GAVELS DEFYING GUNS: THE JUDICIAL CONTROL OF STATE POWER IN AUTHORITARIAN SYSTEMS

By

Rodelio Manacsa

Dissertation

Submitted to the Faculty of the

Graduate School of Vanderbilt University

in partial fulfillment of the requirements for

the degree of

DOCTOR OF PHILOSOPHY

in

Political Science

December, 2007

Nashville, Tennessee

Approved:

Professor C. Neal Tate

Professor Stefanie Lindquist

Professor M. Donald Hancock

Professor Tracey George

Professor Pamela Corley

Copyright © 2007 by Rodelio Manacsa All Rights Reserved To my children, Gayle and Jaden,

For touching my life with their smiles

and to Charie,

Whose love makes it all worthwhile

ACKNOWLEDGEMENTS

To count a hundred million stars...at a rate of one per second, sounds like a job that no one can possibly complete in a lifetime. In reality, it would only take three years. *The key is focus---a willingness not to be distracted.*

---Timothy Corelli Sullivan

The Rule of Four

This quotation was an ever present companion when I was writing this project. It was a perpetual reminder of what I needed to do in order to complete my dissertation. There were times that I have lost my focus; got distracted by the stars. However, through the kindness of certain people I managed to get back on track.

First of all, I would like to thank my dissertation advisor, C. Neal Tate, for all the support, belief, and encouragement. With his steady yet understanding hand, he helped me overcome every challenge possible in this enterprise. I know I will not be able to thank him enough. He is a mentor to to me in the best way that is possible. And that is the highest compliment I could ever give.

I would like to thank Pamela Corley for all her advises when I hit a block along the way. Same goes to Stefanie Lindquist for her trust and belief in my abilities. I am also grateful to Don Hancock for his unfailing support to all my endeavors in graduate school. Finally, I am most appreciative for the friendship and understanding of Marina Ghulyan, Irek Kusmierczyk, and Sonalini Sapra. Their friendships are gifts that I am so fortunate to find along the way.

iv

I also owe my deepest gratitude to my family at the Ateneo de Manila University who supported my graduate education in the United States. In particular, I would like to thank Father Bienvenido Nebres, S.J., Antonette Angeles, Achoot Cuyegkeng, Miren Intal, and Father Jose M. Cruz, S.J. I am also grateful to the friendship and support of my colleagues, namely, Alma Salvador, Melissa Lao, Benjie Tolosa, Lydia Yu-Jose, Father Jose Magadia, S.J., Diana Mendoza, Benilda Santos, Eduardo Calasanz and Thomas de Dios.

I thank my children, Gayle and Jaden, for understanding their father during those nights when I could not read or play with them because of work. They are my inspiration; they keep my feet on the ground and my heart in its place. They are my pride and joy.

Finally, I owe my most heartfelt gratitude to Charie, my wife and best friend in life. Without her kindness and understanding, writing this project would have been a most arduous task. *But with her, life is a joy, a blessing to enjoy.* To her this dissertation is most lovingly dedicated.

TABLE OF CONTENTS

	Page
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
LIST OF TABLES.	ix
LIST OF FIGURES	xi
1.0 TO DEFER OR TO DEFY: JUDICIAL CONTROL IN INSECURE E	NVIRONMENTS
 1.1 Introduction 1.2 Control, Costs and Courts: Examining the Literature 1.3 Research Design: Paired Comparison, Most Different Systems, Mixed Methodology 1.4 Plan of the Dissertation 	3
2.0 RESTRAINING THE STATE: THEORIZING JUDICIAL NEGATIO	N
 2.1 Conceptual Definitions	32
3.0 REGIME TYPE, DURATION, AND MECHANISM SELECTION: HE INHIBIT JUDICIAL NEGATION	OW DICTATORS
3.1 Introduction	67

4.0 CULTIVATING JUDICIAL POWER: JUDICIAL NEGATION IN THE PHILIPPINE SUPREME COURT BEFORE MARTIAL LAW

4.1	Introduction91
4.2	Indigenous Communities and Customary Laws93
4.3	Hispanic Colonialism and the Civil Law System95
4.4	American Colonial Rule and the Common Law System101
4.5	Judging under the Bayonet: The Supreme Court and
	the Japanese Occupation
4.6	"That Eloquent reminder of the Rule of Law":
	The Post-Independence Supreme Court before Martial Rule
4.7	Conditions for Controlling the State: The Philippine Experience
5.0	CONSTRAINING CAESAR: JUDICIAL NEGATION IN THE PHILIPPINE SUPREME COURT DURING THE MARCOS DICTATORSHIP, 1972-86
5.1	Introduction
5.2	Motivations for Martial Law
5.3	Methods for Remaining in Power141
5.4	The Philippine Supreme Court and
	the Challenge of Regime Justification
5.5	The Philippine Supreme Court and
	the Challenge of Regime Institutionalization
5.6	Supreme Court Jurisprudence and
	Authoritarian Decay, 1983-86
	JUDICIAL NEGATION AND THE MARCOS DICTATORSHIP: AN EMPIRICAL ANALYSIS
6.1	Modeling Judicial Negation in Dictatorships
6.2	Research Design
6.3	Results and Discussion
6.4	Courts, Dictators, and the Pursuit of Legitimacy:
	Insights from the Philippine Case

7.0 TAMING THE SWORD IN THE APARTHEID STATE: JUDICIAL NEGATION IN THE SOUTH AFRICAN APPELLATE DIVISION

	Introduction	232
7.2	Historical and Political Context of the South African Legal System	234
7.3	Source of Law and Structure of the South African Judicial System	240
7.4	Regime Duration, Mechanism Selection, and Judicial Negation	
	in South Africa, 1950-1994	244
7.5	Judicial Negation in the South African Appellate Division:.	
	An Empirical Analysis	276
8.0	GAMES, GUNS, AND GAVELS: CONCLUSION AND IMPLICATION	ONS
8.1	Introduction	309
	Introduction	
8.2		310
8.2 8.3	Studying Dictatorships	310
8.2 8.3	Studying Dictatorships	310
8.2 8.3 8.4	Studying Dictatorships	310 312

LIST OF TABLES

Table	Page
Table 1.1	Comparative Features of South Africa and the Philippines
Table 3.1	Classification of Regimes69
Table 3.2	Regime Duration and Mechanism Selection
Table 4.1	Supreme Court Justices by Appointing President (1948-53)
	Political Parties in Control of the Executive and Legislative Departments
Table 5.2	Members of the Supreme Court (September 21, 1972)14
Table 6.1	Philippine Supreme Court Decisions, 1972-86203
Table 6.2	Descriptive Statistics
Table 6.3	Logistic Estimation of Judicial Negation at the Philippine Supreme Court under Authoritarianism (Model 1)206
Table 6.4	Changes in Predicted Probabilities of Judicial Negation (Model 1)
Table 6.5	Predicted Probability of Negation for Economic Cases
Table 6.6	Logistic Estimation of Judicial Negation at the Philippine Supreme Court under Authoritarianism (Model 2)221
	Changes in Predicted Probabilities of Judicial Negation (Model 2)
Table 6.8	Logistic Estimation of Judicial Negation at the Philippine Supreme Court under Authoritarianism (Model 3)226
Table 6.9	Changes in Predicted Probabilities of Judicial Negation (Model 3)
	Logistic Estimation of Judicial Negation at the Philippine Supreme Court under Authoritarianism

Table 7.1	Key Apartheid Legislation of the South African Government247
Table 7.2	Judges in the Appellate Division During the Early Years of National Party Rule
Table 7.3	Appellate Division Decisions, 1950-90287
Table 7.4	Appellate Division Decisions, 1971-90
Table 7.5	Descriptive Statistics
Table 7.6	Logistic Estimation of Judicial Negation at the South African Appellate Division, 1971-90 (Model 1)
Table 7.7	Changes in Predicted Probabilities of Judicial Negation (Model 1)
Table 7.8	Logistic Estimation of Judicial Negation at the South African Appellate Division, 1971-90 (Model 2)
Table 7.9	Changes in Predicted Probabilities of Judicial Negation (Model 2)
Table 7.10	Logistic Estimation of Judicial Negation at the South African Appellate Division, 1971-90 (Model 3)
Table 7.11	Logistic Estimation of Judicial Negation at the South African Appellate Division, 1971-90

LIST OF FIGURES

Figure	Page
Figure 2.1	Judicial Negation Under Unified Government51
Figure 2.2	Judicial Negation Under Divided Government
Figure 2.3	Judicial Negation Under "Limited Pluralism"
Figure 2.4	The Effect of Foreign Investments to Judicial Negation56
Figure 5.1	Extensive Form of the <i>Javellana</i> Game
Figure 5.2	Solution to <i>Javellana</i> Game by Backward Induction162
Figure 6.1	Antigovernment Decisions During Martial Law, 1972-1986201
Figure 6.2	Antigovernment Decisions During Martial Law, 1961-1986202
Figure 6.3	Percentage of Economic Cases in Cases that involved Government, 1972-86
	Percentage of Antigovernment Decisions in Economic Cases, 1972-86
	Percentage of Wage Compensation Cases in Cases where Government was a Party
Figure 6.6	Percentage of Antigovernment Decisions in Wage Cases, 1972-86213
	Antigovernment Decisions in the South African Appellate Division, 1950-90