



## FORUM 4

### *'Pag Meron Ka Nito, Wala Kang Talo!* *Ang mga Abugado, ang Hudikatura, at ang* *Arkitekturang Legal ng Awtoritarianismong* **Marcos**

Miyerkules, 15 Enero 2014, 1:00-4:00 n.h.  
Pulungang Claro M. Recto (Faculty Center Conference Hall)  
Bulwagang Rizal, Kolehiyo ng Arte at Literatura  
Unibersidad ng Pilipinas (UP) Diliman

**MARIA LUISA T. CAMAGAY** (PROPELOR, DEPARTAMENTO NG KASAYSAYAN, KOLEHIYO NG AGHAM PANLIPUNAN AT PILOSOPIYA, UP DILIMAN): *Magandang hapon po sa ating lahat. Magandang hapon sa ating mga estudyante na siguro [ay] dapat naririto dahil wala kayo masyadong kaalaman tungkol sa paksang martial law at administrasyong Marcos. Magandang pagkakataon na ito. Ito ay isang serye na itinataguyod ng Third World Studies Center. Ngayong hapon ay mapalad tayong makasama ang sumusunod na tagapagsalita na magbibigay liwanag naman sa aspektong legal ng deklarasyon ng martial law. Magbibigay ng paunang pagbati, ang kasalukuyang direktor ng Third World Studies Center, na si Dr. Ricardo Jose.*

**RICARDO T. JOSE** (DIREKTOR, THIRD WORLD STUDIES CENTER AT PROPELOR, DEPARTAMENTO NG KASAYSAYAN, KOLEHIYO NG AGHAM PANLIPUNAN AT PILOSOPIYA, UP DILIMAN): *Magandang hapon sa inyong lahat. We have a very high-powered panel this afternoon. But I would like to give some regrets first, apologies because one of those we really had hoped would come, Atty. Rene Saguisag . . . wanted to come, until we heard early this week that he is in the hospital since Sunday and ayaw*

*payagan ng doctors niya na lumabas.* But he was looking forward to this. Anyway, he gave us a quick summary of what he wanted to say.

*Maraming salamat sa pagdalo ninyo dito sa forum na ito* and welcome to the fourth of five public forums organized by the Third World Studies Center. This is a series that was meant to tackle the legacies, implications, and the various aspects of martial law and the Marcos administration. It is now over forty years since martial law was declared—which is more than one generation actually—and memories are fading, the eyewitnesses are going, but [many of] the issues of the martial law era have not been fully resolved. There are various consequences that we are still facing today and some of these have been written about, but many more have not yet been written about and have not been tackled. In light of the fact that it has been more than one generation since those difficult years, the Third World Studies Center has embarked on this series to try to document, examine—to reexamine, if you will—the issues of that controversial period.

In this fourth forum, we are going to discuss the role of lawyers, the judiciary, and the legal architecture of the martial law regime. For better or for worse, UP played a strong role in this. Some of the presidential decrees as a matter of fact are still much in force, while others have been rescinded because they no longer apply. We are fortunate to have with us a group of experts in the field. One issue, I guess, in all of these is that President Marcos was a lawyer and he knew how to get things done following the legal framework. And lawyers speak a different language—a legalese type of language—which most of us are not very familiar with. So, this afternoon we have two lawyers who will speak to us in more understandable language and we have one journalist who is very familiar with the activities of that time and is very familiar with the personalities of that period.

We apologize in advance for the inability of Atty. Saguisag to participate in this afternoon's forum much as he wanted to. But the other members of the panel, I think, are well familiar with the topic at hand, being lawyers and having practiced and taught or studied law. Once again welcome to all and may we all have a truly fruitful afternoon.

**CAMAGAY:** *Sa pagkakataon na ito, ibig kong ipakilala ang ating mga tagapagsalita. Si Prop. Froilan Bacungan ay naglingkod bilang ikapitong dekanong Kolehiyong ng Batas ng UP mula 1978 hanggang 1983. Sa ilalim ng panunungkulan niya itinatag ang ilang mga institusyong akademiko sa*

Kolehiyo ng Batas. *Kasama na [dito] ang Legal Resources Center, Academy for ASEAN [Association of Southeast Asian Nations] Law and Jurisprudence, ang International Studies Institute of the Philippines, at ang Institute of Judicial Administration. Nagpatupad din siya ng makabagong kurikulum na naglalayong gawing mas makabuluhan sa lipunan ang propesyon ng abogasya. Bilang propesor ng batas sa UP sa loob ng halos limang dekada, nagturo si Propesor Bacungan ng Labor Law at Constitutional Law na naging paksa rin ng mga libro, monograph, at artikulo na kanyang isinulat.*

*Nagturo din ng mga kurso sa karapatang pantao si Propesor Bacungan at dumalo sa 1978 Vienna Conference on Human Rights Education and Teaching. Naging miyembro din siya ng UNESCO [United Nations Educational, Scientific, and Cultural Organization] Committee of Experts on Human Rights na nag-draft ng Six-Year Plan for the Development of the Teaching of Human Rights. Siya ay naging komisioner ng Commission on Elections at pangulo ng Philippine Constitutional Association. Sa kasalukuyan ay pangulo si Propesor Bacungan ng Center for Research and Special Studies na nag-review ng Labor Code at naghain ng mga pagbabago sa iba pang mga labor at social legislation noong nakaraang administrasyong [Gloria] Macapagal-Arroyo. Pinangunahan din niya ang ilang mga proyekto ng center ukol sa repormang pang-agraryo, isang paksang malapit sa puso ni Propesor Bacungan. Bilang dating direktor ng UP Law Center, ginawa niyang mandatory subject ang kurso ukol sa repormang pang-agraryo sa kolehiyo. Nagtuturo din [siya] ng mga kurso ukol sa repormang pang-agraryo [sa] Unibersidad ng Sto. Tomas simula pa noong 2005. Si Prof. Bacungan ay nagtapos ng bachelor of laws sa Unibersidad ng Pilipinas at master of laws sa Yale University, kung saan siya ay Fulbright-Smith Mundt scholar.*

*Si G. Raul Pangalangan ay propesor rin at nagtuturo ng constitutional law at public international law sa Kolehiyo ng Batas ng UP. Bukod sa pagiging dekano ng Kolehiyo ng Batas ng UP ng dalawang termino, siya ay naging visiting professor sa Harvard Law School. Nakapag-lecture din si Professor Pangalangan sa The Hague Academy of International Law, Melbourne University, Hong Kong University, Irish Center for Human Rights, Japan Society of International Law, at sa Thessaloniki Institute of Public International Law . . . Noong 2003 nahirang na amicus counsel si Propesor Pangalangan sa kasong impeachment ng dating punong mahistrado na si Hilario Davide, habang noong 2006 ay naging lead counsel naman siya sa harap ng Korte Suprema sa matagumpay na hamon sa naging proklamasyon ng state of emergency ng dating pangulong Gloria*

Macapagal-Arroyo. *Kasalukuyang tagapaglathala* [si Propesor Pangalangan] ng *Philippine Daily Inquirer* kung saan siya ay dating nagsusulat ng lingguhang kolum na pinamagatang “Passion for Reason.” Pangulo rin [siya] ng Bantay Katarungan, isang nongovernmental organization na naglalayong itaguyod ang rule of law sa bansa. Siya rin ay naging Asian Public Intellectual fellow . . . para sa taong 2013. Nagtapos ng bachelor of laws sa UP at ng master of laws at doctor of juridical science (SJD) sa Harvard Law School si Professor Pangalangan. Nagwagi ng Leiden Prize for best paper in public international law ang kaniyang master of law thesis, habang ang kaniyang SJD thesis ay nanalo ng Saunder Prize for Best Thesis on Issues Relating to International Peace. Natanggap niya ang kaniyang diploma mula sa The Hague Academy of International Law noong 1987.

At panghuli—pero hindi naman komo babae—ay si Marites Dañguilan-Vitug. Si [Marites] ay isang manunulat. Siya ay editor-at-large ng *Rappler*, isang online news provider, at pangulo ng Journalism for Nation Building Foundation. Dati rin siyang punong patnugot ng *Newsbreak*, isang peryodiko na isinalarawan ng *New York Times* bilang magazine na “with spunk and spice.” Ang pinakabagong libro niya ang *Hour Before Dawn: The Fall and Uncertain Rise of the Philippine Supreme Court* (Vitug 2012), ay sequel sa best-selling na *Shadow of Doubt: Probing the Supreme Court* (Vitug 2010), ang unang aklat na humawi sa tabing na sumasaklob sa Kataastaasang Hukuman ng Pilipinas. Ang *Hour before Dawn* naman ay nagwagi ng National Book Award for nonfiction noong 2012. Ang e-book version naman ng *Shadow of Doubt* nasa top ten best selling books ng Amazon sa ilalim ng kategoryang “courts.” Kinilala rin ito ng Manila Rotary Club bilang “Outstanding Non-fiction Book” noong 2010. Tunay ngang ang *Shadow of Doubt* ay maituturing na tagumpay sa mata ng mga kritiko at nakapagambag din sa nagbabagong political landscape sa bansa. Mayakda rin si Ms. Vitug [ng] mga sumusunod na libro: *Our Rights, Our Victories: Landmark Cases in the Supreme Court*, kasama si Criselda Yabes (Vitug and Yabes 2011); *Power from the Forest: The Politics of Logging* (Vitug 1993); *Jalan-jalan: A Journey through EAGA*, kasama si Criselda Yabes (Vitug and Yabes 1998); and *Under the Crescent Moon: Rebellion in Mindanao*, kasama si Glenda M. Gloria (Vitug and Gloria 2000). Ang *Power from the Forest* ay nagwagi ng National Book Award for Journalism noong 1994 at isinalarawan ng *International Herald Tribune* bilang isang “well-written and well-produced book that deserves a wider audience.” Ang *Jalan-jalan* naman ay hinirang ng *Asiaweek* noong 1999 bilang isa sa mga nangungunang libro tungkol sa Asya. Ang *Under the Crescent Moon* ay nagwagi ng National Book Award noong 2001. Hall of Famer

*na siya sa National Book Awards sa marami niyang napanalunang mga premyo. Nagsusulat din si Ms. Vitug sa mga peryodiko kasama na ang International Herald Tribune, Christian Science Monitor, Newsday, at Asahi Shimbun, at sa mga libro at journal kasama na ang The Politics of Environment in Southeast Asia at The Journal of Environment and Development na inilathala ng University of California in San Diego. Pinarangalan si Ms. Vitug ng Courage in Journalism Award ng International Women's Media Foundation para sa kaniyang pag-uulat sa kalagayan ng mga gubat ng Palawan; ng Ozanam Award ng Ateneo De Manila University; ng Outstanding Alumni Award ng University of the Philippines; ng Jaime V. Ongpin Award for Investigative Journalism; at ng Ten Outstanding Young Women Award sa larangan ng pamamahayag. Nagtapos ng BA [bachelor of arts] in broadcast communication sa UP si Ms. Vitug. Dati rin siyang Nieman Fellow sa Harvard University at nag-aral ng International Relations sa London School of Economics and Political Science.*

*Ang una nating tatawagin ayon sa ating programa ay si Prop. Froilan Bacungan.*

**FROILAN BACUNGAN** (DATING DEKANO, KOLEHIYO NG BATAS, UP DILIMAN): *Ang unang tanong ng organizers nito is: "How did Marcos utilize the law to keep himself and his political allies in power?"*

*Ito naman ang sagot ko: Whatever happened during martial law regime under President Ferdinand E. Marcos, he was just fully implementing his oath of office as worded in the 1935 Constitution, Article VII, Section 7. Ano naman itong oath of office ng presidente? Ito iyong sinabi ni President Marcos:*

I do solemnly swear that I will faithfully and conscientiously fulfill my duties as President of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God.

That [was] what President Marcos did during the time that he was president.

"Why is the crafting of the legal structure that supported, and in fact legitimized, the Marcos dictatorship rarely discussed in public?"

*Ito naman ang sagot ko: Because the discussion about the Marcos regime in public has been only to the extent that you justify your position as pro-Marcos and anti-Marcos. It is not the way the Third World Studies Center wants the debate to be, namely, objective.*

“The usual reason given by groups and individuals who have been part of the Marcos regime is that they served the dictatorship believing that they can temper the harsh blows of Marcos’s iron fist.”

*Ito naman ang sagot ko:* I was never part of the Marcos regime. *Nagtuturo lang ako sa* law school and giving bar reviews about the same time. I was executive secretary of the Philippine Chamber of Commerce and Industries at the time that martial law was proclaimed. I succeeded Crisolito Pascual as director of the UP Law Center, and later on, Irene Cortez as dean of the UP College of Law. I was never a part of the Marcos regime (*basahin ang* appendix 4.1, 467-68).

“Did the people in the judiciary and the legal profession then share the same view?”

*Ganito . . .* In a sense, the common view of persons like Crisolito Pascual and Irene Cortez was that, from the time President Marcos became president until he was ousted as such by the People Power [Revolution], he was president under the 1935 Constitution. So try to remember, that everything they [would] say about Marcos, he was doing it under the 1935 Constitution.

“What should the Supreme Court have done to stop the imposition of martial law?”

*Ito naman ang sagot ko:* The proper question is, “What kind of a constitution should be implemented?” *Una*, the Supreme Court only implements the present constitution, not any other constitution. If it [was] the 1935 Constitution, then, whoever [would] be in the Supreme Court could not have stopped President Marcos from being a dictator. They [would] promulgate the decision that could be downloaded in the internet that dealt with *Aquino v. Enrile* [General Register (GR) No. L-35546, 17 September 1974]. I wish to emphasize that the Supreme Court will only interpret what is [in] the constitution and it does not do anything else, because if they do something else then it is a fake Supreme Court.

“Within the context of the judiciary’s nature and contemporary political culture, are there any chances for another Marcos to rise and tailor fit the constitution to his needs and make lackeys out of the Supreme Court justices?”

*Ito naman ang sagot ko:* There will never be a Marcos again, but there may be because there is a Bongbong Marcos who, as senator of the republic, is implementing the following provisions, among others, of the Declaration of the Principles—. *Itong Saligang Batas ngayong* 1987,

we owe it to that woman, [Cecilia Muñoz-] Palma who was [chair of the 1986 Constitutional Commission]:

[Section 3:] Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

*Ito naman ang* Section 4:

The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.

Section 5:

The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Another way of saying it will be, let us ensure that we will not change the 1987 Constitution. Section 18, Article VII which states, and I will read it really slowly:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent and suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

Then you will note that this is going to be done:

Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least

a majority of all its Members in regular session or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

*Iyon ang hindi nangyari noong* time ni Marcos because there was no such command in the constitution. But you will find Bongbong following [that].

Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

That is why the Congress should convene without anybody calling for it. So, if anyone proclaims martial law, Congress will convene itself to see to it that [it serves as] a countervailing force. And what will the Supreme Court do?

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

And what is the state of martial law?

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.



During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

You could not detain a person for more than three days.

Let us now, of course, go back to the 1935 Constitution which states, “The President shall be commander-in-chief” and then these [slide shows additional text of the provision]. *Tingnan ninyo na lang ang mga rason*. All of you should read the proclamation of President Marcos. He did not justify this with all [these]. In other words, he said that nobody ever questioned the [facts,] it was questioned at the Supreme Court.

Whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of 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.

Who were the members of the Supreme Court at that time? You know when we are trying to think of what happened during the martial law regime, we should look at everything. Who was the president who caused it? It was President Ferdinand E. Marcos, the valedictorian of his class, the best and brilliant mind in the legal profession at the time.

And who were the justices? *Mabait itong si [Querube] Makalintal*—I still remember that we were [at the Development Academy of the Philippines (DAP) for a seminar]. We were assigned rooms. The one in charge of DAP that time was Luz Villamor, [who was with] SSS [Social Security System]. *Sabi niya*, “Froilan, room number one *ka*.” But room number one was assigned to Querube Makalintal. *Sabi [ni Makalintal]*, “I went to room number one, there was a Bacungan there!” . . . But Querube Makalintal never complained. He did not file any case against me.

I remember Calixto Zaldivar, father *ni* Lorna Zaldivar [who] was a good friend of mine. We were all at UP. *Si* Fred Ruiz Castro, *medyo kaibigan din natin*. *Ikuwento ko ang ginawa niya*. *Sabi niya*, “Froilan, *ayaw ko pang mag-retire* at seventy. *Puwede bang palitan natin ang batas* so that after seventy, I can continue being an associate justice of the Supreme Court.” [*Sabi niya*,] “*Ganito, tawagin ko si Ferdinand*, classmate *ko iyan*.”

*Palitan natin ang Saligang Batas.* We will change it so that we will not [need to retire] at seventy.” Except that when they were [flying back from] India, he died before he was seventy. So, *sayang iyong pagpalit namin ng Saligang Batas.*

Of course *si Enrique Fernando.* *Naging professor ko ito . . . Ang gusto niya kausapin lang ay ang mga anak ng justices.* So *hindi ako kasali* because *ang tatay ko* is a school teacher.

*Ito kalaban ng lahat, si [Claudio] Teehankee [Sr.],* of course. *Si [Antonio] Barredo* was a politician (*basahin ang* appendices 4.2, 469–72, at 4.3, 473–74). *Si Felix Makasiar* became dean of the Lyceum. *Si Felix Antonio ay kasama ko sa PHILCONSA* [Philippine Constitution Association]. *Si Salvador Esguerra, sa Malacañang.* They were all friends. But these guys, you know what is wrong with them? That is precisely the case.

*Si Estanislao Fernandez, Cecilia Munoz-Palma, ito professor ko si Ramon Aquino* who was so faithful to President Marcos, he was there at the time when he thought Marcos was being brought to Paoay–Hawaii *pala.*

*Ito naman, classmate ko, si Estelito Mendoza, isa sa mga pinakamagagaling na abogado* and because of that *mataas ang ibinabayad na taxes niya.* But he is very very good; he is the highest taxpayer of our country. *Sana lang binabayaran niya.*

*At sinasabi ni Raul [Pangalangan] kanina sa akin, naging justice din, si Hugo Gutierrez. Iyong mga anak ko ay Gutierrez scholars* because they were his assistants at the House and Senate Electoral Tribunal when they were in law school. And then of course the other persons.

*Wala na akong sasabihin.*

*Uulitin ko lang,* we should never go back to the 1935 Constitution and the members of the Supreme Court should not be the ones to [challenge] the profound ideas of the constitutional law the way Thomas Jefferson wanted it . . . Anyway, that is what we should do and that is what the young people here should do.

**CAMAGAY:** *Salamat Professor Bacungan.* So, *mayroon siyang iniwan na payo: huwag daw tayo babalik sa 1935 Constitution.* So *ngayon dumako na tayo kay Propesor Pangalangan.*

**RAUL PANGALANGAN** (TAGAPAGLATHALA NG PHILIPPINE DAILY INQUIRER AT DATING DEKANO, KOLEHIYO NG BATAS, UP DILIMAN): Thank you very much . . . Dean Bacungan was my dean when I was a student at the law

school. I must say on record, dean, that I was the president of the law student government and Dean Bacungan was the most supportive dean. I remember, dean—I am sure you have had many glorious moments, but the one scene I remember from law school was you chatting on the sidewalk with the drivers and the janitors. You were sitting with them on the *bangketa* and the students actually verbalized their appreciation, that they have a dean who can sit down with the lowest ranking staff . . . . Thank you. And also Marites [Dañguilan-Vitug], I am glad to be on the same panel. I must say that Marites's work as an investigative journalist has been featured by the *Philippine Daily Inquirer* in its banner headline. I recall that on 1 January 2012, we started the year with your work.

Okay, I borrowed my title from the book of Roberto Unger, a professor from the Harvard Law School. And in this context it is actually anointing dictatorial power with constitutional piety because that was the role that the law played for legitimating the dictatorship.

And this is basically a summary of what I propose to say in the next twenty minutes: that usually the legal framework for martial law is traced to the September 23—technically September 21—declaration of the martial law Proclamation 1081, when in fact the real foundation was laid one year before with the suspension of the writ of habeas corpus and I will go into the case that upheld that decision.

My larger point actually is rather theoretical and historical, not really legal. My concern is that the best challenge by the liberal lawyers, by liberal legalism as an ideology against Marcos, was that Marcos was telling a lie. Either he was exaggerating the communist threat [or] he was fabricating uprisings here and there; there was no basis for this declaration. And as I will demonstrate, it actually failed to delegitimize the rule of Marcos and that [was] why he persisted from 1973 all the way to his downfall at EDSA 1. And the only true channel really was Left theory, especially at that time emanating from this building [Palma Hall].

But even Left theory had to disguise itself after the [Benigno] “Ninoy” [Aquino] assassination [in 1983] as essentially bourgeois liberalism. My friends who were Maoist one moment suddenly morphed into Jeffersonian liberals. I mean if you do not look behind appearances, but they had to do that to win over the middle forces. That was where the human rights lawyers came in. That is why I had wished that Atty. Rene Saguisag was here. The human rights lawyers formed the core, eventually, of the leadership of the coalition against Marcos.

And this is also the irony. It was, in fact, Marcos who looked for an alternative theory between liberalism, imported from the West, and the left-wing orthodoxy. Marcos wrote three books<sup>1</sup> to justify that—I understand ghost written by members of the [UP] Social Sciences and Philosophy faculty, I will ask you later Malou [Propesor Camagay] for some names. And that well, of course, the ideological experiment failed really with the downfall of Marcos.

My examples—since I mentioned that Dean Bacungan was my professor when he was dean, and I have many students here, my examples will really sound dated to you. It shows my age.

This is from my favorite movie, *The Godfather*. So, I guess the kids here have not seen *The Godfather*, have you, right? Or maybe you have encountered it as a video game. So, this is one line from *The Godfather*: “A lawyer with his briefcase can steal more than a hundred men with guns.” Actually, that is a part of a dialogue and the next one shows you the response to that. It was uttered by the lawyer of the godfather, the head of the mafia, Vito Corleone. His *consigliere*, his lawyer, his adviser was an Irish lawyer who said the line. And the response was given by his son, the hot-tempered successor to the Corleone family who said: “Hey kid, if you have a hundred guys with guns on your side, whatever you do, do not trade them in for some fucking lawyers!”

So, let me have a survey here: Who among you agree with the Irish lawyer who says that the most potent ally is the lawyer with the briefcase? Anyone here? No takers? I mean that is the ideology of the entire Malcolm Hall. So, who is on the side of Sonny Corleone? Who is on the side of the men with guns? Well, if you side with the men with guns, then you actually affirm the classic wisdom of Niccolo Machiavelli: “It is better to be feared than loved.” And I am sure you take this in—

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1. Sa bandang dulo ng forum, sasagutin ni Propesor Camagay ang isyung ito. Ayon sa kanya, ang tinutukoy dito ay ang librong *Tadhana: The History of the Filipino People*. Isinulat ng mga historyador—karamihan sa kanila galing sa Departamento ng Kasaysayan ng UP—ang librong ito sa ngalan ni Marcos (tingnan ang tala 9 sa Forum 3 para sa mga puwedeng masangguning batis tungkol sa *Tadhana*). Sa palagay ng mga patnugot ng *Kasarinlan*, hindi ito ang tinutukoy ni Pangalangan kundi ang alin man sa mga ito: *Today's Revolution: Democracy* (Marcos 1971), *Notes on the New Society in the Philippines* (Marcos 1973), *Notes on the New Society of the Philippines II: The Rebellion of the Poor* (Marcos 1976), *The Democratic Revolution in the Philippines* (na kumbinasyon lamang ng unang dalawang nabanggit na titulo) (Marcos 1974) at *Five Years of the New Society* (Marcos 1978). Gayunpaman, ni sa bulung-bulungan hindi nasabing ipinasulat ni Marcos ang mga librong ito sa mga taga-UP. Ang madalas mabanggit na tagasulat ni Marcos ng mga librong ito ay ang isa sa kanyang mga tagapagsalita, si Adrian Cristobal (tingnan ang tala 10 sa introduksyon).

I believe this subject is now called Soc Sci 2 [Social Sciences 2], right? It was called Social and Political Thought during my time. [It was] the first subject I taught when I was a Political Science instructor. But notice the bottom code: never attempt to win by force if it can be won by deception. And that is where the lawyers come in.

My next slide, this is actually a summary. I do not expect you to note the details. This is just to give you a survey. Marcos, as Dean Bacungan emphasizes, was properly elected as president in 1965, served one term as president—that [was] a four-year term—and the first president to be reelected under the 1935 Constitution for a second term which was about to end in 1973. And then he started getting ideas and fortunately for him—and I say this deliberately—by that time, the student movement was reaching a crescendo—the First Quarter Storm, the Diliman Commune, the historic bombing at Plaza Miranda of August 1971—and the suspension of the writ of habeas corpus was validated by the Supreme Court in a case I will quote for the non-law people. *Lansang v. Garcia* [G.R. No. L-33964, 11 December 1971] is a case I keep on talking about.

In September 1972, Marcos declared martial law. He ruled under martial law powers from September 1972 to January 1973. So that is the whole month of October, November, December—so, roughly three and a half months—and then he foisted upon us this totally bogus ratification of the 1973 Constitution. And then again, a case that I will keep on talking about, *Javellana v. Executive Secretary*, G.R. No. L-36142, 31 March 1973]. Again just to fast track it, by 1986 we had a snap election and [Corazon] “Cory” [Aquino] [became] president and by 1987 we have the current 1987 Constitution.

My last slide is like a chart. The power of Marcos morphed over that period. So, from the standpoint of a person being tortured, from the standpoint of the student whose fingernails are being pulled with pliers, from the standpoint of *Hilao v. Marcos* [No. 95-15779, argued and submitted 18 June 1996; decided 17 December 1996]—a student was captured, tortured, detained at V. Luna [the Armed Forces of the Philippines Medical Center] and then the autopsy report says she voluntarily drank a bottle of acid. That was the official report. From the standpoint of the victims, the power never changed. You get hit on the head, you get hit on the head. Your eyeballs get plucked out, your eyeballs get plucked out. But from the standpoint of the lawyers, it mattered, how you legally characterize the power.

As Dean Bacungan said, from 1965 to 1972, [Marcos] was the duly elected president who took his oath under the 1935 Constitution. Between September 1972 to January 1973, he governed purely under the very clause—I am so glad Dean Bacungan showed you, and to give you a flavor of the language—the “commander-in-chief” clause. So, it was pure military power in those three and a half months. But notice by January 1973, the entire power changed because by then, by legal fiction, we have a new constitution. And Marcos then supposedly consulted the people who said, yes, we like the new constitution but please do not put the parliamentary system in place and please exercise the powers of the president under the 1935 Constitution, and the prime minister and the president under the 1973 Constitution. And so he ruled under that power until 1981.

In 1981, we had paper lifting of martial law. And he was actually elected to a fresh term of office, fully constitutional, if you just go by the paper trail. And the six-year term would have ended in 1987, except that he was under so much pressure from the popular movement. So notice, if he called for special elections in 1986, it was not because of any constitutional duty, it was purely upon political pressure. It was pressure from below, from all the protests and rallies. So, he called for the snap election and it was challenged before the Supreme Court as unconstitutional. As in fact it was. Yet the Supreme Court bent over backwards, again showing that the court is a creature of politics and we ourselves as Filipinos as the sovereign Filipino nation, nobody complained because we wanted the elections to proceed. And then Cory [Aquino] took her oath—she could not have taken her oath under the existing constitution then, so she had to come up with a Freedom Constitution, something written by Adolfo Azcuna. He was assigned. You know, in the frenzy of the revolution, someone had to draft the constitution. “You! Sit down and write it!” So, he wrote it, the Freedom Constitution under which we were governed until 1987. And then we have the 1987 Constitution.

I begin with what I consider the real foundation of martial law powers: the illegal arrest of 1971, in *Teodosio Lansang v. Garcia*. It was a series of many cases. One of those arrested is actually present [here], Gary Olivar. [*Humarap si Pangalangan kay Gary Olivar.*] Gary, you were then second year college? And you were how old?

**GARY OLIVAR:** Nineteen.

**PANGALANGAN:** You were nineteen years old. Gary was arrested together with Teodosio Lansang. Gary was charged under the Anti-Subversion Law. They were charged as communists, as subversives. And notice the liberal defense is that, “Hey, that is not true, they are not communists.” Well then, Gary you can tell me whether that is true or not. I have got to tell you, it does not take a detective to know. Teodosio Lansang was teaching here in the CAS [College of Arts and Sciences] faculty at that time. He was teaching foreign languages. What language was he teaching that time? Russian! [For] God’s sake!

I will not go through all the cases but *Garcia-Padilla v. Ponce Enrile* [G.R. No. L-61388, 20 April 1983] is very close to my heart. And this is a whole series of illegal arrest cases. Garcia-Padilla was a faculty member of [UP Manila]—that [was] Sabino “Abe” Garcia-Padilla, my brod in Alpha Sigma. Abe was captured in Nueva Vizcaya when the military raided an NPA [New People’s Army] safe house. And instead of just arresting a doctor—it was a clinic of a doctor, Aurora Parong—they camped out inside the house and each time someone rang the doorbell, they welcomed the person and arrested him. One of them was Abe. Abe passed away less than one year ago and I just wanted to mention the historic case of *Garcia-Padilla*.

As I will demonstrate later, *Lansang v. Garcia* was seen as a blow against Marcos. That was the favored interpretation of my era. My professor then in the College of Law in this subject was Miriam Defensor-Santiago. My other professor was Haydee Yorac. So both terror professors. Guess who was more terrifying, Haydee or Miriam? Yes, absolutely. Haydee was more terrifying than Miriam. Miriam was very motherly. She was scary but motherly. So, you can imagine, these two professors were anti-Marcos and they liked *Lansang v. Garcia*. So by their narrative, by the canonical account to my generation of law students, *Lansang* was a good decision. Why? Because before *Lansang*, all commander-in-chief decisions were beyond judicial review. I mean, how can judges pass over the decision of the commander-in-chief on whether or not there is not enough trouble, whether or not there are enough soldiers, whether or not the communists have grown to a threatening proportion. It was a pure judgment call by the president. That was the ruling doctrine then.

So, for *Lansang v. Garcia* to say that it will exercise judicial review was, for the likes of Haydee and Miriam, the assertion of the primacy of civilian authority over the military, the primacy of the courts over the commander-in-chief powers. And it was very well crafted. The goal

of the court is merely to check the executive, not to supplant it. It was merely to ascertain whether or not he has gone beyond the constitutional limits, the limits read to you by Dean Bacungan earlier, and not to exercise the power in his behalf, not to second guess the discretion of the chief executive. Everyone was singing hallelujahs to *Lansang v. Garcia*. I will go back to this case later.

Next one, *Javellana v. Executive Secretary*. Even the justices of the Supreme Court said that the 1973 Constitution had not been ratified properly. You needed a plebiscite. You need to count the votes. The votes had to be secret. All that Marcos had—we were already under martial law—was a so-called People’s Assembly with a mere show of hands and asked the question, “Do you approve of the new constitution?” Of course, they all said yes. “Do you still want a plebiscite?” They all said, “No, we do not want [one] anymore.” And Marcos said, “Hey, we have a valid constitution.” It was challenged before the Court, i.e., *Javellana v. Executive Secretary*. And the court said, “Hey, it is perfectly okay.” And one justice said, “Even in my own neighborhood we did not have that plebiscite. Even in my own neighborhood, I, a justice, never took part in the ratification of the [constitution].” Despite that, the 1973 Constitution took effect. And notice the logic, this is logic which is squarely within the framework of liberal theory. They said: If the people had staged a revolution and established a new government by arms, would you say this is unconstitutional? And the court says, “Well, if the people staged a revolution, but peacefully, without force, why should we disadvantage them? We should be equally nice to those who changed the constitution peacefully, rather than by violence.”

There are now two strings of reasoning: *Lansang*, which was highly praised by the democratic forces and *Javellana*, which was widely criticized by the democrats because it disregarded the test of strict legality and replaced strict legality with political reality after the fact, post hoc. Notice that until today, the orthodox is that *Lansang* is good news because, again Dean Bacungan read to you the 1987 Constitution, we codified the language of *Lansang* into the commander-in-chief clause of the 1987 Constitution.

This [was] what that court said in *Lansang*. Notice that they agonize over the decision on 5 October [1971]: “[The Supreme Court] . . . tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the” suspension of the writ of habeas corpus . . . “Upon further deliberation, the members of the Court are now unanimous in the conviction that it has the authority



to inquire into the existence of said factual bases . . .” So, notice that there was a change in the temperament of the court, and for me that was a mystery. Why the change?

Until, later on, I read this book, the diaries of Marcos.<sup>2</sup> When Marcos fled, apparently, he left his diaries in Malacañang and someone published the diaries in a book. It turns out, Marcos was monitoring the decision of the court in *Lansang v. Garcia*. So Marites, what is happening today about the lobbying within the court is old hat. Marcos had a mole inside the Supreme Court, and Dean Bacungan, I am just reading from the [Marcos] diaries, it was Fred Ruiz Castro. It says: “The President had a spy. One of the justices, Fred Ruiz Castro, a fellow native of Laoag, a senior appointee. Castro came to dine with the President on September 16. It was an extraordinary session far outside the norms of judicial decorum and wholly disdainful of any notions of separation of powers”—something that Marites has developed in her book. I hope more examples, Marites, and more recent episodes. “Castro told Marcos, ‘I think we have enough votes.’ But [Castro] said, ‘If you want more votes, lift the suspension of the writ in some regions of the country, a partial lifting, so that we can get a unanimous vote.’” The prospect of a unanimous vote had enormous appeal to the president. So what he did was [to] travel to Cebu on a Saturday, restored the writ in Cebu, it appeared on the Sunday papers, just in time for the en banc session on Monday. So, you know the timing was impeccable. And this is what Marcos said after he was told that the court was unanimous: “It was euphoric. A red letter day. The biggest legal victory in my administration,” he said. “It electrified everyone.”

The weird thing was that the matter at that time was already academic because he kept on having a partial restoration of the writ just to have a unanimous vote. And in fact the diary said that: “People do not know why I am ecstatic about this case. Because the Supreme Court already acknowledged the existence of the rebellion. This means I can place the Philippines under Martial Law.”

My first problem: If *Lansang* was a high moment for the anti-Marcos people, then why was Marcos so happy? Why the gap between the legal imagination which says that *Lansang* was good for liberty, and the realist mind which says that *Lansang* was good for martial law? And the answer actually came from Perfecto Fernandez, my other professor.

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2. *Maaaring ang tinutukoy dito ni Pangalangan ay ang Delusions of a Dictator: The Mind of Marcos as Revealed in His Secret Diaries* ni William C. Rempel (1993).

Fernandez said the court purported to review the suspension of the writ. It did not wash its hands. It says, “Look, we will review [it].” But it adopted a very low threshold for validity, namely whether the decision was totally bereft of any factual basis which will make it an arbitrary decision. In other words, in order to validate the decision for the court, it will need evidence. Where will you get an evidence for a rebellion? You get it from the commander-in-chief. In other words, you are asking the guy to supply evidence to support his own decision and obviously the guy will always have the factual grounds for his decision. So, notice my first problem was that *Lansang*, far from being a score for democracy, was actually part of a grave digger for democracy (*basahin ang* appendix 4.4, 475-78).

I will proceed to my second problem. The likes of Yorac and Defensor-Santiago—I use them, Dean Bacungan, as examples only because they were my actual professors who expressed these opinions—criticized *Javellana* for abandoning the test of strict legality. Well guys, when Cory Aquino took over in 1986, it was also challenged before the court. And what was the reasoning of the court to validate Cory? It was exactly the reasoning in *Javellana*. Cory’s rise to power was not due to the constitutional processes. In fact, it was achieved in violation of the 1973 Constitution because it was Marcos who officially won the snap elections. But the people have accepted Cory. And Cory, being in effective control of the entire country, the legitimacy of her government was not justiciable but belongs to the realm of politics where only the people are judge. So, notice if it was so bad and so stupid and so foolish when it was done by Marcos, why should it be so nice when the same thing was done by Cory? In other words, liberal constitutionalism could not provide a solid, intellectually respectable answer to *Javellana v. Executive Secretary*.

The weird thing was, at EDSA 2, the Supreme Court was expected to do the same thing they would have done in *Javellana v. Executive Secretary*, except that suddenly, the court suddenly applied—well, pretended to apply—the test of legality (*Estrada v. Desierto*). The court said that “Well, I think we can say that he [President Joseph Ejercito “Erap” Estrada] actually resigned.” The weird thing was that they were relying upon [entries in] the Angara diary, which were not even presented before the court, which were published by the [*Philippine Daily Inquirer*],<sup>3</sup> and on that basis validated the oath-taking of Gloria

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3. *Nalathala sa Philippine Daily Inquirer* 4-6 Pebrero 2001 *ang mga tala mula sa diary ni* Edgardo Angara, *na noon ay executive secretary ni Pangulong Joseph Ejercito Estrada*.

[Macapagal-]Arroyo and of course, sealed the fate of our country for the next ten years.

So, my second problem is: If the liberals were correct and *Javellana's* abandonment of strict legality was a low moment, was bad news, then why would the Cory [Aquino] Supreme Court, rely on the same bad theory to validate EDSA 1, something which is universally applauded in the Philippines today? And conversely, if *Lansang's* insistence on judicial supremacy was a high moment, then why would the court apply strict legality to validate EDSA 2?

But I will now proceed to my third point—and this is why I was hoping that Rene Saguisag would be here—[which] is an indictment of the legal profession. Problem number three: the worst they can say was that Marcos was lying. And indeed he was lying on one point: the fake ambush of [Juan Ponce] Enrile. Well, for the youngsters here, the immediate cause for the proclamation of martial law was that Enrile was coming from playing golf at Wack Wack and then he was ambushed on his way out. And then, when Marcos was about to fall in 1986, Enrile said, “Oh, we staged that thing. It was all fake. Do not believe it.” Well, he had a biography recently and apparently he changed his mind (Enrile 2012).

So, the *Inquirer* took him up on the fake ambush.<sup>4</sup> But notice, apart from the fake ambush, I think Marcos was telling the truth. Was there a rising left-wing presence in the country? We are talking about ground zero for the growth of the Left in the country. So, [showing photos to the audience] we have the First Quarter Storm next; this is the graduation of 1970—for the law students here, the person carrying “people’s war vs. Martial Law” placard, that is Prof. Raffy Morales, a cum laude graduate of political science, class valedictorian of the UP College of Law, managing partner of the Sycip law office [SyCip Salazar Hernandez & Gatmaitan], the largest law office in the country today. I asked him why he carried that, because the other slogans were a bit milder, he said, “I did not know, they just passed me a placard and I carried it. And when I saw the pictures it turned out that that was what I was carrying.” [Still showing photos] I do not know if you guys are aware that there was a Diliman Commune once upon a time. [Pointing to the picture being shown] That is the College of Mass Communication. So you will notice that some trees have since grown

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4. *Inquirer* Research, “True or False: Was 1972 Enrile Ambush Faked?” *Philippine Daily Inquirer*, 8 October 2012, <http://newsinfo.inquirer.net/284836/true-or-false-was-1972-enrile-ambush-faked>.

in that part of the campus. The next slide, that is the first floor of AS [then the College of Arts and Sciences], Palma Hall, as I am sure you recognize and those are the AS steps. Somewhere in the crowd [there was] President SP [Salvador P.] Lopez, the guy in the suit. And of course the next one, Plaza Miranda. Well this is . . . Plaza Miranda, someone threw a grenade at the miting de avance of the Liberal Party, almost killing Sen. [Jovito] Salonga. Marcos blamed the communists.

Liberal orthodoxy says that Marcos was telling a lie. Well, I have come across many accounts from former communists saying that Marcos was telling the truth.<sup>5</sup> And that the guy who threw the grenade was actually a very bright lumpen element, who was specifically chosen for the task by the highest officers of the Party [Communist Party of the Philippines].

In other words, for me, liberal theory fails to come to grips with the fact of a left-wing revolution. And the next slide is the announcement of the declaration of martial law. I will go back to this point later. The slogan of Marcos was, “I declared martial law to save the Republic and to reform society.” The “saving the Republic” part is pure commander-in-chief; “reform society” is not part of commander-in-chief powers, which brings us then to the real conundrum.

You know, if liberalism really was so delegitimized by the time Marcos declared martial law, why its enduring allure for the Filipinos? Today the rhetoric of the rule of law is a very powerful rhetoric. We continue to romanticize judicial review. We celebrate it as sober and rational as against the political power. You know the raw power of the Marcos regime. The people are stupid, uneducated and, and impulsive. And for me, especially as a law professor, it positions law as a secular religion and the lawyers as a secular priesthood. But I think there is a gap. And this is a description from a philosopher [Roberto Mangabeira Unger]. He is describing Brazil, but the first time I read this I felt he was describing my country:

The most striking fact about the social imagination of the elites was a particular incongruity between the spiritual ideals they had accepted as properly governing the life of the society and

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5. *Tatlong personalidad ang sumusuporta sa puntong ito ni Pangalangan: sina retiradong heneral Victor Corpus (1989), si Ruben Guevarra (1998), at dating senador Jovito Salonga (2001). Mariin at paulit-ulit na itinatangi ni Jose Maria Sison ang paratang na ito.*

the vision of social life they in fact lived out in their relations to one another and to their subordinates. (Unger 2004, 73)

So, at the level of professed beliefs, we are liberals in the Philippines in terms of our unofficial ideology.

But their actual social life was another story . . . . There they treated each other as patrons and clients and traded in favors and dependencies. (Unger 2004, 73)

This is fully demonstrated, Marites, in your book, that the official decisions of the court will be rendered as if they are the product of proper legal analysis and yet if you look at the maneuverings behind that, it is all horse trading under the table. The formation of alliances are here and there. And here for me, it is almost a description of us as Filipinos.

There they showed their almost complete disbelief in all institutions not founded on blood, property, or power. There they acted as if a moment of personal presence were worth a thousand promises and as if any exercise of power could be tolerated as long as the veil of sentiment covered it. (Unger 2004, 73)

And my last slide: the crisis then for liberalism found a refuge in law, in fact, specifically human rights discourse where the left felt it could engage the traditional politicians on a safe ground and talk among themselves as if they shared a common point of reference—the language of the law, the language of the constitution, and the language of the Bill of Rights. What happens, however, and especially for my discipline, is that it positions the “law as reason encoded in the doings and dreams of power” (Unger 1996, 23). In other words, it celebrates the law as if it were the embodiment of reason, when in fact it was the embodiment of compromises, and dirty compromises at a deeper level, and which lead this author to say that—and I do not know if Dean Bacungan will agree with me—law professors are “like priests who have lost their faith but kept their jobs.”

**MARITES DAÑGUILAN-VITUG** (EDITOR-AT-LARGE, *RAPPLER*): Good afternoon *sa inyong lahat*. Since I am the only non-lawyer in the panel, I decided to focus on the memory part. Keeping the memory of the

martial law—I am also a journalist, so that is one of my main interests. Why is there a scarce popular documentation of the legal sleight of hand that was behind martial law? My co-panelists have given us authoritative accounts of the legal thinking that went into martial law. As a journalist, I will look [at] why a gap exists between history and the popular consciousness.

Advertisement for ourselves: When my colleague, Criselda Yabes—she is here—and I were working on this book, *Our Rights, Our Victories* (Vitug and Yabes 2011), we tried to popularize landmark cases in the Supreme Court and one of them is *Javellana v. Executive Secretary*. We found out that while we do have access—as Dean Bacungan said, you can download decisions and opinions, we do have access to these, and also on the habeas corpus cases—what we do not have is a popular version for non-lawyers, for the general public, on the characters who had first-hand experiences, who participated in the shaping of martial law: their insights, their diaries, their thoughts, and regrets, if any.

For example, we encountered dead ends—and I think this speaks sadly of the state of our archives. The Supreme Court has no copy of the transcript of records of the oral arguments on the historic *Javellana v. Executive Secretary* case. Our national library does not have it either. Neither does the UP College of Law nor the libraries of Senator Jovito Salonga, the late Senator Jose Diokno, and the late Chief Justice Roberto Concepcion, and we met a dead end.

So, why did we want to read this? Because oral arguments are quite important. I encourage the students to watch and listen to the oral arguments of the Supreme Court. It can be boring but you will get to know how the justices think. So lawyers face the Supreme Court and make their case for or against an issue. I find oral arguments very instructive because they give us an insight on how the justices think. We must remember that they are supposed to be like monks: they are not supposed to be seen, they are just supposed to speak through their decisions. So, when you listen to the oral arguments, you get an idea of how they think based on the questions they ask. If we have these transcripts, we would know how Estelito Mendoza, then the solicitor general, argued for martial law. And how Lorenzo Tañada and Jovito Salonga argued against it with color, with the flavor of their language. We would know the kinds of questions the justices asked, and how the counsels on both sides answered. We would have a sense of historic deliberations, a feel for the event, and a flavor of the conversation that was taking place then. We would have seen some color in what was otherwise perhaps a very grim discussion.

So, personalities who had first-hand experiences of this defining moment in our history sadly declined to talk to us. For example, Senator Joker Arroyo, who was with Tañada, Salonga, and Diokno then. On the other side, former Chief Justice Reynato Puno did not also grant us an interview. In the case of Puno, he has managed to hide this part of his past because he was not as visible as Mendoza and because of his rhetoric.

Another advertisement for myself: When I was researching on Puno for my book, *Shadow of Doubt* (Vitug 2010), which was my first book on the Supreme Court, I found out that Puno was one of Estelito Mendoza's second-tier lawyers, his co-defender of martial law. Puno was working with the Office of the Solicitor General when martial law was declared and during martial law he stayed on as counsel of government for eleven years. He appeared in the Supreme Court during the oral arguments on martial law, including *Javellana v. Executive Secretary*. But listen to this: more than three decades after the declaration of martial law, Puno described the regime he helped perpetuate as one of, and I quote, "a slaughter of rights." A period when the constitution was "sent to the shredding machine."

We found an account of a journalist who worked with the wire agencies then and who is now with the *Inquirer*, Fernando del Mundo. He covered one of the oral arguments and remembered Puno vividly as part of Mendoza's panel. Appearing in one tragic hearing, here is his account: "He appeared in one tragic hearing four months after martial law was declared in September 1972, on an opposition petition asking the Supreme Court to act and stop Marcos from promulgating a decision of a rump plebiscite"—which Professor Pangalangan discussed extensively—"In the midst of the debate in the Supreme Court, news was relayed to the Supreme Court that Marcos at that very moment has just issued in Malacañang a decree proclaiming that the plebiscite was approved by viva voce vote and the constitution that he said was now in effect." So, while they were deliberating in the court, *mayroon na palang* decree si Marcos and this is what del Mundo wrote: "Caught flat-footed, the justices looked stunned. The Court later issued a decision declaring the petition argued by Lorenzo Tañada and the other opposition lights of the time—Jose Diokno, Francisco 'Soc' Rodrigo, Jovito Salonga, Sedfrey Ordoñez, Joker Arroyo—moot and academic."

Another thing, an important point is we lack memoirs and independent biographies, those not commissioned by the subjects. In our research for *Our Rights, Our Victories*, we found some papers of Chief

Justice Concepcion, thanks to his grandson who is teaching here in UP—I forgot what department—who lent us the papers of his grandfather. Concepcion was the chief justice when *Javellana* was decided. He dissented and later resigned from the court. But no one has written a book about Concepcion and [he] did not leave any of his memoirs. We do not have biographies or memoirs of justices who sat in the Supreme Court during the martial law years. In fact, notes of justices should be turned over to our national libraries or archives so that the public can have access to them. I actually envy the journalist and historians in the US because when they write biographies, they make references to diaries, notes, memos of public officials, including justices. They are available for public use. Perhaps as a result of these and the lack of classroom discussions on martial law, students today hardly remember this period in our history, and hardly know the roles certain personalities played during these dark years. In fact, Chief Justice Puno became a professor emeritus *pa sa* UP College of Law. He is very well regarded.

Again in 2012, Cris Yabes attended a talk given by Estelito Mendoza at the UP College of Law. Unfortunately, I was not able to go, and she said that she was surprised that the students did not ask tough or incisive questions on Mendoza's role in the shaping of martial law. No critical questions and she said some of the students were even giggling, apparently thrilled by Mendoza's presence, sharp mind, and wit.

The last point I will talk about is the lack of literature on Marcos and his relationship, both personal and official, with the Supreme Court justices—as mentioned in the diaries written by a foreign author, the “coziness” of his dealings with the co-equal but independent branch of the government (*basahin ang* appendix 4.5, 479–84). As we know the justices should avoid meeting with the president because the executive department has pending cases with the Supreme Court and of course they are co-equal and separate departments. But if you go to the actual entries of the Marcos diary—and I will show you some of them later—he called some of them to the Palace for meetings and dinner. At least in the time of President [Benigno Simeon] Aquino [III], he only had one lunch with Renato Corona at the house of his sister in Green Meadows but that is another story.

I will show you a few excerpts from the Marcos diaries, the actual entries, which I hope you can go over, and because they can provide leads and information, which historians can check and use. These excerpts will show the relationship between Marcos and the justices



was not simply one way, that he dictated on them. In fact, the justices played along and they also had a self-interest to protect, like they wanted to stay on in the Supreme Court. So if you see, September, a year before Martial Law—we all know the secret, Fred Ruiz Castro was the great spy—so the 15 September 1971 entry, I will just read briefly: “Justice Fred Ruiz Castro”—this is Marcos writing in his diary—“taking lunch with Senator [Jose] Roy at the request of the former, suggested that I lift the suspension of the writ of habeas corpus first in the Visayas, then in Mindanao. He believes that this will make the Supreme Court decision unanimous,” etc. (*basahin ang* appendix 4.6, 485–90). And then, I did not put it in the slide, but on September 16, the day after, his entry says: “I had dinner with Justice Fred Ruiz Castro, and Senator Roy, and he affirmed that, one, the justices believe that there is a rebellion but not all over the Philippines; that if I lift the suspension in the Visayas, Mindanao, and some provinces of Luzon, the decision to uphold my proclamation would be unanimous” (*basahin ang* appendix 4.7, 491–96). And then September 18, two days later, another entry of Marcos: “I’m also disturbed by the statement of Justice Fred Ruiz Castro that the justices are only human, affected by media, demonstrations, and propaganda or which is otherwise known as public opinion” (*basahin ang* appendix 4.8, 497–502).

So, a year later, on 24 September 1972, another entry of Marcos—this is quite interesting—he says: “Diokno, Chino Roces, Max Soliven, etc. have filed a petition for a writ of habeas corpus before the Supreme Court.” Again, he talked to Teehankee, Barredo, Makasiar, and Antonio. He said, he asked them to see him and they insisted that the government should submit to the Supreme Court for the court to review the proclamation of martial law. And then Marcos said: “I told them in the presence of secretaries Ponce Enrile, Vicente Abad Santos, as well as Solicitor General Estelito Mendoza, that if necessary, I will formally declare the establishment of a revolutionary government so that I can formally disregard the actions of the Supreme Court” (*basahin ang* appendix 4.9, 503–08). He had more detailed entries. Actually you can get the complete entries from the PCGG [Presidential Commission on Good Government] library, I got it from there.

On 25 September 1972, again, “Met justices Fred Ruiz Castro and Salvador Esguerra as a *consulta*.” “*Consulta*” is a term they use in the Supreme Court. When they say *consulta*, [they meant], “I would like to seek your advice or your opinion.” Marcos said: “I told them I need their help and counsel because we must keep all the actuations within

constitutional limits . . . Justice Esguerra said he feels that it is a legitimate exercise of martial law” (*basahin ang* appendix 4.10, 509–16). Then another entry is also interesting: 11 October 1972 he met again with the great spy, Justice Fred Ruiz Castro, and then Marcos said: “I met Justice Fred Ruiz Castro. He has told the Chief Justice”—referring to Concepcion—“of my request that there be no direct confrontation between me and the Supreme Court. Justice Castro called attention to the fact that in all the cases they have studied, the US Supreme Court decided the cases after martial law was over. I believe they will do this” (*basahin ang* appendix 4.11, 517–24).

On 14 November 1972, the entry of Marcos reads: “Estelito Mendoza reports that Justice Fred Ruiz Castro has the decision upholding the constitutionality of RA [Republic Act] 1700 with only Justice [Enrique] Fernando dissenting and [Calixto] Zaldivar riding the fence. But the justices would not allow him to promulgate it. I asked him to expedite its promulgation” (*basahin ang* appendix 4.12, 525–30). When I was reading this, I was really shocked because, of course, this is all not allowed between the Executive and the Supreme Court. Another entry, 19 December [1972] Marcos said: “In my conference with Justice Antonio Barredo tonight at 8:30 p.m., at my request, it seems that the justices are concerned about the constitutional provision that they may be replaced by me, by the appointment of their successors. He suggested that I issue a policy statement, that notwithstanding this provision, I wouldn’t use the power” (*basahin ang* appendix 4.13, 531–34). So they were also asking for something from Marcos. Then another entry 20 December [1972], he said “[met] justices Fred Castro, Dindong Teehankee, Felix Makasiar, Tony Barredo, Salvador Esguerra, and Felix Antonio. They recommended suspension of the effects of the Martial Law, during the campaign for the Constitution,” etc. (*basahin ang* appendix 4.14, 535–38).

This one is a reaction. You know we were never sure if Marcos is telling the truth, so it is best to also check the news reports or other documents. But on 23 December 1972, it is a very interesting entry when he said: “I am nauseated by the selfish motivation of the Supreme Court in questioning the power of the president to appropriate funds for the plebiscite when all along, all they wanted was my promise that I would not exercise the power, granted me by the new Constitution to remove them from the Supreme Court!!”—two exclamation points *pa* (*basahin ang* appendix 4.15, 539–44).

And the second to the last [slide]. Again, on 27 January 1973, he had dinner with the justices in Malacañang. Maybe if I were a reporter covering Malacañang, I would have loved to wait for the justices after they left the room. He says: “It is apparent that the other justices are in favor of dismissing the petitions, questioning the validity of the ratification of the New Constitution. But they want to be assured of their continuance in office.” And then here is interesting: “Everybody else has accepted the New Constitution and as we put it in the dinner conference we held tonight, how do the justices expect us to ‘unscramble the eggs already scrambled?’” He said: “We have to handle them with finesse as the Supreme Court might become the rallying point of the opponents of reform” (*basahin ang* appendix 4.16, 545–46).

Then the last slide [Marcos’s diary entry, 29 January 1973]: “The dinner with the Justices without the Chief Justice Concepcion who is sick in Sto. Tomas Hospital turned out well” (*basahin ang* appendix 4.17, 547–48). I was not able to go over the other entries but I think there is a need for popularly written, maybe a book or a paper that will show how Marcos related with the justices, and of course, after forty-one years look at what a lack of our memory has brought us.

**RENE A. V. SAGUISAG (DATING SENADOR, REPUBLIKA NG PILIPINAS):** [*Dahil sa karamdaman, hindi nakarating si dating senador Saguisag sa forum, pero nag-email siya sa TWSC para sa kanyang sagot sa mga tanong ng Sentro na kanya sanang tatalakayin sa kanyang panayam. Binasa sa forum ni Propesor Camagay ang maikling email ni Senador Saguisag.*]

*Unang tanong:* “Paano kinasangkapan ni Marcos ang batas upang maisakatuparan at panatilihin ang sarili at mga kaalyadong pulitiko sa kapangyarihan?”

*Naging superexecutive, supercourt, superlegislature, at one-man Constitutional Convention (Amendment No. 6) si Macoy [Ferdinand Marcos] (basahin ang* appendices 4.18, 549–60, *at* 4.19, 561–72). *Mas matindi kung ang mensahe ay:* “The First Lady wants this.”

*Pangalawang tanong:* “Bakit hindi gaano pinaguusapan ang naging pagbuo sa legal na balangkas na sumuporta sa diktadurya?”

*Pangamba at lagim. Sanay ang Pinoy na maging lahing alipin. Kastila, Ingles, Kano, Hapon, Kano ulit, at Ilokano ang naghaharing uri. Saludo tayo.*

*Pangatlong tanong:* “Ang pangkaraniwang dahilan na ibinibigay ng mga grupo at indibidwal na naging bahagi ng rehimeng Marcos na pinagsilbihan nila ang diktadurya sa paniniwalang maaari nilang mabawasan ang dahas ng

*kamay na bakal ni Marcos kung sila ay nasa kapangyarihan. Maaari kayang may parehong sentimyento ang hudikatura lalo na ang Kataas-taasang Hukuman sa usapang ito. Ano kaya ang maaaring ginawa ng hudikatura upang pigilan ang deklarasyon at tuluyang pagpapairal ng batas militar noon.”*

Good Filipinos, *gaya ng good Germans ni [Adolf] Hitler, gaya ng mga abugado noon sa Alemanya who obeyed as law anything calling itself by that name and was printed at government expense. Nuremberg ruled that was wrong.*

*Panghuling tanong: “Sa inyong pakiwari, sa konteksto ng kontemporaryong kulturang pulitikal at katangian ng hudikatura, maaari pa kayang maulit ang pagmamaniwala ng Konstitusyon at ang pagbrabroso ng ehekutibong sangay ng pamahalaan dito?”*

*Nangyari ito kay Erap na sinabi ng Korte Suprema na nag-resign base sa Angara [diary]. We have to be eternally vigilant.*

## MALAYANG TALAKAYAN

**CAMAGAY:** Very interesting insights. The floor is now open to questions. We encourage the students to come forward, and first, identify themselves. Any questions from the floor? *Kung walang* questions from the students, the other members of the audience? Gary [Olivar], would you like to start?

Probably while waiting for questions from the floor, I really appreciate the observation that we are not very good in keeping records or sources, especially in the contemporary part of our history. In fact, even presidential papers, they should be properly held. In the US, I know presidential papers are really kept, but here in the Philippines, some are found in the National Library, like the Quezon papers. But there are some that are still not released by the families, like the Garcia papers, they are still with the son-in-law of President Carlos P. Garcia. So that is really a problem, so if in the executive branch we have that kind of problem, *lalo na sa* judicial. So it makes it very difficult because you need [pieces of] evidence to corroborate your assertions. Second, the concept of biographies. I do not know—the Americans, they love biographies, either *artista* or political figures. But here I notice the only biographies that we have are usually done by foreigners. There seems to be a problem of revealing things to fellow Filipinos. And Filipinos open up easily to foreigners. For example, I am referring to the book *An Anarchy of Families* (McCoy 1993), if you look at all the works there,

they were written by foreigners, Americans particularly. So, there is that kind of historiographical problem which confronts us Filipinos. The third probably is there is hesitancy to write about very recent past. It is still fresh. That is why some historians love to write about the Spanish period. *Pero iyong contemporary, ang daming skeletons in the closet.* Like for example, the information revealed in the books of Marites, really are, you know, mind-boggling. We see Puno, we see him in a new light. Because he is so revered, but he had *pala* this dark past of being part of the martial law period. So, *siguro mayroon ding ganitong hesitancies itong mga tao na* they do not want to reveal that dark past of theirs and [are] therefore hesitant to write memoirs. They prefer not to write about it. They prefer not to be interviewed about that part of their life. But it is very important. Otherwise, we lose information or data. It might be the dark age of Philippine history if people refuse to write, to be interviewed, to release documents, diaries. *Kasi puwede naman iyong diary, basta siguro mayroon lang* “Okay, publish it after I die,” so you are safe. I recognize from a historical point of view the problem of sources of this particular period.

Any questions from the audience? Yes. Please identify yourself and direct your question to any member of the panel.

**RUTH PUNZALAN:** So, good afternoon. I am [from] . . . Block A, from Dean Pangalangan’s class Con Law 2 [Constitutional Law 2]. So, the title of our forum today is, “Ang mga Pamana at Sumpa ng Rehimeng Marcos.” And I guess coming from a Con Law perspective, as Dean Pangalangan has discussed, *Lansang v. Garcia, Javellana*, and also as Dean Bacungan has also discussed, the provisions of the constitution with regard to the commander-in-chief powers. So those are clearly the *pamana* of the *rehimeng* Marcos. But what do you say or think are the *sumpa* from that particular part of our political history? I guess this question goes to Dean Pangalangan.

**PANGALANGAN:** Thank you, Ruth, for the question. I will address this to the organizers, the “*sumpa*” part is about the . . . Sorry, what does it mean?

**CAMAGAY:** The bad and the good legacy. Bad is the “*sumpa*.”

**PANGALANGAN:** Okay, so the legacy of those years. Well, thank you for the question, that is a tough one. Well, it might sound too

academic and I do not know how philosophical the organizers wished the discussion to be, but . . . let me just focus on the legal profession. I think the profession is too inward-looking. Exactly as Professor Camagay says, we tend to take seriously our legalese and we accept the trite formula of law as gospel truths. When, in fact, if you read all these decisions, you know with the benefit of forty years [of] hindsight, and with the benefit of the diaries that I and Marites have mentioned, you will realize that the legal arguments were just a cover for other maneuvers which were going on—that is, at one point. But at another point, perhaps also we should really take the arguments seriously and Marcos played that game to the hilt. And that is why if we focused on *Lansang* and *Javellana*, these decisions provide the framework of legitimacy. He called his dictatorship constitutional authoritarianism. He said that in [other] parts of the diary he would say that we must always have a veil of constitutionalism for everything that we do. In other words . . . if in the beginning I said we should look beyond the legal rhetoric and see what is really happening. Now, the second problem for me is that we should also take legal rhetoric seriously and see how it structures the debate, see how it legitimizes the arguments of Marcos. I was telling Dean Bacungan earlier and I am so glad that Marites mentioned Justice Puno, at that stage of the work of Estelito Mendoza, he had to rely on highly theoretical and academic lawyers to theorize about the validity of martial law, the suspension of the writ, of illegal arrest. In other words—let me close on this point—the traditional libertarian lawyer confronted with a warrant of arrest against let us say a student activist, like Gary Olivar, the traditional response will be, “Okay fine, I will defend my client. He is accused of being a communist, my reply is he is not a communist. If he wrote this paper, I will say that he wrote this as part of a course he had with Dodong Nemenzo [Professor Francisco Nemenzo of UP]. If he wrote this, it was part of his duties as a member of the student council, etc. If he wrote this in the [*Philippine*] *Collegian*, he wrote it as part of his freedom of speech.” In other words, it will be a purely fact-based argument along the way. For me, maybe the lawyers should have also looked at the larger picture about the place of radical advocacy within the context of freedom of speech and the constitutional order. And that is why for me, Marcos won that game. He was the only one who played that game. Everyone just regurgitated the tired, old, liberal theories. Marcos explored other arguments. So for me there was a clash: the traditional formula straight from the Bill of Rights citing all

these classical statements about freedom of speech and then left-wing orthodoxy which was totally oblivious to legal legitimacy and which would legitimize their cause calls by their own set of slogans anyway. And Marcos knew it was not working and he came in. And that is why his claim of building the New Society, the Bagong Lipunan ideology, [the] revolution from the center, for me, were not just empty attempts to oppose nationalization. For me they were actually attempts to provide an ideological legal ground.

**DAÑGUILAN-VITUG:** So, can I follow up on the question earlier, who wrote those three books of Marcos? You said they came from UP.

**PANGALANGAN:** Well, Professor Camagay would know that.

**CAMAGAY:** *Talaga naman ano, Marcos really wanted to change the society. Talagang radical iyong New Society niya, to the point that he had to write books to really trace why there would be a revival of the barangay and so on and so forth. So talagang tinulungan siya ng mga ibang mga kasapi namin sa Departamento ng Kasaysayan. Alam na yata ng iba kung sino sila. But well it is a fact that this was a team, plucked from members of the [UP] Department of History and they really were given a lot of support. In fact, I knew one went to Europe to really look for data. So, they were there in the National Library, they had a special room where they would write. According to them, what they admired in Marcos was when he was given the draft of the manuscript he really read it and did marginal notes on the drafts. So he really was that assiduous naman. It may have been ghost-written but he really read the manuscript which came out. In fact, not the entire manuscript came out. It was overtaken by events but they were able to come out with three volumes of *Tadhana* [subtitle: *A History of the Filipino People*]. *Iginuhit ng tadhana, kumbaga destiny.**

**BELLA LUCAS:** I am from the Center of Integrative and Development Studies. Dr. Camagay *ang tanong ko*, has anybody done a study on the Class '39 of the UP College of Law? That was Marcos's batch, *ano?*

**CAMAGAY:** *Parang wala pa.*

**LUCAS:** *Magandang project sa legal history ng mga estudyante, ano?*

**CAMAGAY:** Oo. College of Law, attention.

**LUCAS:** *Puwedeng oral history iyan, hindi ba? Buhay pa sila hindi ba? May buhay pa?*

**CAMAGAY:** *May buhay pa, yes.*

**LUCAS:** *Siguro magandang material iyon.*

**CAMAGAY:** *Pero iyon nga, ang experience ng Third World [Studies Center], as far as I know—*

**LUCAS:** *Nagre-reunion iyang batches na iyan, hindi ba? Are they very close that they do not spill the beans or whatever?*

**DAÑGUILAN-VITUG:** *Baka alam ni Dean Bacungan.*

**CAMAGAY:** *Baka si Dean Bacungan may alam tungkol doon. Mayroon na po bang nagsulat tungkol sa Class '39?*

**LUCAS:** *Sa kanila pong reunion, ano pong pinaguusapan nila kung nagkikita-kita sila?*

**CAMAGAY:** *Sino pa bang 1939 na buhay, na classmates ni Marcos? So, well magandang [research] agenda iyan (basahin ang appendix 4.20, 573–76). Okay, may tanong pa ba? Estudyante, ipakilala ang sarili.*

**ROY DE MESA:** *Good afternoon po . . . from Block D sa class ni Sir Pangalangan. History major din po dati dito.*

**CAMAGAY:** *Yes, I remember you.*

**DE MESA:** *I totally agree with what you said and what Ms. Vitug said about the need to preserve our memories kasi main historiographical problem nga na iyong sources natin sobrang kulang. For example, even in the military, in the US after thirty years, they declassify the documents of their intelligence, pero dito, diretso shredder iyon after ten years. So, may mga ganoon tayong problems. This question is directed to you [Professor Camagay] po. What do we have? What are the sources that we can work with right now to create a picture in order to popularize the discourse*



on martial law? *Kasi iyon nga*, in our generation *ang dami naming hindi alam*. Even the historians now they do not really have much to work with.

Another question; this one is directed to Professor Pangalangan. Sir, would you think that more than just the developments of the time, the 1935 Constitution itself, do you think that it is conducive to a dictatorship? *Kasi sir*, if you look at the presidency of, for example Quezon—aside from Marcos, Quezon was a really powerful president and the 1935 Constitution would it have something in it that would allow for such machinations to lead to a dictatorship? Could it be that we adopted it from a time when the US had a very strong presidency in Franklin Roosevelt? Those are my two questions. Thank you.

**CAMAGAY:** *Talagang* as I said, *itong* martial law, it is a long process because, well, it is forty years so it is not that distant. So, *ang* history *talaga parang* you must have the luxury of distance with the event. But, I am happy to see some works coming out, especially *iyong* mga eyewitness accounts from martial law. *Unti-unti lang ang mga lumalabas na iyan*. *Pati iyong parang* biography of a family, *iyong Subversive Lives* (Quimpo and Quimpo 2012). So *unti-unti*. *Pero iyong* official *na sabihin mong* sources, *ito nga binanggit ni Marites [Dañguilan-Vitug] iyong tinurn-over ng military sa* Commission on Human Rights, and that has not been really looked [at]. *Hindi pa siya masyado tinitingnan*. *Parang katu-turnover lang . . .* We should also get accounts [from] the people themselves. And *iyon kasing* memoir, *hindi tayo masyadong [naniniwala] diyan sa ganyang klaseng sulatin*. *Ang* memoir—because that would have given them the chance to justify and explain their position during the martial law period, *pero hindi nga mapagsulat*. And probably the culture of writing is not that advanced in us. *Pero magandang tayo ang magi-interview kasi mas oral tayo kaysa written*. *Pero iyon nga ang problema*. *Pero* as far as I know *sa* experience *ng* Third World [Studies Center], *ang nagbukas lang talaga, ang nagsalita* was Virata (Katayama et al., 2010). He was open to being interviewed. The others like [Jaime] Laya, *hindi yata* very cooperative. And the others who were members of the cabinet, *kasi sila iyong talagang makakapagsalita*. *Kaya nga sabi ko dapat parang may* living history *na* project where you interview them and you see their faces, because there will be non-verbal communication *rin*, when they pound their hand on the table to assert a strong point or something like that. *Pero iyon na nga siguro naman*, as they grow older, they will be kinder to themselves. They would like to leave a legacy. They would like

to explain their positions during the martial law period. So, at least *may* diaries *tayo ni Marcos na naiwan*. So, *talagang ano pa* we will still have to build up the newspaper accounts (*basahin ang* appendix 4.21, 577–88). *Mayroon tayong* Radical Papers *dito sa* [UP] Main Library. *Puwede rin iyang tingnan*. So, *siguro unti-unti mayroon tayong* written and oral sources on the martial law period. Dean [Pangalangan], your turn.

**PANGALANGAN:** Okay, thank you so much Roy for the question. Well, as Dean Bacungan demonstrated in the 1987 Constitution, we built in all those safeguards against another proclamation of martial law: automatic review of the court [on a petition filed] by any citizen—you do not have to be arrested to do that; automatic convening of the congress without need of a call and they can do it anywhere, so even if the congress is padlocked they can do it. But you see, Roy, I agree with you that the 1935 Constitution was written for a strong president, written with Manuel Quezon in mind. But for me, my concern goes beyond that. So for instance, even under the 1987 Constitution, [Gloria Macapagal-] Arroyo tried to avoid all the automatic checks mentioned by Dean Bacungan simply by refusing to call her “state of emergency” suspension of the writ [of habeas corpus] or the operation of martial law, so she went to the court four times. Four times she was challenged before the court for every sort of emergency that she would declare, but she would avoid the language of the constitution. In other words, for me, I would rather not just look at the text, I would rather look at the political, at the political dynamics. And notice again with Arroyo: she declared a [state of] emergency twice. Twice the court obliged. And then the third time, iyong *David v. Arroyo* [G.R. No. 171396, 3 May 2006], the court said, “Well, we better look at it this time.” In other words, for that there were many factors, there was of course the populist pressure, there was the fact that the person arrested was Prof. [Randolf] David of [the UP Department of] Sociology. In other words, for me, I would rather see the language, the text of the constitution as merely part of a political you know, a larger picture, rather than as a controlling text, a stand-alone text.

**CAMAGAY:** *May tanong pa ba ang mga estudyante, faculty, other members of the audience? Nawala na si Gary [Olivar]? Ayaw na magsalita ni Gary Olivar?*

*Mayroon pong comments, not necessarily questions, but comments from the floor? Pasensya na po dahil nilalaro pa po ng anghel itong ating mga [estudyante sa] audience noong martial law. Pero magandang pagkakataon ho na alamin natin kung ano ang nangyari. Okay, Marites.*

**DAÑGUILAN-VITUG:** I just wanted to share that—I was looking for the Marcos papers, I asked [Manuel] “Manolo” Quezon [III], meaning *hindi lang po iyong diaries pero iyong mga letters, memos, iyong mga naiwan lahat sa Malacañang. Sabi ni Manolo Quezon, nasira iyong iba, nabasa ng ulan. Iyong iba nasa National Archives.* So we still have to go to the Archives to check *baka nandoon pa iyong iba. Pero sayang.* Maybe UP can do a project. *Sayang.* But Manolo Quezon was quite helpful in directing me *kasi gusto ko lang makita sana iyong, aside from the diaries, ano pa ba iyong official letters niya, memos. Kasi he always wrote, Marcos was always writing. He kept notes of a lot of things that he did.*

**CAMAGAY:** You know there was before a rumor, UP wanted all the presidential papers here. I do not know if within the Diliman campus or close to it. But it never really materialized. Because it would have been good [if] we have all the presidential papers intact in one place. As of now, in the National Library we have the Quezon papers. The Roxas papers are here in the UP Main Library, [in the University Archives] but people have not really taken a look. *Maganda rin iyon, I can imagine, the Roxas papers, because it is [about] post-war Philippine situation. Pero iyon na nga maganda sana kung matipon lahat. Baka itinago rin ng Marcos family iyong ibang papers, ano?* So, it would be a good project *talaga* if we could have a law—law again!—*na* all papers of the president should be surrendered to a particular institution for the future generation to consult [or] use.

Comments from the floor? Questions? Yes, please introduce yourself.

**ROLANDO TALAMPAS:** *Nagtataka lang kami, iyong mga estudyante hindi nagtatanong, sila iyong magmamana nitong sinasabi ng mga tagapagsalita. But anyway ayaw nila, so kami na lang. Well, curious ako kung ano iyong relasyon ng history at saka ng law sa long-term na perspective. Mukhang magkaiba iyong judgment ng dalawang spheres na ito, lalo na sa usapin ng demokrasya. Kapag historical, mukhang lumalambot habang tumatagal. Parang nagiging humane. Dati galit na galit iyong mga tao sa diktador. Pero*

in the long term, *nakikita na nila iyong human side ng mga diktador at noong mga nagmana ng kanilang kayamanan at ng kanilang poder* and not to mention *ng kanilang apelyido. Pero iyong law*, on the other hand, *maiwanan iyong kaniyang sinasabi* at that particular period and it is good *mayroong record* *iyon. Kaya lang*, I doubt *kung makakatulong iyong batas para doon sa longer-term judgment ng history. Parang magkaiba iyong perspektiba na mangyayari . . .* Well, on the legal scale, *sino ba talaga iyong magdo-drawing ng legal infrastructure ng isang demokrasya? Iyon bang iba't ibang sangay ng gobyerno? Iyon bang presidente? O iyon bang ibang may ideolohiya, iyong liberalismo na binabanggit ni Dr. Pangalangan? [Iyong mga] realist na kumukontra sa mga ganoong pagtingin? O iyong mga tao in their large numbers? Kasi it seems that mayroon ding ibang dynamic iyong puwersang galing sa labas, labas doon sa mismong logic ng political legal parameters ng estado.*

**CAMAGAY:** *Kanino mo gustong [i-direct] ang tanong?*

**TALAMPAS:** *Kung sino man po.*

**CAMAGAY:** *Sige, unahin na natin si Raul.*

**PANGALANGAN:** Thank you, Professor Talampas for the question . . . First, I recall that at the height of the human rights litigation during the Marcos years, if I recall right, this is a quote [from] Joker Arroyo, he was asked, “*Bakit kayo file ng file ng kaso natatalo naman kayo?*” And his answer was, “We have to file the cases to document the events because the cases will be the official record of what happened and we must keep on filing cases, so even if you lose the case, the courts will have a record of the events that happened.” And that is why, going back to the question of Dr. Camagay and Marites, in fact, you can write the history of martial law just purely by the cases. I attempted that with one of my charts, that every big event can be traced to a case or to a legal issuance by Marcos. And you can actually match what Marcos did after the Plaza Miranda bombing, what he did after, you know those two boats carrying guns from China that ran aground in Palanan, Isabela, *MV Karagatan*. In other words, the big events will always have a mirror in terms of legal documentation. But that is the most crass level of answering the role of lawyers vis-à-vis history.

I would like to address Rolly’s point that the historians can have a more—I do not know how you will describe it—the more humane, the

more flexible judgment [while] legal analysis remains fixed and rigid and stiff . . . I will answer it at two levels. First is that there is a built-in ideology for law that is encoded into the constitution. In other words, the way I described the 1987 Constitution, it will be a hodgepodge of left-wing goals carried out through a liberal language. That is encoded in the document. And then it is stiff, you have to work within that framework, so they do not have much room to maneuver in. But I would like to close with this point: it actually goes into the Pinoy attitude to language and to rules. Pinoys are schizoid about rules. Sometimes they want the literal application of the rules. But sometimes they want a more commonsense reading of the rules. And you cannot tell, being schizoid, which Pinoy we are talking to at a given moment. We encounter it; we deal with the UP bureaucracy. Sometimes we are aghast at the narrowest, most legalistic reading of rules and sometimes we actually applaud the very technical reading of the rules. I am actually a bit sympathetic to the courts and to the bureaucrats because they do not know at what stage, you know, what kind of interpretative leeway they are supposed to exercise at a given point, and that was demonstrated by *Javellana*, or for that matter the [Chief Justice Hilario] Davide impeachment. Notice that for the Davide impeachment, we were very literal with the rules. I was amicus counsel for the case and I actually articulated that during the oral argument. That it cannot be this literal. But I think, Rolly, at that stage it is not about ideology anymore. It is purely legal, pure theory of law, pure jurisprudence.

**TALAMPAS:** *Puwede makaulit? Hindi kaya complicit iyong Left doon sa nag-evolve na legal thinking, legal framework na in-adapt ni Marcos and his friends? Well, they gave all the excuses for Marcos to develop fully the legal mechanisms for martial law.*

**PANGALANGAN:** Okay, that is a nice approach, Rolly. In hindsight it is a yes, right? It was almost like a script . . . Again we are not going to some conspiratorial theory of [Marcos] talking to Joma [Jose Maria Sison, chair of the Communist Party of the Philippines], but it is almost like the two smart guys knew what the other wanted and it was like a ballet-like coordination between the two. And I think objectively, one can say that they supplied one another with what the other needed at that point in history. So the throwing of the grenade at Plaza Miranda, from the standpoint of the Left, would sharpen class

contradictions, intensify the revolution. For Marcos it provided him an excuse to suspend the writ of habeas corpus. Then he declared martial law. It pushed all the above-ground student activists to go underground and actually helped the NPA, the underground, recruit more people. So there was that dynamic. Whether that was deliberate, conscious, and, you know, conspiratorial, well, I do not know. But in a sense, they worked well together. But in terms of the discourse, you know actually if you looked at the Marxist interpretation of rules, they are actually as positivist as the traditional Pinoy positivists. In other words, they will be as literal about the rules as possible. No different from Pinoy bureaucrats. In other words, the apparatchik of the Bolsheviks will be no different from the apparatchiks of UP. They may carry out a different ideology, they may swear by a different flag, but their attitude about the interpretative leeway over the rules is just as confined and as textual. I will pause at that point.

**CAMAGAY:** Okay, I recognize Ms. Bugnosen, a student.

**MONIQUE BUGNOSEN:** I am a student of Ma'am Camagay in one of her classes and I am also a [political science] student here in CSSP [College of Social Sciences and Philosophy]. Actually, I only came in during Ma'am Vitug's speech and . . . I did not really know that Reynato Puno was somehow a conspirator . . . in the [defense of] martial law. And when I was in high school, that was the time when he was chief justice, so, my image of him now has changed. But I just would like to know, since most of us here are young, most of us here are students, could you name some prominent people, prominent lawyers or members of the Supreme Court [then] who until now are prominent. Like last year in UP *naging* issue *ang* Virata because *iyon nga ho* he was part of the Marcos administration. Then, *iyong* CBA [College of Business Administration] named the school after him. Maybe in terms of the judiciary, *sino po iyong mga* prominent members of judiciary or even lawyers [then] who are still prominent now. So that you know, students will know who are these people who were actually part of the martial law [regime].

**PANGALANGAN:** Well mostly, you know, purely, it is a generational thing. They are all retired by now. So for instance, well, I am surprised that you are surprised that Chief Justice Reynato Puno was once upon

a time one of the lawyers of the Office of the Solicitor General. This is borne out of the record. In fact, one of the challenges to EDSA 1 is entitled “Letter of Reynato Puno to the Supreme Court” [*In Re: Letter of Associate Justice Reynato S. Puno of the Court of Appeals dated 14 November 1990, A.M. No. 90-1102697-CA, 29 June 1992*]—that is the title of the case. Because when Cory [Aquino] took over, she demanded the resignation of all the justices, reappointed them, and changed the seniority. [Puno] wanted his old seniority and so he was one of the challengers. So, for me they are mostly retired by now, and if some are still in active practice, I cannot recall. Well, the classmate of Dean Bacungan was Joker Arroyo and Joker was part of MABINI [Movement of Attorneys for Brotherhood, Integrity and Nationalism] together with our scheduled speaker Rene Saguisag. Well, the other difficulty actually is that part of Philippine politics also is that, exactly the same way that you are surprised that Puno had roots in justifying the dictatorship, they changed their roles over time. Even some of the anti-dictatorship guys will eventually be identifying with some questionable factions. I am not attuned to the names. Nothing leads to the mind right now. Well, I am sorry I cannot talk [about it].

**DAÑGUILAN-VITUG:** I remember I interviewed Chief Justice Puno when he was new as chief justice and I asked him, “What can you say about your defense of martial law?” And he said he was just doing his job then as part of the Office of the Solicitor General and that was a different time in his career. So now, as Supreme Court Chief Justice, he is now a defender of human rights. So, he said it was only part of his job. I think the other prominent personalities are still around: President Fidel Ramos, although he was not as stern and his reputation is not as notorious as Senator Juan Ponce Enrile, but he was there during martial law. Of course, Juan Ponce Enrile and the ACCRA [Angara Abello Concepcion Regala & Cruz] Law Offices. Raul, some in the ACCRA Law Offices, right? Or was it just Enrile at that time? Anyway, Enrile, in his memoir said that he founded the ACCRA Law Offices during the martial law years.

**CAMAGAY:** Bel [Lucas], you would you like to ask a question?

**LUCAS:** This is for Marites [Dañguilan-Vitug]. Because I thought you will talk about your own memoirs. *Hindi ba* you were already a journalist when martial law was at the peak of things. But what you said

were from the Marcos diaries and interviews. I was hoping you will put your own memoirs of martial law.

**DAÑGUILAN-VITUG:** Just to clarify, I was young, very young then. I was a freshman at UP. I entered [UP] in 1971 after the Diliman Commune. So that is why I am interested in that period. So I try to look at sources.

**CAMAGAY:** Yes, the student. Please introduce yourself.

**RAYA MANALO:** *Estudyante po ako ng Asian Center, Philippine Studies. So, ang question ko po, in connection with the post-Marcos era, kung ang Marcos dictatorship ay legal in accordance with the 1935 Constitution, ano po iyong opinyon ninyo doon sa extra-constitutional process ng pag-upo . . . kay [Gloria Macapagal-Arroyo. Ano po iyong opinion ninyo sa people power as a process?*

**PANGALANGAN:** Well, I have written on this quite extensively. For me, the people power is difficult to fit into a constitutional straightjacket and that is why for EDSA 1 we had to use the political question doctrine. The court said, “What can we do, she is now there.” So, if the Marcos metaphor was to unscramble the egg which was scrambled, the metaphor of the court for EDSA 2 was to put the toothpaste back in the tube. So, in other words, just to show you, over the years they have tried about every metaphor from scrambled eggs to toothpaste just to describe what they were doing because it was so difficult to do it. So, yes we fit EDSA 1 and EDSA 2 within the constitutional framework, it was really forced. And that is precisely my point, maybe we should just be candid that something strange happened and we moved on. Because if we force them to fit into the constitution, we distort the constitutional order. So with EDSA 2, the resignation of Erap [former president Joseph Ejercito Estrada], the guy never really resigned but he exited Malacañang from the back door. He crossed Pasig River on a boat. He had the Angara diary. And then the court said, “Well, look—.” And then the court had to invent words: “the totality of contemporaneous circumstances lead us to the concept of constructive resignation.” You know what? It is an exemption to the rule. So, to shorten the answer, no, it does not fit the constitution but we have lived with it because [that is the] the only way to justify and to legitimize the [and] to transform the de facto situation to de jure. I am actually more



particular . . . about the perception of the Filipino public. I do not know Marites [Dañguilan-Vitug] if you remember this: EDSA 2, GMA [Gloria Macapagal-Arroyo] took the oath [of office] on a Saturday. By Monday what was the headline of the newspapers? It was Gloria playing golf at a really fancy golf course. And for me, it shows the class character of the uprising that overthrew [Erap]. They loved to see their new president rubbing elbows with the rich and mighty and playing golf at this place where, you know, [you] pay x millions just to get past the front gate. So, for me, it was rather disappointing that we packaged it as a people power uprising, when as *Time* magazine lampooned the uprising, it was actually a rich people's power.

To go back to your question, if you want to look at it purely as a constitutional question, then sure, it is a game we lawyers love to play. We can kick the doctrines comfortably. For me the metaphor really is playing soccer: you kick the ball around. Or maybe playing frisbee. It is a game, it is a nice game. We have fun doing it. But does it add to the legitimacy of the entire enterprise? My position is it does not. True legitimacy will have to be rooted in deeper social concerns, about social inequality, about class power, about the concentration of wealth among the few in the Philippines. But precisely that is the debate we shunted out as soon as we shift to this legalistic mush that we traffic in, that we profit from in Malcolm Hall. That is precisely my conundrum. The Filipino public loves legal debate. And despite the fact that I have been so disappointed often enough in the past, and that the contrived nature of the debate has been exposed often enough, it persists. So for me that is the mystery. I think the allure lies in the promise that it is possible to have the equal protection of the law and genuine freedom of speech, etc. And maybe we need the illusion and that is why we hang on to the legal discourse.

**CAMAGAY:** *Mayroon pang tanong? So, sa puntong ito ibig kong pasalamatang ating mga tagapagsalita ngayong hapon: si Dean Froilan Bacungan, si Dean Raul Pangalangan, at si Marites Dañguilan-Vitug, sa kanilang ibinahagi. At sana ay hindi natin kalimutan na lang ito at maging isang alaala lang. Nagpapasalamat kami sa Third World Studies Center na nagtataguyod nito. At gaya nga ng nabanggit, nagsimula ang panayam at serye ng lekturang ito dahil nga doon sa naging pagpapangalan ng College of Business Administration bilang Virata School of Business, na nakatatak na, [sa] lahat na ng information tungkol sa UP Diliman ay nandoon na ang Virata School of Business. So, iyon ang nagpasimuno ng ganitong usapin,*

na maganda naman, upang mapag-usapan ang martial law—mula pagpapangalan ng Virata School of Business, iyong compensation package [para sa mga human rights victims], kung bakit nakakabalik ang mga Marcos sa arena ng pulitika, at ngayong hapon ay iyon ngang legality of martial law. Maraming salamat sa ating mga tagapakinig at sa ating mga tagapagsalita. Magandang hapon po sa inyong lahat. ❀

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