reports,

> That's why Ninoy [Aquino] was so disappointed. He said I expected there to be marching in the streets, but instead everyone stayed home. He said, "I was correct about Marcos, I was wrong about the Filipino people."[276]

CONSTITUTIONAL AUTHORITARIANISM

Marcos described his regime as "constitutional authoritarianism." He never openly attacked the impartiality or independence of the Supreme Court and instead relied on his constitutionally vested powers to appoint judges of his choice. Having banned all political parties and Congress, Marcos openly declared his actions to be subject to the judicial review of the Supreme Court. He assured that "the judiciary shall continue to function in accordance with its present organization and personnel."[277] Solicitor General Estelito Mendoza is quick to point out that the martial law regime readily received the suits that were brought against the government. He believes that though "somewhat paradoxical" given the state of crisis, this fact evidences that Marcos left the judiciary healthy, unimpaired, and fully functioning. Mendoza notes,

> In the ordinary concept of martial law, the government is superior and not subject to constraints resulting [in] judicial review. But, [this was] one of the primary, and I think important, decisions of President Marcos, which is

[276] Ibid.

[277] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.

> not fully appreciated … [He was in] a difficult position … the options were to disregard the complaints from the Supreme Court … to tell the Supreme Court that he declared a revolutionary government and thus was not subject to decisions of the courts – but that would mean suspension of the Constitution, and suspension of civil rights … [or] to submit to the jurisdiction of the Supreme Court … President Marcos decided on the second option … to take the position that martial law was proclaimed by the president under the Constitution and under conditions prescribed by the Constitution.[278]

Solicitor General Mendoza is right to point out that Marcos submitted his government to the Supreme Court's jurisdiction, but he ignores the reasons why Marcos did so. It was not to preserve the constitutional process, which Marcos repeatedly prostituted, or to defend civil rights, which he ignored when it benefited him. Marcos saw the utility in leaving the courts intact and "independent." Due to his legal background; however, he also instinctively, and sincerely, hesitated to attack the courts. Indeed, at no point did Marcos wish to declare to the world that he was establishing a dictatorship and that his rule would be absolute. Marcos took pains to cloak his actions with a semblance of legality instead, seeking to present to the international community and Filipino people that he was not departing from the past political tradition. For this reason, he made sure only to proceed with full, albeit perverted, legal backing.

Hon. Lazaro provides a clear example of this, recounting,

> [Marcos is] one fellow who would not commit anything illegal. If you tell him that it's … illegal he will not do it, but he will find some way to make it legal. For instance, there is a law … which says that all government properties must be insured by the GSIS … Roberto Benedicto, he wanted to [to be the one to] insure … some [government] properties … When [Marcos] was informed that, Benedicto, [despite the fact] that he was a political supporter [of Marcos], [could] not do it, because it was against the law. He had to pass the law to allow it, [which stated]: all government properties [will] be insured by the GSIS, except in cases as approved by

[278] Mendoza, Atty. Estelito. Personal Interview. 13 Aug. 2008.

> the President … [So] if he approves it, it's legal … [and] no [longer] illegal. That's how legalistic [Marcos] was.[279]

In his analysis, Lazaro doesn't focus on Marcos's prostitution of the law to fit his needs. Rather, he applauds Marcos for his insistence upon obtaining legal support to his actions. Unfortunately, this entirely ignores the fact that Marcos had to first break the law in order to gain such legal backing.

In a larger context, however, if Marcos could achieve his desired goals alongside an "independent" judiciary all the better. For a functioning, unimpaired court could only serve to protect his powers from charges of foul play by the opposition. An independent judiciary was thus, his most useful defense. To these points, Atty. Ricardo J. Romulo comments,

> During martial law [the courts] were totally supine, anything Marcos ordered with regards to martial law was 'amen'. But I would like to say that with regards to plain civil cases, by which I mean corporate work and that sort of thing, where Marcos did not intervene, [the courts] were quite unbiased and competent.[280]

With regards to martial law, it would only be later, as a consequence of the March 31st, 1973 *Javellana v. The Executive Secretary* case that the judiciary became locked in a state of inertia, effectively powerless for the rest of the martial law regime. Had they decided to rule differently, perhaps the Supreme Court could have played a different rule under martial law, for at this early stage, Marcos had indeed given them one rare opportunity to do so.

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[279] Lazaro, Hon. Manuel. Personal Interview. 11 Aug. 2008.
[280] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2007.

THE 1973 CONSTITUTION

With the declaration of martial law, Marcos ordered the arrests of the anti-Marcos Constitutional Convention delegates. After such an attack, the rest bowed to Marcos in fear. The ConCon, nevertheless, preserved their decision to switch to a parliamentary system and the constitution's new tone of social consciousness. Marcos mandated the creation and inclusion of the Transitory Provisions, however, which allowed him to remain President and *de facto* dictator, ruling without a legislature. Marcos never truly implemented the new constitution, never elected a new prime minister, and in the end the Transitory Provisions ruled the country.

The 1973 Constitution changed the governmental system from a presidential US structure to a parliamentary one. Therefore, the position of the president became merely a symbolic post, with the powers to:

> 1) "Address the National Assembly at the opening of its regular session"; 2) "proclaim the election of the Prime Minister"; 3) "dissolve the National Assembly and call for a general election as provided (for)"; 4) "accept the resignation of the Cabinet as provided (for)"; 5) "attest to the appointment or cessation from office of members of the Cabinet, and of other officers as may be provided by law"; 6) "appoint all officers and employees in his office in accordance with the Civil Service Law"; and 7) "perform such other duties and functions of state as may be provided by law."[281]

The New Society's unicameral National Assembly was, thus, the center of power. Article VIII, Section 3, sub-section 1 set the term limit of its members at six years and Section 4 restricted the office to natural-born Filipinos.[282] According to Article VIII, the National Assembly held the power to depose the Prime Minister with a majority vote for a successor (Section 13, sub-section 1) and ratify treaties (Section 14, sub-section 1). The

[281] Ibid.
[282] Ibid., p. 85.

National Assembly also held the "sole power to declare the existence of a state of war" (Section 14, sub-section 2).[283]

When he seized emergency powers, Marcos only allowed the judiciary to continue to operate independently. With respect to the judiciary's functioning and its role within the separation of powers, the new constitution instituted no serious changes from the 1935 Constitution.[284] The Supreme Court could act as a single body, *en banc*, or in two divisions, and the types of cases it could hear, as well as its procedure for appeals, remained the same.[285] There were some changes from the 1935 Constitution. Article X, Section 2, sub-section 1 enlarged the Supreme Court from eleven to fourteen associate justices and one chief justice.[286] Insignificantly, Justices were also now required to be natural-born citizens, but otherwise the qualifications remained the same. Lastly, the Constitution created the *Sandiganbayan*, a constitutional court specifically designed to try public officials for charges of graft and corruption, which was an unprecedented, though ultimately ineffective, innovation in Philippine judicial history[287]

TRANSITORY PROVISIONS

The most offensive portion of the 1973 Constitution was Article XVII, the Transitory Provisions. The Transitory Provisions were supposed to ensure a smooth transition from the 1935 Constitution to the new charter, but this proved to be hollow. First, Article XVII, Section 2 provides for an interim National Assembly, mandating:

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[283] Ibid.
[284] Ibid.
[285] Ibid., p. 86.
[286] Ibid.
[287] Ibid., p. 92.

> The members of the interim National Assembly shall be the incumbent President and Vice-President of the Philippines, those who served as President of the nineteen hundred and seventy-one Constitutional convention, those Members of the Senate and the House of Representatives who shall express in writing to the Commission on Election…their option to serve therein, and those Delegates…who have opted to serve therein by voting affirmatively for this Article...[288]

Only 15 out of 317 delegates voted against Article XVII, prominent among them were Rev. Pacifico A. Ortiz, S.J., Enrique Voltaire R. Garcia II, Jose Mari Velez, Raul S. Manglapus, and Heherson T. Alvarez.[289] In addition to applying heavy political pressure, Marcos offered potential interim National Assembly members 216,000 pesos annually for salary and expenses, and as Rolando V. del Carmen notes, "the attractiveness of this self-induced offer must have been irresistible to all but the most patriotic of delegates!"[290]

The ultimate purpose of the provisions was to enable Ferdinand Marcos to replace any government official at will and to validate all his martial law decrees.[291] Section 3, sub-section 2 declares:

> All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after the lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, unless expressly and explicitly modified or repealed by the regular National Assembly.[292]

Furthermore, sub-section 2 of Article XVII stated that the incumbent President:

> [S]hall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and Prime Minister …

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[288] Ibid., p. 89.
[289] Ibid., p. 191.
[290] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[291] Tate, C. Neal. "Courts and Crisis regimes: A Theory Sketch with Asian Case Studies." Political Research Quarterly 46.2 (1993): p. 311-338.
[292] Muego, Benjamin M. Spectator Society. Athens: Ohio University, 1988

> until he calls upon the interim National Assembly to elect the Interim President and Prime Minister.[293]

No definite date for this election was set, for it would take an indefinite period of time to create his New Society, and the Philippines endured thirteen and a half years under Ferdinand Marcos. The Constitutional Convention unilaterally ratified this new Constitution on November 30th, 1972.[294] Marcos then issued a decree allowing for free debate of the Charter provisions and scheduling a plebiscite to vote by secret ballot on January 15th, 1973.[295] This concession never materialized. As scholar Benjamin Muego observes,

> Through a complicated set of Supreme Court decisions, edicts, referenda, and clever and astute political maneuvers, Marcos was able to discharge the powers of the president under the 1935 Constitution and those of prime minister under the 1973 Constitution. In short, he was the legislative and executive, all rolled into one.[296]

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[293] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[294] Ibid.
[295] Ibid.
[296] Muego, Benjamin M. Spectator Society. Athens: Ohio University, 1988

CHAPTER NINE: LEGITIMIZATION

A NEW JUDICIARY

Though the Constitution protected the Supreme Court, the lower courts were subject to various encroachments. With the Transitory Provisions allowing President Marcos to act as both the executive and legislature, he could have abolished the lower courts or modified them to his liking.[297] In fact, the September 22nd, 1972 General Order No. 3 did just that, effectively granting immunity to those carrying out Marcos's orders pursuant to Proclamation No. 1081.[298] The order removed from the civil courts' jurisdiction:

> 1) Those [cases] involving the validity, legality or constitutionality of any decree, order or acts issued, promulgated or performed by [him] or by [his] duly designated representatives pursuant to Proclamation No. 1081, dated September 21, 1972.
> 2) Those involving crimes against national security and the Law of Nations.
> 3) Those involving crimes against the fundamental laws of the State.
> 4) Those involving crimes against public order.
> 5) Those crimes involving usurpation of authority, rank, title, and improper use of names, uniforms, and insignia.
> 6) Those involving crimes committed by public officers.[299]

These cases were, instead, redirected to military tribunals, where President Marcos's authority was most protected. This situation comes often as a consequence of escalating war or crises of national defense. The Cold War gave the means for a president, working from a history of bossist, personal rule, to establish such a regime. Yet, the military tribunals acting according to Marcos's desires was also, functionally, just a more radical version of the judiciary consistently turning a blind eye to abuses.

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[297] Ibid., p. 92.
[298] Ibid., p. 93.
[299] Ibid., p. 92-93.

With regards to lower court judges, the 1973 Constitution removed all legislative checks on the executive's appointing privileges and vested this power exclusively in the prime minister.[300] The Supreme Court, however, assumed a disciplinary power over lower court judges that had previously been the authority of the executive. The 1973 Constitution lowered the mandatory retirement age to 65, down from 70 as the 1935 Constitution prescribed. This alteration gave Marcos the legal means to replace some of the older Supreme Court justices and appoint loyalists in their place. Even tenure in the Supreme Court seemed uncertain, however, for Section 10 of the Transitory Provisions stated that incumbent justices could remain in office "unless sooner replaced."

In addition to General Order No. 3, the 1973 Constitution did, very subtly, also manage to alter the Supreme Court's jurisdiction. The Supreme Court enjoyed original jurisdiction over "cases affecting ambassadors, other public ministers, and consuls, and over petitions for certiorari, prohibition, *mandamus, quo warranto*, and *habeas corpus*," and the appellate power to "review, revise, reverse, modify, or affirm on appeal or certiorari" lower court decisions in five areas.[301] The Supreme Court possessed the power of judicial review and the authority to declare unconstitutional any treaty, law, ordinance, executive agreement, or executive order. With regards to its appellate jurisdiction, however, whereas the 1935 Constitution designated "all cases in which an error or question of law is involved," the 1973 Constitution restricted this to "cases in which *only* an error or question of law is involved. [Emphasis mine.]"[302]

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[300] Ibid., p. 93-94.
[301] Ibid.
[302] Ibid., p. 95.

The Supreme Court's power to declare an "executive agreement" unconstitutional now required ten concurring votes, an alteration that raised considerable, albeit quiet, concern among law students and legal scholars at the time.[303] Lastly, Article X also required that within thirty days of the opening of the National Assembly, the judiciary submit an "annual report on the operations and activities of the judiciary."[304] "This seemed to indicate, at least on the surface," Muego argues, "a diminution of the judiciary into a subordinate branch in relation to the executive and legislative branches."[305]

Despite operating under the a time of crisis, Solicitor General Estelito Mendoza asserts that the government did not win every case brought to the Supreme Court, simply because it was martial law. "I would like to think," he says, "[that] we won the cases on the merits." He offers the explanation that Marcos appointed exceptionally qualified justices, specifically noting the role that their background played in empowering the executive branch. Mendoza elaborates,

> One significant aspect which should be noted, and maybe this helped, is that [Marcos] appointed to the Supreme Court, several who were, at one time, solicitor generals … There are many cases [brought to] the Supreme Court, which do not involve direct application of the law, but in which political considerations [come into play] … A solicitor general, because he has been [a] lawyer for the government…as Justice, [will] go to the Supreme Court with a familiarity and … understanding of the interests of the government. So with that in mind, I would not say there is a likelihood that he [will] decide in favor the government, but one can be certain [that] when he makes his decision he's not going to ignore what the interests of government are.[306]

Over the course of martial law, several times the Supreme Court abstained from deciding a case, stating that it was a political question and beyond their scope. Perhaps that is what

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[303] Ibid.
[304] Ibid.
[305] Ibid.
[306] Mendoza, Atty. Estelito. Personal Interview. 13 Aug. 2008.

Mendoza means when he mentions the "interests of the government" with regards to such questions. However, appointing politically and government minded, former Solicitor Generals as Justices, politicizes the judiciary, which is precisely what the Supreme Court's design aims to prevent.

THE ROLE OF THE JUDICIARY

Ferdinand Marcos paid great deference to the Supreme Court and when he would defend his actions, reminded the public that he subjected his administration to the Supreme Court's review all throughout. He truly submitted himself to judicial review during *Javellana v. The Executive Secretary*, however, the Supreme Court, as it historically did, sided with the executive. After this, having outmaneuvered the judiciary and legally cornered them, Marcos could easily boast that he submitted himself to the judiciary, because he knew the Supreme Court wouldn't defy him.

President Marcos's martial law decrees included clauses that exempted the crisis regime's actions from the judiciary's jurisdiction.[307] He gave military jurisdiction to almost all criminal cases and exempted crimes by public officials and crimes against public order from the Supreme Court's jurisdiction.[308] The Supreme Court was not accustomed to such a lack of independence, and thus, initially didn't hesitate to hear cases against the validity of President Marcos's martial law decrees.[309]

When Marcos drew up the new 1973 Constitution and called a plebiscite to have it ratified, the Supreme Court accepted petitions challenging Marcos's calling of a

[307] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[308] Ibid.
[309] Ibid.

plebiscite. On January 21st, 1973, *The New York Times* cited that many were charging Marcos with "inflating the dangers stemming from the relatively small number of Communist-led insurgents as a means of making himself into a dictator," and that the tide was turning against Marcos and his new constitution.[310]

> Headed by Lorenzo Tañada, a Harvard Law School graduate, a noted civil-rights attorney and, until recently, a luminary of the Philippine Senate, the opposition groups have been seeking an injunction by the Philippine Supreme Court to prevent Mr. Marcos from putting into effect a new authoritarian constitution … Mr. Marcos was going to submit the new charter to a national plebiscite. Mr. Tañada and eight other petitioners asked the Supreme Court in mid-December to prohibit the plebiscite. They argued that the new charter had been improperly adopted, was a contradictory, unfit and undemocratic document, and was being put to the people by the President in violation of the rights of Congress under the old Constitution. In any case, they argued, a fair vote on a new constitution was impossible under martial-law suppression of free speech.[311]

The New York Times also reported on January 12th, 1973, that though martial law had at first won "grudging acceptance," because "after years of dangerous drift toward anarchy, many … welcomed an apparent sharp drop in crime and promise of real reform, including the proclamation of a new land reform measure," this initial attitude was beginning to thin:[312]

> [T]he most telling evidence of dissatisfaction with the present regime in Manila can be found in President Marcos' own recent decisions to defer a scheduled Jan. 15 plebiscite on his new Constitution and to suppress public debate on the proposed charter, which would permit an indefinite extension of martial rule.[313]

President Marcos decision to postpone the plebiscite rested upon his claims that "Filipinos had slipped back into their old habits and that the enemies of the state were

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[310] Durdin, Tillman. "Marcos Gets his Kind of Democracy." The New York Times. 21 Jan. 1973: p. 207. ProQuest Historical Newspapers The New York Times (1857-2005).
[311] Ibid.
[312] "Dissent in Manila." The New York Times. 12 Jan. 1973: p. 32. ProQuest Historical Newspapers The New York Times (1851-2005).
[313] Ibid.

taking advantage of the debate to foment anxiety, confusion, discord, and subversion."[314] After banning free debate of the charter and ordering that the spread of rumors be punishable by death, on December 31st, 1972, Marcos issued Proclamation Decree No. 86. This organized national Citizens Assemblies for an informal referendum and open vote on the new constitution.[315] With Citizens Assemblies ratifying the new constitution, the Supreme Court had no choice but to disregard the previous petitions.

"A SHOW OF HANDS"

In flagrant violation of electoral laws and previous promises, the constitution was ratified by "a show of hands." On January 17th, 1973, Proclamation No. 1102 "Announcing The Ratification by the Filipino People of the Constitution Proposed by the 1971 Constitutional Convention," declared the constitution ratified with a 95% vote.[316] These newly created Citizens Assemblies "were created in barrios, in municipalities and in districts/wards in chartered cities pursuant to Presidential Decree No. 86, dated December 31, 1972."[317] These assemblies were composed of:

> [A]ll persons who are residents of the barrio, district or ward for at least six months, fifteen years of age or over, citizens of the Philippines and who are registered in the list of Citizen Assembly members kept by the barrio, district or ward secretary.[318]

This was quite a political innovation, which Marcos claimed to have designed to "broaden the base of citizen participation in the democratic process and to afford ample

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[314] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[315] Ibid.
[316] Wurfel, David. "Martial Law in the Philippines: the Methods of Regime Survival." Pacific Affairs 50.1 (1977): p. 5-30.
[317] Bernas, Joaquin G. Constitutional Structure and Powers of Government. Manila: Rex Bookstore, Inc., 1997.
[318] Ibid., 985.

opportunity for the citizenry to express their views on important national issues," his ban on free debate notwithstanding.[319]

The proclamation states that the questions, "Do you approve of the new Constitution?" and "Do you still want a plebiscite to be called to ratify the new Constitution?" were posed to the Citizens Assemblies.[320] The proclamation then reads:

> 14,976,561 … members of all the Barangays (Citizens Assemblies) voted for the adoption of the proposed Constitution, as against … 743,869 … who voted for its rejection; while on the question as to whether or not the people would still like a plebiscite to be called to ratify the new Constitution … 14,298,814 … answered that there was no need for a plebiscite and that the vote of the Barangays (Citizens Assemblies) should be considered as a vote in the plebiscite.[321]

Marcos's subsequent proclamations, Proclamation No. 1103 and No. 1104, abolished the Transitory Provisions' call for an interim National Assembly and imposed the continuation of martial law for an indefinite period of time.[322]

On January 22nd, 1973, the Supreme Court dismissed all ten petitions challenging Marcos' ability to substitute a plebiscite to pass the 1973 Constitution. Nine out of ten members of the Supreme Court declared the question "moot and academic," with only Justice Calixto Zaldivar dissenting.[323] Zaldivar along with Chief Justice Roberto Concepcion and Justice Querube Makalintal were the only non-Marcos Supreme Court appointees at the time.[324] Marcos proclaimed that this decision had opened the way for the Constitution's full enforcement. In a public statement, he said:

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[319] Ibid.
[320] Ibid.
[321] Ibid.
[322] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[323] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[324] Ibid., p. 96.

> Henceforth, there should be no hesitation on the part of anyone in the implementation of the new Constitution … The ratification is an accomplished fact. The new Constitution is in full force and effect by the sanction of the people.[325]

TOWARDS A "NEW SOCIETY"

President Marcos wasted no time before officially enlarging the scope of his programmatic intentions. With regards to this, Justice Feliciano reflects,

> A lot of people think that [Marcos] and Ponce Enrile stage-managed the thing … but Mr. Marcos, as soon as Martial Law was declared, declared the objectives of his proclamation of Martial Law. It was not just to put down disorder or to prevent future upheavals, but rather to change society. Now that's as broad as you can get. If that is your objective you can do almost anything you want – and the declaration did not need any confirmation or consent of the legislative party. It was a unilateral act on the part of the Chief Executive and it was supposed to be a temporary situation.[326]

Justice Feliciano went on to proclaim that martial law was merely "a big pretense," which, of course, is what pushed Ninoy Aquino and the opposition to fight against Marcos. To the pro-Marcos camp, however, martial law was not only a time of order, but great achievement and progress.

To this day, Presidential Legal Counsel and Lawyer for the Office of Government Corporate Council under Marcos, Hon. Manuel L. Lazaro claims,

> First and foremost [Marcos] wanted what was good for the country. You will notice that when he declared martial law he wanted to have a new society. If you read all his books on a new society, he wanted to change the public, the people. Well, he succeeded in the first two years. He declared martial law in 1972. You wouldn't believe it. There was discipline for two years. You couldn't spit. Everybody just followed suit. [There were] no nightclubs, all nightclubs ended at about eight [PM]. [There was] no carrying of guns and things like that. [There was] no

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[325] "Marcos Charter Challenged by 5." The New York Times. 27 Jan. 1973: p. 5. ProQuest Historical Newspapers The New York Times (1857-2005).
[326] Feliciano, Justice Florentino P. Personal Interview. 18 Aug. 2008.

> problem [with] drugs. You know why? [During the] third year [of martial law], a fellow named Linseng, the most famous drug dealer, [Marcos] had him convicted and … shot publicly. [After that] there were no more drug dealers. [327]

Martial law undeniably instilled an order and discipline in Philippine society that had been absent before, however, it is Lazaro's contrary interpretation of the Marcos years and their significance that is so striking. Due to the particular political tradition of the Philippines, Lazaro's unabashed admiration for President Marcos doesn't blind him from the dictatorial nature of Marcos's regime. When Lazaro brushes aside the corrupt and self-motivated aspects to Marcos's rule, it is because they also drove the politicians that came before him. The difference to Lazaro is that Marcos was still able to achieve certain things for the Philippines. For example, Lazaro discusses the Transitory Provisions of Marcos's 1972 Constitution, reflecting,

> All of a sudden from … constitutional [rule] you [had] martial law, so you [had] to have a period of adjustment. Maybe what [was] not good [was that the Transitory Provisions gave] the President the power to suspend Congress and make the rules himself. But, if you had, had Congress, first of all, [Marcos] would not been able to come up with and enact all his programs.[328]

Fidel V. Ramos points out the holes beneath the New Society revolution after the first three successful years of martial law. Recalling his previous damnation of Mrs. Imelda Marcos's role in this history, Ramos details,

> [After] the first 3 yrs, this third force … the 'conjugal dictatorship,' started to overpower everybody else. Then, [Marcos had gotten] rid of the old monopolies and oligarchs, but he created and established new monopolies and oligarchs. The country started to suffer and that [began] the outrage against his administration … Even before Ninoy's assassination, things were already going bad.[329]

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[327] Lazaro, Hon. Manuel. Personal Interview. 11 Aug. 2008.
[328] Ibid.
[329] Ramos, President Fidel V. Personal Interview. 2 Sept. 2008.

JAVELLANA V. THE EXECUTIVE SECRETARY

The January 22nd, 1973 Supreme Court decision declaring the legality of the 1973 Constitution's ratification process a "moot and academic" question, "did not deal squarely with the legality of the new Constitution."[330] Senators Diokno, Roxas, and Aquino, the National Press Club President Eduardo Monteclaro and two private citizens therefore filed four more suits, requesting that the Supreme Court void the new charter and bar its enforcement.[331] The petitioners asked the judiciary to "save the Republic from the stark reality of a dictatorship."[332] They implored the Court to order a new plebiscite, in accordance with the 1935 Constitution, which they declared to be still in force. In response, Solicitor General Estelito Mendoza warned the Supreme Court not to interfere in an "essentially political question," and maintained that the Citizens Assemblies' ratification was in "substantial compliance" of the 1935 Constitution.[333]

Mendoza recounts the various threads to his defending argument in the *Javellana v. Executive Secretary* Case. He first asserts that it was a political question, citing that under the U.S. Constitution, various cases pertaining to revolutionary governments are exempt from judicial review.[334] Then, he equates a plebiscite, referendum, and ballot vote equally, by virtue of their shared functional purpose. Mendoza explains,

> What [is] the point of voting through the ballot? It is really to determine the expression of the will of the voter. So the question really is whether the procedure that was adopted also demonstrated the will of the electorate and I argued that it did so … In each *barangay* there was a [vote],

[330] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[331] Ibid., p. 96.
[332] Ibid., p. 97.
[333] Ibid.
[334] Mendoza, Estelito Atty. Personal Interview. 13 Aug. 2008.

> although by show of hands. Then there was a canvass of the results, and [once all] consolidated together … one can say that, although not strictly in accordance with the requirements of the constitution, the approval by the people … has been manifested accurately … To the question … [as to] whether the plebiscite … is in accordance with the constitution, I would order that if the purpose of the plebiscite is to determine the will of the people … it's better decided by the people themselves.[335]

In their decision for the *Javellana v. Executive Secretary* case, delivered on March 31st, 1973, the Supreme Court states that, "Six Justices agree that the issue of the validity of Proclamation 1102 (announcing the ratification of the proposed Constitution) is a justiciable question; four Justices differ."[336] According to Article XV, Section 1 of the 1935 Constitution the only means of ratifying a new constitution is through "an election or plebiscite held in accordance with law and participated in only by qualified and duly registered voters."[337] Yet, though the Supreme Court decided that the ratification was not in "substantial compliance of the law,"

> [F]our Justices hold that the proposed Constitution has been acquiesced in by the people; two Justices hold that the people have not expressed themselves; one Justice thinks the doctrine of 'Constitution by acquiescence' inapplicable; while the three other justices agree that they lack the knowledge or competence to make a determination.[338]

Benjamin Muego explains that, "if the court's decision appeared contradictory, it was intended to be so," because, as Rolando V. del Carmen observes, the decision was,

> Strongly reminiscent of Justice [John] Marshall's judicial technique employed in Marbury v. Madison where that great Chief Justice adroitly obtained pragmatic legal results without unduly forsaking idealistic allies.[339]

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[335] Ibid.
[336] Central Lawbook Publishing Co., Inc. ed. Supreme Court Reports Annotated. Vol. 50 01 Mar. 30. Manila: Central Book Supply, Inc., 1973.
[337] Ibid.
[338] Ibid.
[339] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.

Therefore, because the Court could not obtain the six votes required to decide whether the public had acquiesced in the constitution or to declare the new constitution not in force, the Constitution, which was in *de facto* operation, continued to be in force. Rolando V. del Carmen writes in the *Asian Survey*, "It is here that President Marcos' unilateral ratification proclamation of January 17, 1973, assumed the proportion of a far-sighted anticipatory legal strategy."[340] Indeed, Atty. Romulo reminds that "[President Marcos] was meticulous at making sure that there was always a semblance of legality to anything he did."[341]

It is notable that the Supreme Court did not issue an outright endorsement for the constitution, for they held that the ratification process was not in substantial compliance with the 1935 Constitution. Yet, given an opportunity to assert the rule of law and denounce Marcos's actions, the Supreme Court crumbled. In consequence, *Javellana v. Executive Secretary* inadvertently legitimized President Marcos's ruling and undermined the Supreme Court's basis for challenging President Marcos in the future.[342] The judiciary's indecision and inability to challenge the new constitution was the turning point for Marcos's regime.

Having succeeded in putting the 1973 Constitution in force, President Marcos gained enormous power. In his column in the *Philippine Inquirer*, Father Joaquin Bernas, the leading Philippine constitutional scholar, writes,

> President Ferdinand Marcos had it so good. When he needed to act in a decisive manner, he could always invoke Amendment 6 of the 1973 Constitution. Amendment 6 gave him tremendous power. It said:

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[340] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[341] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2007.
[342] Tate, C. Neal. "Courts and Crisis regimes: A Theory Sketch with Asian Case Studies." Political Research Quarterly 46.2 (1993): p. 311-338.

> ‘Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim *Batasang Pambansa* or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instruction, which shall form part of the law of the land.’ The possibility of using this provision solely depended on the judgment of the President.[343]

The ratification of the 1973 Constitution and the *Javellana v. Executive Secretary* case served to be the most pivotal of the Marcos years. Not only did it grant him full powers, it legitimized his actions before the law and undercut the opposition’s arguments against him.

The Supreme Court had not been coerced into rendering their decision, though they did feel the political pressures surrounding their verdict. This, however, is no different from the “political questions” that they had decided in the past. As they did three times before, the Supreme Court once again bowed to the executive branch. In this way, though more extreme than his historical predecessors, the Supreme Court extended the political tradition to include Marcos.

Though the Supreme Court had long operated alongside blatant political violations of the rule of law, being a passive body with powers to decide only those cases brought before them, the Court could turn a blind eye. Now, when confronted with the question as to what was officially acceptable, the Supreme Court did not rise to assert the Constitutional constraints upon the executive. In keeping with its historical political tradition, the Court decided in favor of Marcos, turning a blind eye to his abuse. In this way, though Marcos’s actions were more extreme, the Supreme Court redefined the traditional limits by legitimizing his actions, to embrace him within it.

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[343] Bernas S.J., Fr. Joaquin G. “Sounding Board: Emergency Powers.” The Philippine Inquirer. 6 Aug. 2007.

POLITICAL PRESSURES

Father Bernas explains why the Supreme Court couldn't persuade a majority against Marcos in *Javellana v Executive Secretary*:

> [One has] to understand the situation there; my own estimate is that even if the Supreme Court majority had rejected the position of President Marcos, it would not have made any difference. The [judiciary] was thinking: "It's better for us to be here than to be completely eliminated."[344]

President Marcos's guarantee of the judiciary's independence effectively backed the Supreme Court into a corner. Granted precarious and precious independence, the Supreme Court felt pressure to act in Ferdinand Marcos's favor in order to secure their existence. Unfortunately, the Supreme Court "independently" choosing to do so legitimized Marcos's rule and established a self-imposed restriction against challenging the crisis regime in the future.

Javellana v. The Executive Secretary limited the Supreme Court's scope and depth of decision-making and rendered the judiciary powerless against the crisis regime.[345] In his early days, Marcos also enjoyed great popularity and support within the Supreme Court and general public. When Chief Justice Concepcion retired after the *Javellana v. Executive Secretary* decision, the Supreme Court lost its staunch Marcos opponent. Afterwards, President Marcos only bolstered his support within the judiciary.[346] Thus, political scientist Neal C. Tate writes,

> By the end of 1974 the Philippine judiciary was no longer in a position to provide any serious check on the martial law regime. Until the end of the crisis regime, the Supreme Court rendered not a single decision that posed even a mild threat to Marcos' rule. To achieve this result, the President

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[344] Bernas S.J., Fr. Joaquin G. Personal Interview. 16 Aug. 2007.

[345] Tate, C. Neal. "Courts and Crisis regimes: A Theory Sketch with Asian Case Studies." Political Research Quarterly 46.2 (1993): p. 311-338.

[346] Ibid.

> never had to use or threaten coercion on the judges nor did he have to replace oppositionist judges.[347]

Atty. Romulo laments, "[President Marcos] was a first rate lawyer, a brilliant mind, before people knew it, he established the trap and then it was too late for the Supreme Court to challenge him."[348] Marcos's military support, being Commander in Chief of the Armed Forces and ruling under martial law, also naturally convinced the judiciary that dissenting against him would be pointless.

During martial law, the judiciary was not a shield against the authoritarian regime's power, but rather, an extension of Marcos's power and legitimacy. Marcos clearly saw this potential, but, at least initially, also genuinely respected the Court's judicial powers. President Marcos possessed a powerful legal mind and the nation considered him something of a legend in that respect. The Philippine public thus allowed him great flexibility with regards to constitutional matters and trusted his expertise. Such expertise, however, is what enabled President Marcos to carefully plan his actions in order to secure maximum long-term benefits. Rolando V. del Carmen posits,

> At the same time, [his legal expertise] may have instilled in him a degree of trepidation for what might be construed in the country and abroad as gross violations of basic constitutional precepts.[349]

Though the new constitution gave him power to subdue the courts, Marcos realized that it was not in his favor to do so. The Court remained tractable and served the crisis regime exceedingly well, protecting President Marcos's seizure of power and shielding him from criticism or opposition.[350] While, ultimately, the Supreme Court's

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[347] Ibid.
[348] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2007.
[349] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.
[350] Ibid.

legitimization bent the Philippine political tradition's limits to include him. Marcos's rule embodies the worst flaws and tendencies of the historical political tradition, yet it was the Cold War context that empowered him. Alongside the Supreme Court, the Cold War also changed the normal limits of the Philippine political tradition and legitimized Marcos's actions. President Marcos was not a necessary inevitability of the historical political tradition, but blame nevertheless falls upon the larger system as well. The historical tradition adversely created a Marcos, who would succeed in bringing it to its most extreme form.

CHAPTER TEN: ANSWERING THE OPPOSITION

MARTIAL LAW DECISIONS

Ferdinand Marcos promoted Makalintal to Supreme Court Chief Justice. He was one of the two justices who, despite its ratification process, voted in favor of Marcos's Constitution to ensure "successful implementation of his social and economic reforms."[351] In addition to Makalintal, Marcos also appointed former Senator Estanislao Fernandez, University of the Philippines law professor Ramon Aquino, and Court of Appeals Justice Cecilia Munoz Palma, thereby making all but one justice[352] of the Supreme Court Marcos supporters.[353] This imbalance heavily affected the Supreme Court decisions to come.

Thirty-one political prisoners, including Senators Ninoy Aquino and Jose Diokno, had petitioned for a writ of *habeas corpus*, which remained pending until 1974 when the Supreme Court finally heard the case.[354] By 1974, the Supreme Court was firmly in Marcos's pocket, therefore, he could confidently allow the Supreme Court to rule on the petition. Marcos declared, "By mere fact of submission to the jurisdiction of the Supreme Court we have allowed the elimination of the power to summarily arrest any person."[355] Yet, still, *The New York Times* reports: "Mr. Marcos refused to say if he would free Mr. Diokno if the Supreme Court granted him the writ."[356]

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[351] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[352] Justice Zaldivar.
[353] Ibid., p. 99.
[354] Ibid., p. 100.
[355] "Marcos States Way Is Opened To Revive Habeas Corpus Writ." The New York Times. 25 May 1974: p. 2. ProQuest Historical Newspapers The New York Times (1851-2005).
[356] Ibid.

The petition charged that when Marcos had declared martial law, no state of rebellion or insurrection existed, to which Chief Justice Makalintal responded: "such a claim ignores the sophisticated modern setting [which] includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting."[357] The Court decided on September 17th, 1974 to uphold "the government's right to rule under martial law, detain persons without charges and restrict freedoms once released from jail."[358] On the last point, Chief Justice Makalintal explains,

> The power to detain persons even without charges for acts related to the situation which justifies the proclamation of martial law necessarily implies the power to impose upon released detainees conditions and restriction which are germane and necessary to carry out the purposes of the proclamation.[359]

All the Marcos-appointed Justices, except the former civil libertarian, Justice Fernando, concurred. Though he supported the rest of the decision as a whole, Fernando still filed a "qualified dissenting opinion" against the provision.[360] Additionally, *The New York Times* reports,

> While recognizing the constitutional basis of the President's proclamation [of martial law] and the suspension of the writ of *habeas corpus*, several justices asserted in separate opinions that the court had the power to scrutinize acts of the martial-law [g]overnment to determine whether they had resulted in manifest transgressions of liberty.[361]

Five out of the eleven justices declared the legality of martial law to be beyond their scope, but Justice Cecilia Munoz Palma "reviewed published accounts of disturbances in the three-year period before President Marcos assumed emergency

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[357] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[358] Ibid.
[359] Ibid.
[360] Ibid.
[361] "Manila Supreme Court Upholds Marcos on Emergency Powers." The New York Times. 19 Sept. 1974: p. 4. ProQuest Historical Newspapers The New York Times (1851-2005).

powers and agreed that a state of rebellion had existed."[362] The six justices then concluded that President Marcos had exercised his constitutional prerogative appropriately, given the situation, and without arbitrariness.[363] This decision allowed Marcos to announce to the world in a press-conference three days later, on the two-year anniversary of martial law, that,

> The power of the President is not absolute. For one thing, before I proclaimed martial law I sought to establish what would have been a coalition government. I asked the opposition parties to join me in the fight against rebellion, but my offer was rejected peremptorily. I submitted myself to the Supreme Court, not only once but several times. I would like to know if any dictator would do that.[364]

For their part, Supreme Court Justices Antonio and Fernandez traveled to Filipino-American communities in the United States and gave speeches in defense of martial law. In a letter to the Chairman of the Subcommittee on International Organizations of the United States House of Representatives, Justice Fernandez assured Donald Fraser that,

> There [had] been no violation of human rights by the government because our Supreme Court [had] already declared that the proclamation and continuance of martial law [was] in accordance with out Constitution and that, therefore, those arrested and detained by virtue thereof, [were] legally under detention and cannot be said to have been deprived illegally of their constitutional rights.[365]

In Honolulu, Justice Antonio argued that under Marcos, "institutions like the judiciary can … function as they ought to in view of the 'elimination' of politics from the system."[366] Whereas, in the past, Antonio pointed out, "the power and interference of

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[362] Ibid.
[363] Ibid.
[364] Muego, Benjamin N. Spectator Society. Athens: Ohio University, 1988.
[365] Ibid., p. 101-102.
[366] Ibid., p. 101.

politicians impeded the swift and smooth flow of justice."[367] In truth, Marcos, like politicians before him, was still impeding the flow of justice, just more skillfully.

DOWN, NOT OUT

Between 1974 and 1977, the Supreme Court remained effectively subdued. With regards to Senator Ninoy Aquino's fate in prison, however, like the Filipino people, the Supreme Court would not submit to Ferdinand Marcos's will. Ninoy had become their hero – their only reassurance that Marcos could not rule indefinitely. When after a four-year trial, the military tribunal court condemned Aquino to death on the charges of murder, subversion, and illegal possession of firearms, the Supreme Court reacted instinctively, albeit tentatively.

Aquino's conviction sparked an international outcry, moving Ferdinand Marcos to "reopen" the case and allow Ninoy to present further evidence.[368] The seven deciding army officers only confirmed Senator Aquino's prior conviction. It was at this juncture, on December 15th, 1977, that the Supreme Court requested a delay of any further action while they decided Aquino's petition for a writ of *habeas corpus*.[369] Fox Butterfield in the *New York Times*, reports that the usually intractable Solicitor General Estelito Mendoza, "immediately agreed to the Supreme Court's request, which seemed carefully phrased to avoid an open challenge to Mr. Marcos."[370]

According to Butterfield, when answering questions on December 15th,

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[367] Ibid.
[368] Butterfield, Fox. "Highest Filipino Court Intervenes In Case of Doomed Marcos Rival." The New York Times. 16 Dec. 1977: p. 3. ProQuest Historical Newspapers The New York Times (1851-2005).
[369] Ibid.
[370] Ibid.

> Several of the justices seemed sympathetic to Mrs. [Aquino] and sharply critical of the military tribunal's conduct of the trial. It was a reflection of the curious nature of martial law in the Philippines to see one of the Government's chief law officials publicly and sharply questioned on the conviction of an opposition figure. Ironically, Justice Antonio Barredo, who in the past has appeared at rallies for Mr. Marcos and had spoken on the President's behalf, was one of the most critical of the Government's actions. "I for one feel personally offended that the military commission did not wait for us to rule," he said, referring to the petition of Mr. [Aquino's] mother.[371]

This was a moment of great significance, being the first time in five years that the Supreme Court overturned an action of Ferdinand Marcos's. The Supreme Court never decided Mrs. Aquino's case. They continued to delay their ruling to keep Ninoy alive without having to overtly defy Marcos.

Later, on May 10th, 1982, Ferdinand Marcos accepted the resignation of all fourteen Supreme Court Justices, following allegations that Justice Vicente Ericta's son's bar examination results had been changed the month before.[372] Marcos did so to restore "the prestige, integrity, and good name" of the high court and "in order to create a new court, without the burden of the tarnished prestige of the present Supreme Court."[373] Four days later, President Marcos swore in 15 new members to the Supreme Court, reseating among them Chief Justice Enrique Fernando. Fernando admitted to "blurred judgment" and expressed gratitude for Marcos's move to instill "new confidence" in the Supreme Court, promising: "We will try to live up to it."[374] This scandal only draws into further clarity, the true nature of the Philippine political tradition, from which the Supreme Court itself isn't exempt.

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[371] Ibid.
[372] "Scandal Has Emptied Philippine High Court." The New York Times 11 May 1982: p. A11. ProQuest Historical Newspapers New York Times (1851-2005).
[373] Ibid.
[374] "Marcos Swears In A New Supreme Court." The New York Times 15 May 1982: p. 6. ProQuest Historical Newspapers New York Times (1851-2005).

Corruption existed even in the Philippines' highest court, bankrupting the notion that it served to uphold the rule of law. Not only did the judiciary fail to denounce Marcos's abuses, but also believed that it too could operate above the rule of law. This may complicate the Supreme Court's capacity to decide whether a party has acted in accordance to the rule of law at all. What does the Supreme Court's legitimation of Marcos's actions mean, in light of its own corruption? It was not only Marcos, but also the historical political tradition and system that he operated in, that were unhealthy.

The Court's legitimation was never proof that Marcos obeyed the rule of law, but, rather, further evidence that the political system operates above of the rule of law. The Supreme Court's approval only continued to protect the tradition from the burden of abiding by the law. Marcos did not break the system, but because of the Cold War, could bend it to include him. This achievement casts him, not as the aberration, but the apotheosis of the political tradition.

THE NINOY STORY

In February 1978 Senator Aquino still remained in jail. When Marcos consented in 1978 to hold an Interim Assembly election, as the 1973 Constitution had promised, Ninoy pledged to run, even in handcuffs. This would be the first election in five years of martial law. Imelda Marcos agreed to head a government coalition ticket against him.[375] This consent to an election was supposed to be a relaxation of martial law. If so, it proved

[375] "Mr. Marcos to Head Ticket in Assembly Race." Los Angeles Times 17 Feb. 1978: p. A2. ProQuest Historical Newspapers Los Angeles Times (1881-1986).

shallow when the government denied Aquino's petition for temporary release in order to campaign, on the grounds that it would endanger national security.[376]

The government later allowed Ninoy Aquino to appear on television on March 10th, 1978 to answer the campaign charges that he had worked for the CIA Stephen CuUnjieng recalls that on that day, there was nobody to be found on the streets, because all were watching Ninoy. President Marcos permitted Senator Aquino to run, but not outside his prison cell. His television appearance was his first in six years. The elections resulted in a decisive victory for Marcos's government coalition party and the opposition cried charges of fraud and ballot stuffing.[377] In Metro Manila, the opposition's hub, somehow all twenty-one members of Marcos's government ticket managed to win, which indicated foul play. Marcos reacted to the charges against him by threatening demonstrators and ordering more arrests.

Finally, after seven and a half years of detention, in 1980, Ferdinand Marcos allowed Senator Aquino to leave jail and fly to the U.S. to receive a necessary coronary bypass. This permanently set aside the Supreme Court's pending decision for the writ of *habeas corpus*. In an address before the American Newspaper Publishers Association in Honolulu the month before, Ferdinand Marcos sought to prove that "authoritarianism need not be synonymous with tyranny." He hoped that his concession to Aquino would be a demonstration of this.[378]

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[376] "Handcuffed in the Philippines." The New York Times. 2 Mar. 1978: p. A18. ProQuest Historical Newspapers (1851-2005).
[377] "Marcos Coalition Takes Firm Lead in Filipino Voting." Los Angeles Times. 7 Apr. 1978: p. A2. ProQuest Historical Newspapers Los Angeles Times (1881-1986).
[378] "Detained Philippine Politician Allowed to Fly to U.S." The New York Times. 9 May 1980: p. A1. ProQuest Historical Newspapers The New York Times (1851-2005).

On January 17th, 1981, after Aquino had left the country, Marcos officially lifted martial law. That same day, Marcos also released 341 prisoners, 159 of whom had violated national security and 182 of whom were common criminals. Henry Kamm in the *New York Times* writes that Pope John Paul II's upcoming visit and Ronald Reagan's election also explain the timing of Marcos's decision in 1981.[379] "Mr. Marcos and his wife have consistently been reported as chafing under the Carter administration's emphasis on human rights," Kamm reports, but, "Mr. Marcos was … encouraged … by a reported assurance from Mr. Reagan that he would treat the Philippines 'as a major ally.'"[380] Therefore, Kamm continues, this decision is, "a gesture to invite Mr. Reagan to initiate a warmer relationship with a country that, despite its strong independence, continues to place great value on its ties to its former colonial ruler."[381]

More than an invitation, however, Marcos had clear expectations when Reagan assumed office. The two had formed a friendship much earlier, during the beginning of martial law, when Reagan was still a first-term California governor. When Imelda Marcos was planning to unveil her pet project, The Philippine Cultural Center, she invited many heads of states, wishing to draw lavish attention to the Philippines and the achievements of martial law. President Nixon and all her other American invites rejected Mrs. Marcos's offer, so she turned to Governor Reagan. It was a flattering invitation for Reagan and, as was Mrs. Marcos's style, Mr. and Mrs. Marcos showed Nancy and Ronald a splendid time. This began the friendship that would determine much of Philippine-American relations over the dying days of the Marcos years. Aquino never

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[379] Kamm, Henry. "Marcos Frees 341; Lifts Martial Law." The New York Times 18 Jan. 1981: p. 1. ProQuest Historical Newspapers New York Times (1851-2005).
[380] Ibid.
[381] Ibid.

saw that ending. After a successful coronary bypass and spending some time in exile in the U.S., when he finally returned to the Philippines, on August 21st, 1983, Ninoy was assassinated upon sight.

CHAPTER ELEVEN: ABOVE THE RULE OF LAW

THE END

Describing his immediate reaction upon hearing this news, Stephen CuUnjieng relates,

> Nobody felt safe after Ninoy died. Whether Imelda or someone higher up had him killed, we still don't know, but that day, real fear of Marcos's regime set in.[382]

Steve Psinakis, a Greek businessman who had married into the Lopez family, was an unwavering Marcos critic and a close friend to Ninoy Aquino. On Ninoy's 25th death anniversary, Psinakis released previously classified documents for the first time, including a transcript of his final conversation with Ninoy right before he boarded the plane to Manila. The following are excerpts from that new, historical record, which has yet to be examined by academic scholars:

> … Now this is the latest, Steve, that I can give you – my source is Cardinal Sin … Number one, Marcos checked-in at the Kidney Center … The experts went, saw him, they did the test. He flunked all the tests and the conclusion was if they operate on him, it would be fatal … Apparently, they are now moving to put in Imelda, in effective control … that's the background that I'm coming [into]…[383]

Steve Psinakis then, reminded Ninoy, "That's the good part. The bad part is that the hardliners like [General Fabian] Ver who are bulldogs without any political savvy … may think they're next in line."[384] Ninoy replied:

> … [T]he rumor in Manila is that I am taking the private jet of Enrique from Hong Kong, but all planes have been guarded and they may close the airport on Sunday or turn back the plane if they will be able to pinpoint [it] ... [Another] one … is [that] … they have two guys stationed to knock me out at the airport … [T]hey will try them for murder [afterwards, and] …

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[382] CuUnjieng, Stephen. Personal Interview. 15 Aug. 2008.
[383] Psinakis, Steve. "My Last Talk With Ninoy." Transcript released 21 Aug. 2008.
[384] Ibid.

> convict them, but [the two guys] have assurances … I am meeting with ASEAN leaders beginning Tuesday, Wednesday, and Thursday. Indonesia's Suharto might receive me, Malaysia is already firm, and Thailand is just about firm. Now, Japan has sent word that if Imelda is in place, Nakasone is willing to use his economic clout … to tell Imelda, … 'if you treat Aquino nicely, we can [have a] dialogue' … Nakasone is willing to send … a secret, private envoy with a personal letter making a plea for me … [promising] that if they … [can] come up with some kind of an understanding, Japanese economic assistance will continue … [T]hey are very uptight and if the woman takes over … there will be chaos … ASEAN today is already one region and any instability in one part of ASEAN will scare investors in the entire region … Now to what extent they can mitigate the hardliners, I don't know, that's the chance we have to take.[385]

Then, referring to his chance of assassination, Ninoy continued:

> Those are the trump cards I am bringing home, which of course, can be negated if one character can blow me out…[But if not], … I will try to hold out for a meeting with Marcos. Now that he is about to meet his Maker, I am almost confident that I can talk to him and sell him something...[386]

At this point, Psinakis asked Ninoy his last question, which was whether there was "any indication from the U.S. side that they might be somewhat helpful or cooperative." Ninoy answered:

> No indication except that they are watching me and they are following all my steps … But I am still hopeful that … they will … eventually … because I don't think they're very happy with [the prospect of] the woman running the show …[387]

For the first time, this conversation proves that Ninoy understood quite clearly the dangers that he faced in deciding to return home. While exiled in the United States, however, Ninoy was certain that his place was at home, declaring that, "The Filipino is

[385] Ibid.
[386] Ibid.
[387] Ibid.

worth dying for." This conversation also provides further evidence that Marcos had been moving to install Imelda in his place, though that fact still remains unproven.

THOSE AT FAULT

In the aftermath, Marcos appointed five jurists to a special commission, created to investigate Aquino's murder. Significantly, the Supreme Court accepted three suits challenging the panel's competence and the Marcos suspended the investigation hearings, pending the Supreme Court's decision.[388] According to the official government account, Rolando Galman, described as a "professional gunman," had killed Ninoy with a single bullet to the back of the head. After firing at Aquino, Galman "was killed by a fusillade of bullets by the security men surrounding Mr. Aquino."[389] Yet, "how Mr. Galman, who was wearing the uniform of the airport maintenance workers, managed to penetrate the tight security screen in effect for Mr. Aquino's arrival," Robert Trumbell in the *New York Times*, writes, "is one of the unanswered questions in the case."[390]

Aquino had been wearing a bulletproof vest and when Aquino stepped off the plane, two guards escorted him and patted him. Rolando Galman shot at Aquino first, but the subsequent onslaught of bullets, launched at the command: "Pusila, pusila," makes it difficult to tell precisely which bullet ultimately killed Ninoy. "Pusila" is *Waray*, a dialect from Leyte, where Imelda and all her bodyguards were from. Marcos's bodyguards were exclusively Ilocano, which seems to shift the blame to Imelda. One must consider, however, Marcos's old tactic of deflecting the blame to Imelda. Additionally, given the

[388] Trumbell, Robert. "Philippine Army Will Investigate Aquino Slaying." The New York Times 19 Sept. 1983: p. A13. ProQuest Historical Newspapers New York Times (1851-2005).
[389] Ibid.
[390] Ibid.

strictly authoritative nature of his rule, it is hard to believe that such an order was carried out without Marcos's approval.

Assassination was a step too far, however, even for Marcos, and it finally galvanized the Philippine people against him. Then, nothing, not his consent to hold presidential elections in 1985 or his subsequent "victory," would turn back the tide. The clumsiness of this miscalculation is highly uncharacteristic for Ferdinand and may evidence that Imelda was behind it, not her husband. Perhaps, though, sickness and desperation had overcome him and it was indeed Marcos's hand.

In the undelivered speech that he had prepared for his arrival, Aquino declares,

> … I could have opted to seek political asylum in America, but I feel it is my duty, as it is the duty of every Filipino, to suffer with his people especially in time of crisis. I never sought nor have I been given any assurances, or promises of leniency by the regime. I return voluntarily armed only with a clear conscience and fortified in the faith that in the end, justice will emerge triumphant … Rather than move forward we have moved backward. The killings have increased, the economy has taken a turn for the worse and the human rights situation has deteriorated. During the martial law period, the Supreme Court heard petitions for *habeas corpus*. It is most ironic after martial law has allegedly been lifted, that the Supreme Court last April ruled it can no longer entertain petitions for *habeas corpus* for persons detained under the Presidential Commitment Order, which covers all so-called national security cases and which under present circumstances can cover almost anything.[391]

Nowhere does Aquino denounce the failures of the other political bodies, besides the Supreme Court. This is natural, because it was the Supreme Court that had most directly betrayed him and refused to come to his aid in jail. Additionally, with regards to human rights, it did truly fall upon the Supreme Court to protect the Philippine people, and it repeatedly failed to do so.

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[391] "The Filipino is Worth Dying For." Tingog.com: The Voice of a Filipino. 21 August 2007. 19 February 2009. <http://www.tingog.com/current-events/ninoy-aquino-20th-death-anniversary-august-21-2007.html>

Aquino's speech continues,

> The country is far advanced in her times of troubles … These problems may be surmounted if we are united. But we can be united only if all the rights and freedoms enjoyed before September 21, 1972 are fully restored … There is a growing cadre of young Filipinos who have finally come to realize that freedom is never granted, it is taken. Must we relive the agonies and the blood-letting of the past that brought forth our republic or can we sit down as brothers and sisters and discuss our differences with reason and good will?

Therein, Aquino summarizes the lesson that the Philippines never learned, because the U.S. ended their independence fight against Spain: "Freedom is never granted, it is taken." Filipinos cannot wait for the Supreme Court to grant it and cannot wait for an unhealthy political tradition to correct itself.

THE FINAL DAYS

Criticism plagued every iteration of the government commission Marcos assigned to investigate Aquino's assassination. Nonetheless, Marcos was genuinely shocked when on October 10th, 1983, the latest commission, comprised of four retired Supreme Court justices, dissolved itself and handed the President their resignation. Responding to charges that the justices were too biased, in their letter, they suggested to Marcos that the commission would enjoy greater respect and public standing if it included "members acceptable to all sectors of society."[392]

Though their culpability was unproven, the Filipino people and Supreme Court could no longer justify Marcos's administration. Marcos's power ebbed increasingly. On October 25th, 1983, the Supreme Court overturned the Manila city government's ban on

[392] Campbell, Colin. "Philippine Panel on Assassination Dissolves Itself." The New York Times 11 Oct. 1983: p. A1. ProQuest Historical Newspapers New York Times (1851-2005).

demonstrations and sanctioned protests at the United States Embassy against American bases in the Philippines. According to a *New York Times* article, the Supreme Court declared in their ruling that there was "insufficient proof to back up claims by city government, in issuing the ban, that Communist subversives would disrupt the march."[393] Exhibiting a striking change of tone, Justice Vicente Abad Santos describes the Government as "paranoid," immediately blaming the Communists "whenever anything negative happens."[394]

On August 18th, 1984, the Supreme Court went further still. Dismissing the Government's claims that they would lead to "civil war," the Court approved plans for demonstrations marking the one-year anniversary of Aquino's death.[395] The Supreme Court stood with Ninoy against the Marcos government in their decision, describing Aquino as a "leader who decided to go back to his country to attain peace."[396] The Court approved the demonstrations, with assurance from its organizers that the marches and rally would be peaceful. Yet, Solicitor General Estelito Mendoza issued grave warnings that the military had obtained intelligence indicating that the Communists had planned to position snipers along the marches' routes and infiltrate assassins into the rally.[397] The Court still ordered security forces to "observe a [discrete] distance from the participants, with the duty of affording protection to the participants as well as to the general public."[398]

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[393] "Court Allows Manila Protest." The New York Times 26 Oct. 1983: p. A3. ProQuest Historical Newspapers New York Times (1851-2005).
[394] Ibid.
[395] "Manila Court Rebuffs Marcos on Aquino Rallies." The New York Times 19 Aug. 1984: p. 8. ProQuest Historical Newspapers New York Times (1851-2005).
[396] Ibid.
[397] Ibid.
[398] Ibid.

By this point, in 1984, martial law had already been lifted and the regime was only weakening. The military was breaking apart into competing factions, each plotting *coup* attempts against Marcos. President Ramos explains that at this point, "The armed forces of the Philippines were no longer [serving] the Philippines of the people, but … became the special armed forces of just an elite group based in Malacañang [Palace]. Therefore, I withdrew my support."[399] In addition to all this, Marcos himself was ravaged by his illness. The Supreme Court then finally began to rise against Marcos.

THE MEANING OF THE RULE OF LAW

In 1973, Rolando V. del Carmen posed the following question in *Asian Survey*:

> On the balance sheet, the Court thus far has done the President more service than disservice, more good than harm. And as long as the court stays tractable, the President will be hesitant to resort to drastic measures to silence it. But whether the President is truly under the "rule of law" is another question which only he can ultimately answer, not through what he says but through what he does in the difficult months, years, or who knows – even decades – ahead.[400]

In retrospect, Ferdinand Marcos did not operate under the rule of law, though he was obsessed with maintaining an appearance of constitutionality and thus, had a distinct respect for the law. Like past politicians, Marcos subverted the rule of law, but the difference lies in the unprecedented scope of his subversion. It is for this reason that he required the complicity of the Supreme Court. Observation of the proper rule of law had never been a true component of Philippine politics, but never too had the Courts

[399] Ramos, President Fidel V. Personal Interview. 2 Sept. 2008.

[400] Del Carmen, Rolando V. "Constitutionalism and the Supreme Court in a Changing Philippine Polity." Asian Survey 13.11 (1973): p. 1050-1061.

legitimization of this non-observation been. In successfully co-opting and outmaneuvering the judiciary, rather than break the tradition, Marcos extended it.

By 1974, Rolando V. del Carmen writes,

> A close scrutiny of [the Supreme Court's] record during the period of martial law reveals that the judicial department has thus far survived adversity through a process of situational accommodation … It is also apparent that perhaps resultant of circumstances beyond its control, the judiciary can no longer be relied upon as the ultimate agency to which individuals may turn for effective redress against the excesses of government when all other means have failed. Given the realities of martial law, there is consolation in the fact that although shaken and weakened the courts still exist. This is much more than can be said of the erstwhile Philippine Congress, which has long since passed into oblivion with no immediate hopes of revival.[401]

The Marcos years eventually proved the Supreme Court to be no better than the Congress, both ineffective and emasculated against Marcos's will. Petty but insistent subversion of the rule of law has always been the political norm and the Supreme Court's tolerance only further proves it.

Naturally a reactive and, thus, passive political body, the Supreme Court could easily turn a blind eye to past politicians' sins, because it fell upon the public to submit petitions for review. Under a state of rebellion and declaration of martial law, however, the language of the 1935 Constitution strengthens the executive's power. For this reason, the Cold War context gave Marcos the tools necessary for his dictatorship, and alongside the judiciary, legitimized his actions.

In retrospect, it is hard to imagine the judiciary acting otherwise, for as the interviews included here demonstrate, both the history and contemporary climate favored Marcos. The judiciary operated within a tradition that allowed its politicians to

[401] Del Carmen, Rolando V. "The Philippine Judicial System Under the New Constitution and Martial Law." Texas International Law Journal. 9. (1974): 143-155.

unapologetically break the law. Marcos brought the tradition to its most extreme limits, but because of the judiciary's legitimization, it cannot be said that he broke it. What lies in stake in this question, whether Ferdinand Marcos was the aberration or apotheosis of the system, is a judgment of the health of the Philippine political system. When one considers what preceded and followed Marcos, particularly, the current President Gloria Macapagal-Arroyo's ongoing attempts to remain in power, it is clear that the system itself is unhealthy. Not the aberration, Marcos instead embodies the Philippine political tradition's deepest ills. He has served to demonstrate to history, what the political mandate truly means to the Philippines' politicians.

EPILOGUE

CONSTITUTIONAL REVISION

Immediately after the victory of the People Power Revolution of 1986, Corazon Aquino assumed power and issued Proclamation No. 1, stating, "As a first step to restore confidence in our administration, I expect all appointive public officials to submit their courtesy resignation beginning with the members of the Supreme Court."[402] Thereafter, President Aquino convened a Constitutional Commission to rewrite the Constitution and on June 2nd, 1986, forty-eight appointed members from various fields, began the task of writing the new Philippine Constitution.[403] Atty. Romulo recounts, "We went around the country and tried to elicit the opinion of people as to the form of government they desired …. People wanted to elect their president; that was how they would express their views."[404]

The 1987 Constitution is the strongest window into how the public and Aquino's administration viewed the emasculation of the judiciary under Marcos. It articulates their conception of the judiciary's role within the balance of a proper separation of powers. Chief Justice Claudio Teehankee's handwritten notes from the Constitutional Commission meetings highlight the importance of Article VIII, Section 1, which appears as the first among the list of changes to be made to the Constitution.[405] Article VIII,

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[402] Government of the Republic of the Philippines. President Corazon Aquino. Proclamation No. 1 25 Feb. 1986.

[403] Villegas, Bernardo M. "The Philippines in 1986: Democratic Reconstruction in the Post-Marcos Era." Asian Survey 27.2 (1987): 194-205.

[404] Romulo, Atty. Ricardo J. Personal Interview. 20 Aug. 2007.

[405] Teehankee, Chief Justice Claudio. "1987 Consti." Chief Justice Claudio Teehankee Center. Ateneo de Manila University Law School. Manila, Philippines.

Section 1 outlines judicial power and greatly extends the jurisdiction of the Supreme Court, defining judicial power to be:

> The duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[406]

The power to decide whether or not there have been "grave abuses of discretion" allows the Supreme Court to settle political arguments. Previously, the Supreme Court tended to refrain from deciding upon political matters and authorities defended themselves against the judiciary by invoking the political nature of their actions, which was outside the jurisdiction of the Supreme Court. This political protection was the first provision that the Constitutional Commission removed. Importantly, because the phrase "grave abuses of discretion" is somewhat ambiguous, the provision can expand or contract according to the nature of the Supreme Court and its willingness to intervene in political matters.[407]

The immediate attention that the Constitutional Commission paid to the judiciary's power and its role in protecting the people against the executive and legislative branch reflects the Supreme Court's ineffectiveness under President Marcos. In a further act of judicial empowerment, Article VIII, Section 5, Part 2 grants the Supreme Court jurisdiction over cases regarding ambassadors, public ministers, consuls etc., and reserves for the high court, final judgment on the constitutionality of any

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[406] Philippine Supreme Court. Chief Justice Claudio Teehankee. A Year of Restoration, A Time of Renewal: 1986 Annual Report of The Supreme Court. Manila, Philippines: 1986.

[407] Tate, C. Neal and Haynie, Stacia L. "Authoritarianism and the Functions of Courts." Law & Society Review 27.4 (1993): 707-740.

government decree or pronouncement.[408] Additionally, under the 1987 Constitution, only Congress may grant the President emergency powers, stating:

> 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. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.[409]

THE EMBOLDENED SUPREME COURT

In the "1986 Annual Report on the Operations and Activities of the Judiciary," Chief Justice Claudio Teehankee writes,

> A free and independent Judiciary is imperative in any democratic society. The Constitution and democratic traditions may be upheld only through the judicial power that is vested exclusively in the 'Supreme Court and in such lower courts as may be established by law.' (Article VIII, Section 1, 1987 Constitution) The institution of judicial review serves as a check that every official act must be based on law that does not contravene the limitations imposed by the Constitution and that it be performed conformably to law.[410]

President Marcos's long "constitutional authoritarianism" deeply scarred the Philippines. Recognizing the judiciary's recent inadequacies and failures, the Constitutional Commission wrote the 1987 Constitution with the explicit intent of preventing a crisis executive from manipulating the judiciary in order to perpetuate a crisis regime's assumption of power.

In the "1986 Annual Report of the Supreme Court," Chief Justice Teehankee seeks to restore confidence in the judiciary, writing,

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[408] Ibid.

[409] Bernas S.J., Fr. Joaquin G. "Sounding Board: Emergency Powers." The Philippine Inquirer 06 August 2007.

[410] Philippine Supreme Court. Chief Justice Claudio Teehankee. A Year of Restoration, A Time of Renewal: 1986 Annual Report of The Supreme Court. Manila, Philippines: 1986.

> If under the past unlamented regime, the spirit of the laws was lost in the convolutions of fine rhetoric, and found its voice expressed only in seemingly futile dissents, now this spirit is again enthroned in all majestic splendor in the institution of the Supreme Court that has been known as the citadel of truth and justice.[411]

With such expanded powers of judicial review, the Supreme Court could reclaim its title as the guarantor of justice and regain its role within the system of checks and balances. The Philippine people hoped that with such expanded powers, the Supreme Court's independence would be permanently guaranteed and no longer vulnerable to the manipulations of crisis regimes seeking to justify dictatorship as "constitutional authoritarianism."

[411] Ibid.

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