

**'WE WANTED JUSTICE AND GOT THE RULE OF LAW':  
LITERARY REPRESENTATIONS OF THE STATE,  
THE RULE OF LAW AND URBAN SQUATTING**

*Roderick Guerrero Galam\**

There is a scene in the Iloko novel *Gil-ayab ti Daga* by Jose A. Bragado<sup>1</sup> where the two main male characters, Boni and Lando, leaders of their squatter community's struggle to protect their land from being taken away from them by a rich businessman, express their utter and bitter disappointment over a judge who ruled in favor of the capitalist.

Namnamaenda a mangsalaknib kadakuada a marigrigat ti ket  
husgado ti nanggibus iti amin a darepdepda a maaddaanda iti daga  
wenno panangtagikuada iti nagtakderan dagiti balayda.

*[He whom they had hoped would protect them who are poor, it was the  
judge who ended all their dreams of owning land or acquiring the land where their  
houses stood.]*

What is the source of Lando and Boni's, and by extension, the squatter community's feeling of being abandoned and betrayed even by a person who, at least in the novel, represents for the poor, the marginalized, the downtrodden and the oppressed ('*he whom they had hoped would protect them who are poor*') the single institution that they had expected and hoped would protect them from their oppressor and deliver them from their oppression? Why did Boni and Lando even expect the court

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\*Assistant Professor, Integrated School, University of the Philippines, lecturer, College of Education, University of the Philippines, B.A. *magna cum laude*, U.P., 1995, M.A. U.P., 2002. His master's thesis, out of which this essay grew, won the *Asty. Lourdes Lontok-Cruz Most Outstanding Thesis Award* from the UP Center for Women's Studies. The author wishes to thank Ms. Abigail Hope T. Serrano and Mr. Romel R. Bagares for the help they extended to the author in the preparation of this work.

<sup>1</sup> *Gil-ayab ti Daga* (literally *Land's Flame*) was serialized from 1985 to 1986 in the Ilokano weekly magazine *Bannawug* (Dawn). Jose A. Bragado is a prolific writer who has written more than a dozen novels for the *Bannawug* where he served as literary and associate editor. He is the present president of the GUMIL Filipinas (Gunglo dagiti Mannurat nga Ilokano), an association of Ilokano writers with chapters in the Middle East, Hawaii, California, Guam, Greece, and Italy. For purposes of convenience, whenever the novel is cited in this paper, the citation shall refer to this note. This essay integrates in its discussion portions of an earlier paper by the author, *Defending a Place in the Nation: Gender, Space and State Oppression in Gil-Ayab ti Daga* by Jose A. Bragado, which appeared in 2 PHIL. HUMAN. REV. 69-105 (2001).

to operate and function in their favor? What is the function of legal courts, and how must legal courts function in a nation where more than percent (70%) of the people are poor and where wealth and power are concentrated among only a handful of the entire population of a democratic country? Did Boni and Lando express in their disappointment a view of legal courts as a refuge for those who have nothing else as protector?

What underlies Boni and Lando's statement is a notion that justice and the rule of law are not simply two different things but that more importantly there is a conflict between the two concepts. This article examines representations of the State, of the concepts of social justice and of the rule of law as they are played out in the problem of urban squatting. Among many literary works which deal with the lives and experiences of the urban poor, I have chosen Bragado's *Gil-ayab ti Daga* because it offers a rich (*il-legal/extra-legal*) site for the examination of such legal-yet-also-social issues as urban squatting, and concepts as *justice* and *rule of law*. Furthermore, the novel provides an opportunity for the examination of the danger, and perhaps impossibility, of truly speaking for others.

# I. JUSTICE AND THE 'RULE OF LAW'

"We wanted justice and got the rule of law."<sup>2</sup> Barbel Bohley, East German civil rights activist, made this statement in the early 1990s after the collapse of the German Democratic Republic to express what she thought about the search for justice for those who suffered under the rule of Honnecker in the former GDR, and the efforts to make accountable the people responsible for the suffering of these thousands of people. Bohley's statement, which captured the sentiments of many former GDR citizens disillusioned and disenchanted with the outcome of the trials, was an explosive one, becoming a household expression and meriting opinion and interpretation from several commentators, including German professors of law such as Gerhard Robbers<sup>3</sup> and Ingo von Munch.<sup>4</sup> The most sustained and enlightening commentary on the implications of Bohley's statement was by Ingo von Munch who said in his essay "Rule of Law Versus Justice" that what Bohley said was "explosive ... both in the horizontal and vertical direction; horizontally, its dimensions include history, politics, psychology; vertically, it goes to the roots of legal philosophy and legal thinking."<sup>5</sup> I borrowed Bohley's statement because, if re-stated as von Munch

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<sup>2</sup> Quoted in Ingo von Munch, *Rule of Law Versus Justice?* in *THE RULE OF LAW: A READER*, 186 (Josef Thesing, ed., 1997) quoting Barbel Bohley.

<sup>3</sup> Gerhard Robbers, *The Rule of Law and Its Ethical Foundations*, in *THE RULE OF LAW: A READER*, 24, 36 (Josef Thesing, ed., 1997)

<sup>4</sup> von Munch, *supra* note 2, at 186.

<sup>5</sup> *Id.*, at 189.

did ("We hoped for justice and merely got the rule of law"; What we had hoped for was not the rule of law but justice"<sup>6</sup>), it expresses *essentially* the same disappointment felt by Boni, Lando, and the squatter community. Yet, as I will also show, the source of their disappointments is quite different; the squatter community's feeling of betrayal therefore needs to be seen and understood in a different context.

#### What is the rule of law?

Josef Thesing (1997) says that the rule of law is "one of the principles that underpin the democratic State"<sup>7</sup> and that "in its practical configuration, is based on two principles, the primacy of the law and the ethical concept of justice"<sup>8</sup>. Thesing's definition or characterization of the concept of the rule of law inextricably bounds it up with the State and the idea of justice. The association of the concept of rule of law with the State specially and specifically in the German context is not at all surprising for the German equivalent of 'rule of law' is '*Rechtsstaat*' (*recht/ law, staat/ state*) – "a democratic State under the rule of law."<sup>9</sup> As Klaus Stern says: "Under the rule of law, the state exercises its power on the basis of laws adopted in a constitutional procedure so as to safeguard freedom, justice, and the certainty of the law."<sup>10</sup> Justice does not only figure prominently in the concept of the rule of law because, more importantly, it is "generally accepted as that principle which both *embodies* and *aims for* justice and the inviolability of the law."<sup>11</sup> (emphasis supplied)

What are the specific elements and principles that characterize 'rule of law' as it emerged and developed in the liberal democratic tradition(s) of the West? Two important and related things have to be mentioned first. Robbers explains that the rule of law, specifically the bourgeois rule of law, which became really significant in the 19<sup>th</sup> century, "was based on the concept of channeling and controlling the power of the State which, theoretically at least was unlimited in an absolute monarchy, while at the same time confronting it with a representation of the people."<sup>12</sup> The rule of law therefore is not merely about the maintenance and safeguarding of a legal order but also about "limit[ing] the exercise of absolute power by the executive."<sup>13</sup> Related to this is the importance the rule of law gives to individual freedom. As Thesing

<sup>6</sup> von Munch, *supra* note 2, at 189.

<sup>7</sup> Joseph Thesing, *Rule of Law and Democracy – An Introduction*, in *THE RULE OF LAW: A READER*, 16 (Joseph Thesing, ed., 1997)

<sup>8</sup> *Id.*, at 17

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Robbers, *supra* note 3, at 24.

<sup>12</sup> *Id.*, at 57.

<sup>13</sup> *Id.*

explains, it "restrains governmental authority so as to protect the freedom of the individual."<sup>14</sup> The rule of law, according to Roman Herzog, "describes a State which does not meddle with the individual and essentially exists to benefit its citizens. ... A State wishing to do justice to all of these individuals even approximately must allow them a great deal of freedom, so that they may arrange their lives in the manner they consider proper."<sup>15</sup> Moreover, wherever the State interferes, such interferences must necessarily be limited and predictable."<sup>16</sup> Herzog's discussion of the conditions (*'such interferences must necessarily be limited and predictable'*) that attend the State's interference in the lives of citizens leads us to the elements and principles of the rule of law.

There are two elements or aspects that constitute 'rule of law': the procedural and substantive aspects. In its procedural aspect, von Munch explains that the 'rule of law', "postulates that any and all acts of governmental authority must be subject to legal standards. In other words: The law forms the most important point of reference in the procedural interpretation of the rule of law. Historically, this is the result of the struggle by citizens awakening to a sense of political responsibility to establish a liberal 'Rechtsstaat' or, in other words, of an effort at self-defence against the licence of the monarch."<sup>17</sup> In its procedural interpretation therefore, the rule of law "relates to the form in which power is exercised, with the proviso that this form – the law – is not an end in itself but includes the substantive expectation of being protected from governmental interference."<sup>18</sup> On the other hand, the substantive interpretation of the rule of law "does not focus on outward form. According to this interpretation, the 'Rechtsstaat' describes a State founded on the idea of justice, meaning social justice first and foremost. If, then, social justice is a constituent element of the rule of law, this flatly contradicts the opinion that rule of law and social State are contradictory...."<sup>19</sup>

To summarize, the current interpretation of the rule of law integrates both its procedural and substantive aspects.<sup>20</sup> Based on this interpretation derived from the interlinking of the two, "a 'Rechtsstaat' is a State in which any and all manifestation of governmental power are measurable by legal standards, and which is based on the idea of justice."<sup>21</sup> In more practical terms, the rule of law "calls for

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<sup>14</sup> Thesing, *supra* note 7, at 17.

<sup>15</sup> Roman Herzog, *On the Essential Significance of the Rule of Law – the State Exists to Benefit Its Citizens*, in *THE RULE OF LAW: A READER*, 19, 19-22 (Joseph Thesing, ed., 1997)

<sup>16</sup> *Id.*

<sup>17</sup> von Munch, *supra* note 4, at 190-191.

<sup>18</sup> *Id.*, at 191.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

administration by a formal system itself committed to fairness and opportunities for individuals to be heard both in accusation and in defense. Further, a government proceeding under the rule of law aims to treat each individual person in light of particular, demonstrated evidence. In the Western liberal legal tradition, the rule of law entails the presumption of innocence, litigation under the adversary system, and the ideal of a government by laws, rather than by persons. No one is above or outside the law, and no one should be legally condemned or sanctioned legal procedures. The rule of law creates a community in which each member is both fenced in and protected by law and its institutions."<sup>22</sup>

Neil MacCormick writes that the four principles that characterize 'rule of law', all "firmly rooted in both the German doctrine of the 'Rechtsstaat' and the Anglo-American doctrine of the rule of law,"<sup>23</sup> are *universality*, *constancy*, *publicity*, and *predictability*.<sup>24</sup> *Universality* of legal norms refers to the "universal applicability of standing laws to persons and their doings in contrast with the arbitrary decrees issued at random".<sup>25</sup> MacCormick argues that "any deficiency in universality causes the law to degenerate into statutes relating exclusively to specific cases," and warns that "any excess of universality may open up an all-too generous scope of discretionary judgment, with the attendant hazard of arbitrary law application".<sup>26</sup> *Constancy* or the principle of permanence refers to the "consistent validity of legal norms".<sup>27</sup> *Publicity* requires that "laws must be made public, and that they must be made known to everyone concerned. Only in this way may people know about their rights and obligations".<sup>28</sup> *Predictability* refers to the "inadmissibility of retroactive legal norms".<sup>29</sup>

For the rule of law to flourish, a most important requisite has to be met. MacCormick argues that "the doctrine of the rule of law usually represents the separation of powers as the most important principle of all".<sup>30</sup> Waldemar Besson and Gotthard Jasper say that "the rule of law and the separation of powers are

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<sup>22</sup> MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 25 (1998)

<sup>23</sup> Neil MacCormick, *'Rechtsstaat' and the Rule of Law*, in *THE RULE OF LAW: A READER* 74-68-77 (Joseph Thesing, ed., 1997)

<sup>24</sup> *Id.* at 73.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 74.

<sup>27</sup> *Id.* at 73.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 75.

inextricably related”.<sup>31</sup> Specifically they say that “the rule of law in any community is based first and foremost on the independence of the judiciary as an institution. Strict segregation must prevail between this and the other State powers. Both the executive and the legislative branch[es] must be denied any chance of interfering with the work of the judges, or even of bringing pressure to bear on them. To a judge, personal independence means that he is safe from being deposed or transferred against his will. Indeed he may be removed from office only after he has been tried and found guilty of either perversion of justice or personal corruption. Similarly, his material independence assures a judge that in his work he is not subject to instructions of whatever kind. He is answerable only to law and justice, and his task is to interpret the rules, in which he is not subject to instructions from public prosecutors, the Government, or higher courts of law”.<sup>32</sup> MacCormick explains that while separation of powers is necessary, its purpose really “relates to the manner in which the instruments of government are deployed, but not to the ultimate goal of governmental action, which is to achieve congruence between the statutory law and its presumptions on the one hand and the application of the law in practice on the other. The separation of powers is merely a necessary instrument on the way towards achieving that congruence”.<sup>33</sup> The rule of law is, therefore, in the words of Wilfred Jenks, “the counterweight to political power; together they establish a balance in which the exercise of power is subject to legal constraints which ensure that power is not abused. The rule of law is thus at the crossroads of law and politics: ‘[n]o legal system operates, or can operate, in a political vacuum; no political system can provide good government, ensure justice, or preserve freedom except on the basis of respect for law’”.<sup>34</sup>

Based on the preceding discussion, the rule of law is a concept that in the context and tradition of Western (liberal) democracies is inextricably tied up with justice. As Ingo von Munch says: “It would be impossible to conceive of a ‘Rechtsstaat’ without justice; it would be a mere pointless shell without substance. . . . the outer forms of the rule of law, particularly power separation, lawfulness in administration, and judicial independence, are indispensable in the implementation of justice. While justice and the rule of law do not represent the two faces of a coin, they are mutually dependent.”<sup>35</sup>

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<sup>31</sup> Waldemar Besson and Jasper Gotthard, *The Rule of Law – Law and Justice Bind All State Authority*, in *THE RULE OF LAW: A READER* 81 (Joseph Thesing, ed., 1997) [Hereinafter, Besson and Gotthard].

<sup>32</sup> Besson and Gotthard, *supra* note 31, at 80-81.

<sup>33</sup> MacCormick, *supra* note 23, at 75.

<sup>34</sup> Sir Arthur Watts, *The International Rule of Law*, in *THE RULE OF LAW: A READER*, 230, 236 (Joseph Thesing, ed., 1997), citing WILFRED JENKS, *THE PROSPECTS OF INTERNATIONAL ADJUDICATION*, 757 (1964).

<sup>35</sup> von Munch, *supra* note 2, at 194.

If this were the case, Barbel Bohley (*We wanted justice and got the rule of law*), in demanding justice was also demanding the rule of law.<sup>36</sup> But as von Munch asks, “what are the roots of the friction and frustration embodied in ‘We wanted justice and got the rule of law?’”<sup>37</sup> von Munch explains that “[t]o begin with, we must say that while justice and the rule of law are mutually dependent, it is impossible for both to be ‘served’ equally at all times. It is even possible for conflicts between justice and the rule of law to arise, at least with regard to (individual) constituent elements of the ‘Rechtsstaat’ principle. Both theorists and practitioners of the law are no strangers to such conflicts between one of the constituent elements of the ‘Rechtsstaat’ principle, legal certainty, on the one hand, and justice on the other”.<sup>38</sup> Gustav Radbruch explains that “the conflict between legal certainty and justice may in all likelihood be resolved by giving precedence to codified legislation underpinned by statutory power even if its contents appear unjust and unsuitable, provided that the contradiction between such an act of law and the principles of justice is not so unbearable as to render the law “incorrect”, in which instance it would have to defer to the demands of justice. Where justice is not even counted among the goals of legislation, and where equality, the core of justice, is intentionally negated in the promulgation of statutory legislation, the law is not only “incorrect” but divested of its nature”.<sup>39</sup> Andreas Zielcke, commenting on Barbel Bohley’s statement said that the rule of law “with all its advantages may and – given its peculiar characteristics – necessarily must provoke disenchantment on a historic scale, particularly in consequence of the fact that a more or less undefined desire for justice led to the fall of the GDR”.<sup>40</sup> Zielcke also says that the rule of law cannot be easily and quickly replaced by a ‘revolutionary drive for justice, because[,] for reasons rooted in its own principles[,] it is so selectively incompilant with the desires of those who wish to settle accounts with despotism and clear the political and moral slate entirely, and it is so unrelenting in translating those needs to meet the demands of its own system, that those who are not familiar with the rule of law are hardly able to recognize these wishes and desire as their own after transformation. ... The rule of law may be injected with sensitivity towards economic and social needs, but it is blind towards legal and moral issues which have not originated and are not definable within its own fram of reference”.<sup>41</sup>

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<sup>36</sup> von Munch, *supra* note 2, at 194.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, quoting Gustav Radbruch.

<sup>40</sup> *Id.*, at 195, quoting Andreas Zielcke.

<sup>41</sup> *Id.*

von Munch asserts that "if we compare justice and the rule of law, and if the rule of law emerges from this confrontation as a cold institution, justice must appear warm or at least warming."<sup>42</sup> Zielcke argues that "[j]ustice aims for action; the law aims for written records, definitions, and judgments. In a just person's mind, life is an amalgam of morality, reality, and even imagination. Under the rule of law, on the other hand, morality and reality are strictly segregated. On the one hand, we find charisma and pathos; on the other, competence, routine, and bureaucratic cynicism. Justice involves calling a spade a spade; the rule of law favours exchangeability and anonymity."<sup>43</sup> von Munch comments (on Zielcke's distinction) that "such comparisons do not yield any preferences, and what is more, there cannot and must not be any general preference in jurisdiction by which justice is favoured over the rule of law, or vice versa."<sup>44</sup>

## II. JUSTICE AND THE RULE OF LAW IN THE PHILIPPINE CONTEXT

In talking about justice and the rule of law in the Philippines, it is necessary to bear in mind the widespread inequality, primarily class in nature that divides the people. It would be irresponsible to look at the idea of 'justice' and the concept of 'rule of law' as they developed and are now being practiced in Western democracies as though their trans-plantation (or *transnationalization*) in the Philippines would not be misshaped and disfigured by the country's social, economic and political condition. For one, justice in the Philippines can be bought, and justice often goes to those who can hire lawyers from the country's most powerful law firms. Judges and even (chief) justices of the Supreme Court are not truly independent, free from the pressure of moneyed interest groups and kin. One needs only to go over the investigative reports of judicial corruption conducted by the Philippine Center for Investigative Journalism.<sup>45</sup> When judges and justices cannot give impartial judgments and decisions because they are so within the grasp of the rich and the powerful, then one of the essential characteristics of the rule of law – neutrality of legal courts<sup>46</sup> – is compromised. When the law is circumvented, when 'justice' and the 'rule of law' are delivered at the foot of the rich and the powerful, when laws are made to protect the interests of a group of people (as in the case of apartheid in South Africa) then we have a State – courts being an arm of the State – that is instrumental in the maintenance of social injustice, a function that completely reverses its essence and purpose as theorized in the 'rule of law'/'Rechtsstaat'.

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<sup>42</sup> von Munch, *supra* note 2, at 195.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM, BETRAYALS OF THE PUBLIC TRUST: INVESTIGATIVE REPORTS ON CORRUPTION (Sheila Coronel, ed., 2000)

<sup>46</sup> Robbers, *supra* note 3, at 36.



### A. LAW AS AGENT OF SOCIAL REPRODUCTION

It is in this context that law as an agent of social reproduction is viewed. I draw heavily from Nicholas Blomley who argues that "law is an important agent of social reproduction for the state"<sup>47</sup> in that it represents "a conjoint expression of state ideology and instrumentality".<sup>48</sup> Blomley says:<sup>49</sup>

law has a distinctive ideological dimension in that it summons up a mass of associations of naturalistic morality, democracy, and determinacy. Law is, however, not just ideology; it aims to do something.

The very instrumentality of law lies, in part, in its ideological nature (for example, its claims to common morality) which encourages compliance given the social costs of deviancy. It is this assumption which underpins the concept of the "rule of law". However, the effectiveness of law also lies in its perceived determinacy as a text. The assumption is that law represents a body of determinate textual commands which, by their very nature, ensure that some goal is achieved." (citation omitted)

If the law operates primarily for the state, how exactly does it serve the state? Three processes represent the functioning of law for the state: one, formulation of law by the legislature; two, application of law by enforcement agencies; and three, interpretation by courts.<sup>50</sup> Blomley provides the following ideal account of how "law is applied within the state":

Law is *formulated* by the legislature (derived from common conceptions of morality), and then *applied* by a myriad of agencies, to whom responsibility is both delegated and monitored by the central state. Some autonomy is accorded these agencies, it being recognized that the practical details of often complex laws are best devolved to those expert in a specific field. The assumption is, however, that such application will be unproblematic, the text of a statute being related to any given situation. Any problems as to the specific meaning of law that may emerge are resolved in the courts, which are represented as being beyond or above the state. The courts' assumed function in this

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<sup>47</sup> Nicholas K. Blomley, *Interpretative Practices, the State and the Locale* 175, 176 in *THE POWER OF GEOGRAPHY: HOW TERRITORY SHAPES SOCIAL LIFE* (Jennifer Wolch and Michael Dear, eds., 1989).

<sup>48</sup> *Id.*, at 175.

<sup>49</sup> *Id.*, at 175-176.

<sup>50</sup> Blomley, *supra* note 41, at 176-177.

ideal type is to *interpret* law; to extend the original of those who drafted the statute to specific phenomena that were not extant at the time of codification and to do so in a manner that is "true" to the intrinsic meaning of the statute as a determinate text. Three finite legislative tasks for the state apparatus are thus identified; that of law-making, law-enforcing, and law interpreting. Each of these tasks, in this idealized division of legal labor, is the dominant (or even sole) function of one agency; that of the legislature, enforcement agency, and court respectively.<sup>51</sup>

Blomley asserts that in this ideal type, two conceptions are implicit: one, functional determinacy ["specific agencies have clearly defined, separable functions with little (if any) intra-apparatus interplay"]; and two, statutory determinacy ["law has meaning in and of itself"].<sup>52</sup> Blomley asserts further that functional and statutory determinacy are deceptive in that "the state as an apparatus cannot be divided so easily" and that "all agencies of the state are engaged in interpretive practices."<sup>53</sup>

The "openness" of law for interpretation by different and various agencies and persons reveals ultimately that "[l]aw is not a higher form of rationality, nor is it, by its very nature, intrinsically determinate."<sup>54</sup> The interpretation of law, Blomley says, is contextual given the necessary socio-spatial rootedness of the interpreter.<sup>55</sup> It is this socio-spatial location of the people tasked to interpret and implement the law that law can easily be appropriated for the protection of the interests of the ruling class which has the resources to influence the interpretation and application of the law. Even at the stage of formulating or making laws, the influence of the dominant class can already come into play to determine who the law will benefit the most. It is in this sense that law or the concept of rule of law can come to maintain and reproduce a social order dominated by the ruling class. Richard Abel, in talking about the maintenance of apartheid in South Africa, provides a good example of this. He says that "despite its unquestionable value, however, legality had severe limitations in the struggle against apartheid. *Since the white legislature wrote the rules, it was no surprise that these favored the regime.*"<sup>56</sup> (emphasis supplied) This is certainly the case presented in the novel *Gil-ayab ti Daga*. This is the source of the disappointment of Boni, Lando, and the squatter's community, the source of their feeling of betrayal.

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<sup>51</sup> Blomley, *supra* note 41, at 176-177.

<sup>52</sup> *Id.*, at 177.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 194.

<sup>55</sup> *Id.*

<sup>56</sup> RICHARD ABEL, *POLITICS BY OTHER MEANS: LAW AGAINST APARTHEID* 535 (1995).

In the face of the ruling class's appropriation of justice and the rule of law, what are these oppressed people to do? This is the subject of the following section.

#### B. IT IS 'OURS'! IS IT 'OURS'? DEFENDING 'OUR' PLACE

Mr. Lopez, a rich businessman, arrives in Filipinas Street and claims the land.<sup>57</sup> He orders the residents to leave the place and, with his private army, terrorizes the residents who for decades have "squatted" on "his" property.<sup>58</sup> The residents, led by Bonifacio (or Boni), organize themselves into a community to form the Filipinas Street Homeowners Association.<sup>59</sup> This homeowners association becomes the face and voice of the residents-squatters in the battle for Filipinas Street. Mr. Lopez, aided by the state and its apparatuses (notably the courts), defeats the residents-squatters who forged an alliance with criminals to thwart the aims of the capitalist.<sup>60</sup> The novel ends with the people resigning to the "truth" that they are illegal occupants and that Filipinas Street rightfully belongs to Mr. Lopez.<sup>61</sup>

From this summary, one can understand why the residents-squatters of Filipinas Street hinge their claim to the land on a notion of their position and space relative to it. They claim to own the land not only because they are within it; they are inside Filipinas Street but more importantly because they occupy it. In fact, many of the residents-squatters have occupied it for decades without anyone claiming it away from them.<sup>62</sup> But the residents-squatters' "within-ness" or "inside-ness" is precarious precisely because it is threatened by their "outside-ness" to it. Most of the residents know that the land they have occupied is not theirs.<sup>63</sup> Only two families have titles to the lot where their houses are built yet, ironically, their titles point to their illegal occupation and possession of the land.<sup>64</sup> Their titles are fake and could only point to their "externality". In contrast, Mr. Lopez, the Filipino businessman who claims to be the real owner of Filipinas Street, claims the land not on the basis of a physical attachment to, or occupation of, it but on his possession of a land title such that even if he has always been "outside" of this place, he has always been "within" it.<sup>65</sup>

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<sup>57</sup> Bragado, *supra* note 1.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

More accurately, the place has always been "within" him as he claims that it has always been part of his vast wealth.<sup>66</sup>

Filipinas Street as place is not only physical space but also social space. In fact, its physical-ness becomes more visible because of its construction and representation as social space. It is a piece of land defined by class and gender struggles with the state contributing to the 'classing' and gendering of the struggle for Filipinas Street. The state (represented by the police/military, the barangay captain, and the courts) protects and ensures the interests of Mr. Lopez. The state's "relative autonomy" is asserted as the state's ruling in favor of Mr. Lopez comes in the form of an "impartial judgment" from the appellate court. The class "war" is enmeshed in gender as the main representatives of this struggle are males. The representatives of the state are all males: the soldiers/policemen; the barangay captain; and the judge/justice. Mr. Lopez who represents the ruling capitalist class is male. The leader of the residents of Filipinas Street is male.

### 1. Weapons of the Urban Weak: Building a Community

The illegal occupation of land in many Third World cities has been described as "the most conspicuous political action of the urban masses."<sup>67</sup> This exposes them to tremendous state violence though sometimes they are tolerated at first.<sup>68</sup> What weapons are available to squatters when the state or when private (capitalist) interests or both can no longer tolerate them? What can slum dwellers do? Before I discuss the most available and perhaps the most powerful weapon squatters have, which is constituting themselves as a community, I would like to unpack first some conceptual baggage that weigh in the analysis I would like to make. When I use the phrase "weapons of the urban weak"<sup>69</sup> (I will discuss its provenance below), there is implied an attitude or reaction of urban squatters to poverty and it is that "the reaction of the poor to poverty [is] rational and that families recognize[] the most sensible ways of improving their living conditions."<sup>70</sup> In short, the "rationality among the poor" position rejects the concept 'culture of poverty' developed by

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<sup>66</sup> Bragado, *supra* note 1.

<sup>67</sup> ALLAN GILBERT AND JOSEF GUGLER, *CITIES, POVERTY AND DEVELOPMENT: URBANIZATION IN THE THIRD WORLD 192* (2<sup>nd</sup> ed 1992) [hereinafter GILBERT AND GUGLER]

<sup>68</sup> See Ricardo Abad, *Squatting and Scavenging in Smokey Mountain*, 39 PHILIPPINE STUDIES 263 (1991), or Alex Brillantes, *National Politics Viewed from Smokey Mountain*, in FROM MARCOS TO AQUINO: LOCAL PERSPECTIVES ON POLITICAL TRANSITION IN THE PHILIPPINES 187-205 (Benedict Kerkvliet and Resil Mojares, eds., 1991) for a description of the daily struggles and challenges that the urban poor, particularly the "squatters", face.

<sup>69</sup> *Infra*, notes 82-87.

<sup>70</sup> GILBERT AND GUGLER, *supra* note 68, at 118.

Oscar Lewis.<sup>71</sup> Gilbert and Gugler say that, "at its crudest, this view [culture of poverty] encouraged the idea that the poor are poor because they are poor. Poor children eat badly, receive a poor education, and receive from their families and cultural peers a training that encourages them to accept their poverty as inevitable."<sup>72</sup> The concept of 'culture of poverty' "denote[s] a situation in which people are trapped in a social environment characterized by apathy, fatalism, lack of aspirations, exclusive concern with immediate gratifications and frequent endorsement of delinquent behavior."<sup>73</sup> The 'culture of poverty' view though developed in the 1960s has persisted and continues to inform the way the poor are seen and dealt with:

It persists, perhaps, because it is a highly convenient explanation to the wealthy; by implication poverty is the poor's own fault. In this sense it serves as 'a vehicle for interpreting the social reality in a form which serves the social interests of those in power.'<sup>74</sup> But, convenient though it may be, it has little basis in reality. The poor respond sensibly and rationally to the choices and opportunities open to them in their housing situation. And while the poor undoubtedly contribute at times to their own poverty, the basic causes of that poverty are beyond their control. The poor are not a separate sub-society but act much like everyone else. In Perlman's words: 'In short, they have the aspirations of the bourgeoisie, the perseverance of pioneers, and the values of patriots. What they do not have is an opportunity to fulfill their aspirations.'<sup>75</sup>

Thus, to say that squatters have weapons to use against state and class oppression recognizes their conscious and always collective actions against a state and a ruling class that consign them to the most marginalized places in the (metro)polis; that frequently treat them as "basura" that can always be thrown away anywhere, anytime. In fact, squatters violently oppose the demolition of their shanties not only because they already claim the land upon which stands their shanty, but also because they have grown too familiar to government relocation/ housing programs for them. Relocations sites are very far from their workplace; there is no provision for running water, for electricity; there are no nearby schools for children; etc. These are conditions squatters find unacceptable and unlivable. These urban

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<sup>71</sup> *Id.* See also F. LANDA JOCANO, SLUM AS A WAY OF LIFE: A STUDY OF COPING BEHAVIOR IN AN URBAN ENVIRONMENT (1975).

<sup>72</sup> GILBERT AND GUGLER, *supra* note 68, at 118. [citations in the text omitted]

<sup>73</sup> *Id.*, citing A. PORTES, *Rationality in the slum: an essay on interpretative sociology*, in 14 COMPARATIVE STUDIES ON HISTORY AND SOCIETY 268 (1972).

<sup>74</sup> *Id.*, citing J. PERLMAN, THE MYTH OF MARGINALITY: URBAN POVERTY AND POLITICS IN RIO DE JANEIRO 247 (1976).

<sup>75</sup> GILBERT AND GUGLER, *supra* note 68, at 234.

poor/squatters/slum dwellers also recognize that their condition is largely due to government neglect that sustains uneven development, unequal distribution of wealth, and complicity with the landed elite and capitalists.

In the face of a problem that threatens to displace them from Filipinas Street, the residents build themselves into a community by forming the Filipinas St. Homeowners Association. Forged by an external threat, the residents saw the need to unite so that they have a better chance to defeat Mr. Lopez. What formerly were residents and households that may have existed in the same place but nonetheless disparate, totally unconcerned about each other's business suddenly had to exist as a community. This community, embodied in/by their organization reflects the very issue that threatens them as well as their constitution into a community only recently. And this community is their main weapon against Mr. Lopez. When I use "community" to refer to the residents-squatters of Filipinas Street, it is in a sense of a community that is both spatial and social. As Dylis Hill explains it:<sup>76</sup>

Communities are purposive for their members. Communities exist through human communication; they are not merely territorial units but consist in the links that exist between people sharing common interests in a network of social relationships. People interact in the course of their everyday social and economic lives; therefore their experience of community is both spatial and social.

The Filipinas Street community is further characterized by a sense of *communality* or communion due to the reason it was (or it had to be) built and forged. Knox (1995) provides the following discussion of *communality*:<sup>77</sup>

*Communality*, or 'communion', exists as a form of human association based on affective bonds. It is 'community experience at the level of consciousness' but it requires an intense mutual involvement that is difficult to sustain and so only appears under conditions of stress.

The community of Filipinas Street was forged out of a common threat and thus a common struggle that is associated with industrial capitalism or the entry of capital into places.<sup>78</sup> In fact, the appearance of Mr. Lopez coincides with the

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<sup>76</sup> DILYS HILL, CITIZENS AND CITIES: URBAN POLICY IN THE 1990s 34 (1994).

<sup>77</sup> PAUL KNOX, URBAN GEOGRAPHY: AN INTRODUCTION 214 (1995).

<sup>78</sup> See Tijen Uguris, *Gender, Ethnicity and the 'Community': Locations with Multiple Identities*, in GLOBAL FEMINIST POLITICS: IDENTITIES IN A CHANGING WORLD, 49-65 (Suki Ali, Kelly Coate and Wangui Wagoro, eds., 2000).

“appearance” of capital: he was claiming the land because he was going to build a factory. There is another sense that this community was forged in ‘common struggle and conflict’<sup>79</sup> against the capital(ist) invasion of Mr. Lopez. The novel was written in 1985 and the author located Filipinas Street in a district in which the residents’ preferred mode of transport would be the Light Rail Transit (LRT). The LRT was by that time newly built and the author intentionally juxtaposed these two urban conditions (squatting and modernization) not so much to comment on the contradictions of the two as to “celebrate” this concretization of industrial capital.

Kimmita manen [Boni] iti tangatang. Luma[b]bagan dagiti ulep iti laud. Nababan ti init. Dandanidan agawid. Idi kumita iti tuktok dagiti balbalay, nakitana ti ulo ti estasion ti LRT iti Buendia. Ladawan dayta ti angrangrang-ay a pagilian.<sup>80</sup>

[Again, boni looked up the sky. The clouds in the west are turning red. The sun is already low. They will soon be going home. When he looked at the rooftops, he saw the top of the LRT station at Buendia. That is a sign of a nation growing richer.]

The community of Filipinas Street consists of residents-squatters who come from the ‘underclass’ (that “‘surplus population’ in a capitalist society made up of the unemployed, the unemployable, and a ‘lumpenproletariat’ of criminals, prostitutes and vagrants”<sup>81</sup>); the working class; and the lower and middle middle class. The composition of the forged community determines not only the leadership of this community but more importantly the strategies/tactics it employed to counter the collusion of the state and the ruling capitalist class. In discussing the forms of resistance the residents of Filipinas Street used to face Mr. Lopez and his goons, I will be using a modified version of James Scott’s concept of “weapons of the weak” made by James Okey in his study of the forms and methods of resistance slum communities in Bangkok used to resist eviction. Okey explains that James Scott:<sup>82</sup>

developed the concept of the “weapons of the weak” to focus attention on the types of resistance that can be found in the countryside on an everyday basis. Weapons of the weak are aimed at

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<sup>79</sup> Uguris, *supra* note 78, at 52.

<sup>80</sup> Bragado, *supra* note 1.

<sup>81</sup> Hill, *supra* note, 75 at 73.

<sup>82</sup> James Okey, *Weapons of the Urban Weak: Democracy and Resistance to Eviction in Bangkok Slum Communities*, 12 SOJOURN 1 (1997), citing J. SCOTT, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE (1985), J. Scott, *Everyday Forms of Peasant Resistance*, in EVERYDAY FORMS OF PEASANT RESISTANCE IN SOUTH-EAST ASIA, 5 (J. Scott and Benedict J. Tria Kerkvliet, eds., 1986), and J. Scott, *Everyday Forms of Resistance*, in EVERYDAY FORMS OF PEASANT RESISTANCE, 3 (Forrest D. Colburn, ed., 1989).

resisting oppression through methods like dissimulation, false compliance, foot-dragging, and sabotage. They are low-risk strategies of resisting the unjust demands of those in power. If there is an urban equivalent of the everyday forms of peasant resistance outlined in Scott, it will be found among the urban weak, in slum and squatter communities. [citations omitted]

Ockey modifies Scott by bringing into the concept the possibility that everyday resistance may lead to some form of confrontation, an aspect that has already been explored by Andrew Turton whom Ockey also cites: "a middle-ground in-between everyday and exceptional forms resistance, a middle-ground, a terrain of struggle, on which practices may possibly serve to link the other two terms."<sup>83</sup> He says, "this middle ground is entered when everyday resistance is no longer sufficient to protect the *de facto* gains made. In this middle ground between passive resistance and open rebellion are eviction proceedings and resistance to them, both processes that go beyond the everyday actions and discourse that constitutes Scott's analysis."<sup>84</sup> He identifies as everyday resistance the following: organiz-ing a watch (to protect the community from arson); adopting a siege mentality; maintaining solidarity; gaining support outside the community; vigorous gathering of information; and remaining visible.<sup>85</sup> The middle-ground tactics include petitioning government officials; attempting to have the issue reconsidered by parliament, the Cabinet, or other bodies; calling for public debates and hearings; and the most provocative, demonstrating.<sup>86</sup> Ockey discusses the importance of looking into the middle ground in the following:

James Scott proposed the concept of everyday resistance to focus attention on the constant low-intensity resistance in the countryside. This refocusing, like the earlier concentration on revolution, only included part of the picture, however. By leaving out the entire range of tactics in the middle ground, Scott presented us with a picture of resistance slowly and steadily pushing towards change, a picture that despite its slow movement, is surprisingly static. In this depiction, resistance almost becomes "everyday" in the sense of being "normal" and not a threat. By including the middle ground, we see that everyday resistance is irregular and dynamic, constantly

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<sup>83</sup> Ockey, *supra* note 82, at 2.

<sup>84</sup> *Id.*

<sup>85</sup> Ockey, *supra* note 82, at 5,11-13.

<sup>86</sup> *Id.*, at 13.



shifting both in focus and intensity and can quickly become more confrontational when policies become more threatening.<sup>87</sup>

Many of the ways resorted to by the residents of Filipinas Street fall within the classification of Ockey. However, there are aspects of the resistance of the Filipinas Street community that cannot be explained by Ockey's "weapons of the urban weak" specifically the many instances when the residents had to transform misery into opportunities for winning the sympathy and support of the outside communities. It is in this context that De Certeau's discussion of strategies and tactics becomes conceptually useful. Beverly Skeggs explains De Certeau's discussion of the difference between strategies and tactics:<sup>88</sup>

Strategies...have institutional positioning and are able to conceal their connections with power; tactics have no institutional location and cannot capitalize on the advantages of such positioning. Rather, tactics constantly manipulate events to turn them into opportunities; tactical options have more to do with constraints than possibilities. They are determined by the absence of power just as strategy is organized by the postulation of power.

De Certeau's distinction is very useful because, to be sure, just as the residents of Filipinas Street were (re-)acting (to) on the moves of Mr. Lopez, Mr. Lopez was resorting to both manipulative and violent/coercive means of "getting back his land." However, the residents are not just reacting to whatever Mr. Lopez did for their resistance would have been reduced to being reactive. The community, through its officers (its president, Boni, and its secretary, Minda) was also able to do things, which, although still actually in response to the threat of Mr. Lopez, were not "reactive" responses to the various ways Mr. Lopez used to evict the residents. These include, for instance, their registering their homeowners association with the Securities and Exchange Commission (SEC).<sup>89</sup>

To fully discuss the resistance made by the community of Filipinas Street against Mr. Lopez, and hence the variety of ways they employed to deal with a formidable foe, I propose to examine the struggle for Filipinas Street within the context of the alliances set up by both sides. To talk about the tactics (or whenever appropriate, strategies) used by the community of Filipinas Street is to implicate the forces and strategies employed by the enemy they are ranged against. By looking into the alliances both sides were able to build, we can better appreciate the forces at

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<sup>87</sup> Ockey, *supra* note 82, at 21.

<sup>88</sup> BEVERLY SKEGGS, FORMATIONS OF CLASS AND GENDER 10 (1997).

<sup>89</sup> Bragado, *supra* note 1.

work in the struggle for Filipinas Street. On the one hand, we can examine the “inclusivity” that the community resorted to. On the other hand, we can examine how Mr. Lopez who represents the dominant/ruling capitalist class is protected by the state through its various apparatuses.

## 2. The Community and the ‘Underworld’ versus Mr. Lopez and the State

When Bonifacio Aglibut (Boni) proposed to the residents of Filipinas Street that they form their Filipinas St. Homeowners Association that was only the time the residents realized that they needed to become a community.<sup>90</sup> The Filipinas St. Homeowners Association was quickly perceived as the residents’ way of becoming a community, which was the only option available to them to face Mr. Lopez.<sup>91</sup> They knew that as individuals they stood no chance but as a “body communal” united in/by a common problem and struggle, they can fight Mr. Lopez.<sup>92</sup> A lieutenant who eventually was designated adviser of the association sums up the association’s unifying role:<sup>93</sup>

Daytoyen ti pangrugian ti panagsisinninged tayo. No mabuangay ti gunglo, patiek a mawarwar amin a problema iti Filipinas St.

*[This is now the beginning of our solidarity. If the association is formed, I believe that all problems in Filipinas St. will be solved.]*

However, this homeowners association was expected at least initially and only by a few (only two residents expressed such a view one of whom is the lieutenant) to build a community, which would eradicate the presence of criminals in the place. Consequently, the community was already expected to operate on an exclusionary practice because it was already defining who can and who cannot be part of the community.<sup>94</sup>

Ammoyo, nasapsapa koma a binuangaytayo daytoy nga asosasion. Mabalín a daytoy ti makalapped ‘ti panagadu ti kriminal nga aglemlemmeng iti lugartayo. Kitaenyo, kunkunada a hideout dagiti underworld character ti Filipinas St..

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<sup>90</sup> Bragado, *supra* note 1.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

*[You know, we should have formed our association much earlier. This could prevent the increase in the number of criminals who are hiding in our place. See, they say that Filipinas St. is a hideout of underworld characters.]*

Thus, an “internal” problem threatens from the very outset the community. For just as the “legitimate” residents are trying to assert their ownership of the land, and thus their inside-ness, they are, by postulating the community as a mechanism to rid itself of criminals, constructing an outside space for those who, like them, have found Filipinas Street as their only place. The criminals, those who are considered as most outside of both the state and the law (but who are most subject to the state and the law) were never explicitly considered and labeled as outsiders before the coming of Mr. Lopez and before the founding of the homeowners association, and thus of the community. The community then becomes the structure that makes possible the “legitimate”, explicit and public assertion of the outside-ness of the criminals who have made themselves “inside” Filipinas Street. Within this community, the criminals, like in the state, are *personae non gratae*.

For Filipinas Street to be truly a community, it must embrace these underworld characters. In turn, these criminals must prove their solidarity with the community. What integrates the two is the alliance forged between them in protecting Filipinas Street from Mr. Lopez whose ally is the state, the enemy of the criminals. Nothing captures the possibility of this alliance, and this alliance itself than the fact that the president of the Filipinas St. Homeowners Association, Boni and the most prominent underworld character of Filipinas Street, Lando, live together. The two are in fact the best of friends who look after each other more than brothers do.

The alliance determined to a large extent the two courses of action the community took. Provisionally, I shall call them the ‘legal’ and ‘extralegal’ (or illegal) courses of action. I frame my discussion of the residents’ tactics (or strategies) within this division.

Boni is convinced that the best way to deal with Mr. Lopez is to act within the bounds of the law. However, even if he is opposed to using criminal acts to put an end to their problem, he is prepared to use them, if only as a desperate last resort. With a sense of inevitability, the Filipinas Street community is bound to deal with Mr. Lopez’s forces with its own forces. Mr. Lopez, prior to his visit to Filipinas Street with business partners had already enlisted the help of a judge named Liput (Traitor).<sup>95</sup>

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<sup>95</sup> Bragado, *supra* note 1.

Against the community's adherence to the rule of law, Mr. Lopez "takes the law into his hands" and unilaterally orders the residents to dismantle their houses and to leave. Using his "private army of goons" to enforce his order, Mr. Lopez threatens the community with force and violence.<sup>96</sup> Yet the community in its first "face off" with Mr. Lopez's armed men chooses to face them with a phalanx of students-activists who had joined the residents to help them protect Filipinas Street even if Lando obtained the commitment of twenty other criminals who could engage Mr. Lopez's men in a shooting.<sup>97</sup> At this stage of the struggle, they are not the principal fighters of the community.<sup>98</sup> They acted as reinforcement to the students who blocked the demolition team from entering the area.<sup>99</sup> In fact, in the first attempt of Mr. Lopez's men to demolish the houses in Filipinas Street, it may be said that the students were the only ones needed to stop the demolition.<sup>100</sup> Frustrated, Mr. Lopez's minions retreat with the threat that the residents will be hailed to court.<sup>101</sup>

Although they succeeded in preventing the demolition team, the residents know that they now face even greater risks as Mr. Lopez would now resort to harsher means.<sup>102</sup> The residents begin to take a siege mentality and are always on the lookout for fire. However, Mr. Lopez does not terrorize the whole community right away.<sup>103</sup> He begins with Boni first by bribing him into resigning as president of the homeowners association and into making him convince the others to just leave Filipinas Street.<sup>104</sup> (Mr. Lopez thinks that the residents of Filipinas Street are not easily intimidated because they had a president who is willing to risk his life for the community. If he could buy Boni, then it would be easier for him to drive the residents away.)

While working on Boni, Mr. Lopez "deploys" the law through the court to evict the residents from Filipinas Street.<sup>105</sup> The court promptly issues an order giving

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<sup>96</sup> Bragado, *supra* note 1.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

the residents 15 days to vacate Filipinas Street.<sup>106</sup> Lando believes that money had passed hands.<sup>107</sup>

The community, in keeping with Boni's "legal" mode of fighting Mr. Lopez, hires a lawyer to try to get the judge to reconsider his order.<sup>108</sup> But the residents know that they must resort to other means in order to get the judge to reverse his ruling.<sup>109</sup>

"Intayo agrali iti sango ti pangukoman. Pikarentayo ti hues."

*["Let us stage a rally in front of the court. Let us goad the judge."]*

Demonstrations, according to Ockey are the most provocative of middle ground weapons of the urban weak.<sup>110</sup> Though demonstrations are frequently effective for oppressed people to articulate their oppression and to draw public attention to their oppression, the way demonstrations are used by the Filipinas Street community is 'tactical'. This is because much of what demonstrations are supposed to accomplish or obtain for the residents depends on the opportunities that may arise from these demonstrations. Boni and Lando in fact imagine possible scenarios that can help them attract public attention to their struggle. That Boni and Lando are conjuring potential scenarios and unintended outcomes they could capitalize on and transform into opportunities demonstrates their lack of (access to) institutional power such that violence, the extreme result of which is death, would be good for the cause – a welcome event and development in their struggle. Even their lawyer tells them to hold rallies and demonstrations in front of the court to get the judge to change his mind.<sup>111</sup> Demonstrations, however, are not always readily available to the community. Even this "weapon" is sometimes denied them. The police always tried to stop them especially when the residents did not have a permit to hold a demonstration.<sup>112</sup> The residents face all sorts of constraints even in merely demonstrating: would the police have allowed them to hold a demonstration in front of a court if the residents asked for permission? Worse, the men of Mr. Lopez attack them and the police take the side of Mr. Lopez and accuse the residents of lawlessness.<sup>113</sup>

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<sup>106</sup> Bragado, *supra* note 1.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Ockey, *supra* note 82, at 13.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

From this time on, the confrontations between the community and the forces of Mr. Lopez become more direct and violent.<sup>114</sup> And the modes of resistance employed by the community become more confrontational and violent, too.<sup>115</sup> The "underworld" residents also increasingly take a more central role and position in the community's defense of Filipinas Street.<sup>116</sup> This is clearly evident in their response to the most serious attack by the men of Mr. Lopez on Filipinas Street.<sup>117</sup> The goons burn the house of Boni and Lando.<sup>118</sup> Although the attack is primarily directed on Boni who rejected the offers of Mr. Lopez (even while he was also subjected to the worst form of intimidation and coercion), it is intended to engulf the whole community in a conflagration, literally.<sup>119</sup> After the incident, the "underworld" residents, upon the initiative and instigation of Lando, keep vigil to protect the community.<sup>120</sup> They also did this in anticipation of the return of Mr. Lopez's goons.<sup>121</sup> They kill three of them when they came back to see if the whole "squatter's area" had been eaten by fire.<sup>122</sup> Violence for violence, the criminals led by Lando drive the vehicle of Mr. Lopez's men to an isolated place and burn it together with the bodies of those they killed.<sup>123</sup> Still, Boni would not allow Lando to kill Mr. Lopez.<sup>124</sup> Not just yet, he says, since they still have a petition being heard in court.<sup>125</sup>

But the judge never heard the "case" as he gave a ruling in favor of Mr. Lopez without even first "hearing" the side (or "arguments") of the community and without first examining the pieces of evidence that they were prepared to show.<sup>126</sup> The judge ruled that Mr. Lopez's land title is authentic and that the community's land titles are fake even though he has not seen the titles held by the residents of Filipinas Street.<sup>127</sup>

Even with the judge's ruling against them, Boni, as leader of the community sticks to his two tactics (still within his preferred "legal" resistance).<sup>128</sup> First, in the

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<sup>114</sup> Bragado, *supra* note 1.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

face of the near exhaustion of their recourse to a legal, fair and just resolution to their problem, the people strengthen their solidarity since it was becoming clear to them that justice has been bought by Mr. Lopez.<sup>129</sup> This solidarity is demonstrated in several rallies and demonstrations joined by most residents of the community, even by the old and the young.<sup>130</sup> Nonetheless, the community files before the same court that ruled in favor of Mr. Lopez a motion for reconsideration.<sup>131</sup> Also, they ask an appellate court to issue a restraining order.<sup>132</sup> This is the second tactic: going through the legal process. Even with a newfound solidarity and a willingness among most of the residents to shed blood to protect Filipinas Street, many of them are discouraged by the obvious miscarriage of justice.<sup>133</sup> The circulation of money among Mr. Lopez, the judge and even the lawyer of the community has only led to the concentration of "justice" on Mr. Lopez.<sup>134</sup>

The misery of the residents does not end with the judge and their lawyer getting bribed.<sup>135</sup> The court had not even looked into their request for a restraining order until the last hour.<sup>136</sup> Thus, they had to prepare again for another demolition.<sup>137</sup> This time, because the eviction order came from a judge, the state's police and soldiers had come to assist the private army of Mr. Lopez.<sup>138</sup> In fact, the police and soldiers mouth the "official" line that the residents are merely squatting and that their land titles are fake.<sup>139</sup> They therefore had to be evicted and by force this time.<sup>140</sup> A violent confrontation occurred between the demolition team and the residents.<sup>141</sup> When the residents showed that they were prepared for a physical and violent struggle, one of the men of Mr. Lopez took his gun and shot at the crowd, killing two children and an old woman (who had a heart attack because of the shooting).<sup>142</sup>

What the community did with the death of the three residents reveals further the 'tactical' rather than 'strategic' characteristic of the community's

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<sup>129</sup> Bragado, *supra* note 1.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

resistance to and struggle against Mr. Lopez.<sup>143</sup> The community agreed to have the wake for the three victims of capitalist and state violence in front of the court that ruled in favor of Mr. Lopez. Capitalizing on the grief and misery of the situation, the community hoped to transform the judge's indifference and apathy into sympathy.<sup>144</sup> Prohibited by both police and the security guards of the court, the community doggedly persisted in drawing the attention of the judge to the injustice he had just helped to deliver.<sup>145</sup> But it was not the judge that the community succeeded in winning but the court's security guard.<sup>146</sup>

Even the burial procession for the victims is transformed into a dramatization and depiction (in short, a "demonstration") of the utter injustice and inequality that characterize the Filipinas Street community's struggle against Mr. Lopez.<sup>147</sup>

... kinuna ni Boni a nasaysayaat no ibaklay wenno bitbitenda dagiti lungon tapno makita dagiti tao ti kinapanglaw dagiti biktima dagiti babaknang. Pinaisaganana met dagiti placard ken streamer tapno maipakitada a maysa a protesta ti ar-aramidenda kontra iti inhustisia.

.....

Kagudua ti kalsada ti sinakupda. Awan ti tokar, ngem awan sarday ti panagpukpukaw ti nakaiggem iti megaphone a sarsarungan dagiti agtutubo.

"Adtoy dagiti natay iti inhustisia!" impukaw dagit nakipamunpon. "Dagitoy dagiti biktima dagiti babaknang nga agaagaw iti daga!"

Gapu iti karkarna nga ar-aramidenda, adu a tao ti nagruar kadagiti balbalayda ket nagintarda iti igid ti kalsada. Nakipagdir-ida met idi agdir-i dagiti estudiante.

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<sup>143</sup> Bragado, *supra* note 1.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*



*[. . . Boni said that it was better for them if they carried on their shoulder or carried by hand the coffins so that the people will see the poverty of the victims of the rich. He had the placards and streamers prepared so that they can show that what they are doing is a protest against injustice.*

.....

*They occupied the other half of the street. There was no music but the one with a megaphone shouted incessantly followed by students.*

*"Here are those who died of injustice!" shouted those who joined the burial procession. "Here are the victims of the rich land grabbers!"*

*Because of the strange thing they are doing, a lot of people came out of their houses and lined the street. They shouted when the students shouted.]*

Boni believes that the community's tactic of using the death of the three residents to attract the attention of others and win their sympathy and support has been very effective:<sup>148</sup>

Nagballigi ti planona. Naaramidna dagiti bangkay a kas rangtayda a mangidanon kadagiti umili ti parikutda.

"Kitaenyo kakabsat, dagiti biktima dagiti gamat dagiti babaknang," impukkaw manen ti estudiante a nakaiggem iti megaphone. "Pinaltoganda dagitoy gapu iti ayatda a panawanmi ti dagami. Amangan no dakayo met ti sumaruno a makita dagitoy a babaknang ket ibagada a kukuada dagiti nagtakderan ti balayyo."

"Taga-anokayo, apo?" impukkaw ti maysa a baket a nakiintar iti igid ti kalsada.

"Taga-Filipinas Street, nana," insungbat ni Boni. "Ibagbagada nga eskuaterkami ket pappapanawendakami. Idi umayda agsatsat iti balaymi, pinaltogandan dagitoy."

"Nagdakesda metten!" nakuna ti baket. "Nasayaat daytoy nga inaramidyo...."

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<sup>148</sup> Bragado, *supra* note 1.

Napatung-ed ni Boni. Magustuanna ti kinuna ti baket. Mabalin a kasta met ti pamanunotan dagiti sabali no maammuanda ti ramut ti pagkaskastaanda.

*[His plan worked. He was able to turn their dead into their instrument of bringing to the people their problem.]*

*"Brothers and sisters, look at the victims of the tentacles of the rich," shouted again the students with the megaphone. They shot them because they want us leave our land. May be the rich will see you next and tell you that they own the land where your house stands."*

*"Where are you from, apo?" asked an old woman who joined those gathered at the side of the street.*

*"Filipinas Street, nana," Boni answered. They tell us that we are squatters and are evicting us. When they came to demolish our houses, they shot them.*

*"How evil could they be!" the old woman said. The others will perhaps have the same thing in mind if they learned of the root of their protest.]*

True, the community may have won the public but they simply lost to the workings of the law. When the appellate court finally found time to look into the community's case, the judge assigned to it asked Boni to submit land titles to prove their ownership of the land. But the community could only submit two land titles, which turned out to be fake.<sup>149</sup> Moreover, the area covered by the titles totaled only 150 square meters whereas Mr. Lopez's authentic land title covers ten hectares.<sup>150</sup> The appellate court upheld the ownership of Mr. Lopez of the contested land.<sup>151</sup> This defeat points to their utter lack of power. The court, relying on the authenticity of the land titles did not consider the fact that many of the residents had lived there for thirty years and therefore could not just be evicted without consideration for this fact. The issue here is reduced to matters that revolve around authenticity of land titles, and not on the issue of squatting itself. Squatters over time may earn the right to purchase from the government the land they have occupied for such a long period of time.<sup>152</sup> While the court looked into available pieces of evidence and had them

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<sup>149</sup> Bragado, *supra* note 1.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> JEREMY SEABROOK, IN THE CITIES OF THE SOUTH: SCENES FROM A DEVELOPING WORLD 201 (1996).

verified and authenticated by the concerned agency (Bureau of Land Registration) it did not question the circumstances surrounding the acquisition of the land by Mr. Lopez. If, as the justice ruled that the two land titles presented by the community were made during a period when fake titles proliferated, then it is just as possible that Mr. Lopez's ownership of the land is questionable or dubious.

It is precisely in not raising these questions, in obfuscating the real issue that even a court, which is presented as an impartial arbiter, is acting on behalf of powerful groups. The involvement of the police, the soldiers, and the courts in the legitimization and protection of the claims of Mr. Lopez show how the state, through its apparatuses, has been appropriated for the maintenance and protection of the interests of the dominant class. Boni and Lando who went to the appellate court to inquire about the judge's ruling express how the court has betrayed the community:<sup>153</sup>

Namnamaenda a mangsalaknib kadakuada a marigrigat ti  
ketdi husgado ti nanggibus iti amin a darepdepda a maaddaanda iti  
daga wenno panangtagikuada iti nagtakderan dagiti balayda.

*[That which they had hoped to protect them who are poor, it was the  
judge who ended all their dreams of owning land or their acquisition of the land  
where their houses stood.]*

That it was Boni and Lando (recall their status in the community) who went to inquire about the ruling is significant to the change in the mode of resistance the community used. When the community pinned their hopes on a just legal resolution to their problem, Boni and Minda were the main organizers and movers.<sup>154</sup> Minda being a college activist-student had a network with student organizations that were willing to join them in their community's fight.<sup>155</sup> Their 'legal' fight was complemented by demonstrations, which were more 'tactical' than 'strategic' in motivation. Their demonstrations reveal their lack of 'inside' access to justice so much so that they needed to resort to demonstrations to appeal to the "awa" of the

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The novel was serialized from 1985-1986 and although the law that most explicitly protects squatters from eviction, the Lina Law (so called because the principal author is Jose Lina) was passed by the Congress only in the early '90s, there have been in the '70s 'legal' protection for squatters. For instance, the United Nation's Covenant on Economic, Social and Cultural Rights promulgated in 1974 recognizes the housing rights of citizens of member-states. Also, Seabrook notes, the United Nation's Committee on Economic, Social and Cultural Rights wrote in 1993 to the Philippine Secretary of Foreign Affairs asking for a response to charges that the Philippine government has consistently violated the housing rights of thousands of its citizens.

<sup>153</sup> BRAGADO, *supra* note 1.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

judge. In contrast, Mr. Lopez, because he had the money and the power, worked his way very insidiously. His access to the judge had to be kept secret because such access is illegal and illegitimate. In fact, the novel does not mention even only once that Mr. Lopez had really bribed the judge except for the insinuations and suspicions of members of the Filipinas Street community.<sup>156</sup> The judge Mr. Lopez mentioned he had already talked with (Judge Liput) is not the judge who ruled on the case (Judge Joson)<sup>157</sup> but Judge Liput perhaps, just perhaps could have been the link between Mr. Lopez and Judge Joson. However, it should not be missed that Mr. Lopez has tremendous access to state power such that a court that is presented as having ruled on the case without any influence from anybody remains questionable precisely because it based its ruling on evidence that may have been obtained dishonestly or through the circulation and exploitation of Mr. Lopez's vast wealth, power, and influence.<sup>158</sup>

Thus when Boni went to the appellate court, he asked Lando and not Minda to accompany him.<sup>159</sup> The community's use of 'extralegal' means to a resolution of their problem is signaled. At this point, the struggle is becoming both tactical and strategic employing modes of resistance that range from the "every day" to the "middle ground" to "open confrontation". (The confrontational and violent (armed even) mode of resistance was already employed in the underworld residents' killing of three men of Mr. Lopez). When Lando attempted to kill Mr. Lopez, he was not acting on the express/explicit "instructions" or "requests" or "wishes" of the community.<sup>160</sup> He acted on his own, even keeping his decision unknown to Boni.<sup>161</sup> But when Lando was killed by the men of Mr. Lopez who himself was fatally wounded the community wished he succeeded in killing Mr. Lopez.<sup>162</sup> When the residents learned that Lando attempted to kill Mr. Lopez to get rid of their community's enemy, they appropriately showed their gratitude for his sacrifice by attending his funeral.<sup>163</sup> Other criminal-friends of Lando said that if the community so desired, they could finish off Mr. Lopez.<sup>164</sup>

The community, which had initially wanted to drive away these criminals, came to depend on the capacity of these criminals (in other words, on their

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<sup>156</sup> Bragado, *supra* note 1.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

criminality) to commit acts which otherwise they themselves cannot do if only to protect Filipinas Street. The residents needed each other because if these “underworld” residents succeeded, then at least no one would pursue “their” land, “their” place as vigorously as Mr. Lopez. The ‘underworld’ residents would then be assured of a place where they can peacefully and securely live, far from the arms of the law. Though their modes of resistance were dictated and shaped more by their lack of access to institutional power which made their resistance more ‘tactical’, they were able to employ a variety of ways which successfully prevented Mr. Lopez and his men from easily evicting them, and which helped to expose corruption in the courts and thus the collusion of the state and the dominant class, and which helped them win the support of the wider public. Despite their exclusion from power, however, (or precisely because of their exclusion) the residents discovered, and forged, their community with those who were even more under the oppression of, and subjection to, the state – the criminals. Their alliance, which constituted the Filipinas Street community, enabled them in crucial stages of their struggle against the alliance of Mr. Lopez and the state, to engage in ‘strategic’ resistance. Denied by the state their power as a people, they asserted back such power precisely by resorting to the only kind of power available to them, and to a sense of justice that they believed was now their only hope. They welcomed the ‘criminal’ acts of their fellow community members, those a few had initially wanted *displaced*, against the state that is committing criminal acts (through the courts, the police and the military) against its citizens it considers too small and negligible.

### III. CONCLUSION: BETRAYING THE PEOPLE

Filipinas Street *is* not just *the* piece of land squatters have ‘colonized’, or appropriated for themselves. It is not only the ten-hectare land “bordered” by China Avenue and Japan Street that is being owned by the capitalist Mr. Lopez. Filipinas Street, as the name unambiguously points to, is the Filipino nation, and the people who have lived there for more than thirty years are the national community oppressed, dislocated and displaced by the capitalist class and the state that has betrayed the people when it colluded with Mr. Lopez. The formation of the Filipinas St. Homeowners Association by the residents to protect their place from Mr. Lopez represents their formation into a nation-community. The victory of Mr. Lopez in driving the residents away from Filipinas Street made possible by the courts and through Mr. Lopez’s use of his “armed” forces, suggests the dominant capitalist class’s ‘forcible’, violent but legal(*ized*) acquisition of the nation. It represents the people’s disenfranchisement and marginalization, both in terms of land and power. The novel does not foresee the people taking back their land and therefore their

rightful place in the nation for it does not only end with the people's defeat. The novel ends with the people's acceptance of (or resignation to) their defeat.<sup>165</sup>

While the ending (the defeat of the squatters) correctly points to the oppressed class's domination by the ruling capitalist class and the state constituted as it is by elites and members of the ruling class, the ending I argue is also premised on a misrecognition. When the author ends his novel with the squatters' resignation to and acceptance of their defeat, he refuses to contend with the power that squatters and other urban poor possess because of their oppression, a power generated by their solidarity. As Jeremy Seabrook says of the squatters in Commonwealth, Quezon City:<sup>166</sup>

The people of the Commonwealth settlement, as indeed those of most slums, are perceived as a threat to order; this is no longer because they are going to overthrow society, or are prey to destabilizing leftist beliefs, but because their capacity for autonomy, self-reliance and independence suggests that they hold the key to a different way of doing things, that they represent the embryo of an alternative social order that is more egalitarian and solidaristic – the reverse of that ideology of extreme individualism preached by the powerful. Concentrations of poor people have a formidable ability to organize[.] (200-201)

The author's ending of his novel does not recognize this and it is ironic because he sees the potential. This refusal on the part of the author obtains from his position vis-à-vis squatting. For all the author's attempts to write about squatters, he is against squatting (who is for squatting any way) and uses the discourse of legality to justify his position. But this discourse of legality – of operating within the bounds of the law – simply means operating and acting within the state that creates and "upholds" the law. Following this legal/state logic, the novel('s author) finds and declares the people of Filipinas Street unlawful occupants and justifies this by the powerful doctrine of the rule of law.

In capitalizing on this logic, the author becomes an advocate of the State. It must be noted that the novel was serialized from 1985 to the early parts of 1986 which indicates that the novel must have been written as early as 1984 (or even earlier). It must be noted also that it was serialized in a magazine that has contributed to the glorification of Marcos and of the dictatorship. Given the conjugal dictatorship's complex to beautify the City of Man to the point of building plywood

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<sup>165</sup> Bragado, *supra* note 1.

<sup>166</sup> SEABROOK, *supra* note 152, at 200-201.

walls to hide squatters from being seen by foreign visitors, the author mouths this logic, this Authority and even does a better job of clearing the metropolis of urban 'human waste.' Rather than a speaker for the oppressed class of squatters, the author is a judge who inflicts his bias on these squatters.<sup>167</sup> From the point of view of the 'rule of law', the author-judge has denied the oppressed substantive due process,<sup>168</sup> or perhaps, was too lazy to research on legal procedures that pertain to his subject before he wrote his novel and before 'authoring' and authorizing the verdict in favor of Mr. Lopez.

If Filipinas Street is the nation, then the people's struggle for it against Mr. Lopez and the state is a national struggle for political and social justice. It is the people's assertion of their fundamental right to the nation that is being usurped and monopolized by Mr. Lopez with legal backing from the courts. It is in this context that the distinction between the 'rule of law' and 'rules of law' must be made. Sir Arthur Watts (1997) explains:

... a rule of law is a statement of what the law prescribes on some particular matter; and collectively, *the rules of law* connote the body of particular rules comprising a legal system as a whole.

In contrast to such general body of rules of law, the concept of the rule of law signifies the regulation of the community in accordance with considerations of law and justice; it 'connotes a climate of legality and of legal order'. It relates more to the underlying characteristics of the community's legal system as a whole than to the content of the rules themselves. While the particular rules of law may be, and often are, changes from time to time, the rule of law involves fundamental principles which may be regarded as characteristic of a legally ordered community. While these characteristics, too, may change over time, they do so relatively slowly; they thus provide the long-term framework within which such particular rules of law – which may be shortlived – operate. The rule of law thus has a status which may in some cases be expressly constitutional, and which in others is at least quasi-constitutional.

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<sup>167</sup> Bragado, *supra* note 1.

<sup>168</sup> For a detailed discussion of the proper legal procedure authorities are supposed to follow in eviction and of some of the statutes that afford protection to squatters, see JUAN CLIMACO ELAGO, *The Role of Local Governments in the Eviction and Demolition Cases of Urban Poor Residents*, 113, 117, in *STATE-CIVIL SOCIETY RELATIONS IN POLICY-MAKING* (Marlon A. Wui and Glenda S. Lopez, eds., 1997). Alas, as in the novel, these statutory protections, it seems, are more honored in the breach than in the observance of their provisions.

This distinction between the rules of law and the rule of law is often blurred by those who, in responding to some international incident by calling for the rule of law to be upheld, are in reality often doing no more than calling for compliance with international law. *Compliance with the law, although desirable, is not the same as compliance with the rule of law.*<sup>169</sup> (emphasis mine)

The court's verdict recognizing Mr. Lopez's ownership of Filipinas Street cannot be accepted beyond reasonable doubt and reproach. It is a warped compliance with the law because it was made in violation of other rules or laws.<sup>170</sup> It is illegal and therefore, unjust. The rule of law has been blatantly violated and compromised and thoroughly undermined. Moreover, Mr. Lopez's winning his case was made only possible by a justice system and by legal courts whose most accurate representation in the novel is Judge Liput (Traitor/Betrayal), the judge whose help Mr. Lopez enlisted for his 'usurpation' of Filipinas Street. Lando and Boni's, and by extension the squatter community's, feeling that they have been betrayed by the court ("*He whom they had hoped to protect them who are poor, it was the judge who ended their dream of owning land...*"<sup>171</sup>) is justified and accurate. Their feeling of betrayal does not really spring from desperation and a false expectation of how legal courts ought to function. Instead, and more rightly so, it obtains from that *ideal* where there is rule of law, from that *ideal of rule of law*, where the rule of law does not only protect individual freedom but guarantees social justice in the face of tremendous State power even as it must also ensure that the State guarantee social justice.

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<sup>169</sup> Watts, *supra* note 34, at 230-231.

<sup>170</sup> SEABROOK, *supra* note 152, at 200-201.

<sup>171</sup> Bragado, *supra* note 1.