"A reign of fear and anxiety": Martial law's roots in colonialism[1]

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Abstract

What is before and beyond our commonplace understanding of martial law as Marcos Martial Law? The Official Gazette traces its beginnings in 1969 when Marcos Sr. boasted that martial law was a matter of when and where. But in a 1973 address, he credited the Americans for having made clear in the fundamental law the power of the chief executive to declare martial law. Marcos Sr.'s claims were self-serving, but he was correct in emphasizing martial law's roots in colonialism. Martial law is an English and American colonial tradition and legal conundrum. It is foremost an instrument for empire and the subjugation of peoples in colonized territories. But it also raises questions and provokes disputes on its ambiguous but important standing within Anglo-American law. This essay examines this lineage by first exploring immediate questions: Is *martial law* law? Was its proclamation in 1972 legal as Marcos Sr. claimed? How can we make sense of his assertion that martial law was democratic self-defense? However, these

[1]This paper is the first of three standalone essays on martial law and state of emergency. It traces martial law's roots in colonialism from Ferdinand Marcos's (1978) attribution of its origins in colonial law and, also, in the practices of two rules of empire, the colonial application of terror, and the suspension of law in colonial situations—including the Philippine-American War. The second essay tracks the expansion and development of what Mark Neocleous (2006, 2007a, 2007b) observed as the normalization or liberalization of emergency in the Philippines and the world. It makes the assertion that Duterte's Drug War, continuously waged by the present Marcos administration, is martial law as normalized emergency. The third essay traces the lineage of the theoretical debate surrounding the meaning of martial law or state of emergency in what Agamben (2005) names as "gigantomachy concerning a void"—the philosophical debate between Carl Schmitt and Walter Benjamin on the concept and practice of "exception." This essays' title is a particular phrasing for colonial terror made by General James Franklin Bell, the provost marshal of Manila during American colonialism (Diokno 2011, p.93).

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questions transition into more fundamental ones: What was martial law's role in colonialism? What were its specific practices? Is there a logic that governs these practices? This essay undertakes three things: First, it demonstrates connections between the terms that define martial law: *exception/emergency, doubled rule of law, arbitrary power, and violence/terror*. Second, it illustrates the continuities in the logic and repertoire of martial law whether deployed within the colonial and post-colonial. Third, it shows that martial law is not just Marcos Sr.'s but also Arroyo's and Duterte's, also Anglo-American and European colonialisms'—stained with an inequitable history, a depraved logic, and a repertoire of brutality.

Keywords. Marcos, martial law, 19th-century Anglo-American and French colonialism, doubled rule of law, terror

INTRODUCTION

Marcos Sr.[2] is decades dead, and here we are continuously imperiled by the threat of martial law. To make sense of the dissonance that this creates in our political understanding, we equated Marcos Sr. with Duterte, whose fist was behind the last incarnation of martial law and who made the equivalence easy with his professed admiration for the former dictator long before being elected president (Cardinoza 2016). We also did this with Arroyo, when talk and portents that martial law was on the horizon persisted during her rule. It is as if we can only think of martial law by thinking of Marcos Sr. at the same time. He is the face of martial law, and we seem to understand the Arroyo and Duterte versions only if we can discern and substitute his for their faces: there is no martial law as such—only Marcos Martial Law.

Indeed, it is difficult for our collective political imagination to decouple Marcos Sr. from martial law. Their deadly union left the whole country poor, gravely injured, and traumatized. In the introduction to *Marcos Martial Law: Never Again*, Raissa Robles (2016) recounts two brutal

[2]For purposes of clarity, this essay will use "Marcos Sr." to refer to the dead former president. But the confusion brought about by just the name "Marcos" is actually deserved by the current president Marcos Jr. who, like the rest of the Marcoses, benefitted from the rule of the former and brazenly defends his inheritance through historical revisionist campaigns, official or otherwise.

stories of the period, the first of which directly involved the Marcoses. It is the story of "the boy who fell from the sky," whose body, moments prior, was circled over by a military helicopter that then clattered away. The boy's lifeless body bore marks of torture, "[h]is head was bashed in, there were burn marks and dark bruises all ever his body… [on which] an examining doctor would later count 33 shallow wounds… [made] with an icepick" (1). The boy was Luis Manuel "Boyet" Mijares, 16 years old, and son of Primitivo Mijares—a close aide and propaganda/media czar of Marcos Sr. who bolted from the dictatorial regime, turned witness against it and exposed all in the book *The Conjugal Dictatorship* (1986, first published in 1977). Marcos Sr. must have fumed over this betrayal by the father. Manila judge Priscilla Mijares later related that her son vanished four months after her husband disappeared. On that day, May 14, 1977, Boyet was lured into a supposed meeting with his father.[3] In her investigation conducted over many years, Priscilla obtained information that "during the torture of my son the father was made to appear by the torturers to witness his son's agony" (quoted in Robles 2016, 3). Her son's murder and her husband's disappearance became part of the civil lawsuit filed against the Marcoses in Hawaii by 10,000 human rights victims of martial law.

Countless appalling stories like this expose the Marcoses' bloody hands and entangle Marcos Sr.'s persona with how the country experienced martial rule. We know that he and his generals compiled lists of political opponents who were to be arrested even before martial law was declared. We also know and can easily imagine how he directly issued the commands or the standing orders that controlled how soldiers enforced martial rule so that all massacres, murders, disappearances, tortures, and incarcerations trace a clear and indelible line to his culpability. Indeed, our experience of martial law is Marcos Martial Law.

[3]The government investigation, led by Philippine Constabulary Officer Panfilo Lacson, concluded that Boyet was kidnapped and was a victim of fraternity hazing. Members of the Tau Gamma fraternity from the University of the Philippines were convicted for his death (Robles 2016, 2-3).

The government's Official Gazette traces the beginnings of Martial Law from May 17, 1969, when Marcos Sr. boasted to the Philippine Military Academy alumni association of his "favorite mental exercise" that tries to "foresee possible problems one may have to face in the future and to determine what solutions can be possibly made to meet these problems." He then provided ominous examples: "For instance, if I were suddenly asked… to decide in five minutes when and where to suspend the writ of habeas corpus… The same thing is true with the declaration of martial law…" The point is "to meet a problem before it happens" (Government of the Philippines, n.d.) What is striking here is that the questions of habeas corpus suspension and martial law are a matter of when and where. It is as if the "how" was already settled, and the "why"—well, justifications usually come after the fact. Mijares (1986) traces the beginnings of Martial Law further, as early "as the first day of his assumption of the Philippine Presidency on December 30, 1965" when he, at the same time and in his capacity, filled the office of the Defense Secretary (55). Robles sees this as part of the first step in controlling the military and the police in Marcos's plan to grab power.[4] Indeed, there seems to be no martial law as such—only Marcos Martial Law.

But for Marcos Sr., there was such a thing as "martial law" that was an available solution to persistent problems: growing unrest and radicalization among students and other sectors of society, continued allegations of spectacular surges in his wealth from the media and the opposition, and his slumping reputation and legitimacy in the eyes of the public (Lacaba 1982). It was also a solution to the persistent issue that is the presidential term limit imposed on his political fortunes by the 1935 Constitution. The irony, of course, is that the same constitution that constrained his powers also provided him with the means to disregard it. In an address (titled "A Vision of a New World") delivered at the 1973 Jaycees International conference, Marcos Sr. expressed perplexity over the constitutional provision on martial law, which "cannot be found in

[4] 1. Control the military and police, 2. Control the Supreme Court, 3. Undermine the public's faith in democracy, 4. Exploit and abet the political crisis, 5. Exaggerate the Communist threat, 6. Get US backing, and 7. Hijack the Constitutional Convention (see Robles 2016, 27-38).

the American Federal Constitution." He can "only surmise [that] what motivated the American legislators when they drew up the fundamental laws of Puerto Rico, Hawaii, and the Philippines" to incorporate "this provision" is "to remove any doubt whatsoever about the power and authority of the Chief Executive of these territories over the powers of martial law…" (Marcos, 1978, pp. 263-269, p.267). This assertion of the legal lineage of his power to declare martial law was a brief digression in a speech about Asian self-determination and cooperation. What segues the aside is the "respectable opinion that 19th-century colonialism has succeeded in segregating the countries of Asia from one another" (Marcos, 1978, p.266). Martial law is, for Marcos Sr., a benevolent intercession from the former colonial master.

In a subsequent speech, this time addressing fellow alumni of the University of the Philippines' College of Law, Marcos Sr., was more detailed and more expansive with his rationalization of martial law. Also, in the same speech, he identified the Jones Law or the Philippine Autonomy Act of 1916 as the source of the constitutional provision of martial law and reiterated his speculation that the American colonial government introduced the provision to put in unassailable terms the authority of the "Chief Executive" over martial law (Marcos, 1978, p.317). He also repeated his claim, first articulated in his televised address notifying the country that it was from that moment under a martial rule that "a democratic form of government is not… helpless… it has inherent and built-in powers wisely provided for under the Constitution" (Marcos, 1978, pp.134, 316). Martial law is a democratic weapon.

There are three themes here that require exploring. First, in several speeches ("First Address to the Nation under Martial Law" and "Second Address to the Nation under Martial Law"), Marcos Sr. (1978) insisted that his martial law government was the same democratic government founded by the 1935 Constitution (pp.144-149) and that it was a case of a democracy defending itself legally—this problematizes the status of martial law's legality and raises the question of democracy's relation to the martial law situation that either protects or overthrows it. Second, despite our experience of a very personal martial rule, martial law to Marcos was an already existing tool that was convenient

and useful because of some fundamental features—there are specific qualities in the concept and practice of martial law that made the Marcos dictatorship possible. Third, Marcos was, of course, being duplicitous when he insisted that martial law was not in the American constitution and yet its existence in our fundamental law of the land was due to American occupation and administration of the Philippines as American territory.[5] But he was also, in a manner that is inadvertently perceptive, correct—martial law was an Anglo-American imperial tradition and, eventually, a legal conundrum. It was foremost an instrument for empire and the subjugation of peoples in colonized territories. It also raised questions and provoked disputes on its ambiguous existence but important standing within English and American law.

Indeed, martial law, and its practical equivalents: state of exception or emergency, is a puzzle to legality. And the questions it raises are typically answered theoretically. This is shown by its paradoxical logic in most constitutions that contain provisions for its declaration: *in an emergency, it suspends the application of law to protect the lawful order.* This is complicated by constitutions that do not have martial law or state of emergency provisions as its rationalization is sought elsewhere, usually in the theoretical elaboration of the powers of the sovereign including the prerogative to suspend the law (Schmitt, 2010, 2014; Agamben, 2005). But this does not stop actual justifications of martial law from referring to this archaic but still current power. For example, even if the 1987 Constitution provides for its legal declaration by the president, the Supreme Court defines this legal sanction as a "prerogative" and "powers and/or prerogative" in its decision that affirmed Duterte's 2016 martial law declaration in Mindanao (Supreme Court, 2017). This essay minimizes such theoretical explanations and limits the problem of martial law's legality to its practical characteristics

[5]Marcos stated that martial law provisions can be found in some State Constitutions, in addition to the American territories (Marcos 1978, 317). Indeed, martial law was invoked a number of times in US history, especially during the American Revolution and the Civil War (White 2012). It was also declared in individual States mainly to respond to strikes and riots and to suppress rebellions (Nunn 2020). It was also invoked in times of major disasters (Padover and Landynski 1995).

and historical justifications. Theorizing is an effect of practical explorations rather than a framework for our accounts. This means that we treat martial law historically—find answers in actual martial law declarations and practices in history. This stance inevitably leads us to this essay's more fundamental questions as inadvertently directed by Marcos Sr.'s tracing of martial law's legal origin and basis in colonialism.

In a way very tangential to Marcos Sr.'s deployment of martial law's colonial lineage as justification, the fact and history of Philippine martial law's roots in colonialism explains its post-colonial application and practice. Section 11, Paragraph 2 of the 1935 Constitution, on the basis of which the 1972 martial law was declared, reads:

> 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 (Government of the Philippines 1935).

This corresponds to parts of Section 21, Paragraph (b) of the 1916 Jones Law that defined the powers and duties of the American Governor-General who:

> …may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of *habeas corpus*, or place the Islands, or any part thereof, under martial law… (Government of the Philippines 1916).

That these provisions are worded nearly in the same way prompts questions: Are colonial and post-colonial martial law the same? Is

there a real difference in the atrocities committed if the perpetrators and the person who commanded them are Americans or Filipinos? The Philippines was a democracy when martial law was declared, and the United States was a democracy when it invaded these islands: What is democracy's part in the establishment of martial rule?

This essay examines these themes by exploring immediate questions: Is *martial law* law? Was its proclamation in 1972 legal as Marcos Sr. claimed? How can we make sense of his assertion that martial law was democratic self-defense? However, these questions will transition into more fundamental ones: What was martial law's role in the Western practice of colonialism? What were its fundamental features as gleaned from its practices? Is there a logic that governs these practices? This essay undertakes three things: First, through the analysis of martial law, as practiced and as defended or rationalized within colonialisms, it demonstrates connections between the terms that define colonial martial law: *exception/emergency*, *doubled rule of law, arbitrary power*, and *violence/terror*. Second, it illustrates the continuities in the logic and repertoire of martial law whether deployed within the colonial past or post-colonial present. Third, it shows that martial law is not just Marcos Sr.'s but also Arroyo's and Duterte's, also Anglo-American and European colonialisms'—stained with an inequitable history, a depraved logic, and a repertoire of brutality.

The colonial practice of martial law

Marcos Sr. rationalized martial law in three ways. First, he insisted on the existence of an emergency or necessity. In his address ("First Address to the Nation under Martial Law") to the Filipino people he announced that he "signed Proclamation No. 1081 placing the entire Philippines under Martial Law" through the authority vested by Article 10, Section 10, Paragraph 2 of the Constitution, he cites existing "conspiracy and operations to overthrow the duly constituted government… by violence or by subversion" (Marcos 1978, pp.134-140, 136). A second way in which Marcos Sr. rationalized martial rule was through the construction of an ideology for governmental and societal "reforms" consisting of discipline, revitalization, and development

packaged in a vision for a "New Society" (Marcos n.d._ ; Marcos n.d._). He claimed that martial law enables this new society that is an expression of Philippine self-determination and the revitalization of Filipino dignity. However, legality was his primary justification for martial rule. He claimed that the 1935 Constitution was very clear on the power of the president to declare martial law. He buttressed this basis in law with arguments based on precedent as well as the ensuing Supreme Court decisions that affirmed his claims. He argued for his power to legislate under martial rule and asserted the legitimacy of the legal framework he constructed through Proclamations and General Orders. He cited the Supreme Court decisions in Kuroda v. Jalandoni and Javellana v. the Executive Secretary as proof of judicial support for his emergency legislative powers. Marcos Sr. also claimed that the previous declaration of martial law by the "constitutional expert" and President Laurel in 1944 also gave the former leader legislative powers. He claimed that this was also the case with US President Abraham Lincoln when he assumed the powers inherent in martial law without constitutional support and approval from the US Congress. ("The Law and Martial Law," Marcos 1978, pp.314-323).

Subsequent jurisprudence after the 1986 EDSA uprising that ended Marcos Sr.'s dictatorship turned the tide of legal opinion against his claims of legality and societal reform. In the court resolution on Dizon v. Eduardo (1987), for example, the Supreme Court declared that the imposition of martial law in 1972 "destroyed in one fell swoop the Philippines' 75 years of stable democratic traditions." Galman v. Sandiganbayan (1986) declared that Marcos Sr. "misused the overwhelming powers of the government and his authoritarian powers to corrupt and make a mockery of the judicial process." In Brocka v. Enrile (1990), the Court maintained that constitutional rights "must be upheld at all costs…[and] may not be set aside to satisfy perceived illusory visions of grandeur." In Aberca vs. Ver (1988), the Supreme Court ruled that the fight against lawless violence, insurrection, rebellion, and subversion "cannot be construed as a blanket license… to disregard or transgress upon the rights and liberties of the individual citizen enshrined in…the Constitution." Further, "certain basic rights and liberties are immutable and cannot be sacrificed to the…imperious

demands of the ruling power" (UP Law Center, 2021). However, in the same decision, the Supreme Court stressed that:

> This is not to say that military authorities are restrained from pursuing their assigned task or carrying out their mission with vigor. We have no quarrel with their duty to protect the Republic from its enemies, whether of the left or of the right, or from within or without, seeking to destroy or subvert our democratic institutions and imperil their very existence. What we are merely trying to say is that in carrying out this task and mission, constitutional and legal safeguards must be observed, otherwise, the very fabric of our faith will start to unravel (Supreme Court 1988).

In other words, the Court does not quarrel with the powers of the military but only with how these powers are used without oversight. This paragraph encapsulates what may be viewed as a general characteristic of the indictment of martial law: they question the legality and harshness of its effects but not the legality of its declaration. And they continue to recognize the power of any incumbent president to declare it. This is clear in the 1987 Constitution where the provision of martial law is preserved, albeit with oversight from Congress and the Supreme Court, despite an alternative and existing provision on the legislative power to declare a state of emergency.

This brings back to Marcos Sr.'s insistence on how the 1935 Constitution was clear about his power to declare martial law. This clarity cannot be explained by the laws that provide for its declaration but rather by the circumstances and beginnings of these laws.

The fact that Philippine martial law has its origins in the American colonial administration of the archipelago is fateful for its post-colonial application. Although invoked only once during American rule, its logic and methods can be gleaned from the conduct of the Filipino-American war and the pacification process after the Americans unilaterally declared the war's end (Roth, 1981; Constantino, 1975). The same logic is applied even in the Filipinization process that supplemented the

pacification of the islands. This logic and these methods are imperial Anglo-American in derivation.

David Dyzenhaus (2009), precisely analyzes the notion and practice of martial law in English and American jurisprudence. He notes that while it is no longer widely invoked today, "it has clear analogs in declarations of states of emergency, in legislative delegations of the authority of virtually unlimited scope to the executive to deal with threats to national security, and in executive assertions of inherent jurisdiction to respond as [it] sees fit to such threats" (p.1).[6] For Dyzenhaus, the assertion of legal authority by the state through its proclamation is, at the same time, "jurisgenerative"—it "constitutes a field of legal meaning," a space within which the state is "legally authorized to act without any legal controls"—and "jurispathic"—to kill off a particular field of legal meaning, "the narrative of the rule of law" (p.2). We have seen, through Marcos Martial Law, how the jurisgenerative effect operated. This generated legal discretionary space was so effective that although there was general condemnation for martial law atrocities, no one among martial rule's enforcers was indisputably held accountable within post-martial law Philippines. But of particular interest to Dyzenhaus is its jurispathic effect, because "to kill off the narrative of the rule of law seems tantamount to killing off law itself" (p.2). The point of law, even when conceived commonsensically, is that it is binding and dominant. The rule of law signifies the hegemony of legal institutions and law as such, with stability and consistency of governance as its effects. It especially demands that the exercise of state power and administrative authority be legal and accountable. This is exactly what martial law undermines in sanctioning the arbitrary and discretionary exercise of power without or with little culpability. For those who see the need for martial law in cases of emergency, it is only temporary—a necessity that is lawful and that serves the long-term interests of the lawful order. But for Dyzenhaus, this presents an untenable legal position—"martial law is not a complete absence of law, nor is it a special kind of [archaic] law;"

6Dyzenhaus refers specifically to measures taken by the US government in response to terrorism after the Al Qaeda attack in September 2001 and in continuance of the American invasion of Afghanistan and Iraq through the US War on Terror.

but instead "an absence of law prescribed by law under the concept of necessity—a legal black hole, but one created, perhaps even in some sense bounded, by law" (p.2). The problem is that, in this perspective, martial law is law.

Instead, Dyzenhaus favors the position of A.V. Dicey, a prominent English constitutionalist, who claimed that martial law "is unknown to the law of England" (quoted in Dyzenhaus 2009, p.4).[7] He argues for a jurisprudence of power, a "wisdom of legality" that depends on judicial review and oversight—a counter-"jurigenerative process that does not defer to the violence of the…state." The goal is to promote a "virtuous cycle of legality" wherein legal institutions cooperate in creating controls and limits on executive powers, ensuring principles of legality and the rule of law (pp.60-61). This is supported by a legal frame that excludes narratives of unconstrained authority and that contains "substantive principles of constitutional morality." For Dyzenhaus, this legal frame opens the way for a virtuous cycle of legality to thrive even if challenged by supporters of martial law (p.61).

Dyzenhaus tries to endorse Dicey's position, offering a better understanding of its apparent contradiction,[8] through the debate that followed a 19th-century case of "ruthless suppression" let loose by martial law in response to the *emergency* presented by the 1865 Jamaica uprising. But in this essay, we will appropriate the case of colonial martial law in Jamaica to wrestle with the point raised by Marcos Sr. claims, also recognized by Dyzenhaus, concerning the origins of the

[7]This assertion depends on the definition of the martial law as a "legal black hole" and of the fact that English law is common law—a "judge-made constitution." Again, quoting Dicey, Dyzenhaus (2009) explains: "Under a written constitution… the general rights it guarantees are 'something extraneous to and independent of the ordinary course of law,' hence subject to [possible] suspension. In contrast, if the right to individual freedom is 'part of the constitution because it is inherent in the ordinary law of the land, the right is one which can hardly be destroyed without a thorough revolution in the institutions and manners of the nation'" (p.5).

[8]This concerns Dicey's preference for the common law or judge-made constitution and his contradictory acceptance of the sovereignty of the Parliament, including the power to sanction martial law and exonerate its enforces (Dyzenhaus 2009, 4-8).

martial law provision in the 1935 Constitution: *martial law is the law of colonialism*.

In October 1865, former slaves and their descendants living in conditions of abject poverty in Jamaica protested against the drive to clear them out of lands coveted by white settlers. The peaceful protest turned into a riot and then quickly into a general uprising when soldiers and local militia opened fire at the protesters, killing seven. Protesters, in turn, killed the magistrate of the courthouse which was the locus of tensions between white plantation owners and black former slaves. They also killed seventeen others and wounded thirty, mostly white, settlers (Heuman, 1991; Winter, 2012; Huzzey, 2015). Governor Edward John Eyre declared martial law and, while the uprising was quickly suppressed, maintained its effects for a month, "during which time [his] forces killed 439 blacks (either shot on the spot or after a perfunctory court-martial), flogged 600 black men and women, and destroyed about 1000 cottages and huts" (Dyzenhaus, 2009, pp.8-9).

However, the suppression and killing of colonized populations were commonplace in the era of empires and did not easily shock the imperial homeland as the Philippine colonial experience attests. What set "the English to engage in some soul searching about their commitment to liberty at home" (Dyzenhaus, 2009, p.6)[9] was the court martial and immediate execution of George William Gordon—an educated and wealthy *mulatto* landowner, former magistrate, and member of the Jamaica House of Assembly.[10] He had no direct role in the rebellion but was a political opponent of Eyre. If we are to present his Philippine equivalent during the Spanish and American colonial period, he would be one of our *mestizo ilustrado* propagandist-*politico*

[9]"In England, the Jamaica Committee, which came to include John Stuart Mill, TH Huxley, and John Bright, one of England's leading political radicals, formed to bring [Governor] Eyre to account before the law. That prompted the formation of the Eyre Defence Committee, which included Charles Dickens, Alfred Tennyson and Thomas Carlyle" (Dyzenhaus 2009, 9).

[10]Gordon was arrested in Kingston, outside the jurisdiction of martial law, and immediately brought to Morant Bay to be tried by a military tribunal under martial law—a pre-war on terror example of rendition that shows such methods as a long-standing means of exceptional power.

heroes. In fact, Gordon himself eventually became one of Jamaica's national heroes. One can see in both Gordon and our historical national elite the embodiment of Homi Bhabha's (1994) "almost the same but not quite/white," whose status in the colonized territory and the imperial homeland can be ambiguous (pp.85-92).[11] Thus, Gordon's execution was too close for comfort for the liberals of the English homeland who feared the specter of martial law reaching their shores. John Stuart Mill, who headed the Jamaica Committee that wanted the Jamaican martial law declared illegal and Eyre prosecuted for murder, claimed the same sentiment when he asserted that the issue was more than "justice to the Negroes," rather it was "whether the British dependencies, and eventually Britain itself, were to be under the government of law, or of military licence" (Huzzey 2015). Meanwhile, the standing of the colonized black Jamaican is clear-cut and easily dismissed as it was for our very own colonized *indio*.

The private prosecutions of Governor Eyre and other military officials after the Parliament absolved them of any fault through an Act of Indemnity prompted a debate that "focused on the use of martial law and the opportunistic murder of Gordon" and that left unquestioned the plight of the colonized Jamaicans (Huzzey, 2015). But this debate failed the liberal conscience, represented by Mill et al., of the English soul. No death blow was delivered to martial law, and questions about the il/legality of its declaration in Jamaica were made moot by the legislative absolution of its perpetrators. To some extent, the legal principle that guided the private prosecution was similar to what Dyzanhaus asserted as Dicey's wisdom of legality, simply: martial law is illegal. But this effort was doomed from the start as those responsible for the Jamaican atrocities were already cleared by the Parliament. The effort to prosecute Governor Eyre did not prosper as the Act of Indemnity awarded criminal and civil immunity for acts deemed morally justified but possibly illegal.

[11]The ambiguity can be positive as shown by Rizal, Luna, del Pilar and others who campaigned for political recognition in Spain; also Pardo de Tavera, Quezon, Osmena and others who benefited from the Filipinization policy during the American period. It can also be negative as when the ilustrados were ridiculed as "monkey[s] on the inside" by the newspaper El Imparcial in Spain (O'Connor 2001, 97-98).

For Dyzenhaus, this is tantamount to the government's "legalisation of illegality" (Dyzenhasus 2009, 4).

Meanwhile, martial law even thrived as it was deployed over and over again "in the suppression of unrest in Ireland and other colonies, and in the equivalents to martial law that have developed in the twentieth and twenty-first centuries" (Dyzenhaus 2009, 11; Neocleous 2007, 500).

The colonial defense of martial law

The problem of legality is of practical importance from the point of view of the rule of law. The idea of the executive's prerogative in relation to martial law undermines the concept and practice of the rule of law at two levels: Conceptually, the declaration of martial law defended as a prerogative of the executive puts those in such position above the law and thus not being subject to it. Practically, the acts of martial law executed as prerogative or discretion disregard the protection that any ordinary citizen expects from the law, its courts, and its procedures, and open the way to anyone being arbitrarily penalized or violated by authorities. Thus, the predicament of legality indeed appears to be dire.

Dyzenhaus seeks to resolve this with a much-improved jurisprudence of power based on Dicey and the arguments of the Jamaica Committee private prosecution. This is because he fears the same predicament in the contemporary analogs of martial law as practiced in the (Anglo-)American-led War on Terror. Nevertheless, as is clear, this fear is of grave importance only from a very particular point of view: "[T]he contagion of lawlessness spreads fast. What is done in a colony today may be done in Ireland tomorrow, and in England hereafter" (Frederic Harrison, a member of the Jamaica Committee and private prosecution, quoted in Dyzenhaus 2009, p.55). This fear was prophetic but also highlights the main concern of those who opposed it, Mill included. Those who defended martial law, meanwhile, had no qualms about its application on English soil. This is because the "legal" measure is unambivalent about its targets. But both colonial homeland positions are unequivocal about martial law's context: colonialism is not questioned and is univocally assumed and accepted. For example,

in Dyzenhaus, it is noted that J. S. Mill's leadership of the Jamaican Committee was odd since he was a "fervent advocate of colonialism" who asserted that the project required "vigorous despotism" (2008, 15; Huzzey 2015).

This imperial univocal assent to martial law is echoed more plainly in Alexis de Tocqueville in a defense of martial law that, while speaking specifically of French colonialism in Algeria, encompasses 19th-century colonialisms and connects this wide practice of martial rule or emergency to the specific experience of American colonialism. His martial law defense also distinctly establishes martial law and colonialism's relationship to democracy. We know de Tocqueville from his analysis and praise of the United States' democracy in his book *Democracy in America* and his defense of martial may come as a surprise. In a letter to Mill, he reveals that he does not share his contemporary's concerns. Instead, he avers that the purposes of colonialism eclipse petty complaints about its means:

I do not need to tell you, my dear Mill, that the greatest malady that threatens a people, organized as we are, is the gradual softening of mores, the abasement of the mind, the mediocrity of tastes; that is where the dangers of the future lie. One cannot let a nation that is democratically constituted like ours and in which the natural vices of the face unfortunately coincide with the natural vices of the social state, one cannot let this nation take up the habit of sacrificing what it believes to be its grandeur to its repose, great matters to petty ones (Kohn 2011, 259; de Tocqueville 1985, 150-151)

Margaret Kohn (2008) contextualizes de Tocqueville's letter to Mill within French colonialism in Algeria. She traces the initial phase of colonialism in 1827 to the French blockade of Algiers in response to the perceived affront that their envoy suffered from the ruling government. This escalated in 1830, when the French occupied and consolidated their control of Algerian coasts. The campaign to hold the interior of the country in the late 1830s met with Algerian resistance that became more organized and effective. The French responded with more brutality that involved the "burning crops, razing villages, and deporting [of] large civilian populations," notorious tactics known as *razzia*. This is similar

to the Spanish *reduccion* and the American "reconcentration" that was practiced in colonial Philippines. They were designed to isolate and identify insurgents and to undermine popular support for the resistance (pp.256-257). According to Kohn, "[t]he most notorious incident took place in June 1845 when General Pelissier trapped hundreds of civilian refugees in the caves of Ouled Riah [and r]ather than negotiating… [the French] blocked escape routes and lit a fire at the entrance to the cave killing everyone inside" (256). For Kohn, this tactic was not exceptional "but rather part of an explicit policy of terror aimed at weakening resistance to the French" (257). De Tocqueville supported such tactics and praised the military commander M. Bugeaud who implemented a razzia campaign by recognizing that he was "the first to have applied, everywhere at once, the type of war that in my eyes, as in his, is the only type of war practicable in Africa. He has practiced this system of war with unequaled energy and vigour" (Kohn 2008, 261).

Kohn shows that while de Tocqueville positioned himself as a moderate "rejecting calls for French withdrawal, on the one hand, and genocidal extermination of the native population, on the other (2008, 257)," he "supported French expansion in North Africa because he felt that it reflected and reinforced the glory of France" and "recognized the 'barbarity' of the methods required to ensure French military domination of Algeria" (2008, p.258). For de Tocqueville, it is natural that colonized countries, as weak societies, be controlled by Europe. Also, colonialism was an extension of European political rivalries and wars: "If these possessions do not remain in our hands, they will pass into those of another European people. If they are not for us, they will be against us, whether they fall directly under the power of our enemies or enter the circle of their influence" (Kohn 2008, 259). For de Tocqueville, France's "greatest task" was, in a contest with other European powers, "the establishment of a European society in Africa" (Kohn 2008, 261).

De Tocqueville, at first glance, sought to criticize the maintenance of martial law in Algeria. He, for example, agrees with liberals that martial law must be temporary and tempered with oversight and he lamented specifically that the "decree…allowed the [governor] to exceed [limits on his power] in cases of emergency" so that the "emergency declaration

became what is known in legal terms as a formal clause [that] appears at the top of all the governors' decrees, thus investing them with de facto legislative power…without guarantees or counterweights" (Kohn 2008, 266). But this fear was only for its dangerous effects in "areas that were exclusively settled by French colonists and mixed areas that posed no serious threat of insurgency" (Kohn 2008, 264). He feared that martial law would prevent the success and well-being of French colonists by endangering their political and economic rights and discouraging the flourishing of settlements in the colony. In other words, his concern was the ascendancy of French settlements and not the continuous implementation of martial law itself. Kohn refers to this when she asserts, based on her interpretation of de Tocqueville's critique of martial law that the "European civilian population was a staunch supporter of the military government; therefore, the government had no reason to govern Europeans so tyrannically" (Kohn 2008, 267). In other words, de Tocqueville's critique of martial law is also his defense of martial law. Kohn quotes de Tocqueville at length:

> The Arab element is becoming more and more isolated, and little by little is dissolving. The Muslim population always seems to be shrinking, while the Christian population is always growing. The fusion of these two populations is a chimera that people dream of only when they have not been to these places. Therefore, there can, and there must be, two distinctive legislative systems in Africa, because there are two very separate societies there. When it comes to the Europeans, nothing absolutely prevents us from treating them as though they were alone, since the rules that we make for them never have to apply to anyone but them (Kohn 2008, 267-268; de Tocqueville 2001, 111).

De Tocqueville envisions an Algeria (and an Africa) of "isolated," "dissolving," and "shrinking" Arab and Muslim populations. This is where French (and European) colonists flourish.

However, in her essay, Kohn is also preoccupied with explaining the puzzle of de Tocqueville's support for colonialism's brutality with his critique of martial law for French and European citizens. She bases her answer on what she argues as de Tocqueville's utilitarian approach to the concept and practice of rights: "[R]ights are the cement the glues

together the social order…[but there] was no social order in Africa that linked…French colonists [to the indigenous population, thus]… Tocqueville envisioned a separate set of laws" (Kohn 2008, 273). But de Tocqueville is only a puzzle from the point of view of the "conscience" of colonialism and empire. And this might be a blind spot for postcolonial critics, like Kohn, who come from former colonies with successful settlers like the United States and Canada. We can say, beyond Kohn and with *Democracy in America*, that the colonies of America were de Tocqueville's exemplars. In these colonies, the flourishing of settlers and settlements was dependent and made possible by the exclusion, elimination, and rounding off of the indigenous Americans into camps and reservations. Thus, his praises for democracy in America were never in conflict with his critique-defense of martial law because they were reserved for successful American colonists and not its indigenous populations: democracy in America is the democracy of colonial settlers.

American colonialism and post-colonial martial law in the Philippines

Meanwhile, in the post-colonial present of indigenous populations, the realities of martial law or its analogs continue to be the stuff of everyday life rather than only of fear.[12] From the point of view of the colonized, the predicament of legality is resolved and settled for the colonizer by the practice of colonialism itself. Thus, "the confusions on both sides of the Jamaica debate arise because the English governing elites combined their love of power, as evidenced in the imperial project, with their love of law, as evidenced in their commitment to governing their exercise of power by law. *The elites should have treated imperialism as a vast exception to the way they governed at home: rule of law in England, arbitrary power elsewhere*" (Dyzenhaus 2009, 15).[13] Is this not de Tocqueville point as found in Kohn? Dyzenhaus recognizes

[12]This is documented in numerous post-colonial histories (Constantino 1975; Sturtevant 1976; Agoncillo & Guerrero 1977; Ileto 2003).

[13]Emphasis mine. This is not Dyzenhaus' position but a natural outcome of a position he criticizes.

this but dismisses it from the point of view of the colonizer—that is, it takes the side of the colonizer as "it assumes that if one wishes to avoid subverting the rule of law…one must avoid governing by [martial] law," that rule of law is a legitimating discourse of the empire and that the colonizers take seriously their White Men's burden of civilizing the rest of the world, and most importantly there is no guarantee that the arbitrary powers of martial law will not reach England (Dyzenhaus 2009, 15-16). But again, from the point of view of the colonized peoples, this application of two rules was precisely the practice of colonization and the experience of the colonized. It might appear as the reason of the colonizer that trumps the universal claim of the rule of law, but it cannot be denied that it was, at the same time, colonial practice—even if it violated liberal sensibilities. Was this not the point of the Propaganda Movement in Spain: the demand to end discriminatory treatment against Filipinos, especially for the ilustrados? Was this not the motivation for the efforts by both nationalist and collaborating elites during the American occupation: to overcome the discriminatory stance of colonial law towards them? Moreover, the arbitrary powers of martial rule as a state of emergency eventually did reach the imperial homeland. Or rather as emergency power, the police and "military licence" that Mill feared has been placed "at the heart of the rule of law as means of administering capitalist modernity" Neocleous 2006, 2007a). Here, as in colonialism, the rule of law is revealed to be doubled—a two-rule system with an obscene and arbitrary underside that is directed against specific classes and peoples: oppositional organized workers and radical political organizations; and later, as can be easily gleaned from contemporary world news: immigrants and refugees.

Rather, if the issue of martial law's legality was irrelevant in colonized populations of Jamaica, Algeria, and the colonized world in general, it was also generally a nonissue in 1972 Philippines: the 1935 Constitution allowed its declaration, which is precisely Marcos Sr.'s primary argument for the lawfulness of his proclamation. The legality is clear and enshrined in the fundamental law as it was in its earlier colonial source: the Constitution empowers the executive, whether Governor-General or President, to declare martial law under conditions of *emergency* or its imminent threat. Thus, the status of martial law as law

for us in the present is a question of the lawfulness of acts committed under it. This lawfulness comes not from the notion of legality regarding its declaration—which, in our case, is settled—but from the lawmaking powers invoked through its enforcement. Again, Marcos (1978) was very insistent on this point, deploying local and US court decisions that culminated in the mysterious "In Re Egan" from which he quoted: "The commander is the legislator, judge, and executor" (p.319).[14] Back in England, the Parliament absolved the officials responsible for martial law through an Indemnity Act, which made the supposed illegality of martial law declaration legal post hoc. It also made acts committed under it legal, although not in the same way as Marcos Sr.'s martial law.[15] Martial Law acts were "legal" precisely because they were also asserted to be acts of legislation. Martial law underwrites its acts with the force of law—the practical effect of this is that of law as force (Agamben, 2005, pp.32-40). Thus, Marcos augmented his argument for the lawfulness of martial law through Presidential Decrees and Orders that built a structure of laws, or its semblance (Government of the Philippines, 1972) reinforced by *violence* and, simultaneously, presented this violence as law.

Thus, the relevant question for us at this point is not that of legality, but this: what remains the same in the colonial experience, the actual declaration of martial law in the colonial setting, and the declaration of martial law in 1972?

The role of violence in martial law is that of terror. As one defender of martial law in the Jamaica debate argued: "[T]he point of martial law is to avert danger by deploying *terror*, with any person a legitimate target who is not actively involved in supporting the military"

[14]An online search of "In Re Egan" returns *In Re: Egan*, a 1944 California Supreme Court Decision that, while involving petitions for writ of habeas corpus and alleged denial of Constitutional rights, does not contain what Marcos quoted. But the point here is that Marcos was rationalizing law-making powers under martial law and that he wielded such power.

[15]As those who impose martial law usually claim, "what they had done was completely lawful under martial law." Here Dyzenhaus (2009) quotes from the observation of Rande Kostal, who also wrote on the concept of jurisprudence of power and the Jamaica debate (p.13).

(Dyzenhaus 2009, 29).[16] Further, the term "any person" actually refers to persons of particular peoples, as the context of the defense of "terror" is quite clear. Martial law is central to the colonial project; its defense reflects "the indispensability of terror as an instrument of imperial government" (Dyzenhaus 2009, 24).[17]

In the Philippine experience of colonialism after colonialism, violence was undeniably part of the colonial strategy. For example, there are continuities in the colonial approaches of Spain and the United States when it comes to the specific practices of torture (water cure) and reduccion/reconcentration. These, in addition to executions, massacres, segregation, and tutelage,[18] make an array of colonial practices that followed representations of the Filipinos as animals, blacks, and children in Spanish and American world expositions, newspapers, and popular culture. In these representations, children are taught, that blacks are enslaved and segregated, and animals are killed. For example, in the political cartoons that appeared in American newspapers and magazines during the 1898 US Congressional debates on the annexation of the Philippines, Filipino revolutionaries were pictured as animals, ordinary natives were represented as intractable black men, and the elites who were more amenable to US rule were shown as children (Ignacio et al. 2004). These representations corresponded with the American colonial policies of war, pacification, and Filipinization wherein revolutionaries were eliminated, ordinary natives were pacified, and Filipino elites were slowly allowed into the Insular Government that followed the military government, which was then transformed into the Philippine

[16]Emphasis mine. Dyzenhaus here explains WF Finlason's position.

[17]Dyzenhaus here quotes Kostal echoing Finlason.

[18]These are documented in numerous historical works (Constantino 1975; Agoncillo & Guerrero 1977; Ileto 2003).

Commonwealth.[19] Can we say that we are luckier than the indigenous Americans? It depends on our position within the Philippine social hierarchy. As Walter Benjamin asserted, the history of the oppressed shows us "that the 'state of emergency' in which we live is not the exception but the rule"—for the oppressed (Benjamin 2003, 392).

The different application of rules to different categories of Filipinos recalls the *two-rule (lawful and arbitrary) system* of the English and French empires; but here, the two-rule system was also implemented within the American colony as different rules applied to the American colonizers, Filipino elites, revolutionaries, and ordinary peoples. In the American heartland, the continued massacre of Native Americans, the segregation of the freed slaves, and the limitation of suffrage to propertied men point to multiple rules as well. Meanwhile, back in England, the precious rule of law—defended from the specter of martial law in the colonies and alive in the killed almost-white-but-not-quite Gordon—was in no danger at all; or rather, was in danger only insofar as the English elites identified with Gordon. For those who defended Governor Eyre, it was clear whom martial law was for.

There are obvious objections to the flow of this argumentation, primarily that these different countries have disparate experiences with martial law: (1) Martial law was imposed in the Philippines only once during the early part of the American colonization, although the puppet government declared it also during the Japanese occupation, and a "state of war" was imposed on the islands by the Spanish during

[19]This is a heuristic or exploratory simplification from the point of view of colonial practice, of course. Colonial control was not total: although dismissed as bandits and criminals, revolutionaries continued to fight American rule; the elite took advantage of American policies to further entrench their position while quarrelling over the extent of their collaboration; and amongst the ordinary Filipinos were the pacified and enraged both. (See cartographical representations of the period in Presidential Communications Development and Strategic Planning Office 2016; see also Cullinane 2003).

the 1896 Philippine revolution.[20] (2) Abraham Lincoln proclaimed the most notable martial law in the US during the American Civil War that sought, among other things, to end slavery.[21] However, this was followed by other rulings that negated the requirements and checks on martial law that the court envisioned (Neocleous 2007a). And, (3) martial law was never declared in the United Kingdom.

The third objection needs no answer, although we can find theoretical and historical research that affirms the application of the two-rule system and that asserts the actual imposition of martial law—as the Defense of the Realm Act deployed in Ireland and later as the more common emergency powers—within the United Kingdom (Neocleous 2000, 2007b). Meanwhile, martial law was declared a total of 68 times in the United States (Nunn 2020b), 40 declarations, or 58.8 percent of which were deployed to quell labor disputes, riots, and civil unrest (Nunn 2020a). In the present, the Black Lives Matter movement bears witness to the continued double standard and systematic racism against Black Americans despite supposed spectacular improvement in their lives after their emancipation from slavery and then from segregation a century later (Kendi 2017).

The first objection is the whole point of the lengthy treatment of martial law cases that have no direct bearing on our own experience of Marcos Martial Law, but the intention is to provide the basis for an assertion that is relevant to our case: *Martial law is the law of colonialism*

[20]After Andres Bonifacio and the Katipunan started the 1896 revolution, the Spanish colonial government declared a "state of war" wherein the "Code of Military Justice" prevailed. (See the English translation of the declaration in Arcella 2002).

[21]Marcos also deployed Lincoln's martial law as rationalization to his own: "[D]uring the American civil war in 1860 (sic), President Lincoln assumed the powers of martial law without the approval of the American Congress… He even went to the extent of refusing to comply with the order of the American Supreme Court… thereby compelling the American Justice to admit that the Supreme Court of the United States was confronted by a superior authority" (Marcos 1978, 317). This was of course a misrepresentation as the US Supreme Court limited the scope of Lincoln's martial law in *Ex parte Milligan*. Nevertheless, it gives us that strange footage of Imelda Marcos lecturing about Lincoln when asked about Martial Law in the documentary *Batas Militar.*

and manifested as a two-rule system of terror and brutality for its target colonized subjects.[22] *As such, every declaration of martial rule in the post-colonial is a summoning of this same two-rule logic and repertoire of terror techniques developed during colonialism.*

Thus, at the beginning of the American occupation and enabled by General MacArthur's declaration of martial rule under General Orders 100 on December 19-20,1900,[23] then provost marshal of Manila and General James Franklin Bell, described the measures to end the activities of the population that supported the Philippine revolutionary forces as designed, "without altogether ignoring the dictates of justice and without transgressing the …self-restraints imposed by civilization with operations of *war*…, to create *a reign of fear and anxiety* among the disaffected *which will become unbearable*, in the hope that they will be thereby brought to their senses and accept the reasonable assurances which have been given them to escape from the effect of such blight."[24] What this "reign of fear" entailed in practice was also detailed by Bell when he pacified the restive Southern Luzon after having earlier pacified the Ilocos region: "Every barrio in Batangas and Laguna will be burned, if necessary, and all the people concentrated in towns…no one will be permitted to be neutral." Further, "The towns of Tiaong, Dolores, and Candelaria will probably be destroyed unless the insurgents…are destroyed" (Ileto 2017, 85). This was, of course, an exemplar reconcentration campaign wherein, according to Reynaldo Ileto, relocation areas were more *concentration camps* than "protected zones" (p.94). Meanwhile, those outside were deemed rebels or seen as their supporters and were therefore enemies that must be annihilated. Thus, Bell's doublespeak of justice and civilizational self-restraint, like the euphemized "protected zones," betrays a doubled rule: Believing

[22]Mark Neocleous asserts that before the colonial expansions of the 19th century, "martial law" meant the rules that apply to the military. Colonialism was the field unto which martial law gained its new meaning as wars of colonization were conducted by the military, which eventually constituted and led the new colonial government (Neocleous 2007a, 492).

[23]A copy of the general order is attached as appendix in Ramsey 2007, 135-157.

[24]Emphasis mine. Quoted in Diokno (2011, 93).

that the intractable common people will follow the orders of their elite leaders,[25] Bell asserted "the principales are the ones we need to influence…[W]e must make the *principale* the object of our especial study and effort" (Ileto, 90). Initially interned within the zones, they were expected to emerge from the ordeal "properly constituted into leading citizens of the new colonial era, their local faction made to feed into the emerging electoral process" (p.93).

Ultimately then, the point here is to demonstrate connections between the terms that define martial law: *exception* or *emergency*, the *doubled rule of law/arbitrary power*, and *violence/terror*. Again, the aim is to show that *every declaration of martial rule in the post-colonial is a summoning of the two-rule logic and repertoire of terror techniques developed during colonialism*.

The specter of colonialism is summoned in every post-colonial declaration of martial law

Are violence and terror the exclusive means of martial law and colonialism? We can say, albeit without the necessary theoretical support here, that the specter of the absolute European monarch is summoned in every declaration of martial rule or state emergency in European countries. We can say, with more confidence and support from the previous discussions, that the specter of colonialism is summoned in every post-colonial declaration of martial law in the Philippines and other colonized countries. This means that the violence and terror of martial rule are exclusively that of martial law and colonialism. And not of these domains but subject to them, other violence and terror are either ordinary crimes that are subject to normal law or emergencies (resistance, subversion, etc.) that are subject to martial law.

What is the difference between martial rule, colonialism, and other types of repressive regimes like absolute monarchy or other forms of autocracy? Absolute monarchies and other forms of autocracy do not need to declare martial law. This is because their rule is always

[25] "The common *hombre* is dominated body and soul by his master, the *principale*." (Quoted in Ileto 2017, 90).

arbitrary. When they do summon the powers related to their prerogative, they are not burdened with questions of legality. Meanwhile, martial law assumes a situation of normality, typically that of the normal rule of law, that it can then suspend or where it can derogate rights that are protected by law. These rules of law and rights are not present in absolute monarchies and other autocracies. Meanwhile, in 19th-century colonialisms like that of the United States, colonizers see themselves as liberal and/or democrats. This presents a situation wherein martial law and/or state of emergency need to be justified and arbitrary rule rationalized as applied to colonized peoples. This is clear in the debate prompted by the 1865 Jamaican case and in de Tocqueville's defense of martial rule as applied to Arabs and Muslims in Algeria. In other words, martial law requires the prior existence of a rule of law. This is the reason why Marcos Sr. can brazenly label the 1972 martial law as democratic self-defense. Indeed, when temporary, it can bring back the normality of law. What he failed to mention is that his version of martial law was aimed at bringing democracy to an end—in reality, it was democratic self-annihilation.

This brings us back to Robles's second story of "the woman who vanished into the night" in the introduction of her book. In the evening of March 24, 1983, the house of a German Protestant pastor was raided by the military in search of weapons and subversive documents. More than two dozen armed men, many wearing "bandoliers of ammunition crossed over their bare chests," herded those about to sleep and the sleeping, took a picture of one pointing to a red-covered dictionary, blindfolded and handcuffed, and dragged them "stumbling into the black night." Among the four who were "seized without warrant or evidence or witnesses" was Hilda Narciso, a teacher, and Basic Christian Communities organizer who was a guest of the pastor. Inside the military vehicle, she was interrogated while "rough hands [ran] all over her body." Unable to see and move, Hilda focused her attention on her interrogator who accused her of being a communist. "[Y]ou were sent here as finance officer of the Communist Party," he declared. "Just say so because if you are not going to cooperate with us, the ocean is just very close to this road. We'll just throw you there. We can kill you" (Robles 2016, 5).

"*We can do anything we want*" (p.5).[26]

An officer in the military safe house raped Hilda. After she was brought out of the room, other soldiers forced her down on the floor and raped her again and again. Hilda details her ordeal with the force of the present: "[T]here are different penises inserted in my mouth. Some are mashing my breast. Some are fingering my vagina. Some are laughing" (Robles 2016, 6).

Hilda was freed after six months, on Marcos's birthday. She was 70 years old during her interview.

This story must be significant for us for many reasons, but this story's significance here rests on three details: it displays the characteristic violence/terror inflicted by the state and enforced specifically on citizens seen as enemies of the state. It demonstrates the capacity of what appears to be state exceptional power to take Hilda out of the realm of normal law and into its sinister double, which is just a ride away. And it happened in 1983 after Marcos Martial Law was formally ended in 1981.[27]

Thus, there was martial law before and after the 1972 martial law. There were colonialisms and there were declarations by Arroyo and Duterte after. There are continued declarations of emergencies all over the formerly colonized world. All these are evocations of the logic and techniques of colonialism.

And thus, martial law is not just Marcos Sr.'s but also Arroyo's and Duterte's, also Anglo-American, French, and European colonialisms'—stained with an inequitable history, a depraved logic, and a repertoire of brutality.

[26]Emphasis mine.

[27]Carlo Carag argues that even after the lifting of martial law, "constitutional authoritarianism" prevailed as it was institutionalized in the 1973 Constitution. The President's continued power to legislate, the retention of military safeguards, continued strike ban, etc., show that "there will be no substantial change." The only consolation was the possibility of "suits against abusive officials of the martial law regime." Carag, 1981, pp.449-463).

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