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## Spectres of a dictatorship: Law's limit concepts in Lino Brocka's *Orapronobis*

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*This article reads Filipino director Lino Brocka's film Orapronobis (1989) as a commentary on the 1987 Philippine Constitution, a post-dictatorship document which the director helped draft as a member of the Philippine Constitutional Commission. Using a 'law and film' approach, the article argues that the film visualises law's limit concepts such as the state of exception, hostis generis humani, and constituent power. The film depicts the failure of words to control the political world that results in a dystopian constitutional order where human rights monsters and revolutionaries contend. Through an exploration of law's limit concepts, Brocka's Orapronobis represents the limits of Philippine constitutionalism.*

'Law has to be rendered visible.'<sup>1</sup>

From the day he assumed the presidency until he stepped down, Philippine president Rodrigo Roa Duterte (2016–22) waged a war against drugs without having declared a state of emergency. This campaign felled thousands of suspects in urban poor neighbourhoods, prompting the International Criminal Court (ICC) to authorise an investigation.<sup>2</sup> In response to the ICC prosecutor's move, President Duterte ordered the withdrawal of the Philippine State from the ICC Treaty in an obvious attempt to pre-empt further investigation.<sup>3</sup> This evasion of individual criminal responsibility was not surprising. Ten years earlier, international lawyer and UN rapporteur Philip Alston had already conducted an inquiry into hundreds of extra-judicial killings of left-wing activists in the Philippines from 2004 to 2007. His report observed that most of the

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1 Peter Goodrich, 'Screening law', *Law and Literature* 21, 1 (2009): 8.

2 International Criminal Court, 'Decision on the prosecutor's request for authorisation of an investigation pursuant to article 15 (3) of the statute', 15 Sept. 2021, [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021\\_08044.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08044.PDF).

3 Republic of the Philippines, Department of Foreign Affairs, 'Notice of withdrawal from the ICC', 2018, <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/15975-ph-officially-serves-notice-to-un-of-decision-to-withdraw-from-icc>.

assassinations were inspired by the Philippine military.<sup>4</sup> Concerned about a possible suit in the ICC, President Gloria Macapagal Arroyo (2001–10) refused to submit the ICC treaty to the Philippine Senate to secure its concurrence.<sup>5</sup> What appears to be consistent in all these cases is that the Philippine president had apparently and self-interestedly acted to protect himself or herself from any possible international criminal prosecution, thereby confirming the widely held belief among human rights activists that the carnage was in effect a result of state policy in violation of all constitutional limitations.

Constitutionalism has been characterised as a presumptuous project because it aims to control a political world by words.<sup>6</sup> Words are envisioned to control state actors as if the latter were Odysseus tied by his comrades to resist the songs of the Sirens.<sup>7</sup> Words and actions may nevertheless disconnect, and rights may simply become good on paper. For this reason, the constitutional project is seen to oscillate between magic and deceit.<sup>8</sup> There is magic in controlling a political world by words, and there is deceit in making people believe in some imaginary state of emergency. The Philippine constitutional order oscillates between these two poles.

It may be noted that all the extra-judicial killings in the Philippines have taken place under a constitutional order, which features a Supreme Court conferred with enhanced powers of judicial review, a Bill of Rights that cannot be suspended, a state of emergency power that has been constitutionally limited, and an independent Commission on Human Rights.<sup>9</sup> The recurrence of systematic executions of state targets has so many times raised serious questions about the integrity of the Philippines' own brand of constitutionalism, understood here as normative prescriptions of governmental powers and individual rights that are considered higher than ordinary

4 'Preliminary note on the visit of the special rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, to the Philippines', 2009. <https://digitallibrary.un.org/record/594980?ln=en>; see also, <https://www.ohchr.org/en/press-releases/2009/10/united-nations-special-rapporteur-extrajudicial-executions-finds-military>.

5 Philippine Supreme Court, *Pimentel v. The Executive Secretary* (2005). [https://lawphil.net/judjuris/juri2005/jul2005/gr\\_158088\\_2005.html](https://lawphil.net/judjuris/juri2005/jul2005/gr_158088_2005.html). During the presidency of Benigno Aquino III (2010–16), the executive branch submitted the treaty for senate concurrence. Thus, when Duterte waged his drug war, the Philippines was party to the ICC.

6 William Harris II, *The interpretable constitution* (Baltimore, MD: Johns Hopkins University Press, 1993), p. 1. Filipinos were the earliest in Asia to write a constitution in 1899. Nonetheless, the United States claimed legal ownership of the Philippine Islands through the Treaty of Paris of 1898 and waged a war of conquest (1899– early 1900s). Years after the reconquest, the Americans would approve the 1935 Commonwealth Constitution, which governed the islands from 1935 until 1973. Marcos Sr declared martial law under the 1935 Constitution and continued to rule under the 1973 Constitution. In 1986, a people's revolt ousted the dictator and exiled the Marcos family and close allies. Corazon Aquino (1986–92) assumed revolutionary powers until the ratification of the 1987 Philippine Constitution. In May 2022, Ferdinand Marcos Jr was elected as president and would later assume the presidency under the 1987 Constitution. See Leia Castañeda Anastacio, 'Keeping close to shore: Preserving colonial legacies in the 1935 Philippine Constitution', in *Constitutional foundations in Southeast Asia*, ed. Kevin Y.L. Tan and Bui Ngoc Son (Oxford: Bloomsbury, 2019), pp. 11–48.

7 Erwin Chemerinsky, *Constitutional law: Principles and policies* (New York: Aspen, 2006), p. 7.

8 Günter Frankenberg, *Comparative constitutional studies: Between magic and deceit* (Cheltenham: Edward Elgar, 2018), p. 10.

9 Article VIII, Sec. 1, Article VII, Sec. 18, and Article XIII, Sec. 17, The 1987 Constitution of the Republic of the Philippines, <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

statutes and legally enforceable.<sup>10</sup> One cannot help but ask how it is possible for a cycle of extra-judicial killings to exist under a constitution without a proper declaration of a state of exception? Is there any deception in the failure of words to control a world?

One of the earliest critiques of the persistent constitutional deceit in Philippine constitutionalism, that is to say, the disjuncture between constitutional words and political world under the 1987 Philippine Constitution, was Lino Brocka's *Orapronobis*, a film which may be considered a constitutional commentary by one of the authors of the constitutional text. *Orapronobis* (*Les Insoumis / Fight for Us*, 1989) was a French-produced film directed by Philippine Constitutional Commission member and film director, Catalino 'Lino' Brocka, who was posthumously honoured as a National Artist of the Philippines.<sup>11</sup> As a member of the constitutional commission that drafted the constitution, Brocka can be considered as an auteur of the constitutional text. Moreover, as director of the film that represented the world created by the 1987 Constitution, a representation that was consequently suppressed by the post-dictatorship government, Brocka may also be considered an auteur of a constitutional interpretation. Brocka was therefore an auteur in a double sense, connecting constitution to film.

This double authorial position of Brocka as a constitutional author and as an interpreter of the constitution arguably establishes an important authorial link between the 1987 Philippine Constitution and the film *Orapronobis* that allows one to reflect on constitutionalism through a conversation between law and film.<sup>12</sup> Ratified a year after the Marcos dictatorship was toppled, the words of the 1987 Constitution re-constituted the Philippine polity by empowering the Philippine Supreme Court with wider powers of judicial review, limiting executive powers, and instituting a Commission on Human Rights. It aimed at constituting a political world different from the one that had been formed under the tainted 1973 Philippine Constitution, a text that legitimated the permanent emergency powers of the President.<sup>13</sup> The 1987 Constitution and *Orapronobis* were constitutive of worlds. Released two years after the ratification of the 1987 Constitution, the film *Orapronobis* represented the world created by the constitution and recorded the people's bright hopes for a new political world which came into being after the dictatorship. It also captured in film the chaos that accompanied the collapse of the old order as

10 These are the normative and formal ideas of constitutionalism. See Robert Schütze, 'Constitutionalism(s)', in *The Cambridge companion to comparative constitutional law*, ed. Roger Masterman and Robert Schütze (Cambridge: Cambridge University Press, 2019), p. 41.

11 The film was produced by Bernadette Films and premiered at the Cannes Film Festival on 24 May 1989. Jose F. Lacaba, journalist and poet, wrote the script.

12 The study of law has become more interdisciplinary in recent years. Law and society, Law and economics, Law and literature are now well-established sub-disciplines. Historical analysis is also playing an important role in this interdisciplinary scholarship. See Tan and Bui, *Constitutional foundations in Southeast Asia*.

13 The 1973 Philippine Constitution, which allowed the sitting president to continue in office, was ratified by so-called 'citizen's assemblies'. The case of *Javellana v. The Executive Secretary* (1973) declared the ratification valid and the Constitution effective. It was later amended to provide the president continuing legislative powers just as he had under the 1935 Philippine Constitution, under which he had earlier declared martial law. See Presidential Proclamation 1081, <https://www.officialgazette.gov.ph/1972/09/21/proclamation-no-1081/>.

military rebels, the Communist Party of the Philippines, and the new government battled for power. It offered a tale of disenchantment with the new constitutional order.

*Orapronobis* was so controversial at the time of its release that the censors gave it a R-18, practically depriving it of a local audience and dooming its presence in Philippine movie houses.<sup>14</sup> However, the film's shocking images still resonate with contemporary audiences and have attracted continual scholarly commentary from many prominent critics, both international and local, through the years. Joel David's review was aptly titled 'After the Revolution', as it noted the film's post-revolutionary narrative of disillusionment.<sup>15</sup> Another early reading of the film connects the women characters to the concept of 'mother-nation' that deviated from the martial law images of the nation.<sup>16</sup> This analysis was followed by an article that touched, albeit in passing, on the film's concept of justice.<sup>17</sup> In a recent book-length study of Brocka's cinema, José B. Capino has characterised it as a martial law melodrama made distinct by what he called 'Marcosian moments'.<sup>18</sup> Lastly, scholars have also examined the ways characters in the film resolved moral dilemmas that arise from murder and rebellion.<sup>19</sup>

While some of these studies have touched on the human rights issues explored in the film's narratives, none of them has fully dealt with the problem of law in the film, particularly human rights law and constitutional law. None of these earlier studies has explicated the film's vision of human rights in relation to the international human rights regime. It should also be noted that the film was produced just two years from the ratification of the 1987 Constitution. This proximity should have elicited critical studies on some constitutional controversies that the film attempted to visualise. Surprisingly, critical studies of *Orapronobis* have not pursued the latter's relationship with constitutional law and international human rights law despite the prominence of questions about the derogation of rights in the film. Thus, there exists an undeniable scholarly gap in the study of Brocka's work.

In this article, I apply an interdisciplinary law and film approach to this important Southeast Asian text to fill the gaps in the critical literature.<sup>20</sup> Unlike previous

14 It was not publicly shown in the Philippines until the Active Vista Film Festival on 26 November 2008 and Cinemalaya Film Festival on 24 July 2009. <https://www.imdb.com/title/tt0097583/releaseinfo>.

15 Joel David, 'After the Revolution', in *The national pastime* (Pasig: Anvil, 1990); see digital edition: <https://amauteurish.com/2014/06/07/the-national-pastime-directors-3/#after-the-revolution>.

16 Roland B. Tolentino, 'Inang-bayan, mother-nation, in Lino Brocka's *Bayan ko: Kapit sa patalim* and *Orapronobis*', *Screen* 36, 4 (1996): 368–88. See also Roland B. Tolentino, *Contestable nation-space: Cinema, cultural politics, transnationalism in Marcos-Brocka Philippines* (Quezon City: University of the Philippines Press, 2014).

17 Jonathan Beller, 'Directing the real: *Orapronobis* and Philippine totalitarianism 2000', *Third Text* 13, 4 (1998): 3–22.

18 José B. Capino, *Martial law melodrama: Lino Brocka's cinema politics* (Berkeley: University of California Press, 2020), p. 166. For Capino, this moment consists of a cold-blooded killing and horrified responses from the victim and the onlookers. See also Darlene Machell de Leon Espena, 'José B. Capino, *Martial law melodrama: Lino Brocka's cinema politics*', *Journal of Southeast Asian Studies* 53, 1–2 (2022): 387–9.

19 Diana F. Palmes and FPA Demetrio III, 'Kohlbergian analysis of the moral reasoning in Lino Brocka's leading films', *Humanities Diliman* 12, 1 (2015): 106–30.

20 In Southeast Asian Studies, film has been used to analyse concepts of nationhood, gender, and ethnicity. See for example, Lan Duong, 'Close up: The female gaze and ethnic difference in two Vietnamese

scholarly readings of the film, I shall focus on *Orapronobis*' well-recognised but understudied relation to law, particularly international human rights and constitutional law, to reflect on the Philippines' recurring rights crisis. Moreover, I will also re-read this film in the wake of Duterte's six-year drug war reminiscent of the undeclared state of emergency depicted in the narrative. The pictures of victims of extra-judicial killings and the mass arrests that characterised the drug war brought back familiar images to those who lived through the transition years of the 1980s. Finally, the election to the presidency of the dictator's son, Ferdinand 'Bongbong' Marcos Jr in June 2022 has unleashed an interest in the bloody history of repression during the dictatorship. Both these critical gaps and contemporary events in the Philippines make a re-reading of the film not only timely, but also imperative.

In the following sections, I shall argue that Brocka's *Orapronobis* visualises law's limit concepts of the state of exception, *hostis generis humani* (enemy of humankind), and revolutionary constituent power. The film represents the undeclared state of exception under the 1987 Philippine Constitution and reveals the absence of the constitutional cord that connects the words of the constitution and the actions of state agents. The representation of this disconnection unveils the failure of words to control actions, which results in a dystopian world upended by human rights monsters and hardened revolutionaries who respectively cannibalise constitutional subjects and fight to end the constitutional (dis)order itself. Through an exploration of law's limit concepts, Brocka's classic film represents the limits of Philippine constitutionalism.

The article's thesis shall be discussed in seven sections. Following this introduction, the second section reviews the literature on constitutional law and film. The third section examines *Orapronobis*' genre of excess. The next three sections discuss the film's representations of law's limit concepts such as the state of exception, the *hostis generis humani*/ human rights monster, and constituent power. Finally, the conclusion ties film form to the extreme content (filmic genre and law's limit concepts) in *Orapronobis* and interprets its exploration of limit concepts as a critique of Philippine constitutionalism's perennial failure to control the world by words.

### **In flagrante depicto of law's limit concepts**

Law and film is now a recognised sub-discipline.<sup>21</sup> This sub-discipline has emerged from law's long relationship with the image. As scholars have noted, law has a 'long tradition of images, a science of symbols, a pictorial and theatrical staging of legality'.<sup>22</sup> Indeed, one bears witness to the wigs, the robes, the symbol of the blind goddess of justice, and so on. The law and film discipline simply pushes forward law's ancient relationship with the image to the age of mechanical reproduction.

women's films', *Journal of Southeast Asian Studies* 46, 3 (2015): 444–62; Noah Keone Viernes, 'Restricted vision: Censorship and cinematic resistance in Thailand', *Journal of Southeast Asian Studies* 52, 4 (2021): 634–57. The present article adds to the existing scholarship by using film to reflect on the problem of the rule of law in a Southeast Asian state. For a legal view, see Imelda Deinla, *The development of the rule of law in ASEAN* (Cambridge: Cambridge University Press, 2017).

21 Peter Goodrich, 'Introduction: In flagrante depicto', *Cardozo Law Review* 31, 4 (2010): 971.

22 *Ibid.*, p. 972.

There is still a dearth of scholarship on law and film in Asia.<sup>23</sup> Corey Creekmur and Mark Sidel's anthology on cinema, law and the state in Asia, which was an early foray into this new field, underscored the novelty of law and film studies. Incidentally, one of the essays in the book, Roland Tolentino's 'The Poverty of Justice', analysed Philippine cinema's representation of law in a traditional 'court room' setting.<sup>24</sup> It critiqued the Kafkaesque inaccessibility of the Philippine justice system and the state's imposition of an ineffective judicial order,<sup>25</sup> thus revealing Philippine cinema's engagement with law.

Since the publication of Creekmur and Sidel's anthology, law and film scholarship has moved beyond courtroom scenes. Marco Wan's *Film and Constitutional Controversy* (2020) is instructive of new directions in the scholarship. In his book, Wan shows how Hong Kong films have engaged with constitutional controversy from the twilight of British rule to the age of the National Security Law. He reveals how cinematic images could capture legal controversies that energise citizens to march in the streets and commit acts of violence.<sup>26</sup> For instance, Wan convincingly argues that some triad films that narrate the complications arising from contested elections involving the gang chief reveal a deeper connection to the issues of suffrage that hound the election of Hong Kong's chief executive.<sup>27</sup> He further explicates Wong Kar Wai's *2046*'s subtle allusions to the Hong Kong Basic Law's fifty-year promise to preserve the capitalist way of life in the former colony. Wan concludes that films do engage with constitutional issues and provide the public ideas about and perspectives on constitutionalism that often evade the lenses of doctrinal works.

Law and film studies, indeed, may provide ways of seeing law that cannot be attained through the lenses of more traditional approaches. In line with this analytical facility, this article also seeks to do something that is only possible through interdisciplinary scholarship: the analysis of the visual representation of law's limit concepts in a film that critiques a constitutional world.

Films and constitutions are texts constitutive of worlds. While constitutional words constitute a political world into existence, narrative film imagines the same world through words and images to tell us something about the constitutional project. From this perspective, film may serve as a commentary on the process of constituting the world and the state of the constituted world.

Moreover, constitutional law and film also create magic and spin deceit. On the one hand, constitutional law constitutes polities, transforms groups into peoples and nations, renders invisible the bonds between leaders and people.<sup>28</sup> On the other hand,

23 See Corey Creekmur and Mark Sidel, *Cinema, law, and the state in Asia* (New York: Palgrave, 2007), p. 1.

24 Roland Tolentino, 'The poverty of justice: Postcolonial condition and representations of justice in contemporary Philippine cinema', in *ibid.*, p. 86.

25 *Ibid.*, p. 85.

26 Marco Wan, *Film and constitutional controversy: Visualizing Hong Kong identity in the age of 'One country, two systems'* (Cambridge: Cambridge University Press, 2020), p. 3.

27 *Ibid.*, p. 118.

28 Frankenberg, *Comparative constitutional studies*, pp. 10–11.

if constitutional law justifies imaginary states of exception, it may render constitutionalism ineffective for deceit could destroy trust and the constitutional culture.<sup>29</sup>

The ontology of film is, of course, magical in itself. It represents moving pictures that become a visual and audible world. This staged-reality can create an illusion that is more ‘realistic’ than the real event.<sup>30</sup> Film’s basic apparatus mediates between the spectators’ perceptions and the world it creates, thus producing non-neutral ideological subject positions.<sup>31</sup> Without doubt, film has the power to represent a world with ‘the force of the visual’.<sup>32</sup>

Film’s power to depict becomes significant in the representation of law’s limit concepts where the boundaries between force and law are blurred.<sup>33</sup> States of exception, human rights monstrosities, and constituent powers are all limit concepts of the law in the sense that they are all extreme concepts. A state of exception suspends the law to the extent that it blurs the line separating legality and illegality, thereby conjuring phantasms and mysteries that confuse the intellect.<sup>34</sup> This suspension of law, in turn, creates a monster that ‘combines the impossible and the forbidden’.<sup>35</sup> Finally, constituent power is also an extreme form of power that arises from nowhere.<sup>36</sup> It is a violent force that re-orders politics and resists constitutional taming.

To clarify these concepts, film can muster all its powers to depict. Indeed, it can catch in flagrante delicto, or in the act, the chief executive, the militarists, and the revolutionaries alike. It can seize them under the cover of darkness and illuminate them in ‘image and actuality’.<sup>37</sup> This, I argue, is what Brocka’s *Orapronobis* does with law. The film, which shows many scenes through a television screen and underscores visuality,<sup>38</sup> portrays the last moments of the Marcos dictatorship, the Revolution of 1986, the new democratic press, and the internal refugees. Through the television, it screens revolution, human rights violations, and constitutional (dis)order. In short, it renders law visible<sup>39</sup> and saves it from vanishing in the maelstrom of phantasms unleashed by the undeclared state of exception.

29 Ibid., p. 278. Former president Gloria Arroyo declared a state of emergency four times using various labels to evade constitutional checks. See Raul C. Pangalangan, ‘Philippine constitutional law: Majoritarian courts and elite politics’, in *Constitutionalism in Asia in the twenty-first century*, ed. Albert H.Y. Chen (Cambridge: Cambridge University Press, 2014), pp. 295–321.

30 Siegfried Kracauer, *Theory of film: The redemption of reality* (Princeton, NJ: Princeton University Press, 1997), p. 35.

31 See Jean-Louis Baudry, ‘Ideological effects of the basic cinematographic apparatus’, *Film Quarterly* 28, 2 (1974): 39–47.

32 Goodrich, ‘Introduction’, p. 973.

33 The limit concept is also characterised as an extremity that serves as a wall. See Piet Strydom, ‘The problem of limit concepts in Habermas: Toward a cognitive approach to the cultural embodiment of reason’, *Philosophical Inquiry* 22, 1–2 (2018): 168–89. For a mathematical view of the notion of limit concept, see Catherine Legg, ‘Charles Pierce’s limit concept of truth’, *Philosophical Compass* 9, 3 (2014): 204–13.

34 Frankenberg, *Comparative constitutional studies*, pp. 276–7.

35 Michel Foucault, *Abnormal* (New York: Picador, 2003), p. 56.

36 Antonio Negri, *Insurgencies: Constituent power and the modern state*, trans. Maurizia Boscagli (Minneapolis: University of Minnesota Press, 1999), p. 2.

37 Goodrich, ‘Introduction’, p. 975.

38 The significance of TV images in *Orapronobis* is noted and analysed in Beller, ‘Directing the real’, pp. 8–15.

39 ‘Lawyers are not good with things that vanish, the juridical preference being for perpetuities’ (Goodrich, ‘Screening law’, p. 21). Thus, it is the filmmaker who could capture this vanishing image

### *Orapronobis*' genre of excess

This section argues that *Orapronobis* visualises a narrative of disillusionment through the integration of melodrama and horror, two systems of excess correlative to the excesses of law's limit concepts.

The film opens with the shocking murder of a priest by the anti-communist cult 'Orapronobis' and closes with a former rebel-priest's decision to re-join the communist underground. It follows the life of ex-rebel priest Jimmy Cordero (played by Phillip Salvador), who is freed from prison in the wake of the toppling of the Marcos dictatorship. Upon his release from prison, he marries a middle-class woman and joins a human rights organisation. He tries to live a normal bourgeois life in the new 'democratic space' created by the post-dictatorship government legitimised by the 1987 Philippine Constitution. Amidst this new normality, he meets again a former love, Esper (Gina Alajar), who has become an internal refugee after her village was terrorised by Commander Kontra (Bembol Roco), a brutal anti-communist leader of a vigilante group organised by state agents, the Orapronobis. During a fact-finding mission to the village, Jimmy discovers that he has a son, who is named after his *nom de guerre*, Camilo, and attempts to fulfil his paternal obligations. Jimmy also meets his former comrade, Rene (Pen Medina), who now operates as a hit man of the rebel group in the city. Rene points out the illusions of the new constitutional order and invites Jimmy to re-join the movement. He leaves his hand gun, and a phone number in case Jimmy wants to return. He asks Jimmy for a code name and the latter gives the name 'Danton'. Meanwhile, NGO workers are disappeared, refugees arrested, and Jimmy gets ambushed. Esper and her son are illegally seized by military agents in the capital and are handed to Kontra and the vigilantes. Kontra then rapes Esper, which triggers her son, Camilo, to attack Kontra. Kontra kills Esper's son and Esper grabs a gun and wounds Kontra. In reaction, Kontra shoots her to death. Django, Kontra's subordinate, then learns about the falsity of his chief's claims to invincibility. He rebels and hacks Kontra to death, slicing the latter's heart and cannibalises it. Jimmy arrives at the place and mourns his son. The film ends with Jimmy's phone call to a comrade using his code name, Danton.

*Orapronobis* belongs to a group of films that engage with constitutional controversies. The director himself described it as his 'most political film' where the political does not only serve as a backdrop, but as 'front and center'.<sup>40</sup> I shall add here that it is also one of his 'legal' films that directly engage with the constitutional issues of governmental powers and constitutional rights. In fact, it has recently been described as a melodrama with a 'bombastic treatise on human rights'.<sup>41</sup>

of the law. The visualisation of law, of course, reaches an extreme perversity in Duterte's drug war. The state-sanctioned attacks on suspected drug lords, drug pushers, and drug addicts consist of a perverse form of visualisation of 'the Law'. The circulation of images of the victims with a text that indicates they are scums of society underscores the drug war's theatricality and visibility.

40 Quoted in Capino, *Martial law melodrama*, p. 170.

41 Ibid., p. 178. Most human rights enumerated in international conventions were codified in the 1987 Philippine Constitution. The rights to life, liberty, and free expression are guaranteed in both international legal and constitutional texts. These rights are limitations on state power. Human rights law is nevertheless a different source of rights with specific legal remedies. Although human rights are primarily enforced domestically by states, the gross violations of these rights may trigger other states to ask the violating state to comply with its obligations under international law. In contrast, citizens may ask

This ‘treatise’, however, is one that divulges a narrative of disillusionment.<sup>42</sup> Jimmy’s story is a narrative of disillusionment with constitutionalism since his belief in democratic space, statist human rights and the new constitutional order crashes towards the end of the film. The loss of constitutional illusions lies at the peak of the film’s teleological vision. The narrative culminates in the loss of illusion and the onset of disenchantment.

From this viewpoint, Jimmy’s disillusionment with the post-revolutionary constitutional order fits well with postcolonial disillusionment that characterise the novels of Chinua Achebe, Wole Soyinka, and even Ngugi wa Thiong’o, as argued by Joe E. Obi Jr. In the Third World context, the narrative of disillusionment is a distinctly post-colonial and post-revolutionary event. It is an event that happens after the triumphant euphoria of an anti-colonial and anti-dictatorship struggle disappears. Drunk with triumphant and hopeful visions, the heroes of these narratives affirm the constitutional order but slowly lose their faith in the new order. They become the new order’s fiercest critics.<sup>43</sup> Jimmy also tries to begin life anew under the post-dictatorship order. He enjoys the new space and the petty bourgeois present. He nevertheless loses his constitutional faith along the way and decides to become the gravedigger of the constitutional order.

Brocka visualises this narrative using two of cinema’s most popular genres—melodrama and horror.<sup>44</sup> Capino’s work on Brocka clearly identified the conventional elements of melodrama and horror in *Orapronobis*.<sup>45</sup> Jimmy’s divided loyalties to Esper and his new middle-class wife, his discovery and loss of Camilo, and the Manichean juxtaposition between the human rights hero and the human rights monster are all conventional elements of the melodrama that have been disparaged by some critics.<sup>46</sup> Jimmy himself, as Capino has argued, is an idealisation of the middle-class youth who joined the anti-Marcos struggle.<sup>47</sup> One may add further that the film’s nostalgia is not only for this ideal hero, but for the armed struggle that the disillusioned hero ultimately affirms. This idealisation is without doubt melodramatic.

local courts to protect their constitutional rights within the domestic legal system. In Europe, one can sue the state before the European Court of Human Rights. There is, however, no regional court that accepts human rights complaints in the ASEAN region.

42 Joel David notes its ‘divulgence of disillusionment’; David, ‘After the revolution’, p. 187.

43 See Joe E. Obi Jr, ‘A critical reading of the disillusionment novel’, *Journal of Black Studies* 20, 4 (1990): 399–415.

44 The combination of styles is also implicit in David’s reading (David, ‘After the revolution’, p. 189). Film genres are a set of conventions made distinct by formal and thematic strategies surrounding plot, character, sound, etc., that elicit particular expectations and responses from the viewers. James Aston and Lin Feng, ‘Introduction’, in *Renegotiating film genres in East Asian cinemas and beyond*, ed. James Aston and Lin Feng (Dordrecht: Springer, 2020), pp. 4–5. Genre forms assume the nature of a ‘set of rules’ for narrative construction that are familiar to both filmmaker and audience: see David Bordwell and Kristin Thomson, *Film art: An introduction* (New York: McGraw-Hill, 1993), p. 81. The notion of genre as ‘rules and regulations’ is widely held. See Edward Buscombe, ‘The idea of genre in the American cinema’, in *Film genre reader*, ed. Barry Keith Grant (Austin: University of Texas Press, 2012), p. 13; Barry Keith Grant, *Film genre: From iconography to ideology* (London: Wallflower, 2007), pp. 1, 8.

45 Capino, *Martial law melodrama*, p. 178. Melodrama is characterised by deviations from realism and by narratives that are repetitive. Linda Williams, ‘Film bodies: Gender, genre, and excess’, in Grant, *Film genre reader*, p. 161.

46 Capino, *Martial law melodrama*, p. 178.

47 *Ibid.*

*Orapronobis* also contains conventional elements of horror films,<sup>48</sup> which is the extreme representation of disorder. Horror occurs at the border where one's sense of 'certainty, integrity and unity' is destabilised.<sup>49</sup> Commander Kontra, the ultimate monster in the age of human rights, is the source of horrifying scenes, from the point-blank shooting of a priest and massacre of villagers to rape and cannibalism. Through his monstrousness, one witnesses dismembered bodies, dripping blood, and a sliced brain ready to be consumed. The recurring images of the monster, the disintegrating human corpse and the cultist connotations of the title, 'Orapronobis', which is a corruption of the Latin *ora pro nobis* (pray for us), elicit fear. The images shock and hold audiences, bringing them catharsis and a certain amount of pleasure arising from film technique. But beyond the technical effects through the manipulation of the filmic apparatus, horror in *Orapronobis* also aligns with the politics of disillusionment. On a formal level, it gives form to the extreme conditions that the film aims to depict. On the substantive level, it represents the horror that brings about disillusionment.

Melodrama and horror, of course, are not only central in giving cinematic form to the narrative of disillusionment; they are also key to understanding Brocka's representation of the law. To understand a cinematic genre's relationship with law in the film, one needs to see melodrama and horror as 'systems of excess'.<sup>50</sup> Film theorists have identified a logic of excess in both genres.<sup>51</sup> According to this view, melodrama and horror are excessive compared to the efficient and action-centred classical realist style of narrative cinema.<sup>52</sup> Thus, melodrama as a genre of excess is characterised by 'lapses in realism', and by 'excesses of spectacle and displays of primal, even infantile, emotions'.<sup>53</sup> In the same vein, horror exhibits excessive violence, eliciting terror and fear among the viewers.<sup>54</sup> Notably, both these excesses feature the central spectacle of the body caught in the grip of either intense emotions or violence.<sup>55</sup>

These excesses are all present in Brocka's film—excessive weeping, fear, violence, cannibalism. These formal features of the melodrama and horror, however, serve a purpose other than merely showing bodily spectacles. In fact, they are correlative with *Orapronobis*' representation of the limit concepts of law. As mentioned before, law's limit concepts breach the boundaries of legality. The state of exception reaches the grey zone between the legal and illegal; the *hostis humani*'s monstrosity is extreme; finally, constituent power is the ultimate right to re-order politics. All three are excessive to the extent that they transgress the limits of the law.

When *Orapronobis* is examined as a totality, one sees a correlative excess in the film's form and content. Just as the film's melodrama and horror display excesses that

48 Capino opts for the more specific category of a 'slasher' film that features a killer. He describes the film as a 'political slasher' and a 'communist melodrama'. *Ibid.*, pp. 172, 178.

49 Darryl Jones, *Horror: A very short introduction* (Oxford: Oxford University Press, 2021), p. 10.

50 Williams, 'Film bodies', p. 161. Melodrama, which may include horror, is a 'mode of excess'. See Peter Brooks, *The melodramatic imagination: Balzac, Henry James, melodrama and the mode of excess* (New Haven: Yale University Press, 1976).

51 Rick Altman, 'Dickens, Griffith, and film theory today', *South Atlantic Quarterly* 88, 1 (1989); Altman is also cited by Williams, 'Film bodies'.

52 Williams, 'Film bodies', p. 160.

53 *Ibid.*, p. 161.

54 *Ibid.*, pp. 164–5.

55 *Ibid.*, p. 161.

repetitively transgress the rules of classical cinema, the film substantively visualises law's limit concepts, crossing and re-crossing the borders of the legal and the illegal.<sup>56</sup> The film's [il]logic of excess in form simply goes hand in hand with its representation of the excesses of illegality.

As a political film, *Orapronobis*' excess cannot simply be dismissed as purely spectacle. These excesses contain a transgressive quality. It may be recalled that Foucault considered transgression, excess, and the limit as related categories.<sup>57</sup> Transgression 'involves the limit'. It is the incessant crossing and re-crossing of a line,<sup>58</sup> a repetition that carries the limit to 'the limits of its being'.<sup>59</sup> Excess embodies this transgression, for what transgresses the limits is excess.<sup>60</sup> In the next three sections, I shall analyse Brocka's visualisation of law's limit concepts, their excesses and their transgressions.

### Horror of an undeclared state of exception

This section discusses *Orapronobis*' representation of the state of exception and its normalisation within the new post-1987 constitutional order. I have mentioned earlier that constitutionalism is magical, because it seems to control the political world by words alone. Words, however, may fail to control a world. Thus, the most beautiful constitution may fail to protect its citizens from arbitrary arrests, trumped-up charges, and extra-judicial executions. And a political leader can swear before a constitution, and yet embark on a campaign of mass incarceration of a whole nation. Words and actions in the political world may simply fail to connect.

In parallel to a constitution's power to create a world, film may also constitute a representation of the political world. The screen, writes Stanley Cavell, holds a world, and distinguishes this cinematic world's existence from the spectator's,<sup>61</sup> thereby allowing the latter to have a totality of vision of this world order. Through this worlding, film can represent the disconnect between words and world. Thus, Brocka's interpretation of the constitution in filmic form has a vision of totality that allows one to view not simply constitutional provisions but also human experience. Having participated in the production of the constitutional text, Brocka now measures how effective those words are in controlling state actions.

From an interdisciplinary perspective of constitutional law and film, the world of *Orapronobis* is a depiction of the political world constituted by the 1987 Philippine Constitution. This is a world where words fail to control the political world—once again, there exists a state of exception, now in an undeclared version.

The state of exception is a juridical concept that has evolved from the notion of a state of siege. The latter is characterised by a spatial dimension, an exceptionally

56 Tolentino argues that the film attempts to position 'the national sublime' or the 'Third World sublime'. I interpret the sublime as law's limit concepts. Tolentino, 'Inang-bayan, mother-nation', p. 382.

57 See Michel Foucault, 'A preface to transgression', in *Aesthetics, method, and epistemology: Essential works 1954–1984* (London: Penguin, 2020), p. 84.

58 *Ibid.*, p. 73.

59 *Ibid.*

60 *Ibid.*, p. 72.

61 Stanley Cavell, *The world viewed* (Cambridge, MA: Harvard University Press, 1979), p. 24.

threatening situation, an international/external enemy, and a declaration that replaces civilian government with military government.<sup>62</sup> In its later form, the state of siege loses much of its military aspect and transforms itself into a metaphor for siege-like conditions.<sup>63</sup>

These siege-like conditions are nowadays known as a state of exception or a state of emergency. The state of exception ‘unites mystery and demons’ because it ‘retires from the rule to open up a wide terrain for the benefit of unbridled power’.<sup>64</sup> It resists precise descriptions and definitions, relying instead on transitions: from law to force and from civilian to military regime.<sup>65</sup>

Under constitutional law, the state of exception is a decision of the executive. This decision triggers the use of emergency powers that allows the executive to consolidate constitutional powers. Under some constitutions, the executive becomes law-maker and judge as well. In other cases, some fundamental rights are suspended. Indeed, ‘[a]ny state of exception,’ writes Carl Schmitt, ‘brings with it certain encroachments upon the hierarchical structure of the constitution.’<sup>66</sup> An ‘effective state of exception would become an impossibility if ... every article in the constitution could raise an insurmountable obstacle to the actions’ of the executive.<sup>67</sup> This decision, Giorgio Agamben has argued, creates a world outside the constitution. It is characterised by an extension of military powers into the civilian sphere and the suspension of constitutional rights. He explains that it is not a certain kind of law, but law’s limit concept,<sup>68</sup> ‘an anomic space in which what is at stake is a force of law without law’.<sup>69</sup>

‘Filmed clandestinely’ at the height of a low-intensity conflict in the Philippine countryside, *Orapronobis* represents the state of exception, albeit an undeclared version.<sup>70</sup> The undeclared state of exception is a post-dictatorship phenomenon wherein the executive acts as if it were in a state of emergency without an actual decision in the form of a proclamation. This resort to emergency powers makes emergency actions ordinary and normalises the exception. Rather than simply suspend the norm, the decision becomes the norm itself.

This legal phenomenon has been identified as the normalisation of states of emergency. ‘Normalisation’ means that the prerogative to use unlawful force, the exception, is ‘internalised’ in the constitutional order, and becomes part of law’s ordinary structure and doctrines. One of the most common ways is the use of ‘semantics camouflaging’, a deviation from constitutional practice.<sup>71</sup> This deviation has the usual effect of changing the standard of protection of individual rights while allowing certain institutions to exercise extraordinary powers. This is best exemplified by anti-

62 Frankenberg, *Comparative constitutional studies*, p. 268. Martial law is the preferred term in American and Philippine law. This article uses ‘exception’ and ‘emergency’ interchangeably.

63 Ibid.

64 Ibid., p. 261.

65 Ibid., p. 262.

66 Carl Schmitt, *Dictatorship* (Cambridge: Polity, 2014), p. 183.

67 Ibid., p. 181.

68 Giorgio Agamben, *State of exception* (Chicago: University of Chicago Press, 2005), pp. 4–5.

69 Ibid., p. 39.

70 The clandestine production of the film is noted in the opening segment.

71 Frankenberg, *Comparative constitutional studies*, pp. 286–7.

terrorism laws that subject the individual to state vilification, and confer new powers on anti-terrorism councils.<sup>72</sup>

Brocka's film was an early depiction of the normalisation of the exception in constitutional law. In visualising this condition, the film drew closer to what Walter Benjamin calls the 'tradition of the oppressed' that considers the state of emergency in which we live as the rule rather than the exception.<sup>73</sup> Thus, the normalisation of the exception creates a quotidian disconnection between the unsuspected words of the constitution (constitutional rights) and state actions (arrests, searches, detentions, etc). The constitution remains executory, and yet the political world is in chaos. Brocka's film catches this disconnect between word and world. Thus, one witnesses a disconnect between the commands of the 1987 Constitution's Bill of Rights and the actions taken by the state. The text says, 'no person shall be deprived of life, liberty ...' (Sec. 1, Art. III). Yet one sees executions of unarmed folks—priest, villagers, activists, women, and children. The constitutional text says, 'the right of the people to be secure in their persons, houses, papers, effects ... shall be inviolable' (Sec. 2, Art. III). Nonetheless, one witnesses the insecurity of the people who live in terror of the vigilantes, who in turn take their orders from state agents. The text affirms 'the dignity of the human person' and 'guarantees full respect for human rights' (Sec. 11, Art. II). However, one sees people lose their dignity as they are ejected from their villages. There are simply no guarantees to protect human bodies from arbitrary violence. The film visualises the dissolution of human dignity because of violations of the integrity of human bodies.

Disrespect for the dignity of the human person is depicted *in flagrante delicto*. The film, in fact, alludes to the murder of an Italian priest whose brain was reportedly eaten by an anti-communist vigilante leader.<sup>74</sup> In the film's uncut version, the camera shows Kontra proclaiming his cannibal instincts to the villagers before murdering a foreign missionary. The film caps the sequence with a graphic shot of the murderer just about to consume the brain of his victim.<sup>75</sup>

This cannibalism is arguably a metaphorical representation of the state of exception—the 'fictional lacuna' in public law that is legally remedied by the executive.<sup>76</sup> In a way, the film shows the continuity of martial law practices under the 1987 Philippine Constitution by beginning the film with cannibalism in the Marcos era and ending with cannibalism in the post-Martial Law years. But this time it is martial

72 See Republic Act 11479, Anti-terrorism act (2020), Republic of the Philippines. On the state as a suicide bomber, see Laurent de Sutter, 'Kamikaze law: On the aesthetics of the legal war on terror', in *Law and new media*, ed. Christian Delage, Peter Goodrich and Marco Wan (Edinburgh: Edinburgh University Press, 2019).

73 See Walter Benjamin's 'Theses on the philosophy of history', in *Illuminations*, ed. Hannah Arendt (New York: Mariner, 2019), p. 200. For Benjamin, the 'state of emergency' is, in reality, the rule, because violence is always used against the working classes. Thus, he suggests that what is to be done is to reveal the real emergency, which is revolution or civil war. Schmitt, of course, believes that the state of exception is not the rule, because a contrary position would make every legal order a latent dictatorship. Schmitt, *Dictatorship*, p. xlii.

74 In 1985, Fr Tulio Favali was murdered. His killers claimed they ate the priest's brain.

75 The images are reproduced in Capino, *Martial law melodrama*, p. 175.

76 Agamben, *State of exception*, p. 31.

law in a more perverse version. The state of emergency in the film happens *without a declaration*.

This makes the state of exception under the 1987 Constitution different from the original martial law of 1972. President Ferdinand E. Marcos (1965–86) declared martial law under the 1935 Constitution through Presidential Proclamation 1081. The state of martial law was then extended and legitimated, including his stay in power, through the 1973 Philippine Constitution. Martial law was officially withdrawn only in 1981 through Presidential Proclamation 2045.<sup>77</sup> The then Philippine president therefore used the emergency powers of the constitution to fight phantasmic enemies, prolonging his stay in office by the same power until the constitutional magic was exhausted by economic collapse and unimaginable plunder. The magic was revealed to be a deceit.

To prevent any abuse of emergency powers, the 1987 Constitution made three important changes. First, it limited the legal grounds for the declaration of martial law. Second, it conferred a power on Congress to consent to any extension. Finally, it made the factual basis of martial law judicially reviewable.<sup>78</sup> For this purpose, the constitution enhanced the power of the Supreme Court to review grave abuse of discretion on the part of the executive and the legislature to prevent the judiciary from becoming a mere legitimating office.<sup>79</sup> And yet, despite the establishment of a new constitutional order, some doctrines were reaffirmed in warrantless arrest cases and martial law practices which continued without a declaration. This problem was observed in many dissenting opinions in the constitutional cases that reached the Supreme Court in the post-dictatorship years, particularly in *Umil v. Ramos* (1990), which is a reaffirmation of the concept of ‘continuing crime’ propounded in a Marcos-era case *Garcia-Padilla v. Enrile* (1983).<sup>80</sup>

Brocka’s *Orapronobis* visualises these constitutional transitions and continuities in the early segments of the narrative. Through cinematic editing of shots that only last a blink of an eye, the film leaps temporally and spatially to signify the rapid collapse of a constitutional order and the rise of a new one. The first segment establishes a temporal setting in the waning years of the Marcos era in 1985, and culminates in Kontra’s point-blank murder of Father Jeff using a shot-reverse shot followed by a total blackout on the screen. While the screen is still dark, one hears the sound of a flying chopper; then, historical footages of the People from the 1986 Revolution appear. This second segment is followed by the prison sequence which shows political prisoners watching the ailing President Marcos Sr speak on TV. In one scene, one of the prisoners, Rene, aims at the TV with an imaginary gun and playfully shoots, ‘*Patay kang bata ka!*’ (You’re dead, boy!). The coverage of the President then goes off the air.

77 Joaquin Bernas, *The 1987 Constitution of the Republic of the Philippines* (Manila: Rex, 2003), p. 885.

78 See Sec. 18, Art. VII, 1987 Philippine Constitution. See also, Bernas, *The 1987 Constitution*, pp. 864–92.

79 See Philippine Supreme Court, *Francisco v. The House of Representatives* (2003). [https://lawphil.net/judjuris/juri2003/nov2003/gr\\_160261\\_2003.html](https://lawphil.net/judjuris/juri2003/nov2003/gr_160261_2003.html).

80 Bernas, *The 1987 Constitution*, p. 202. The doctrine allows the police to arrest the accused without warrant, even when the latter is no longer in flagrante delicto.

Certainly, there is nothing more symbolic of the constitutional transition in 1986 than the dictator's sudden disappearance from the TV screen. This shift from visibility to invisibility could not be lost among the prisoners who right away realised that they would be free. The third segment shows the juridical consequence of the disappearance of Marcos' image on TV: Jimmy and Rene's release from prison. This relation between the visual and the juridical is pursued further in the narrative which now returns spatially to the countryside in the fourth segment. This time Kontra reappears, and leads the massacre of villagers, thus re-establishing not just a temporal, but also a juridical connection between 1985 and the post-Marcos constitutional order. Towards the film's climax, particularly in the rape sequence, the *mise en scène* notably shows the faded poster of Marcos Sr behind Kontra as though the image of the dictator was the inspiration of the consequent inhumane acts. However, this visual persistence of the dictator's image behind Kontra and the Orapronobis reflects not so much the survival of the Marcos order as the normalisation of the state of exception which began with the formal lifting of martial law in 1981.

From a certain viewpoint, the ratification of the 1987 Constitution simply closed the door to any abuse of *de jure* emergency power which was used by Marcos Sr under the 1935 and 1973 Constitutions. Article VII, Section 18 of the 1987 Constitution, which states that a 'state of martial law does not suspend the operation of the Constitution', made it more sensible to normalise the exception rather than trigger the new safeguards of *de jure* emergency powers.<sup>81</sup> Now that martial law was limited to 'a period not exceeding sixty days', it was practical not to declare an emergency. If the constitution does not easily allow the use of the emergency powers, then deceit may be used to make the atrocities appear within constitutional bounds. Hence, the undeclared state of exception which is represented in the film *Orapronobis* appears to be based on a heavy dose of deceit.<sup>82</sup> This excess dosage reaches the limits and leaves the main character disenchanted with the constitutional order.

### Unleashing human rights monsters

In his jampacked-lectures at the Collège de France, Michel Foucault declared that each epoch produces its own privileged forms of monsters. He then enumerated and expounded a number of monstrosities that haunted the European mind—the biological monster, the political monster, and the moral monster.<sup>83</sup> Our epoch—the age of human rights—has not discarded the notion of monster. Along with the vampires and the zombies and the *aswang*,<sup>84</sup> juridical science has invented the ultimate monster of the age: the human rights violator. This monster, as Hannah Arendt would describe the Nazi general Adolf Eichmann, is a 'new type of criminal', who

81 Art VII, Section 18, the 1987 Philippine Constitution.

82 The existence of a declaration of a state of emergency is not necessarily without deceit. When there is an absence of a military threat, the emergency may be called 'fictif', that is, a fiction. It is political by nature (Agamben, *State of exception*, p. 5). A recent example is the Myanmar military's declaration of a state of emergency as pretext for ousting the elected civilian government in February 2021. Constitutional grounds become mere fig leaves to hide the deceit. See Melissa Crouch, 'Myanmar coup has no constitutional basis', *East Asia Forum*, 3 Feb. 2021, <https://www.eastasiaforum.org/2021/02/03/myanmar-coup-on-the-pretext-of-a-constitutional-fig-leaf/>.

83 Foucault, *Abnormal*.

84 *Aswang* is a monster in Philippine folklore. It is a human being that transforms into a beast at night.

is in ‘actual fact hostis generis humani’.<sup>85</sup> International law’s newest *hostis generis humani* therefore joins the ranks of pirates, slave traders, torturers, and other enemies of mankind who can be tried in all jurisdictions.<sup>86</sup>

Brocka’s *Orapronobis* vividly introduces this human rights monster in Commander Kontra, the vigilante leader supported by Philippine military agents. The presence of Kontra in the narrative almost transforms the film into a human rights horror, a genre that challenges the viewers’ ‘sense of certainty, integrity, and unity’.<sup>87</sup> His violence, his brutality, his thirst for blood, in a word, his monstrousness reminds one of the monster—that central character of the horror film.<sup>88</sup>

For Foucault, the monster’s frame of reference is the law. The notion of monster suggests a violation of both social and natural laws. It is, however, no ordinary negation of the law. The monster upends the legal system because its crime is not an ordinary crime.<sup>89</sup> Its murder is not an ordinary murder. The monstrous crime unsettles the category of murder due to its gross and inhumane violence. Thus, the monster emerges in history ‘as both extreme and an extremely rare phenomenon’. It is the limit, ‘both the point at which law is overturned and the exception that is found only in extreme cases’.<sup>90</sup>

Kontra fits this limit concept. Kontra’s form of monstrosity has an obvious relation to law. His monstrous acts—shooting a priest, strafing villagers, terrorising communities—are always a violation of law. But they are no ordinary violations of the law. There is perversity in his every act that qualifies its criminality. His cold-blooded murder is qualified by cannibalism. His murder turns into a massacre. Each of his criminal acts is intensified and heightened to the extent that they make his very existence a negation of the law. Kontra is undoubtedly the epitome of ‘radical evil’.<sup>91</sup>

To describe Kontra simply as a rightist cannot reveal the nature of his monstrosity. At the outset, the idea of a monster is characterised by a mixture. Foucault

85 Arendt as quoted in David Luban, ‘The enemy of all humanity’, *Netherlands Journal of Legal Philosophy* 2 (2018), doi: [10.5553/NJLP/221307132018047002002](https://doi.org/10.5553/NJLP/221307132018047002002).

86 Luban’s argument that the concept of *hostis humani* derives from tyrants is interesting. Tyranny is certainly the father of the war criminal. Nonetheless, he disagrees with Vattel, who argued that the *hostis humani* may be exterminated wherever they may be seized. *Netherlands Journal of Legal Philosophy* 2 (2018) contains several interesting articles on the concept of ‘Hostis Generis Humani’.

87 Jones, *Horror*, p. 10.

88 *Ibid.*, p. 23.

89 Foucault, *Abnormal*, p. 324.

90 *Ibid.*, pp. 55–6.

91 Luban, ‘The enemy of all humanity’. On the problem with the concept, see Marc de Wilde, ‘Enemy of all humanity: The dehumanizing effects of a dangerous concept’, *Netherlands Journal of Legal Philosophy* 2 (2018), doi: [10.5553/NJLP/221307132018047002005](https://doi.org/10.5553/NJLP/221307132018047002005). The identification of a perpetrator of crimes against humanity does not mean allowing the lawless seizure and extermination of the accused. A complicated attempt to prosecute the real ‘hostis generis humani’ in Southeast Asia has been launched in the Cambodian trials. Ta Mok, Duch, and other henchmen of Pol Pot were arrested and tried. See Craig Etcheson, *Extraordinary justice: Law, politics, and the Khmer Rouge Tribunals* (New York: Columbia University Press, 2019). See also Alexandra Kent, ‘Conflict continues: Transitioning into a battle for property today’, *Journal of Southeast Asian Studies* 47 1 (2016): 3–23. The International Court of Justice has also issued preliminary remedies against Myanmar. See ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Gambia v. Myanmar) (2020), <https://www.icj-cij.org/public/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>. History suggests that Southeast Asia does not lack examples of *hostis generis humani*.

surveyed these mixtures that include two realms (man and animal), two species (pig and sheep), two sexes (man and woman), and two forms (a man without arms and legs/ snake).<sup>92</sup> Kontra does not necessarily fit these old categories, because his monstrosity is more modern. Nonetheless, he is also a mixture, an ideological mixture. He claims to be a former communist guerrilla who is contemptuous of intellectuals. He is a follower of the ousted dictator Ferdinand Marcos, whose fading poster remains plastered in Kontra's house in the time of the 1987 Constitution. He is an auxiliary agent of the state, who receives commands from Col. Ricardo Mateo (Joel Lamangan). He is also a leader of an anti-communist religious group, Orapronobis. Like many leaders of Philippine millenarian groups, he claims to be invincible. Finally, he is a fan of US imperialism as symbolised by the poster of Rambo and the US flag that hangs beside religious statues in his quarters. Like a monster, Kontra is beyond any neat category. His personality is a transgression of stable categories of the Left, the Right, and the Centre in the Philippine political spectrum. He is a categorical monstrosity.

This categorical monstrosity manifests in monstrous acts that violate both positive international law and the law of Nature. Kontra violates minimum protections set in Common Article III of the Geneva Conventions and the Second Additional Protocol to the Geneva Conventions. He shoots a priest. He massacres villagers. He terrorises communities. He does not distinguish between armed rebels and unarmed civilians. In short, he is an international criminal.<sup>93</sup> In addition to this legal monstrosity, Kontra is also a monster because he violates the law of human nature by acts of cannibalism. He violates a taboo on eating human flesh. As he declares to the child of his victim, 'Do you know what he does to noisy children? He cuts their balls, then he fries them and finally, he eats them.' And then, he shows (*monstrare*) this monstrosity by eating the brain of a priest.

While Kontra's monstrous acts of killing and cannibalising villagers may be distinguished juridically,<sup>94</sup> both are assaults on the human body. Both murder and cannibalism deprive victims of the 'integrity' of the human body, which is protected by international human rights law. International human rights law declares that there is an 'inherent dignity of the human person' from which all rights are derived.<sup>95</sup> Human dignity, which is a recurring idea in the preambles of the Universal Declaration on Human Rights and the two human rights covenants<sup>96</sup> and integral to the 1987 Constitution, has been interpreted to mean a basic protection of the human

92 Foucault, *Abnormal*, p. 63.

93 Possibly, he is liable for crimes against humanity or war crimes.

94 Article 14 (17), Revised penal code of the Philippines (RPC) (1930). Criminal law in the Philippines does not outlaw cannibalism of the dead, but it may aggravate the crime of murder. It adds 'ignominy' to the murder; <https://www.officialgazette.gov.ph/1930/12/08/act-no-3815-s-1930/>.

95 United Nations, Universal Declaration of Human Rights, 10 Dec. 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

96 Nigel Rodley, 'International human rights law', in *International law*, ed. Malcolm Evans (Oxford: Oxford University Press, 2018), p. 790. See also, United Nations, International Covenant on Civil and Political Rights, 16 Dec. 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

body.<sup>97</sup> Kontra's spectacles of violence against human bodies negate the protection promised by international and constitutional law.

This dissolution of human dignity is vividly captured by violent images in the film. As a critic describes one of the most memorable scenes in the film:

With almost pornographic attention, the camera studies the remains of Esper and the other victims. Shots linger on their pale and mangled bodies, and on faces made unrecognisable by caked blood and dirt ... Suddenly, the camera assumes (Jimmy's) point of view and spots Camilo's body in the same trailer that brought her remains.<sup>98</sup>

The images show the violence against the integrity of human bodies, a violence that dissolves human dignity. The images of murder, strafing, torture, kidnapping, and pure terror paint a dystopian constitutional order where words fail to control actions in the political world. This dystopian vision is captured best by the ultimate violence against the integrity of the human body and the ultimate form of lack of human dignity: cannibalism.

Analysed in the context of the undeclared emergency, cannibalism cannot be considered incidental. Kontra, the cannibal, is a monster created by the failure of words to control state actors. If the state of exception is the limit concept of constitutional law, Kontra also crosses the limit, the 'point at which law is overturned'. Indeed, both the undeclared state of exception and its monster are limit concepts. They are juridical extremes.

The systemic construction of Kontra's monstrosity is suggested by the re-production of juridical monsters in the narrative. Kontra ends up being cannibalised in the hands of his own followers. Suddenly wounded by Esper, Django realises Kontra was only bluffing when he claimed extraordinary powers of invincibility. Kontra's magical powers are therefore also revealed as deceit. This revelation results in the ultimate horror of a cannibal being cannibalised: Django kills Kontra, takes the latter's heart, and consumes his erstwhile leader's flesh.

In sum, a human rights perspective makes the criminal perversity in the film understandable. The visualisation of the *hostis humani*'s monstrosity signifies the ultimate violation of the integrity of the human body, and critiques law's ultimate failure to uphold human dignity. Moreover, through the *hostis humani*'s cannibalism in the opening and climactic segments, the film establishes a connection between cannibalism and the state of exception. The cannibalisation of the cannibal suggests that the undeclared emergency is a permanent state of cannibalism, where words fail to control the world and respect for human dignity is mere constitutional deceit.<sup>99</sup>

97 Elizabeth Anker, *Fictions of dignity: Embodying human rights in world literature* (Ithaca, NY: Cornell University Press), p. 26.

98 Capino, *Martial law melodrama*, p. 170.

99 The permanence of a system that reproduces human rights monstrosities can be gleaned from a recent Philippine case that tells of inhumane horror. See Philippine Supreme Court, *Manalo v. Secretary of National Defense* (2008); [https://lawphil.net/judjuris/juri2008/oct2008/gr\\_180906\\_2008.html](https://lawphil.net/judjuris/juri2008/oct2008/gr_180906_2008.html). General Jovito Palparan was later convicted by a criminal court of the crimes of kidnapping and illegal detention. See the court decision in *People of the Philippines v. Major General Jovito S. Palparan, Jr., Lt. Colonel Felipe Anotado, Jr., Master Sergeant Rizal Hilario, and Staff Sergeant Edgardo Osorio* here: <https://newsinfo.inquirer.net/1033309/full-text-the-conviction-of-palparan>.

### Beyond constitutionalisation

*Orapronobis* represents another limit concept of law: the revolutionary exercise of constituent power. To explore this limit concept, the film visualises an image of the revolutionary who exercises constituent power through revolutionary violence (rebellion). The revolutionary hero is a limit concept in two senses. First, he is a different kind of political monster. Second, he retrieves constituent power and exercises it in re-structuring the constitutional order. In Brocka's film, the revolutionary is therefore extreme as a person, and he exercises an extreme form of collective power.

The revolutionary as a limit concept is related to the human rights monster. They are twins born during a social crisis. But the conception of the revolutionary as a monster goes back to the 1790s. If the monarch was the political monster in French revolutionary literature, the revolutionaries were objectified as its counterpart in post-revolutionary France.<sup>100</sup> French counter-revolutionary literature represented the revolutionary as a monster that drips with blood, akin to the image of a cannibal. Like the human rights monster, the revolutionary is also armed and hungry for the blood of fellow human beings.

In *Orapronobis*, the character of Rene, who shoots the image of the dictator on TV with his imaginary gun and later appears as a member of the rebels' urban hit squad, fits the image of a political monster. He is depicted as a hardcore communist assassin, who guns down low-ranking police officers in the capital. The changed conditions under the 1987 Philippine Constitution do not affect him. He considers the constitutional project as a deceit. A former comrade of Jimmy's, Rene reconnects with the former and invites Jimmy to re-join the revolutionary movement. To a certain extent, Rene is a mirror image of Commander Kontra, which the original and French titles reflect, *Orapronobis* (the cult) and *Les Insoumis* (The Rebels).<sup>101</sup> Both have no qualms about killing human beings. It is Rene's kind who might just end up like Kontra.

This 'counter-revolutionary' representation of Rene, however, constitutes only one side of the film's vision of the nature of the revolutionary act. In dialectical contrast to a 'counter-revolutionary' vision, *Orapronobis* narrates a revolutionary plot in the sense of both conspiracy and storyline. The film's plot tells of Jimmy's narrative of disillusionment, or disenchantment with constitutionalism, that transforms him from a reformist human rights activist to an armed revolutionary, who now assumes the *nom de guerre* 'Danton', the French revolutionary. Indeed, the film, which is structurally framed in a narrative of disillusionment, is arguably a story of the failure of statist human rights.

The emergence of Jimmy as 'Danton' towards the end of the film has juridical meanings at both the level of plot and character. As a narrative of disillusionment, the film presents a human rights plot that reverses the now dominant human rights

100 As a breaker of the social pact, counter-revolutionary literature sees the revolutionary hero as a political monster. Foucault, *Abnormal*, pp. 98–9.

101 Gillo Pontecorvo's *The battle of Algiers* (1966) also suggests this when it provides the same musical score to the scenes of both victims of state terror and revolutionary terror. See Peter Bondanella, *Italian cinema: From neorealism to the present* (New York: Continuum, 2001); see also, Paul Haspel, 'Algeria revisited: Opposing commanders as warring doubles in *The Battle of Algiers*', *Journal of Film and Video* 58, 3 (2006): 33–42.

narratives of human positive development in liberal discourses on human rights. Scholars of human rights and literature have identified two predominant modes of human rights narratives that proliferate and circulate globally. The main narrative of international human rights is said to be that of human development under the tutelage of the state. According to this discourse, human beings attain the highest form of development through the rights conferred on them by the state. This narrative is akin to the kind of development one reads in the *Bildungsroman*, where the character's youthful naiveté gives way to enlightenment.<sup>102</sup> The second human rights narrative is contained in what has been called the 'human rights bestsellers' that justify imperialist interventions and present the West as the saviour of the Third World.<sup>103</sup> In these liberal discourses, the West becomes the geopolitical promised land for the Third World oppressed.

In contrast to these two human rights narratives in world literature, *Orapronobis* represents a shift from human rights to revolutionary rights. Here, the narrative of human development is replaced with a narrative of disillusionment. The human rights hero suffers several blows in his attempt to live a normal bourgeois life and ends up as a revolutionary. Towards the end of the narrative, constitutional illusions are shattered and the deceit of the undeclared state of exception is finally unveiled.

In the early sequences of the film, the newly freed hero begins his life anew by believing that there is a 'democratic space'. In fact, as the Police Official points out in one scene, the newly-freed Jimmy who speaks on TV is the embodiment of this freedom, of the new democracy. The hero then joins a human rights organisation and starts investigating problems of internal refugees. Invited by a former comrade to re-join the revolution, he declines and argues that 'human rights are also important'. There are new forms of struggle, he argues, that fit the changing political field.

However, human rights violations destroy his faith in the new constitutional order. The massacres, the mass terror, the mass evacuation to urban places, the illegal arrests, the ambush, the killing of Esper and her son—all these violations of human rights force the human rights hero to understand the limits of statist human rights. It shatters Jimmy's constitutional illusions and leads him to re-join the rebellion and retrieve constituent power—the raw power to reorganise the constitutional order.<sup>104</sup> In the film's final sequence, Jimmy enters a dimly-lit room and retrieves Rene's hand gun in the drawer. Then, close up shots of Jimmy's face and a hand holding a gun would alternate, signifying Jimmy's retrieval of the ultimate and most radical human right of rebellion that had been banished by constitutionalisation.

Rebellion, which is a crime under the law of the state, may be interpreted as a retrieval of the radical aspect of the right to human dignity.<sup>105</sup> This radical aspect is constituent power, which is a power to change an existing order that fails to protect human dignity.<sup>106</sup> This power is 'a force that bursts apart, breaks, interrupts, unhinges

102 Joseph Slaughter, *Human rights, inc.: The world novel, narrative form, and international law* (New York: Fordham University Press, 2007), p. 17.

103 Anker, *Fictions of dignity*, p. 37.

104 Negri, *Insurgencies*, p. 2.

105 Article 134, Rebellion or Insurrection, RPC.

106 Illan rua Wall, 'A different constituent power: Agamben and Tunisia', in *New critical legal thinking: Law and the political*, ed. Matthew Stone, Illan rua Wall and Costas Douzinas (London: Routledge, 2012),

any pre-existing equilibrium and continuity'.<sup>107</sup> The legal philosopher Illan rua Wall has astutely observed that this radical right is usually banished or tamed by constitutionalisation.<sup>108</sup> Through constitutionalisation or juridification, the radical power vanishes from the codes of positive rights and only through a collective act of the people can this power be retrieved and exercised once more as if it were King Arthur's sword stuck in a rock waiting for the revolutionary hero.

This reading of radical right in the film is supported by the fact that Jimmy does not appeal to an individual human right that is enumerated in international conventions and enforced by states within their jurisdictions.<sup>109</sup> On the contrary, Jimmy re-joins a social movement through which constituent power—a collective right of people—is exercised. If one accepts that rebellion is the retrieval of constituent power, then Jimmy's late-night call to Rene and his assumption of the *nom de guerre* 'Danton' symbolises a crossing of the limits of statist human rights and constitutional rights. Through this symbolic movement, the film forces the viewers to imagine and contemplate the 'real' state of exception, that is, revolution.<sup>110</sup>

### Visualising the limits of Philippine constitutionalism

Lino Brocka walked out of the constitutional commission soon after securing the inclusion of the phrase 'freedom of expression' in Section 4, Article III of the 1987 Philippine Constitution.<sup>111</sup> What appeared to be 'an artist's oversized tantrum', film critic Joel David would rather interpret as the director's decision to 'continue conducting his side of the political debate in the venue where his expertise lay—the mass medium of film'.<sup>112</sup> One may add that the walkout signalled a number of transitions in Brocka's work: from constitutional author to film auteur, from creative to critical work, from the realm of law to the realm of art. These transitions were crystallised in the making of *Orapronobis*, the constitutional author's critique of the 1987 Constitution.

Brocka's constitutional commentary in the form of the film medium went beyond the hermeneutics of specific provisions and offered a critique of the undeclared state of exception and the constitutional project itself. In the intertextuality between the

p. 46. Wall defines it as 'potentiality of radical change'. It includes not only rebellion and revolution, but also radical dissent and subversion.

107 Negri, *Insurgencies*, p. 10.

108 Illan rua Wall, *Human rights and constituent power* (London: Routledge, 2012) discusses the banishment of the radical in human rights.

109 The radical right to resistance emerges from historical conditions and is not based on positive law. The law that justifies it is 'transcendent'. See Costas Douzinas, 'The right to the event: The legality and morality of revolution and resistance', in *The radical philosophy of rights* (London: Routledge, 2019), p. 185.

110 As suggested by Benjamin in 'Theses on the philosophy of history'.

111 Brocka walked out after a heated argument over the rejection of a proposal to reduce foreign shares in domestic business to 34 per cent. During the debates, Blas Ople hurled an ashtray at Wilfrido Villacorta. See 'Constitutional commissioners hold back decision to resign', AP News, 26 Aug. 1986. <https://apnews.com/article/843d86e9119e70054892ee747b875f18>. The records of the Commission state the following: 'Letter from Honorable Lino Brocka, Member, Constitutional Commission of 1986, dated August 28, 1986, informing that he has written to Her Excellency, President Corazon C. Aquino, about his irrevocable resignation from the Constitutional Commission ...'. Records of the Constitutional Commission (1986), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/24/50984>.

112 David, as quoted in Capino, *Martial law melodrama*, p. 197.

world imagined by the constitution and the film's representation of such a world, Brocka has not only underscored the importance of the power of constitutional words to control state action, but also provided an alternative mode of constitutional interpretation characterised by a totality of constitutional vision.

This constitutional vision explored the limit concepts of law in a filmic form that displayed excess. This vision was embodied in a narrative that traversed a movement from constitutional magic to deceit and from constitutional faith to rebellion. Brocka's vision of constitutional disenchantment found form in the narrative of disillusionment. This narrative in turn was visualised through melodrama and horror's systems of excess. Thus, the excesses of weeping were combined with the excesses of violence, of murder, of massacres, of ambushes, of kidnappings, and of acts of cannibalism. Melodramatic pathos went hand in hand with horror, thereby producing an excess that results in disillusionment.

*Orapronobis'* systems of excess objectified the limit concepts, the extremes, and the exceptions of the law. The undeclared state of exception, the human rights monster, and the exercise of constituent power, like Brocka's film, produce excess that breaches and transgresses the limits of law. The undeclared state of exception is a condition where phantasmic enemies haunt the imagination and frees the state from constitutional fetters. The *hostis generis humani* or human rights monster, who is unleashed in a state of exception, is equally transgressive of many legal categories of both natural and positive law. Finally, the same undeclared state of exception transforms the human rights hero into the revolutionary, who retrieves the ultimate human right of revolutionary violence to dissolve the constitutional order itself. All these three are limit concepts that reach the blurred boundaries between the legal and the illegal.

In his visualisation of these limit concepts, Brocka offered a dystopian vision of the constitutional project in the Philippines in 1989, dashing the legal euphoria that followed the ratification of the 1987 Constitution. Brocka's constitutional vision warned viewers that a constitutional order will descend to cannibalism if words fail to control actions in the political world. Since the release of *Orapronobis* in 1989, Brocka's vision has been vindicated so many times. Like that faded image behind Kontra, the spectre of dictatorship seems to return eternally in the post-revolutionary years, inspiring cataclysmic breaches of constitutional limits. The spectre of the dictator would reappear in President Arroyo's Proclamation 1017 (declaring a state of national emergency), which plagiarised Marcos' martial law declaration.<sup>113</sup> Years later, the spectre returned once again in President Duterte's drug war and his two-year martial law in Mindanao Island.<sup>114</sup> Indeed, after *Orapronobis'* dystopian representation of the constitutional order, the Philippines has seen a cycle of human rights

113 See Philippine Supreme Court, *David v. Macapagal-Arroyo* (2006). Arroyo declared an emergency on the anniversary of the revolution on 24 February 2006 to pre-empt protests accusing her of electoral fraud: <https://www.officialgazette.gov.ph/2006/05/03/david-v-arroyo-g-r-no-171396-may-3-2006/>.

114 Philippine Supreme Court, *Lagman v. Medialdea* (2017), [https://www.lawphil.net/judjuris/juri2017/jul2017/gr\\_231658\\_2017.html](https://www.lawphil.net/judjuris/juri2017/jul2017/gr_231658_2017.html). This decision was the first case to fully elaborate the nature of martial law under the 1987 Philippine Constitution. In 2017, after Islamic militants laid siege to the City of Marawi, President Duterte placed Mindanao under martial law. Congress extended the emergency from 2017 to 2019.

catastrophes that culminated in the recent election of the namesake of the ultimate constitutional monster and *hostis generis humani* in Philippine history, as though the spectre has finally transmogrified into flesh, leaving millions of desperate citizens to storm the heavens and pray that in the second coming of a 'great' personage, the historical experience would be structured not as a tragedy, but as farce.