

Time as Constitutional Constraint

Temporal Limits and Emergency Powers in the 1987 Philippine Constitution

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Jose Duke Bagulaya

International Research Centre for Cultural Studies

The Education University of Hong Kong

Abstract

An offshoot of the 1986 People Power Revolution, the 1987 Constitution broke with the mythical temporality of the martial law regime of Ferdinand Marcos, Sr. by restoring constitutional time, establishing plural temporalities, and utilizing time as a legal constraint. The article examines how time plays as a constitutional constraint on emergency powers in the 1987 Philippine Constitution. It analyzes the Constitution's temporalizations as they were tested in practice by Rodrigo Duterte's declaration of martial law in Mindanao in 2017. The article concludes that the Constitution's use of time as a constitutional constraint has played an important role in thwarting schemes by Philippine presidents to stay in power beyond any temporal limitations.

Keywords

Temporalization, martial law, constitutional constraint, 1987 Philippine Constitution, emergency powers.

“But at my back, I always hear Time’s winged chariot hurrying near.”
- Andrew Marvell, “To his Coy Mistress”

“Time . . . is the very substance of the law, the condition of its power”
(*“le temps . . . est la substance même de le loi, la condition de sa puissance”*)
- François Ost, *Le temps du droit*

In 1985, former Philippine Senator Lorenzo Tañada petitioned the Philippine Supreme Court for the disclosure and declaration of invalidity of so-called “secret laws” issued by then dictator of the Philippines, President Ferdinand Marcos, Sr., who had been ruling the country since 1965. In adjudicating the case, the Marcos Supreme Court of 1985 ruled that only laws of general application must be published before their dates of effectiveness as explicitly stated in their provisions. The old oppositionist Senator moved for reconsideration.

In February 1986, a revolutionary event occurred. The dictatorship was swept into the dustbin of history, including his legal façade, the 1973 Philippine Constitution. On December 29, 1986, just a few months after the Marcos, Sr. dictatorship was toppled, the Philippine Supreme Court issued its second decision in the case of *Tañada v. Tuvera*. The post-dictatorship decision of 1986 clarified the earlier ruling on the question of the temporal effectiveness of laws. The “new” Supreme Court ruled that all laws, not just laws of general application, must be published to become effective. The lawgiver cannot simply determine a specific date of effectiveness without publishing the law itself. As Justice Isagani Cruz lyrically declared, “The days of the secret laws and the unpublished decrees are over. This is once again an open society . . .” (Cruz, par. 22).

If one reads this case beyond its doctrinal value, one may note that the decision reveals law’s often invisible relation to time. Law becomes law at a particular moment in time. Law has a temporal existence, which may be short or long. Indeed, law may determine its temporal existence and control the effects of its power in time. Through law’s temporal structures, our understanding and experience of history is also constructed (Uitz).

Reading the same text, one may note further that the decision announces a break in time, a rupture. “The days of the secret laws . . . are over.” By saying that the days of the secret laws are over, the decision was describing a temporal break from the past regime and was certainly announcing the coming of a new time. This temporal break would be institutionalized by the 1987 Philippine Constitution, which is one of the most temporally conscious constitutions. Through more than three decades, the 1987 Philippine Constitution has survived armed offensives from the Left and the Right; the ouster of another president; the questionable presidency of Gloria Macapagal Arroyo (2001-10); and the tumultuous presidency of Rodrigo Duterte (2016-22). While the endurance of constitutions is not an absolute good and reasonable constitutional changes can be made to allow a polity to adapt to changing times, constitutions are primarily made to constrain (wo)men and power, including the ways of changing the rules governing the exercise of power. Constitutionalization assumes a certain disdain for absolute power as much as for whimsical and opportunistic changes. The 1987 Constitution is no exception in embodying this disdain. But what could be one of the most important constraints in the 1987 Philippine Constitution that has allowed it to survive wicked and scheming Presidents? One could do no worse than offer the Constitution’s “temporalizations,” or the constitutional construction of time as an answer. Of course, this answer raises the more fundamental questions. How does the 1987 Philippine Constitution use time as a constraint? How does the construction of temporal structures limit the executive’s emergency powers? These are the questions I will try to answer. This article examines how time plays as a constitutional constraint on emergency powers in the 1987 Philippine Constitution. An offshoot of the 1986 People Power Revolution, the 1987 Constitution broke with the temporality of the martial law regime of Ferdinand Marcos, Sr., who abolished constitutional time by declaring martial law under the 1935 Constitution, and inaugurated a mythical time¹ by extending the state of exception indefinitely through the 1973 Constitution, thereby making such emergency seemingly without end.² The 1987 Philippine Constitution restored constitutional time and utilized time as a constitutional constraint. The constitution limited the

executive's exercise of emergency powers by attaching a time fuse on the state of martial law, setting mandatory time frames on legislative and judicial actions during the emergency, and by sustaining the multi-temporalities of the three separate branches. These constitutional temporalizations in article VII, section 18 of the Constitution built a complex system of checks and balances that clipped the executive's emergency powers and made the state of exception transitory and relative in its effects. By utilizing time as constitutional constraint, the post-dictatorship Philippine Constitution has survived states of emergencies through time.

Though the 1987 Constitution should be well-known as a reaction to a twenty-year reign of one man, its temporalizations of emergency powers, including the powers to declare martial law and suspend basic rights, have not been well-studied in Philippine legal scholarship (Pangalangan, *"Philippine People"*). The study of Philippine constitutional law remains highly doctrinal and limited to expounding high court decisions. I try to fill this gap by deploying the new temporal approaches in constitutional studies to my analysis of the temporalizations in the 1987 Constitution. Though I utilize court interpretations, I explicate their thoughts on both temporality and doctrine.

This article is divided into five sections. The next section surveys the recent studies on time and law and discusses the concept of time and its relation to constitutional time. The third section analyzes the temporal effects of martial law under the 1935 and 1973 Philippine Constitutions. The fourth section discusses the temporal constructs of the 1987 Philippine Constitution that have constrained the President's emergency powers. Finally, the last section provides a summary of the arguments and reflects on time and constitutional resilience.

Time, Law, and Constitution

Time is a concept that is deeply rooted in human existence.³ Conscious of life's ephemerality and fleetingness, human beings have long struggled against time. They have tried to make time stand still (Adam 120). The novel form, for instance, is only one of the artistic expressions of

humanity's continuing struggle against time (Lukacs 44 ctd. in Benjamin). In this transcendental struggle, humanity has tracked time by measuring it, first, according to nature, and then, according to human design that eventually developed into a means of control over human beings (Adam 114).⁴ Indeed, human beings have utilized time to put things in order and constrain chaos (Fraser). This constraining function has placed the concept of time closer to the idea of constitutional order. It is worth recalling that constitutionalism has been understood as a kind of governmental (self)-restraint akin to the act of Odysseus, who had himself bound to a mast to resist the alluring songs of the sirens (Chemerinsky 7). Without constraint on their power, governments might simply succumb to the attractions of absolute power.

New temporal studies of law have recognized time's omnipresence in law (Stronks; Ranchordás and Roznai). Law governs childhood, adulthood, and retirement. It is by means of time that law determines the exercise of rights, the security of tenure, and the acquisition of residency and citizenship. In the case of the latter two, time becomes a currency to exchange for rights (Cohen).

François Ost clarifies the intersection of law and time in three theses: "Time constructs; literally, it temporalizes . . . the primary juridical function is to contribute to the social institution . . . [Seen dialectically], law directly affects the 'temporalization' of time. Time, in turn, determines the institutional force of law" [*le temps se construit; littéralement, il se 'temporalise' . . . la fonction principale du juridique est de contribuer à l'institution du social. . . Le droit affecte directement la temporalisation de temps, tandis que, en retour, le temps détermine la force instituante du droit*](Ost 12-13, my translation).⁵ For Ost, the concept of temporalization serves as a means to understand the social institution of time as a determining factor of law's power to shape human lives. Indeed, through temporalization, one realizes that "time . . . is the very substance of the law, the condition of its power" [*"le temps . . . est la substance même de le loi, la condition de sa puissance"*](13). Thus, in the context of constitutional law, the term "temporalization," understood here as the constitutional construction of time, limits power, reinforces the separation

of powers, and structures historical meaning through various forms such as term limits, temporal rules on constitutional amendment, and temporal rules on emergency powers, etc.

This new temporal-legal thought has started to penetrate the conceptions of constitutional law (Cuocolo; Kirste 35; Rigaux ctd. in Gerard, et al.). Recent studies have pointed out that constitutions are constructed with time frames, which shape the sequence of events leading to the ratification of the constitution (Lazar, *Time* ; Lazar, *Out*). Such sequence, in turn, determines the meaning of the constitutional event and aids political legitimation. Certainly, constitutional writers look to the past to condemn problematic constitutional practices and they construct a specific constitutional design to avoid such practices in the future (Ranchordás and Roznai). In a sense, constitution-making is a form of “making-present” that opens itself to the horizon of the earlier and the horizon of the later. Constitution-making heralds the shift from dynastic time, which is reckoned through the cyclical reigns of monarchs, to constitutional time, that is, linear historical time (Dupré and Yeh; Kosmin).

Constitutional time is a legal time constructed by a constitution (Balkin).⁶ Unlike ordinary time, constitutional time is backed by legal or legitimate violence. It covers the determination of the temporality of public offices, states of exception, and constitutional change itself. This legal time uses the socially constructed calendar time as reference point (such as the measure of day or year) to construct a temporality that affects the institutions of government.⁷

Constitutional time is also a legal time conceived as a plural temporality. For when constitutions constitute constitutional “bodies,” these bodies have their own motions, their own rhythms, and, thus, their own correlative temporalities. In other words, the constitutionalization of the principle of the separation of powers constitutes the multi-temporalities or the temporal plurality of the separate branches. Constitutional time discloses itself as a “symptom of this plurality of rhythms”⁸:

Arguably as essential was the fact that each branch of power acquired a different temporality, which strengthened the separation of power by making simultaneous renewal of all branches of power almost impossible. The dyschrony resulting from these deliberately different temporalities has created a complex pattern, with each institution operating on a different time zone (Dupré and Yeh 46).

These multi-temporalities of the separate branches guarantee freedom because no single temporality of an institution predominates. Hence, constitutional time means the existence of plural temporality characterized by a disjointed experience of time. This plural temporality limits power and guarantees the existence of other temporalities, other existences, and other voices.

The 1987 Constitution as an anti-dictatorship charter constitutes a plural temporality and imposes other temporal constraints. It is argued that it makes use of time as a form of constitutional constraint not only on term limits, but also on the emergency power. It temporalizes time into various forms of constitutional constraint on the executive and the other branches of the government during the state of emergency. Understanding these temporalizations, however, requires an understanding of the temporal structures it destroyed. The experience of martial law taught critical lessons on the importance of time in Philippine constitutional history. Thus, we turn our discussion first to the destruction of constitutional time under the martial law regime (1972-86) in the Philippines.

The Mythical Time of Martial Law: Presidential Term-Limits and Emergency Powers in the 1935 Philippine Constitution

In this section, I will argue that the exercise of the temporally unlimited martial law power of the executive under the 1935 Constitution ended constitutional time and allowed the chief executive to traverse constitutional eras. This potent power exploded constitutional time and subordinated the temporal existence of constitutions to a mythical time without end.

The 1935 Commonwealth Constitution, ratified under the American colonial regime, had been governing the Philippine state at the time of

independence. This Constitution established a governmental structure that resembled the New Deal American Government, which was characterized by a powerful executive (Anastacio). In fact, under the 1935 Constitution, the Philippine President was conferred broader explicit powers than the US President under the US Constitution (*Marcos v. Manglapus*). The most potent power of the presidency under the 1935 Constitution was conferred by article VII, section 11 (2) which states:

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

If constitutions have magical power, the emergency powers, which include three powers, are indeed the most magical among the executive powers (Frankenberg).⁹ The emergency powers confer a power to suspend the privilege of the writ of *habeas corpus*. To suspend means to freeze time—the time of the privilege of the writ. At that moment of suspension, the temporal existence of the privilege disappears, and no citizen may avail themselves of the remedy to free themselves from detention.

The President may also “place” the Philippines under martial law. The verb “place” here means to put something into a particular state. To “place” under martial law therefore is to use the power to put the islands in a state of exception, that is, a suspension of the constitutional state and an encroachment upon the structure of the constitution (Schmitt 83). Under the state of exception, it is as though the world was placed *hors la constitution* (Agamben 5). In short, martial law is a suspension of the law, which is a suspension of law’s time itself.

A state of exception, of course, is not a strange power. Since the French Revolution, modern constitutions have codified it and made it part of constitutional development (Schmitt 205). While that may be so, the problem with the provision above is that it appears to be a blanket clause

devoid of textual closure (Frankenberg 280). It does not say for how long one can suspend time and law. The provision is silent about the duration of suspension. It suggests perpetuity. It is as if the exercise of this power would create a new and mythical world.¹⁰

The lack of temporal limitation of this power can be contrasted with the provisions governing the term of the President. Article VII, section 2 of the 1935 Constitution states that the President shall hold office during a term of “four years.” Section 3 adds that the “terms of the President and Vice-President shall end at noon on the thirtieth day of December following the expiration of four years after their election, and the terms of their successors shall begin from such time.” Finally, section 5, art VII states:

No person shall serve as President for more than eight consecutive years. The period of such service shall be counted from the date he shall have commenced to act as President. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service of the incumbent for the full term for which he was elected.

Clearly, the absence of time-limits in the emergency powers contrasts with the temporalizations of the term of the President. The temporal existence of a presidential term is constructed in detail from the exact moment of the day (noon of December 30) of its beginning and the expiration after four years. More importantly, it sets a maximum of eight consecutive years for any President.

With this temporal structure, the 1935 Constitution constructed a history of short presidential administrations of four years. No president was able to win re-elections from 1946-65, except Ferdinand Marcos, Sr. Elected in 1965 and then re-elected in 1969, President Marcos, Sr. was facing the end of his presidential time. Since the Constitutional Convention of 1971, which would eventually write the 1973 Philippine Constitution, was at first beyond the President’s control, the President’s transitional leap from the 1935 Constitution to the next one was not assured. As Marcos, Sr.’s erstwhile and disappeared propagandist P. Mijares put it, the prospect of losing time in power was indeed the real emergency that Marcos, Sr. faced.¹¹

It was in this context that emergency powers became critical. Presidential Proclamation 1081 (PP 1081), which was signed on September 21, 1972 (but announced on September 23, 1972), placed the country under martial law. Martial law power worked magically for Marcos, Sr. The attempt to ban Marcos, Sr. under the new constitution failed, and a transition to a parliamentary system was approved.¹² Marcos, Sr. also succeeded in retaining his position and powers under a transitory provision. Under article XVII, section 3 (1) of the proposed draft constitution, the President shall continue to exercise his powers under the 1935 Constitution, including the powers of the President and the Prime Minister until he calls the interim National Assembly to elect the interim President and the interim Prime Minister:

The incumbent President of the Philippines . . . shall continue to exercise his powers and prerogatives under the nineteen hundred and thirty-five Constitution and the powers vested in the President and the Prime Minister under this Constitution until he calls upon the interim National Assembly to elect the interim President and the interim Prime Minister, who shall then exercise their respective powers vested by this Constitution (1973 Phil. Const.).

What appears obvious in the provision is the consolidation and continuation of presidential power. The President is authorized to exercise his existing powers and the powers of the president and the prime minister under the new constitution. What is less obvious is that the provision handed the incumbent president *time*. First, the President was allowed to *extend his stay even after the eight-year limit* (December 30, 1965- December 30, 1973) in the 1935 Constitution. Second, the President was given *control over the time* to call the interim National Assembly to elect the interim President. As later events would show, this less obvious power, the power to control time, would be critical in galvanizing the lifetime presidency of Marcos, Sr. Indeed, while it could be said that the military institution guaranteed Marcos, Sr.'s power, such critical support might had been secured in turn by the promise of his exercising military power without the limitations of constitutional time.

With the insertion into the text of a transitory provision securing his powers, Marcos, Sr. thereafter submitted the draft constitution to the people. Voters were invited to village assemblies in January 1973, and they were asked to vote *viva voce*. The 1973 Philippine Constitution was “ratified” by an absurd number of votes without a secret ballot at a time when law was suspended. The mode of ratification of the new constitution drew criticisms and was perceived as a violation of the amendments provision of the 1935 Constitution.¹³ The issue of validity of the 1973 Constitution was naturally raised in the Supreme Court. However, on March 31, 1973, a divided Philippine Supreme Court issued its decision in *Javellana v. Executive Secretary*, which declared that there was “no further judicial obstacle to the Constitution being considered in force and effect.”

With this ruling in *Javellana*, President Marcos, Sr. appeared to have succeeded in traversing the change in constitutions. He now seemed to rule legitimately in a new constitutional time. But the existence of constitutional time was only apparent. In fact, by wielding martial law powers, he had already suspended the constitutional time of the 1935 Constitution. The bogus ratification of the 1973 Constitution did not establish a new constitutional moment. In fact, Marcos, Sr. would “suspend” the call for the interim National Assembly that the 1973 Constitution had created; and, because of the non-convening of the National Assembly, he remained President exercising legislative and other emergency powers.¹⁴ With time in the President’s control, everyone simply waited for Godot.

Indeed, only the executive, the holder of martial law’s magic to suspend constitutional time, was able to transition unscathed. Seen temporally, it was the state of exception that left no gaps. One constitution was abolished, and a bogus one came into being. One constitutional provision after another was subverted until all constitutional acts became farcical. The inauthentic temporal existence of the new constitution was now completely subordinated to the mythical time of martial law. Constitutional time no longer existed.

How did this mythical time come into being?

When the state of exception placed the Philippines *hors la constitution*, it suspended law and its temporality. Was it an ironic coincidence that Marcos, Sr. was reported to have distributed Rolex watches to some trusted generals just before his suspension (or abolition) of constitutional time? (De Quiros 361). The watch was certainly the most ironic prefiguration of the end of constitutional time. Thus, through his emergency powers, President Marcos, Sr. ended constitutional time, controlled constitution-making, and imposed his own temporal order.

What emerged then under the state of exception was mythical time, which I use here to broadly cover the eschatological, the epic, and the strictly mythical modes of representation which were all harnessed to justify the permanent exception or the emergency that was made permanent.¹⁵ Certainly, martial law was conceived to be perpetual, a repetition without end. The legal scholar and later International Criminal Court Judge Raul Pangalangan observed that there were “unending extensions of Marcos [Sr.] presidential terms from 1965 to 1986 . . .” (Pangalangan, *Philippine Constitutional* 303).

For Chief Justice Fred Ruiz Castro of the Marcos Supreme Court, these perpetual extensions were only natural for he imagined martial law not simply as “the drastic solution to a violent situation.” The aim of martial law was shamelessly conceived to be the “extirpation of the ills and conditions which spawned the riot, the anarchy, and the rebellion” (Bernas *The 1987 Constitution* 881). In short, the state of exception was no longer based on the military emergency. It became a state of siege without a siege,¹⁶ a fictive state of emergency, *l’etat de siège fictif*.¹⁷

This fictiveness of the state of exception was suggested by the messianic undertones of the justification of martial law. A Jesuit critic, who was always sensitive to any presumptuous eschatological positioning of the dictator, wrote sarcastically in his popular textbook: “And since the ills and conditions which spawned the riot, the anarchy, and the rebellion form a long line that traces itself to the garden of Eden, the administrator of martial law was really, in the view of the Marcos Supreme Court, another Redeemer!” (Bernas, *The 1987 Constitution* 881) The Jesuit critic could have

added that the Redeemer only appears at the end of constitutional time. The Redeemer will wage war against all evils of the old society, subdue them, and finally, inaugurate the establishment of the dictator's version of the Heavenly City, the "New Society" ("*Bagong Lipunan*").

This eschatological vision was certainly suggested by the numerous justifications of the dictatorship. In *Aquino v. Commission on Elections* (1975), the Court repeats the Chief Justice's eschatological narrative on martial law as a solution to "meet the impact of a worldwide recession, inflation or economic crisis." Only the president's emergency powers, for the apologists, can solve the crisis. Martial law thus made the President an eschatological figure at the end of constitutional time. As the agent of the eschaton, he was no longer bound by any constitutional time. Article XVII, section 3 (1) of the Transitory Provisions of the new constitution of 1973 simply confirmed this transition to mythical time.

Lastly, the regime harnessed poetic talent to construct epic images for the conjugal dictatorship. Marcos, Sr. and his wife began to appear as epic heroes. A year after the legitimization of the 1973 Constitution, presidential assistant Guillermo de Vega, who would be murdered in the presidential palace, published *Ferdinand Marcos: An Epic* (1974). This sycophantic book was followed by Alejandrino Hufana's *Imelda: A Tonal Epic* (1975) which is an ode to the other half of the dictatorship. In line with this mythification, artists started visualizing the husband and wife as the mythical first Filipinos, *Malakas* and *Maganda* (The Strong and the Beautiful), emerging from the crack in a bamboo stalk. A retelling of this mythical story of the Strong and the Beautiful would be commissioned and published in 1980.¹⁸

All the three modes— the eschatological, the epic, and the mythical— herald the arrival of a new temporality that suggests perpetuity through repetition. The eschaton appears at the end of historical time inaugurating the new temporal regime of the Messiah. Moreover, epic time is adventure time which does not reveal historical and biographical changes. Epic represents a heroic world that stands in "an inaccessible time and value plane (Bakhtin 14)."¹⁹

This lack in historical change is what distinguishes it from the novel form, the development of which, as a genre itself, takes place in “the full light of the historical day.”²⁰ Lastly, the mythical figures of the strong and the beautiful announce a founding myth that had to be repeated and recalled in rituals.

The sudden explosion of these mythical representations clearly coincided with the end of the 1935 Constitution. Constitutional time ended and was now replaced by mythical time. After the 1935 Constitution had vanished, the President’s stay in power would now appear permanent. What was supposed to be transitional became (apparently) perpetual.²¹

The Temporal Limits of Emergency Powers in the 1987 Philippine Constitution

In this section, I will argue that the 1987 Philippine Constitution broke with the mythical time of martial law, returned to constitutional time, and constructed temporal limitations that constrained executive power and reinforced the separation of powers. It temporalized the executive’s exercise of emergency powers by attaching a time fuse on the state of exception, turning on the clocks for legislative and judicial actions during the emergency, unleashing the multi-temporalities of the separate branches, and limiting the temporal and spatial effects of martial law. These constitutional temporalizations built a complex system of checks and balances that has constrained executive power during an emergency. With time as a constitutional constraint, the 1987 Constitution made the state of emergency transitory and relative in its effects.

In 1986, the EDSA Event occurred. Over a million people gathered along the Epifanio de los Santos (EDSA) Avenue, at the sector which is located between two military camps. People from various areas of the nation arrived and stayed there for days to protect rebel soldiers from a possible assault by the dictatorship. As the people massed and milled on the highway and Marcos, Sr.’s troops refused to shoot, the dictatorship collapsed. Corazon C. Aquino, widow of murdered former Senator Benigno Aquino, Jr. and Marcos, Sr.’s opponent in the 1986 snap elections, assumed revolutionary powers. She threw the 1973

Constitution into the dustbin, assumed legislative powers, and appointed new local officials. The panegyrists of the dictatorship in the Supreme Court were asked to submit their resignations and new members were appointed (Supreme Court of the Philippines “A Constitutional History”).

She thereafter appointed representatives from various sectors as delegates to a new Constitutional Commission. On February 2, 1987, a new Philippine Constitution was ratified in a plebiscite and a new constitutional moment began.²²

The new constitution established three separate branches— the executive, the legislative, and the judiciary.²³ The President exercises executive power (art VII, sec 1); the legislature, with its upper and lower houses, legislative powers (art VI, sec 1); the judiciary, judicial power that includes the duty and enhanced power to determine grave abuse of discretion of the government (art VIII, sec 1). The three branches with their separate powers were conferred separate temporalities. The Supreme Court justices hold office from the time of their appointment until they reach seventy years of age (art VIII, sec 11). The members of the House of Representatives serve a three-year term and cannot serve beyond three consecutive terms (art VI, sec 7). The members of the Senate serve a term of six years and cannot serve beyond two consecutive terms (art VI, sec 4). Most importantly, the President serves a term of six years and is not eligible for any re-election (art VII, sec 4). Moreover, anyone who has succeeded as President and has served as President for more than four years is not qualified to run for the same position anytime. This ban against a former president and anyone who has served as such for more than four years is worth noting. The former president is not only barred from running again for the same position within a limited period but for all time. The framers here thought a president thinking of re-election would decide in favor of interests that further his staying in power (II Record 204-438; Bernas, 1987 Constitution 811-812). Moreover, without a permanent ban, a former president may simply run intermittently in contravention of the intent to limit power. The wisdom of limiting time became clear when Gloria Macapagal Arroyo, who after

serving the remaining years of Joseph Estrada's presidential term (1998-2001), served another six years, thus extending her stay for more than nine years, a period within which she was able to appoint enough members of the Supreme Court to reverse the ban against appointments to the high court during the election period (discussion of *De Castro v Judicial and Bar Council* in Bagulaya, "Statutory"; Agabin).

The variations in the terms of office construct a multi-temporal existence of the separate branches that reinforce checks and balances. Their time in office exists independently of each other and requires no simultaneous renewal. These plural temporalities create a multiplicity of interests that prevent the office holders from implementing a unified scheme to subvert the Constitution. While the new constitutional structure has been characterized as a presidential bandwagon, the Constitution set up a stronger check on the President's powers (*Francisco v. House of Representatives*; Kasuya).

Among the important temporal limitations is the single term for the President. This term of six years begins at noon of the thirtieth of June following the elections and ends at noon of the thirtieth of June six years thereafter. After serving this single term of six years, the President can no longer run for re-election. The records of the Constitutional Commission reveal that this temporal limit on the presidency was intended to thwart a "bad" President from "accomplishing his evil design" (Bernas, 1987 Constitution 811). It was optimistically believed that six years was too short for any scheme to be successfully implemented. To a certain extent, this was a correct assessment. No attempt at constitutional amendment or revision has succeeded since 1987.²⁴

This temporal structure constructs brief segments of presidential time. Each of these segments can be considered a distinct period because of the personalized character of the presidency. This personalized character of the presidency is further strengthened by the country's weak party system. There appears no political party that consistently stays in power. Thus, the period has been defined by the President's time in office, and constitutionalists, for good reason, have periodized the post-dictatorship history in terms

of presidential terms (Bernas, *The Aquino*; Bernas, *The Ramos*; Bernas, *The Abbreviated*; Bernas, *The Troubled*).

These segments, in turn, can be sutured into one linear history divided into presidential “periods.” Through this suturing, the segments or periods construct a kind of “temporal syntax” that conveys a new meaning (Kosmin 186). Indeed, the 1987 Constitution lends itself to a new kind of periodization that contrasts with the martial law era. Periodization organizes sequences, makes distinctions, underscores breaks and discontinuities, and constructs meanings. While the martial law period appears to be an unending mythical time as argued above, the new Constitution constructs a linear history consisting of short presidential periods. What appears therefore is something like a relay marathon where each runner only sprints for a lap. This new temporal syntax of the 1987 Philippine Constitution suggests that power cannot be held by one man forever. Power has a temporal limitation and cannot be exercised by a single man or woman without end. Such is the meaning of this temporal syntax of democracy (compare with Bratton 147).

More critical than the president’s single term was the 1987 Constitution’s temporalization of emergency powers. Martial law under the 1987 Philippine Constitution can no longer suspend constitutional time:

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 of *habeas corpus* [my emphasis] (art. VII, sec. 18).

The state of exception in the 1987 Philippine Constitution thus cannot arrest constitutional time. The Constitution continues to operate and retains the separation of powers. As one member of the Constitutional Commission stated, “A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of the separation of powers” (Bernas qtd in *Lagman v. Medialdea*, par. 153-154). The Constitution’s temporal existence is secure and unaffected by a state of exception.

It appears then that the Constitution seems to have eliminated the fictive state of emergency. It has reduced the state of emergency to a literal siege or siege-like situation. Only those courts that are under a state of siege can be replaced by military courts. Thus, if civil courts in a particular area can still function, then no military courts shall displace them even under martial law. In this sense, the new state of exception moves closer to a *real* military emergency. This was appropriately noted during the deliberations of the Constitutional Commission: “There is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theater of war” (Bernas as qtd in *Lagman v. Medialdea*, par. 154).

By eliminating the fictive kind, the Constitution made the temporal and spatial effects of state of exception relative. The exception’s full impact on the separation of powers can only be felt in the actual theatre of war. Where the sound of guns has not silenced the courts, the declaration has virtually no effect on the separation of powers. This creates a possible disjuncture between the spatial scope of the declaration and the exception’s full temporal effect on constitutional structure in the actual theatre of war. In other words, though the declaration may cover a whole island, for example, the temporal effect of the emergency (suspension of the separation of powers) is limited to the area of actual conflict in the island.

Aside from its continued operation under martial law, the 1987 Philippine Constitution’s art. VII, sec. 18 also includes many temporal limitations that further complicate the temporal effects of martial law. It states:

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 or 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. *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 or special session,

may revoke such proclamation or suspension, which revocation shall not be set aside by the President. 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 the 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.

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.

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 [my emphasis]. (1987 Phil. Const.)

What is distinctive about Section 18 is not its wordiness, but its numerous references to time. The 1987 Constitution counts. Indeed, a close reading of the section reveals many temporal references: sixty (60) days, forty-eight (48) hours, twenty-four (24) hours, three (3) days, and thirty (30) days.

One may compare and contrast section 18, article VII of the 1987 Constitution above with article VII, section 11 (2) of the 1935 Constitution which simply states:

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

As shown above, the 1935 Constitution's provision on emergency power clearly lacks temporal references, not to mention temporal limitations. The only phrases that may refer to time are "whenever it becomes necessary" and

“when the public safety requires.” Thus, the state of exception in section 11 lacks a temporal limitation that would prevent it from becoming permanent.

In contrast, the 1987 Constitution uses time as constraints. The temporal references noted above have been recognized by the Philippine Supreme Court in its jurisprudence as “temporal limitations” that “severely restrict” the state of martial law and its extensions (*Lagman v. Pimentel par 3*). The temporal duration of martial law and the suspension of the privilege of the writ of *habeas corpus* cannot exceed sixty days (60 days). Within forty-eight (48) hours from the suspension or the declaration, the President shall report to the Congress. The Congress shall convene within twenty-four (24) hours. If the factual basis of martial law is challenged, the Supreme Court must decide within thirty (30) days from the filing of the case. The detained shall be charged within three (3) days. Finally, upon the President’s initiative, the Congress may revoke or extend the duration of martial law.

Unlike the 1935 Constitution’s lack of temporal limits, Section 18 is replete with temporal references which may be categorized into three forms of constraint.

The first one refers to the general temporal limitation of the state of exception itself. Under the 1987 Constitution, martial law only lasts for sixty days. Thus, the Constitution attaches to the state of exception what Constitutional Commission member Christian Monsod has aptly called a “time fuse” (qtd in *Lagman v. Medialdea, par 109*). This time fuse terminates the state of exception automatically after sixty days. Without an extension, the exception vanishes out of time.

Moreover, only Congress can renew the lease on time of emergency powers. If the state of exception under the 1935 Constitution led to Congress’ suspension in time, now it is the temporal existence of the state of exception that depends on Congress. More importantly, it is no longer possible for a state of “exception” to last indefinitely. The new temporal limitation therefore makes the exception not only relative, but also transitory.

Secondly, the exercise of the state of exception under the 1987 Constitution triggers the plural temporality and motions of the separate branches. It is as if various clocks are turned on suddenly and simultaneously

by the declaration of an emergency. More importantly, the clocks, if one pursues the metaphor, do not belong to a single branch. They belong to the three separate branches of the government. The clocks time the specific actions of the various branches: to report, to convene, to decide a case, to extend or revoke, etc. The provision therefore binds time and action of a specific branch. In this sense, each of the clocks has a specificity that affirms the multi-temporalities of the separate branches.

This reinforcement of the multi-temporalities of the separate branches transforms the administration of the emergency. It is no longer a one-man show. Congress may revoke or suspend the proclamation, while the Supreme Court may inquire into the sufficiency of the factual basis of martial law. These two checks on the President were characterized as distinct and independent from each other (*Lagman v. Medialdea par 142-143*). Moreover, these powers to revoke and inquire have a temporal simultaneity. They exist simultaneously and independently of one another. This temporal simultaneity of the separate powers to revoke and inquire means that, unlike in 1972, no branch of the government will ever witness the vanishing presence of a co-equal branch. In short, no branch will be suspended in time, that is, abolished.

The temporal simultaneity and plural temporalities of the separate branches bring forth the third form of temporal constraint in art. VII, sec. 18 of the 1987 Constitution: the separate branches were provided different constitutional time frames within which to perform an action. Thus, forty-eight hours for the President to submit a report to Congress; twenty-four hours for the Congress to convene; thirty days after the filing of a case questioning the factual basis of martial law for the Supreme Court to decide. The twenty-four-hour limit is automatically triggered by the President's proclamation, while the thirty-day period runs upon the filing of the case questioning the factual basis of martial law.

To recapitulate the analysis, the time fuse, the multi-temporalities of the separate branches, and the time frames for governmental actions temporalize time as a constitutional constraint in the 1987 Constitution. The time fuse is the temporal limits of the emergency itself. The multi-temporalities of

the separate bodies secure their existence and independence from executive power which takes the form of military power. The time frames for governmental action make sure each governmental branch acts promptly. In a sense, the temporal limits correspond to various levels— the state or condition, the bodies of the separate branches, and the acts of the separate branches. These elaborate temporalizations were forged in preparation for the coming of another “Marcos.”

The major test of these temporalizations arrived on May 23, 2017. While President Rodrigo Duterte was in Russia, the Philippine military attempted to seize a leader of a terrorist group in the city of Marawi. This triggered the counterattack of the Maute group by launching the siege of Marawi in Mindanao Island. On the same day, the President issued Proclamation No. 216, placing the entire Mindanao Island under martial law and suspending the privilege of the writ of *habeas corpus*. Within forty-eight hours, the President submitted his report to the Congress. Both houses of Congress thereafter issued resolutions expressing support for the declaration of martial law (*Lagman v. Medialdea*). Meanwhile, the battle between government troops and the Islamic militants raged on for months.

This exercise of the state of exception by the President made the anticipated and the past converge in the present.²⁵ The “dictator” from the future and the “past experience” of the dictatorship converged in the “present” controversy of the Marawi conflict. The event therefore attracted numerous cases questioning the validity of the declaration and, later on, the extension of martial law. In hindsight, the practical effects of the temporalizations revealed that the constitution’s use of time as a constraint succeeded in constricting power. The 1987 Constitution survived the emergency, not to mention the Duterte presidency itself. Of course, as the street fighting was unfolding, the emergency revealed constitutional grey areas, which created constitutional controversies before the Philippine Supreme Court.

The cases that arose from the Marawi conflict explored the temporal and spatial dimensions, or what we may call the chronotope (time-space) of martial law under the 1987 Philippine Constitution.²⁶ In the martial law cases of 2017-19, the Court affirmed the power of the President to

determine the spatial coverage of the declaration even as it underscored the relative effects of the emergency on the spaces. Moreover, it protected the multi-temporalities of the separate branches and emphasized the temporal simultaneity of their actions. Finally, it recognized the transitoriness of the emergency and its extensions and conceived a repetitive judicial review for each extension of the emergency.

The first consolidated cases were argued before the Supreme Court in Manila in June 2017. Within the time frame set in Section 18, the Court issued the decision in *Lagman v. Medialdea* (2017). The Court recognized the President's prerogatives in choosing which power to exercise and it accorded the President much leeway in the determination of the spatial scope of martial law. In short, the Court found the factual basis of the proclamation of martial law sufficient and upheld the proclamation's constitutionality. This result was hardly surprising. After all, the armed conflict in the city of Marawi was raging while lawyers were arguing in front of the justices. The facticity of the emergency stared everyone in the eye. The only question was whether there were sufficient facts to justify the enlargement of the scope of martial law from the besieged city to the whole of Mindanao, the second largest island of the archipelago. The Supreme Court ruled that the nature of the armed conflict allows the enlargement of the spatial or territorial scope of the declaration of martial law, which is to be determined by the President. It therefore found valid the President's placing of the whole island of Mindanao under the state of emergency even though the real fighting is limited to the city of Marawi. The Court rejected the petitioners' argument that the new chronotope of section 18 limits the coverage of the declaration to the space where fighting occurs. Nonetheless, the Court clarified that it is only in the latter space where the full temporal suspension of civilian rights, courts, and legislatures take effect. Nominally, the state of emergency covers a wide space, but the temporal suspension of law is limited to a small space where the siege actually happens. As such, the chronotope of the emergency power in the 1987 Constitution deprives it of a uniform and absolute temporal effect. The state of emergency under the 1987 Constitution now has arguably relative temporal effects.

While the decision may appear a total victory for the executive, the Supreme Court protected the multi-temporality and temporal simultaneity of the separate branches constructed by the Constitution. Notably, it revisited the previous ruling in *Fortun v. Arroyo* (2012) which suggested that the Court's power is secondary and depends on the legislative branch's action. The earlier 2012 case had declared:

Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart.

The Supreme Court found the above statement a "stray" declaration that must be rectified. According to the Court in *Lagman*, the ruling in *Fortun* that arose from the eight-day martial law in Maguindanao in 2009 unwittingly clipped the Court's own power.²⁷ Indeed, the earlier declaration in *Fortun* froze the Court's review power and made it dependent on the action of Congress. The Supreme Court now ruled that it "can simultaneously exercise its power of review with, and independently from, the power to revoke by Congress." Thus, "any perceived inaction or default on the part of Congress does not deprive or deny the Court of its power to review" (*Lagman v. Medialdea*, par 142-143). The case of *Lagman* therefore affirmed the multi-temporality and temporal simultaneity of the separate powers that the Constitution constructs.

The long duration of the siege of Marawi forced Congress to extend martial law not just once but thrice. The second extension from January 1, 2018-December 31, 2018 was expectedly questioned and gave the Supreme Court a chance to elaborate on the temporality of its decision in martial law cases. The Court distinguished the issues raised in *Lagman v. Medialdea* and the second case of *Lagman v. Pimentel*. In the first case, the petitioners questioned the factual basis of the declaration itself, while the second case raised the factual issue of the persistence of the war which would justify the

extension. The Court ruled that petitioners are not barred from raising the second issue because the nature of the Court's judgement on the sufficiency of the factual basis of martial law was "transitory by nature" due to the fluidity of war conditions (*Lagman v. Pimentel*). This transitory nature of the decision has an important consequence: it allows a repetition of judicial review. This repetitive judicial review then finds a correlative in the legislative power to extend. In the same case, the Court ruled that the Constitution does not limit the number of times Congress can extend martial law. It also rejected the construction that each extension should be limited to sixty days.²⁸ What appears here is a correlation between openness and repetition. On the one hand, the Court opened martial law to an extension to be determined by another branch; on the other hand, it made each extension subject to a review. The Court's interpretation allows the continuous renewal of martial law subject to a repetitive review. This interpretation constructs a repetition of states of emergency with a time fuse that are subjected to judicial review each time.

From a certain perspective, a repetitive extension may have a dangerous effect of normalizing the consequences of martial law. Congress' power to extend may allow the executive to continue the existence of a state of emergency. This is indeed a possibility. Nonetheless, the repetitive check on every extension remains. For as long as the separate powers are temporally existing and not suspended, there is no reason to fear that a martial law without a time fuse would be approved by Congress. Indeed, it is in the interest of the representatives in Congress to attach a time fuse on its extension to make the President dependent on them. Thus, while the repetitions of renewal and review may create an impression of permanence, their short durations and repetitions underscore transitoriness, which in essence arises from the temporal constraints imposed by the Constitution.

The production of transitoriness is, without doubt, an important achievement of the 1987 Constitution. The preceding era was characterized by mythical time and a permanent state of exception. What the 1987 Constitution did was to make constitutional time continuous while making presidential time and emergency powers transitory. Through its complex

system of temporal structures, the 1987 Constitution has succeeded in constraining the executive's emergency powers.

Conclusion: Time and Constitutional Survival

As a written document, a constitution belongs to a group of texts that are meant to last. Among these texts are religious scriptures, legal codes, philosophical and literary texts. In ancient times, these texts were etched on papyrus, bamboo, and baked clay to survive the vagaries of time. The inscription of the texts formed part of a project to incise key cultural-religious traditions on peoples' minds (Carr 8). Only this double incision of the text on both clay and heart guaranteed its continuity across history.

A constitution is also a well-wrought text meant to be inscribed on a tablet. When the French revolutionaries wrote that where there is no separation of powers there is no constitution (*Declaration of the Rights*, art 16 [1789]). what they really meant was that without the separation of powers, the constitution would simply become a piece of paper that can be changed whimsically by a king, a party, a junta, or an emperor. One can imagine a country whose state constitution is amended each time its Congress meets. Worse, one can imagine a country that boasts of a new constitution every decade. In this sense, there is really no constitution if one means a text that is meant to last. Where constitutions are disposable as table napkins, they lose magic and become a form of deceit (Frankenberg 278). Only the separation of powers guarantees the persistence of constitutional magic and, in turn, constitutional survival.

Having learned a bitter lesson from the experience of dictatorship, the framers of the Philippine Constitution of 1987 etched into the constitutional text many constraints on the President. As one member of the Constitutional Commission said, “[I]n the case of Mr. Marcos [Sr.], he is undoubtedly an aberration in our history and national consciousness. But given the possibility that there would be another Marcos, our Constitution now has sufficient safeguards” (Lagman v. Medialdea. Par 116). Indeed, they did not write a Constitution for angels. What they prepared was a carefully wrought Constitution for the coming of the seventy evil shepherds.

The most important of these safeguards are, without doubt, the temporal limitations in the presidential term of office and the emergency powers. In this article, I have discussed how the Constitution's new presidential term-limit has temporally constrained the President. The new temporal limitation of a single six-year term of office resulted in a new periodization of constitutional time in the form of a segmented history of presidential administrations. This new temporal structure broke with the previous endless rule of one person for twenty-one years that allowed the leader to corrupt the national spirit.

The 1987 Philippine Constitution is a constitution that counts and works with many clocks. As shown above, the exercise of the ultimate emergency power of martial law triggers the ticking of several clocks of the separate branches. This writing has identified three forms of these temporal constraints in article VII, sec. 18 of the 1987 Constitution. First, the Constitution set mandatory time frames to regulate governmental actions, thereby forcing bodies to move. Second, by putting constitutional bodies in motion instead of freezing them in time, the martial law power unleashes multi-temporalities and temporal simultaneity of the separate branches. More importantly, the new temporal limitations in the emergency powers of the President attached a time fuse on the state of emergency, thereby making the latter transitory.

Seen metaphorically, the exercise of the state of exception is monstrous. It can devour not only individuals and other governmental branches, but also constitutional law itself. The 1987 Constitution shows how time can be harnessed to construct a constitutional labyrinth within which to confine the executive. The temporalizations of the state of martial law build constitutional constraints that confine executive power as if it were the constitutional minotaur. Like Daedalus, the constitutional writers of the post-dictatorship era in the Philippines wrote a constitution that constructed a labyrinth to contain the monstrous emergency powers of the President. No Philippine president has yet succeeded in finding his way through the constitutional labyrinth built with the constraining power of time.²⁹

In this context, Philippine constitutionalism has some important lessons on the ways to prevent a constitutional descent into authoritarianism. While they do not serve as an absolute guarantee, constitutions may build temporal structures to contain executive power from suspending constitutional time. This study has shown that time, when harnessed and forged into constitutional constraints, can be the most formidable enemy of aspiring dictators. To thwart these malevolent aspirations, the constitutional temporalizations should not only focus on constraining presidential power, but also focus on supporting the separation of powers. These should unleash temporal plurality and simultaneity of the separate branches. These should bind time and action of the separate branches and interweave time and act in constitutional performance. Lastly, time must tick against states of emergency to make them fleeting and transitory. For so long as emergency powers vanish in time, quiet flows constitutional time.

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Notes

1. I use the term “mythical time” here to refer to various temporal modes of representation suggesting perpetuity, specifically the eschatological, the epic, and the strictly mythical, that is, the use of foundational mythic figures. By the latter, one refers to mythical figures outside of epic and biblical narratives.
2. Many people were sceptical about the parliamentary elections held under martial law and the nominal lifting of martial law on January 17, 1981. Free and fair elections and martial law are contradictory practices. Opposition candidates were also in detention. Centralization of power for years also made the elections unfair. Prolonged detentions without cases being filed remained part of the practice (*Salonga v. Paño*).
3. Time [*chronos*] is that which is “counted in the movement which we encounter within the horizon of the earlier and later.” (Aristotle’s definition qtd. in Heidegger 460. For Heidegger, “[t]he making-present which interprets itself—in other words, that which has been interpreted and is addressed in the ‘now’— is what we call ‘time’ [*Zeit*].”
4. Leon Trotsky noted that behind the Orthodox calendar was the power of the Russian Czar. It took a revolution to change calendars in Russia (*History*).
5. The word “temporalization” [*Verzeitlichung*] has also been defined as the historicization of the past and present time (Clark 9).
6. Balkin theorizes a cycle of constitutional time as opposed to linear time. Specifically, he theorizes a cycle of constitutional time that is generated by three cycles: political regime, polarization and depolarization, and decay and renewal of republican government.
7. Calendar time attempts to follow cosmic time. Cosmic time is the temporal movement of the heavenly bodies. Constitutions count time according to calendars. But their constitutional “counting” temporalizes or constructs time. Stronks also differentiates legal time, cosmic time, calendar time, and human time (4-10).
8. From a materialist perspective, time arises from the motion of each atom and its accidental relations with other atoms in motion. While “every conjugation of atoms has its own rhythm,” atoms do not exist apart but intertwine with others (Morfino and Thomas 4).
9. In the Philippines, these powers include the power to call out the armed forces, the suspension of the privilege of the writ of *habeas corpus*, and martial law. I find Frankenberg’s notions of magic and deceit useful in describing the temporality of the martial law regime. The enormous force of emergency powers can aptly be described as “magical.” Its abuse based on non-existing justifications can only

- be deceitful. Arguably, the history of Philippine constitutional law also swings in between the poles of magic and deceit.
10. I have tried to use mythical time rather than the word “timeless” because of the inaccuracy of the notion of timelessness. Myth, of course, is an attempt to arrest time. It suggests a perpetual repetition (Eliade). For a critique on the use of “timeless” in international politics, see Hom 46.
 11. A large coalition of independents and progressives won as delegates in the 1971 elections for the constitutional convention. PP 1081 was silent on this personal “emergency.” It can only cite the communist insurgency, and the anti-Marcos, Sr. mobilizations in the capital as causes of the emergency (Mijares 8, 82).
 12. The charter change gave a semblance of legality to the overstay of Marcos, Sr. Mijares was correct in observing that martial law would have been futile for Marcos, Sr. without the new constitution. The emergency powers and amendment process were the two interlinked modes of gaining time (138). Nonetheless, it was martial law that allowed Marcos, Sr. to control constitution-making and thus time.
 13. It was said that people were asked whether they wanted to have a sack of rice. After they had raised their hand, they were made to sign blank papers. All these were in violation of the amendment procedure of the 1935 Constitution which required a plebiscite for the ratification of a new constitution. The justices themselves admitted that the 1935 Constitution’s procedure was not followed. Doubt about the validity of the 1973 Constitution persisted. As Bernas put it: “The final word on all this, however, was pronounced dramatically again by the people themselves, and with clearer authenticity. The EDSA Revolution of February 1986 and the events that followed put an end to the 1973 Constitution.” [1987 Phil Consti as stated below] On the varying positions of the justices in the Ratification cases, see Bernas (*1987 Phil. Consti.* 1314-1330).
 14. The 1973 Philippine Constitution, art XVII, sec. 2 created an interim national assembly to be called by the President. But in *Aquino v. Comelec*, the Court ruled that the President cannot be compelled to convene the interim national assembly. Hence, those who expected to ride the transition to mythological time found their political lives to have vanished with the end of the 1935 Constitution. Only President Marcos, Sr. was not bound by time. The Supreme Court simply conformed to the President’s mythological time. Typical of the odes and hymns to the “redeemer” is this classic line from Justice Castro: “The supreme mandate received by the President from the people . . . should be *sufficient guarantee, without need of judicial overseeing*, against commission by him of an act of arbitrariness in the discharge particularly of those duties imposed upon him . . .” [emphasis added] (*Padilla-Garcia v. Enrile*).
 15. Schmitt suggests that one meaning of suspension is “abolition” (191). Martial law’s suspension or arrest of time is a shared theme in the following works of De

- Quiros and Tadiar. I have discussed martial law and time in Bagulaya, *Righting in the Novel Form*.
16. Siege and war are the ‘mother’ and ‘father’ of emergency situations (Frankenberg 268).
 17. A fictive state of exception is devoid of a military emergency. It is political. In this case, it becomes a simple technique of government (Agamben 5-7; Frankenberg 265).
 18. R. Ramos et al. *Si Malakas at Maganda* (ctd. in Rafael 282). It is worth noting here that Hufana wrestled with the concept of time in an early “well-crafted” work titled “Hymn on the Eclipse, 1955.” He wrote: “Time is a trinity:/ Infant, father, ghost/ . . .The ooze last night, the matter of today/And tomorrow the decay . . . But time shall not delay/ . . . A daily dominion/ . . .Time travels on a plane . . .” In this poem, he alludes to the bird of time which transcends time and space. (Grow, “Hufana” 272-274). It can be argued that Hufana’s metaphysical musings on time finally found its true muse in the historical Imelda Marcos, which he transforms into an epic heroine who is no longer bound by history. Hufana’s epic is thus no simple hack work. The tonal epic is consistent with the poet’s own transcendental struggle against time which intersected with the Marcoses’ own escape from constitutional time.
 19. The eschatological, the epic, and the mythical are used here to make practical distinctions among the ways the dictatorship’s new temporality was justified. The gaps and disconnections are natural, because there was certainly no attempt at a unified theory of time here. What is obvious from facts above was the attempt to harness eschatological, epic, and mythological forms in combination to express or justify the dictatorship’s overstay or transcendence of constitutional limits. Whether the utility of these various forms will create a unity was secondary to the dictatorship. Thus, there may be an eschaton without Kairos (the critical moment of conversion). After all, the dictator is no Jesus Christ.
 20. Id., at 3. The relationship between epic and myth is clear. The great epics of Homer belong to cycles of mythical stories. The epic and myth share the same heroes. Although mythical heroes do not always appear in epic forms, both epic and myth represent an ahistorical condition. Foundational myths constitute “mythic time” repeated in ritual. See Reyes, *The Road* 14. Here, the chronotope of the rural road slows the movement of time and mythic time is characterized as repetitive.
 21. Martial law was nominally lifted by Proclamation 2045 in 1981. But Marcos, Sr. never relinquished his legislative powers.
 22. It is a privileged moment, for what comes after it is ordinary law-making (Calabresi).

23. While there were three branches during martial law when the Batasang Pambansa opened, there was no separation of powers because President Marcos, Sr. also exercised legislative powers.
24. The President's single six year-term limit has certainly contributed to the Constitution's apparent untouchability. It has constrained the actions of Philippine Presidents in their attempts to change the provisions through any of the three modes of amending the constitution enumerated in art. XVII, sec. 1. Time was always too short for a President to completely control the other branches and unify their interests and temporalities. Congress, which is divided into the Senate and House of Representatives, has its own political dynamic. It could not be relied upon to constitute itself into a constituent assembly. A constitutional convention is also unmanageable. There is no guarantee that the provisions wanted by the President would be incorporated. Finally, the people's initiative to amend the Constitution is cumbersome as it requires a petition proposed by at least twelve percent of the total number of registered voters with the additional requirement that all districts must be represented by at least three percent of such voters. Most importantly, this initiative is limited to an ordinary amendment and can only be used once every five years. There had been two attempts to use the people's initiative in the time of President Fidel Ramos (1992-98) and President Gloria Macapagal Arroyo. In *Lambino*, the Supreme Court intervened and invalidated the movement, which was certainly attempting at a power grab through constitutional change. (Pangalangan, "Philippine 'People'" 303-304; *Lambino v. Commission on Elections*; Pangalangan, "Philippine Constitutional"; Gatmaytan-Mango.) Time and the pandemic put an end to President Rodrigo Duterte's flirtation with charter change. The Marcos administration II has launched a new campaign for constitutional change.
25. It may be noted that Heidegger emphasizes the interpretive act that gives a relational structure to the "now," "then," and "on that former occasion." He calls it "datability" [*Datierbarkeit*], which avoids the free flowing of "nows" that is devoid of significance (Heidegger, *Being* 359, 474). The numerical and phenomenological aspects of Time form part of the Constitutional Horizons. Art. VII, sec. 18 of the 1987 Philippine Constitution contains these elements. Its "Present" contains the numbers (the arithmetic, what is counted) as well as the consciousness that retains [the history of martial law] and awaits [the coming of another dictator/Marcos]. The act of interpretation brings all these horizons together. Gadamer calls it "the fusion of Horizons." (362-369). The Marawi siege was the event that fused all the horizons.
26. Martial law "designates" one of those "spaces set free for the detailed technical implementation of a military operation" (Schmitt 150). Martial law has both temporal and spatial effects, in a word, a chronotope. The concept of time-space or "chronotope," which expresses a connectedness between time and space, was

- first coined by Bakhtin in his literary studies. He argued that the novel expresses changing temporal-spatial effects. ("Forms"106, 250; Reyes) For an application of the chronotope to international law, see Parfitt 52-56. Like the law of war, martial law has temporal and geographic scope (Crawford). There are three Philippine Supreme Court decisions arising from the martial law cases: *Lagman v Medialdea* (2017), *Lagman v Pimentel* (2018), and *Lagman v Medialdea* (2019).
27. Martial law was declared in Maguindanao Province after the ruling Ampatuan family massacred the wife of a political opponent, her aides, and journalists. The *Fortun* case was rendered moot by President Arroyo's lifting of martial law after eight days in 2009.
 28. The state of martial law in Mindanao ended after two and half years. It began on May 23, 2017. It was first extended from the end of the sixty-day period to December 31, 2017. The second extension covered January 1, 2018 to December 31, 2018. The last extension was from January 1, 2019 to December 31, 2019. See the third case of *Lagman v. Medialdea*, 2019.
 29. In Greek mythology, Daedalus was the architect of Minos' labyrinth that kept the minotaur. Ariadne's thread helped Theseus, the slayer of the minotaur, to get out of the labyrinth.

Works Cited

- Adam, Barbara. "Time." *Theory, Culture, and Society*, vol. 23, 2006, pp. 119-126.
- Agabin, Pacifico. *The Political Supreme Court*. U of the Philippines P, 2012.
- Agamben, Giorgio. *State of Exception*. U of Chicago P, 2005.
- Anastacio, Leia Castañeda. "Keeping Close to Shore: Preserving Colonial Legacies in the 1935 Philippine Constitution." *Constitutional Foundings in Southeast Asia*, edited by Kevin Y.L. Tan and Bui Ngoc Son, Bloomsbury, 2019, pp. 11-48.
- Bagulaya, José Duke. "Righting in the Novel Form: Memories of the State of Exception and Non-Juridical Rights in Ruth Firmeza's Gera." *Kritika Kultura*, vol. 39, 2022, pp. 666-722.
- . "Statutory Deconstruction: Against Oracular Constitutionalism." *Philippine Humanities Review*, vol. 15, no. 2, 2013, pp. 3-24.
- Bakhtin, Mikhail M. "Epic and Novel." *The Dialogic Imagination: Four Essays*, U of Texas P, 1981, pp. 3-40.
- . "Forms of Time and of the Chronotope in the Novel." *The Dialogic Imagination: Four Essays*, U of Texas P, 1981, pp. 84-258.
- Balkin, Jack. *The Cycles of Constitutional Time*. Oxford UP, 2020.
- Benjamin, Walter. "The Storyteller." *Illuminations*, Schocken, 2019.
- Bernas, Joaquin. *A Living Constitution: The Aquino Presidency*. Anvil, 2000.
- . *A Living Constitution: The Ramos Presidency*. Anvil, 1999.
- . *A Living Constitution: The Abbreviated Estrada Presidency*. Ateneo de Manila UP, 2003.
- . *A Living Constitution: The Troubled Arroyo Presidency*. Ateneo de Manila UP, 2008.
- . *The 1987 Constitution of the Republic of the Philippines: A Commentary*. Rex Books, 2003.
- Bratton, Michael. "The 'Alternation Effect' in Africa." *Journal of Democracy*, vol. 14, 2007, pp. 147-158.
- Calabresi, Steven G. "Time and the Law: The US Constitutional Experience." *Time, Law, and Change: An Interdisciplinary Study*, edited by Sofia Ranchordás and Yaniv Roznai, Bloomsbury, 2020, pp. 33-66.
- Carr, David M. *Writing on the Tablet of the Heart: Origins of Scripture and Literature*. Oxford UP, 2005.
- Chemerinsky, Erwin. *Constitutional Law: Principles and Policies*. Aspen, 2006.
- Clark, Christopher. *Time and Power*. Princeton UP, 2019.
- Cohen, Elizabeth F. "The Political Economy of Immigrant Time: Rights, Citizenship, and Temporariness in the Post-1965 Era." *Polity*, vol. 47, 2015, pp. 337-351.

- Crawford, Emily. "Temporal and Geographic Reach of International Humanitarian Law." *The Oxford Guide to International Humanitarian Law*, edited by Ben Saul and Dapo Akande, Oxford UP, 2020, pp. 57-75.
- Cuocolo, Lorenzo. *Tempo e potere nel diritto costituzionale*, 2009.
- "Declaration of the Rights of Man and Citizen." 1789.
- De Quiros, Conrado. *Dead Aim: How Marcos Ambushed Philippine Democracy*. Foundation for Worldwide People Power, 1997.
- Dupré, Catherine, and Jiunn-rong Yeh. "Constitutions and Legitimacy over Time." *Routledge Handbook of Constitutional Law*, edited by Mark Tushnet, Thomas Fleiner, and Cheryl Saunders, Routledge, 2012, pp. 45-56.
- Eliade, Mircea. *The Myth of Eternal Return: Cosmos and History*, 1989.
- Frankenberg, Günter. *Comparative Constitutional Studies: Between Magic and Deceit*. Edward Elgar, 2018.
- Fraser, Julius Thomas. "Constraining Chaos." *Time: Limits and Constraints*, edited by Jo Alyson Parker et al., 2010, pp. 121-135.
- Gadamer, Hans-Georg. *Truth and Method*. Continuum, 2004.
- Gatmaytan-Mango, Dante. "Changing Constitutions: Judicial Review and Redemption in the Philippines." *Pacific Basin Law Journal*, vol. 25, 2007, pp. 1-24.
- Grow, LM. "'Hufana in Excelsis': Dredging for Poetic Nuggets." *Philippine Studies*, vol. 50, 2002, pp. 269-278.
- Heidegger, Martin. *Being and Time*, translated by John Macquarrie and Edward Robinson, Harper, 2008.
- Hom, Andrew R. "Silent Order: The Temporal Turn in Critical International Relations." *Millenium*, vol. 46, 2018, pp. 303-330.
- Kasuya, Yuko. *Presidential Bandwagon: Parties and Party Systems in the Philippines*. Anvil, 2009.
- Kirste, Stephan. "Die Zeit der Verfassung." *Jarbuch des Öffentlichen Rechts Der Gegenwart*, vol. 56, 2008, pp. 35-74.
- Kosmin, Paul. *Time and its Adversaries in the Seleucid Empire*. Harvard UP, 2022.
- Lazar, Nomi Claire. "Time Framing in the Rhetoric of Constitutional Preambles." *Law and Literature*, vol. 33, 2021, pp. 1-21.
- . *Out of Joint: Power, Crisis and the Rhetoric of Time*. Yale UP, 2019.
- Mijares, Primitivo. *The Conjugal Dictatorship of Ferdinand and Imelda Marcos*. Ateneo de Manila UP, 2019.
- Morfino, Vittorio, and Peter Thomas. "Tempora Multa." *The Government of Time: Theories of Plural Temporality in the Marxist Tradition*, edited by Vittorio Morfino and Peter Thomas, Bill, 2017, pp. 1-19.
- Ost, François. *Le temps du droit*. Edition Odile Jacob, 1999.

- Pangalangan, Raul. "The Philippine 'People Power' Constitution: Rule of Law, and the Limits of Philippine Constitutionalism." *Asian Discourses of Rule of Law*, edited by Randall Peerenboom, Routledge, 2003, pp. 365-378.
- . "Philippine Constitutional Law: Majoritarian Court and Elite Politics." *Constitutionalism in Asia in the Early Twenty-First Century*, edited by Albert Chen, Cambridge, 2014, pp. 295-321.
- Parfitt, Rose. "Newer is Truer: Time, Space, and Subjectivity at the Bandung Conference." *Bandung, Global History, and International Law: Critical Pasts, Pending Futures*, edited by Luis Eslava, Michael Fakhri, and Vasuki Nesiah, Cambridge UP, 2017, pp. 49-65.
- Philippines, Supreme Court. Aquino v. Comelec. G.R. No. L-40004, 1975. lawphil.net/judjuris/juri1975/jan1975/gr_40004_1975.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Francisco v. House of Representatives. G.R. No. 160261, 2003. lawphil.net/judjuris/juri2003/nov2003/gr_160261_2003. Accessed 18 May 2024.
- Philippines, Supreme Court. Fortun v. Macapagal-Arroyo. G.R. No. 190293, 2012. lawphil.net/judjuris/juri2012/mar2012/gr_190293_2012.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Lagman v. Medialdea. G.R. No. 231658, 2017. lawphil.net/judjuris/juri2017/jul2017/gr_231658_2017.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Lambino v. Commission on Elections. G.R. No. 174153, 2006. lawphil.net/judjuris/juri2006/oct2006/gr_174153_2006.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Lagman v. Pimentel. G.R. No. 235935, 2018. lawphil.net/judjuris/juri2018/feb2018/gr_235935_2018.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Marcos v Manglapus. G.R. No. 88211, 1989. lawphil.net/judjuris/juri1989/sep1989/gr_88211_1989.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Padilla-Garcia v. Enrile. G.R. No. L-61388, 1983. lawphil.net/judjuris/juri1983/apr1983/gr_l_61388_1983.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Salonga v Paño. G.R. No. L-59524, 1985. lawphil.net/judjuris/juri1985/feb1985/gr_l59524_1985.html. Accessed 18 May 2024.
- Philippines, Supreme Court. Tañada v. Tuvera. G.R. No. L-63915, 1986. lawphil.net/judjuris/juri1986/dec1986/gr_63915.html. Accessed 18 May 2024.
- Rafael, Vicente L. "Patronage and Pornography: Ideology and Spectatorship in the Early Marcos Years." *Comparative Studies in Society and History*, vol. 32, 1990, pp. 282-304.
- Ranchordás, Sofia, and Yaniv Roznai. "Introduction." *Time, Law, and Change: An Interdisciplinary Study*, Bloomsbury, 2020, pp. 1-10.
- Republic of the Philippines. Presidential Proclamation 2045 (1981).
- Republic of the Philippines. Presidential Proclamation 1081 (1972).

- Republic of the Philippines. "The 1935 Philippine Constitution." www.officialgazette.gov.ph/constitutions/the-1935-constitution/.
- Republic of the Philippines. "The 1973 Philippine Constitution." www.officialgazette.gov.ph/constitutions/1973-constitution-of-the-republic-of-the-philippines-2/.
- Republic of the Philippines. "The 1987 Philippine Constitution." www.officialgazette.gov.ph/constitutions/1987-constitution/.
- Reyes, Maria Luisa Torres. "The Road Chronotope in Rural Colonial Philippines." *Frontiers of Narrative Studies*, vol. 8, 2022.
- Rigaux, Marie-Françoise. "Constitution et concordance des temps." *L'accélération du temps juridique*, edited by Philippe Gerard, François Ost, and Michel van de Kerchov, OpenEditions, 2000/2019, pp. 395-412.
- Schmitt, Carl. *Dictatorship*. Polity, 2014.
- Stronks, Martijn. *Grasping Legal Time: Temporality and European Migration Law*. Cambridge UP, 2022.
- The Supreme Court of the Philippines. *A Constitutional History of the Supreme Court of the Philippines*, sc.judiciary.gov.ph/387.
- Tadiar, Neferti. *Things Fall Away: Philippine Historical Experience and the Makings of Globalization*. Duke UP, 2009.
- Trotsky, Leon. *The History of the Russian Revolution*, translated by Max Eastman, Penguin, 2017.
- Uitz, Renata. *Constitutions, Courts and History: Historical Narratives in Constitutional Adjudications*. Central European UP, 2005.