

Agamben on the Normalcy of *Anomie*: The Post-Marcos Dictatorship

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Abstract

In a democratic state, the rule of law prevails over the rule of man. The preponderance of the law means that no one is above it and the law is the legitimate basis for exercising power. The state of exception is however an anomic space that paves the way for the Sovereign in this case the executive to decide on his own discretion on how to restore the normal situation. In this case, the law is suspended and power is concentrated now on a single person. The paper which draws upon the thoughts of Giorgio Agamben asserts that the exception has become the paradigm that democratic states employ even during the absence of emergency. This manifests on the executive encroachment over the powers of legislative and judiciary that dismantle the separation of powers. Executive rule has become the norm for democracy. To give flesh to Agamben's contention, the paper would zoom in the history of the Philippines to show how democracy in the country throughout the years has been simply diluted by executive dictatorship.

Keywords: Agamben, Anomie, Post-Marcos, Democracy

Introduction

The rule of law is the hallmark of every democratic state. The law ideally safeguards the liberty and rights of the citizens to ensure fairness and equality, and it ensures that government authorities would exercise their power legitimately. This is what delineates democratic states from totalitarian regimes where power is only concentrated on a single person who becomes the law himself.

The state of exception, however, shows that there are times in which the rule of law is suspended and power shifts eventually to a single person, the president. The suspension is declared when an imminent danger instigated by sedition or rebellion threatens the stability and order of the state. The law is silent in the midst of an escalating insurgence and does not provide the concrete and necessary steps on how to restore normalcy. In this case, the president takes over and is given the power and duty to do what it takes the save the state from anarchy. However, once the normal state of affairs is restored, the original separation of powers is again upheld, and the constitution becomes again the basis of the executive for exercising its power and for fulfilling its mandate.

Drawing upon the Italian philosopher Giorgio Agamben, the paper asserts that democracy which is founded on the rule of law is also founded on anomie or lawlessness which shows in the executive's proclivity to usurp power over the legislature and judiciary even when there is no emergency. The paper argues that the Philippines shares the same predicament even when it claims to be a democratic country.

The paper is structured into three parts: the first part will discuss the crucial link between law and exception. It will draw out thoughts from Carl Schmitt a German Jurist which Agamben criticized to assert the permanency of the state of exception. The second part will discuss on Agamben's idea on the anomic character of exception and the anomie that

characterized contemporary democracy. The discussion includes a brief historical justification of this phenomenon. The third part will trace how the paradigm of the state of exception is invoked by the Philippine presidents throughout the years even after toppling the Marcos dictatorship which attests to the fact that democracy in the Philippines has not totally broken the fetters of dictatorship it once vehemently fought. The paradigm still reigns.

Legality and Exception

In *Legality and Legitimacy*, Schmitt asserts that in a parliamentary system, laws are norms enacted by a legislative body. Laws are not simply ordinary orders or measures that regulate the conduct or the behaviour of people since laws are binding and tied with the state's mechanisms of deterrence and punishment. Laws then for Schmitt must be distinguished from other norms in society that are not a product of legislation such as etiquette, orders, measures and the observance of custom prevailing within a particular society.¹ Customs after all for instance vary from culture to culture, and each country has a way of integrating the custom into the life of the community without it having deliberated in the legislative body for approval. It is already implicit in the practices of the community though some of them may already be codified and reflected in the laws of that country itself. Same can be said about etiquette which prescribes norms for what is socially acceptable and unacceptable. A violation of good manners such as not saying thank you when receiving a favour does not constitute a legal liability and so sets it apart from legal norms.

For Schmitt, the parliament which in most European countries is the legislative body that craft laws does its function in the name of the collective will of the people it

¹Kirk Wetters, "The Rule of Norm and the Political Theology of Real Life in Carl Schmitt and Giorgio Agamben", in *Diacritics*, vol. 36, nos. 1 2 (2006), 31.

embodies. The parliament in this regard is not to be seen as the rule of the people that composed them since by virtue of its function and the people it represents, it is the valid norms or laws that have been established that would ultimately guide them and to which state officials must eventually conform². As Schmitt says,

The rule of law prevails rather than the rule by men, authorities or superiors. And even more precisely: The laws do not rule, but are only valid as norms. Domination and sheer power do not exist at all anymore. Whoever exercises power and domination acts based on law or in the name of law. He does nothing but enforce a valid norm in accordance with his own responsibilities.³

In this regard, the constitution which is the supreme law of the state and which provides the basis for legitimate exercise of power is vital for the healthy functioning of democracy in a society. To guarantee the observance of the rule of law, the separation of powers is established. The three branches of government—the executive, legislative and judiciary—fulfill the function of upholding the laws of the land. The executive executes the laws which the legislatures have crafted and deliberated which in turn is interpreted by the judiciary. The three branches of government provide the checks and balance to ensure that no one holds the monopoly of power.

Kirk Wetters points out that in both Schmitt's works on *Legality and Legitimacy* and *Political Theology*, Schmitt, however, recognizes that during emergencies and

² Carl Schmitt, *Legality and Legitimacy*. Trans. Jeffrey Setzer and John McCormick. Durham. (N.C.: Duke University Press, 2004), 13.

³ *Ibid.*, 8.

exceptional cases the laws or norms are silent and in themselves could not address the situation.⁴ The inability of the legal and constitutional system during exceptional cases where there is imminent danger brought about by rebellion or sedition requires an extra legal measure to pacify the situation. This means that the laws as norms are suspended, and the power shifts now from the constitution to the person who is going to the restore the situation, the sovereign. The sovereign who is under the laws are now in charge through extra-legal means to restore the situation and so the laws and the legal and the constitutional system could operate once again.⁵ This is an explicit recognition that “there is no rule that is applicable to chaos. Order must be established for juridical order to make sense.”⁶ The Sovereign steps outside the law in order to guarantee its normal function.

In the state of emergency, two manifestations of power of the sovereign are at play: the power to suspend the law and the power to determine the time for suspension. In the first instance, the power of the sovereign to suspend the law during emergency and exceptional cases gives him the discretion to do whatever it takes to restore the normal situation. For instance in the suspension of the *Writ of Amparo*, the sovereign suspends the normal Bill of Rights of a person specified under the constitution to the point that a person can be arrested even if his guilt or innocence is not

⁴ Wetters, 2006, 31.

⁵ Citing Link, Wetter says that Schmitt’s view could be described as ‘protonormative’ since normality could only be derived from normativity or the legal-prescriptive sphere and hence, during cases (state of emergency) when legal norms do not apply, it gives way for exemption. ‘It undermines the legitimacy of prevailing norms.’ See Kirk Wetters, “The Rule of Norm and the Political Theology of Real Life in Carl Schmitt and Giorgio Agamben”, in *Diacritics*, vol. 36, nos. 1 2 (2006), 31-46.

⁶ Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. (Stanford, CA: Stanford University Press, 1998), 16.

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established. The due process which is the normal procedure given to the person before he is convicted is suspended, and so even an innocent person here can be incarcerated. The sovereign also has the power in the first place to determine that a suspension is needed. Although the constitution specifies certain criteria for declaring a suspension such as imminent danger, the thing is imminent danger is sometimes hard to determine, and ultimately it rests on the power of the sovereign to declare it.

For Schmitt, the emergency is an exception that must be lifted when the threat is gone. He points out that under the parliamentary system there is a danger of extending the emergency for it would mean dictatorship, and as Schmitt consistently asserts that it is the rule of law and not of persons that should prevail.

Although Schmitt eventually criticized legality as the sole basis for legitimacy in liberal democratic states, he affirms that in the case of exception, law still holds the power even after it is suspended.⁷ The sovereign upon the declaration of the state of emergency is outside the juridical order but nevertheless belongs to it since he is the one who makes the decision. For Schmitt, the topographical structure of the state of exception is characterized by exclusion on the basis of suspension of law and inclusion by virtue of the decision of the sovereign.⁸

Agamben on the Normalcy of Exception

The Italian philosopher Giorgio Agamben criticised Schmitt's stance that the state of exception is still governed

⁷ Schmitt, 2004, 9.

⁸ Giorgio Agamben. The State of Exception - Der Ausnahmezustand. Lecture at European Graduate School, 2003, 3. Transcription by: Anton Pulvirenti. (<http://www.egs.edu/faculty/giorgio-agamben/articles/the-state-of-exception/#>).

by the juridical order even after the suspension of law. Agamben argues that it is paradoxical to say that the sovereign is simultaneously outside and inside the juridical order for when the sovereign suspends the law, the sovereign is neither outside nor inside the juridical order. The suspension enters the zone of anomie or lawlessness since it is already outside the juridical order.⁹ What is referred to by Schmitt as force of law upon the declaration of emergency is not law but acts of the sovereign, the executive.¹⁰ It is executive power or rule and no longer the law. The law enters into complete anomie upon the declaration of suspension. Agamben argues that the force of law has no force, and it is executive rule that dominates upon the suspension.

However, the important theoretical point that Agamben wants to assert here is the permanency of exception. Agamben contends that although Schmitt is right in pointing out that the state of exception is justified whenever there is a grave threat to national security and order, Schmitt was not able to see the 'normalization' of the state of exception. For Schmitt, the state of exception is temporary while the normal state of affairs is not restored. But Agamben following Walter Benjamin's 'Theses on the Philosophy of History', boldly asserts that this time the 'state of emergency has become the rule.'¹¹ He argues that the state of exception has become normal: the zone of

⁹ Agamben, Giorgio. The State of Exception - Der Ausnahmezustand. Lecture at European Graduate School, 2003, 3. Transcription by: Anton Pulvirenti. (<http://www.egs.edu/faculty/giorgio-agamben/articles/the-state-of-exception/#>).

¹⁰ This is reminiscent of what Hobbes argues in the *Leviathan*: the need to secure peace requires an absolute and undivided power. The sovereign must have all discretionary powers so he could immediately act to restore peace and maintain it. See Thomas Hobbes, *Leviathan*. Ed. C.B Macpherson. (New York: Penguin, 1968).

¹¹ Agamben 1998, 9.

emergency and the zone of normality collapse to the point that they have become identified with one another.¹²

In his work the *State of Exception*, Agamben cites the history of notable countries such as France, Switzerland and the United States of America to show this very phenomenon. Agamben argues that when President Poincare for instance issued a decree on August 2, 1914 holding Paris under a state of siege, the activity of the parliament was suspended for 6 months, and although the parliament resumed its normal function on January 1915, many of the laws passed after the resumption simply reinforces again the power of the executive over the legislative.¹³ This can be seen in the law granting the Poincare government the absolute power to regulate production and food supply. The same thing happened again according to him on January 1924 when the stability of the Franc was threatened, the Poincare government asked again for full powers to address financial matters, and it was granted the power with 4 month limit to address the problem despite the objection that it violated the power of the parliament, and thereby violated the separation of powers.¹⁴ The delegation of legislative power in France did not end, however, with the Poincare government. The Laval government again met strong resistance from the left side led by Leon Blum for issuing 500 decrees which have the status of law to devalue the Franc. The paradox according to Agamben is that when the left catapulted into power, they asked again for the same measures, the same power, to establish control and impose new taxes.¹⁵ The delegation of power to the executive which happens during the state of exception has become the

¹² Giorgio Agamben, *State of Exception*. Trans. Kevin Attell. (Chicago: University of Chicago, 2005), 12.

¹³ *Ibid.*, 12.

¹⁴ *Ibid.*, 13.

¹⁵ Agamben, 2005, 12.

paradigm that both the left and the right wing have accepted.¹⁶

In Switzerland, a non-aligned nation, the Swiss Federal Assembly on August 3, 1914 granted power to the executive to take measures to ensure the security of the country and to ensure its neutrality in the midst of the World Wars. According to Agamben, the case of Switzerland is interesting since the Swiss jurists defended the citizens' objection that the delegation of powers was unconstitutional by asserting that the delegation is rooted itself in the Article 2 of the constitution, which says, "the aim of the confederation is to ensure the independence of the fatherland against the foreigners and to maintain internal tranquility and order."¹⁷ For Agamben, the exception here was justified not on the basis of the emergency itself but on the provision of the constitution which affirms and safeguards it. This shows for Agamben that the exception can be justified by interpreting some provisions of the constitution or by filling the lacunae within it.

Agamben goes on to mention the cases the United States of America and Italy on how exception was extended after the state of war and anarchy. During the World War I, President Woodrow Wilson of the United States of America, granted the president complete control of the country to address the war and include declarations such as proscribing disloyal acts of fraternizing with the enemies and throwing invectives to the government. In 1933, President Theodore Roosevelt employed again the paradigm of exception and acted like a commander in the battle to address the Great Depression in which major economies of the world faced economic recession. According to Agamben, the power was extended to address the outbreak or emergence of World War II. The Bush Administration's declaration of waging war against the

¹⁶ Ibid.

¹⁷ Agamben 2005, 22.

terrorists in the aftermath of the September 11 terrorist attack shows again in the contemporary period the use of exception as a paradigm in the US.

The appeal to the state of emergency in Europe and in the United States during the war and its aftermath reveal for Agamben the normalcy of exception. Schmitt's position that the sovereign takes the power from the legislative is only meant to restore the normal order is for Agamben no longer the case because at the present democratic countries in Europe in Northern America and beyond have witnessed the same practice of the executive encroaching on the powers of the legislative and the judiciary to the point that the essential separation of powers have already collapsed. It shows that the theory of the state of exception in which the sovereign assumes power over legislative and judiciary is not just a practice common to outlaw states where a despot rules and who is also the law. In Italy for instance, Agamben observes that after the sieges that happened in Sicily and other provinces and even today, it has become an executive rather than a parliamentary.¹⁸

The delegation of power to the executive is commonly exercised by totalitarian regimes and democratic states. The "antagonistic and functionally connected elements: the norms of law and the lawless or anomic state of exception have been blurred."¹⁹ This is the malady that inflicts contemporary democracy. The president whose function normally does not have the force of law is acting as the law himself that eventually circumvents the constitution to which he is supposed to anchor his action and decision. The anomic character of executive rule puts democracy under fire and it challenges the ideals that democracy upholds.

¹⁸ Ibid., 18.

¹⁹ Ibid., 86.

The Philippines's Experience of Executive Encroachment

The country has its share in the normalization of the state of exception. President Marcos held the country under Martial law on September 21, 1972 under the Proclamation no. 1081. The Martial Law purportedly was to deter the mounting insurgence from several groups: activists, CPP-NPA, MNLF who threatened to topple down the Marcos regime. President Marcos used his emergency powers and became the law himself to deter the uprising. The Martial Law eventually led to grave abuses of human rights, plunder, granting his cronies monopoly, and the incarceration people who opposed his dictatorial regime. This devastated the Philippine economy and trampled down its democracy.

Propitiously, the dawn of hope for the country longing for liberation emerged with the success of People Power I. When President Corazon Aquino, the widow of the late Benigno Aquino Sr., assumed power in the palace, the country asserts that never again will dictatorship reign. The painful lessons of the Martial Law had a long lasting effect on people's consciousness especially on the victims of sheer persecution and unjust incarceration.

Nonetheless, President Corazon Aquino who gave an order to draft what is now the 1987 constitution to correct the abuses of the Marcos regime was paradoxically still an heir to the dictatorship. Although Cory was able to restore democracy, she was accused of violating the constitution for nepotism and for instituting a brand of democracy that revolved around an elite circle that includes businessmen and landlords.²⁰ Prof. Rocamora points out that President Corazon Aquino who was also an illustrious and landed Cojuangco "could not transcend her class interest" and it turned out that she helped lay the breeding ground for the

²⁰ Joel Rocamora, "Discontent in the Philippines," in *World Policy Journal*, vol. 8, no. 4, 657 (1991).

corrupt oligarchs.²¹ President Corazon Aquino's elite circle who cared only to protect their business interests foiled the enactment of agrarian reform law. Consequently, the farmers were left fuming over the government's lack of response to the problem. It turned out that the Corazon Aquino presidency created another form of dictatorship one that is elitist; a subtle dictatorship but nonetheless continues to bedevil Philippines's weak democracy.

President Fidel V. Ramos, who assumed power after the end of President Aquino's term, and who was at the forefront of toppling down the Marcos regime, showed the same malady of executive dictatorship. In 1997, President Ramos under the dubious People's Initiative for Reform Modernization and Action (PIRMA) pushed for Charter change via a signature campaign or people's initiative. PIRMA which gained 4 million signatures aims to lift the term extension of the president Ramos which would extend president's term from six years onwards.²² The Supreme Court declared that PIRMA has no legal justification; Ramos, however, pursued the plan by convening congress as a constitutional assembly and by asserting that although second term would not be possible, a two year extension would be enough.²³ The irony came when the personalities who worked to topple the Marcos dictatorship namely Corazon Aquino, Cardinal Sin and Fidel Ramos himself, Cory Aquino and Cardinal Sin now have joined hands again in a big prayer rally to stop Ramos's plan of running for the second term. The rally to deter Ramos's plot of extending his term

²¹ Ibid., 658.

²² Alastair Dingwall, Charter Change; Ramos and Aquino, in *Rappler*, August 15, 2014. <http://www.rappler.com/thought-leaders/66269-charter-change-ramos-aquino>. (Accessed August 19, 2014).

²³ Alastair Dingwall, Charter Change; Ramos and Aquino, in *Rappler*, August 15, 2014. <http://www.rappler.com/thought-leaders/66269-charter-change-ramos-aquino>. (Accessed August 19, 2014).

was symbolic for it was done on September 21, 1997, the commemoration of the declaration of Martial Law.

President Ramos's plan failed, and he was succeeded by President Joseph Estrada whose presidency is marred by corruption that eventually ended his presidency. One of the controversies surrounding Estrada's presidency was his declaration of the dreaded martial law when he launched an all-out war against the Moro Islamic Liberation Front (MILF). The declaration was heavily criticized and eventually the declaration was lifted that restored the normal situation in the conflict-ridden region. President Estrada's display of power did not end with the martial law. Indeed even when the war already ended and he is not already acting as the commander in chief in the battle, President Estrada still showed his power and grave abuse of discretion.

This became evident on November 2000 when President Estrada issued two controversial Executive Orders EO 312 and EO 313 which deal on the privatization of coconut levy funds. EO 312 and 313 intend to create coconut industry fund to supplement the income of farmers, and the fund will be taken from Government's 27 per cent share in the San Miguel Corp stock to help boost the farming industry.²⁴ However, lawyer Mario Ongkingko who represented the farmers appealed to the Supreme Court to invalidate the EOS since the funds that are taken to support the farmers, the Sagip Niyugan program are public funds. The petitioner argues,

EOs were unconstitutional because they impinged on the COA's power to audit and examine funds held in trust by the government; the control, management and disposition of

²⁴ Philip Tubeza, "SC Voids 2 Estrada's EOS to Use Coco Levy Funds" in *The Philippine Daily Inquirer*. April 21, 2012. (<http://newsinfo.inquirer.net/180051/sc-voids-2-estradas-eos-to-use-coco-levy-funds>). (Accessed August 28, 2014)

public funds were now in the hands of the private sector; the utilization and disposition of the coco levy funds were beyond the mandated purposes and encroached on the legislative powers of Congress; and since the ownership issue of the levy funds was not yet settled, the EOs were a usurpation of judicial authority.²⁵

The SC just favored the petition of the farmers asserting that the coconut levy funds are “prima facie funds”, and President Estrada has usurped the power of the legislature to allocate public funds.²⁶ The SC also reaffirms the decision of Sandiganbayan which Estrada encroached that the 27 percent share of SMC is owned by the government and should be entrusted to the care of the farmers.

President Gloria Macapagal-Arroyo was catapulted to power after the impeachment of President Estrada. With the same tone, on February 24, 2006 which coincided with the celebration of the 20th Anniversary of the EDSA People Power I, President Arroyo issued PP 1017 declaring a state of emergency.

Now, therefore, I, Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Commander-in-Chief of the Armed Forces of the Philippines, by virtue of the powers vested upon me by Section 18, Article 7 of the Philippine Constitution which states that: “The President . . . whenever it becomes necessary, . . . may call out (the) armed forces to prevent or suppress . . . rebellion. . .,” and in my capacity as their Commander-in-Chief, do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or

²⁵ Ibid

²⁶ Ibid

suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction; and as provided in Section 17, Article 12 of the Constitution do hereby declare a State of National Emergency.²⁷

President Arroyo simply justified the above declaration by citing the alleged tactical alliance among their political opposition, the NDF-CPP-NPA, and the military coup de tat group to topple down her administration.²⁸ The grave threat and systematic conspiracy made her to declare the emergency. But on March 3, 2006, exactly one week after the declaration of a state of national emergency and when the President had already lifted PP 1017, petitioners Randolph S. David, et al. assailed PP 1017 on the grounds that “(1) it encroaches on the emergency powers of Congress; (2) it is a subterfuge to avoid the constitutional requirements for the imposition of martial law; and (3) it violates the constitutional guarantees of freedom of the press, of speech and of assembly.”²⁹ In G.R. No. 171483, petitioners KMU, NAFLU-KMU, and their members assert that PP 1017 and G.O. No. 5 “are unconstitutional because (1) they arrogate unto President Arroyo the power to enact laws and decrees; (2) their issuance was without factual basis.”³⁰ And in G.R. No. 171489, another petitioners Jose Anselmo I. Cadiz et al argue that PP 1017 “goes beyond the nature and function of a

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(<http://sc.judiciary.gov.ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm>.)

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(<http://sc.judiciary.gov.ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm>.)

²⁹ Ibid.

³⁰ Ibid.

proclamation as defined under the Revised Administrative Code.”³¹

Indeed, the Supreme Court rules that PP 1017 is unconstitutional insofar as it grants President Arroyo “the authority to promulgate “decrees” that eventually undermined the power of the legislature.³² The Supreme Court cites Section 1, Article VI which categorically states that “[t]he legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives.”³³ The Court asserts that “neither Martial Law nor a state of rebellion nor a state of emergency can justify President Arroyo’s exercise of legislative power by issuing decrees.”³⁴

The Arroyo presidency was marred by multiple charges of graft and corruption and violations of the Constitution. The corruption charges and allegations cascaded to her cabinets and allies who teamed up together to create a culture of corruption and immunity. As to the violation of the Constitution, what stood out was President Arroyo’s appointment of Chief Justice Renato Corona as the new head of the Supreme Court before she left the office. Many criticized Arroyo for the Constitution prohibits midnight appointments especially at the end of the president’s term. One of the renowned framers of the 1987 Constitution, Fr. Joaquin Bernas, S.J. asserts that the executive privilege and midnight appointments “make the independence of the supreme court suspect.”³⁵ Fr Bernas notes that in 1986 Commissioner ‘Soc’ Rodrigo fought bravely to remove from the president the appointing power

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Joaquin, Bernas. *A Living Constitution: Constitutional Issues Arising During the Troubled Gloria Arroyo Presidency Part II*. (Quezon City: Jesuit Communications Inc, 2010), 291.

and restore the role of Commission on Appointments “for the appointment of justices of the Supreme Court and the Court of Appeals” arguing that the practice of presidential appointment started from President Marcos where he appointed all the justices of the Supreme Court and should already be abolished, but as Fr. Bernas plaintively writes, Commissioner Rodrigo’s “proposal lost, 8-26.”³⁶ Paradoxically, the framers of the Constitution were still nostalgic of the Marcos dictatorship until now the same paradigm is at place. President Arroyo used the same appointing prerogative allegedly to help her shield from the anticipated voluminous cases that would be filed against her one she steps down from the presidency.

President Benigno Simeon Aquino III who assumed power after PGMA’s term was a fierce critic of the former president though resembles her in some ways. Although he is resolute in his campaign to dismantle the systemic corruption in the government, President Aquino is notorious for encroaching the powers of the legislature and judiciary. In fact, President Aquino started the campaign by using his power and his political machineries to topple down Chief Justice Corona who is seen to occlude his campaign for integrity and transparency. Aquino allegedly used the Pork Barrel to convince congress and senate to vote for the impeachment of Corona. Aquino mobilized even his Cabinets to testify in the senate trial, all for the same goal of removing Corona from office, which he is successful.

President Aquino’s history of violating the Constitution by arrogating power unto himself includes the renowned case of the Development Acceleration Program (DAP). President Aquino at his behest order the massive transfer of funds from various sources to the Disbursement Acceleration Program, which the President created in 2011 “without the knowledge and consent of Congress, and the full details of

³⁶ Ibid., 261- 262.

which he has consistently refused or failed to disclose.”³⁷ Aquino has committed a grave abuse of discretion with regard to DAP as Section 25 (5), Article VI of the Constitution provides:

No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.³⁸

The Supreme Court eventually dignified the petitions that the DAP is unconstitutional. The SC argues that DAP “violates the principles of checks and balances and the separation of powers that the 1987 Constitution integrates into the budgetary process; and the DAP violates the constitutional prohibitions against the transfer of appropriations and against the transfer of funds from one branch of the government to another, both under Section 25(5) of Article VI of the Constitution.”³⁹

The restive Aquino, however, went on to attack the Supreme Court in many of his speeches for deciding against the constitutionality of the DAP. The attack has political

³⁷ Kit Tatad, ‘Impeach Aquino Now!’ in *Manila Standard Today*.

(<http://manilastandardtoday.com/mobile/2014/04/21/exclusive-105/>). (Accessed August 27, 2014)

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(sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_brion)

overtones for Aquino appointed the new Chief Justice Maria Lourdes Sereno with the hope that the SC will be an ally for good governance. With two years left in the office, Aquino seems not to wane in his battle against the two equal branches of government should they not cooperate on what he thinks personally is right and just for the nation.

The history of the nation after the post dictatorial era shows that Marcos's head has not totally been cut off. The tendency of the executive to usurp powers over the two equal and separate branches of government show that even in the Philippines, the normalcy of the exception is at work, democracy remains a dream for the Filipino people.

Conclusion

Democracy thrives under the rule of law. Legality serves as the canon for a legitimate exercise of powers for government authorities who have the mandate to protect its citizens and to ensure the overall welfare of the state. The separation of powers exists precisely to ensure that the constitution is upheld and no single person or branch of government holds the monopoly of power. This is what separates dictatorship from democracy.

The state of exception which is invoked during cases in which the state faces an imminent danger that seriously threaten the stability of the state shows the limitation of the law as a basis for democratic exercise of power. The paper has argued following the ruminations of Giorgio Agamben that the state of exception is a suspension of the whole juridical order and so exception is characterized by anomie or lawlessness since it is under the self-governing rule of the sovereign which in this case is the executive. Contrary to Schmitt's position that the exception is still an exercise of the law, Agamben argued that it is outside the law.

However, the very bone of contention here is whether exception is permanent or transient. The paper following

Agamben has asserted that exception has become the rule. It has become a paradigm in contemporary democracy. This means that the exception is no longer confined to emergency cases such as sedition or serious shortage of basic necessities, it is now the basis for exercising power. For Agamben, the optimism to go back to the original state of affairs fail and it is no longer possible to restore the normal order where law is always the supreme basis for the legitimate exercise of authority. It is now the sovereign, the executive that reigns in contemporary democracy which is evident in the sovereign's encroachment of powers over the legislative and judiciary. This may appear to be an exaggeration but the history of democratic states across the globe show how democracy at present is diluted by the executive who arrogates power for himself; an executive dictatorship that has become the norm.

The Philippines is a prime example. Even after the success of People Power I which toppled down the Marcos dictatorship, the country has not 'cut off the head of the king.' From President Corazon Aquino up to her son, the country has not genuinely progressed. They still showed the same breed of tyranny. They fought for democracy only to subvert it is evident in the current administration's obstinacy to insist its agenda even when it encroaches the power of the judiciary. The president's explicit gestures of attacking the Supreme Court show that ultimately it is the president who is powerful and he wields power over the judiciary and the legislative, many of whom are his allies. The normalcy of exception in the Philippines certainly would not end with the Aquino presidency, succeeding presidents will always find the way to assert its power for the executive is no doubt powerful. Anomie which comes during the state of emergency is no longer restricted to it. It has become as Agamben would put it the paradigm.

References

- Agamben, Giorgio. Introductory Note on the Concept of Democracy in 'Democracy in What State?' Trans. William McCuaig. New York: Columbia University Press, 2011.
- _____. *State of Exception*. Trans. Kevin Attell. Chicago: University of Chicago, 2005.
- _____. *The State of Exception - Der Ausnahmezustand*. Lecture at European Graduate School, 2003. Transcription by: Anton Pulvirenti. (<http://www.egs.edu/faculty/giorgio-agamben/articles/the-state-of-exception/#>).
- _____. *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford, CA: Stanford University Press, 1998.
- Dingwall, Alastair, 'Charter Change; Ramos and Aquino,' in *Rappler*. August 15, 2014. <http://www.rappler.com/thought-leaders/66269-charter-change-ramos-aquino>. (Accessed August 27, 2014).
- Bernas, Joaquin. *A Living Constitution: Constitutional Issues Arising During The Troubled Gloria Arroyo Presidency Part II*. Quezon City: Jesuit Communications Foundation, Inc, 2010.
- Downey, Anthony. 'Zones of Indistinction Giorgio Agamben's 'Bare Life' and the Politics of Aesthetics,' in *Routledge*, vol. 23, no. 2 (2009): 109-125.
- Fabbri, Lorenzo. 'Chronotologies of the Exception: Agamben and Derrida Before the Camps,' in *Diacritics*, vol. 39, no. 3 (2009): 77-90, 92-95.

- Feldman, Leonard. 'Judging Necessity: Democracy and Extra-Legalism,' *Political Theory*, vol. 36, no. 4 (2008):550-577.
- Lee, Charles. 'Bare Life, Interstices, and Third Space Citizenship,' in *Women's Studies Quarterly*, vol. 38, no. 1-2 (2010): 57-76.
- Macey, Jonathan. 'Executive Branch Usurpation of Power: Corporations and Capital Markets,' *Yale Law Journal*, vol. 115, no. 2416 (2006): 2418-2443.
- McLoughlin, Daniel. 'Giorgio Agamben on Security, Government and the Crisis of law', in *Griffith Law Review*, vol. 21, no.3 (2012): 680-707.
- Melissa, Ptacek. 'Thresholds: Sovereignty and the Sacred,' in *Law and Society Review*, vol. 34, no. 2 (2000): 495-514.
- Rocamora, Joel, 'Discontent in the Philippines', in *World Policy Journal*, vol.8, no. 4 (1991):633-661.
- Sarat, Austin and Clarke, Conor. 'Beyond Discretion: Prosecution, The Logic of Sovereignty, and The Limits of Law,' in *Law and Social Inquiry*, vol.33, no. 2 (2008): 387-416.
- Shapiro, Kam. 'Politics is a Mushroom: Worldly Sources of Rule and Exception in Carl Schmitt and Walter Benjamin,' in *Diacritics*, vol. 37, no. 2-3 (2007): 121-134.
- Schmitt, Carl. *Legality and Legitimacy*. Trans. Jeffrey Setzeir and John McCormick. Durham, N.C.: Duke University Press, 2004.
- Tatad, Kit. 'Impeach Aquino Now!' *Manila Standard Today*. April 21, 2014.

<http://manilastandardtoday.com/mobile/2014/04/21/exclusive-105/>. (Accessed August 27, 2014)

Thompson, Mark. *The Anti-Marcos Struggle*. Quezon City: New Day Publishers, 1996.

Tubeza, Philip. 'SC Voids 2 Estrada's EOS to Use Coco Levy Funds' *The Philippine Daily Inquirer*. (<http://newsinfo.inquirer.net/180051/sc-voids-2-estradas-eos-to-use-coco-levy-funds>). (Accessed August 28, 2014).

Wetters, Kirk. 'The Rule of Norm and the Political Theology of Real Life in Carl Schmitt and Giorgio Agamben', in *Diacritics*, vol. 36, no.1 (2006): 31-46.

<http://sc.judiciary.gov.ph/jurisprudence/2006/may2006/G.R.%20No.%20171396.htm>.

(sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_brion).