

# **BANGSAMORO ARMED CONFLICT: A REVOLUTION AGAINST ETHNOCIDE**

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*“Ob, Sovereignty, what crimes indeed are committed  
in thy name! Isn’t it time to rethink thee?”<sup>2</sup>*

**I. INTRODUCTION**

Considered as the longest armed struggle for self-determination in Southeast Asia, the Bangsamoro struggle started in the 16<sup>th</sup> century as an offshoot of colonial aggressions that impoverished and marginalized the once independent and flourishing nation under the reign of the Sultanates. The tenacity of the conflict lies in two competing concerns: the assertion of self-determination rights of the Moro separatist movements; and the affirmation of the Philippines’ sovereign rights to territorial integrity. The territorial question has been disputed more often in the battlefields than over a negotiating table.<sup>3</sup> For Manuel L. Quezon III, Mindanao went from “land of promises” to “land of blood.”

The Mindanao conflict, expressed in Muslim armed resistance against the Philippine state, has deep historical roots. The Muslims, who prefer to be called Moros rather than Filipinos, believe that they have never been part of the Philippines and that their present struggle is a continuation of their ancestors’ war for independence, first launched against Spanish and American rule, and now under the post-colonial ‘Filipino-run Philippine state.’ On the other hand, the state contends that Muslims have to acknowledge the existence of a sovereign Philippine state, whose territorial jurisdiction, which includes the islands of Mindanao and Palawan, and the Sulu archipelago (regarded as the Moroland), has been defined in accordance with international law and accepted by the international community. Hence, the state views the ongoing armed struggle of the Moros as an act of secession against a legitimate state, while the Moros declare it to be an exercise of the peoples’ ‘right to self-determination’ against a state which ‘illegitimately annexed’ the Bangsamoro. This divergence in outlook, without underestimating other political, social and economic reasons, has been the underlying cause for the

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<sup>2</sup> SOLIMAN M. SANTOS, JR., THE MORO ISLAMIC CHALLENGE: CONSTITUTIONAL RETHINKING FOR THE MINDANAO PEACE PROCESS 125 (2001).

<sup>3</sup> Rizal G. Buendia, The State-Moro Armed Conflict in the Philippines: Unresolved National Question or Question of Governance?, [https://eprints.soas.ac.uk/4362/1/AJPS13-state\\_moro\\_conflict\\_in\\_the\\_philippines.pdf](https://eprints.soas.ac.uk/4362/1/AJPS13-state_moro_conflict_in_the_philippines.pdf) (last accessed Feb 23, 2017).

internecine conflict between the state and the Muslim armed movement.<sup>4</sup>

The Moro struggle is an ethnic-wide movement, i.e., its cause is shared by the great majority of the Muslims. It cuts across the various sectors of Moro society. The armed struggle's membership includes some from the poor and the rich; the unlettered and the educated; the leaders and the followers; and from both sexes. There are jobless, farmers, fishermen, merchants and even government employees among the *mujahideens*. In other words, the struggle is not a class or peasant struggle, but an ethnic struggle.<sup>5</sup>

The contradiction between the state's nation-building project and the secessionist movement's state-creation venture has not only led to armed conflict but also tested the viability and competency of the current Philippine political system in unifying the country given the diversity of its people. Thus, beyond the issue of self-determination, a crucial element that contributes to the mitigation or exacerbation of the current conflict is the manner the state governs.<sup>6</sup> The Philippine government, in ruling Mindanao, is exploiting the resources, diluting the Muslim majority and containing tribal peoples in enclaves of underdevelopment. Settlers from the crowded and predominantly Christian Luzon and Visayan islands have grown into a dominant culture, seizing Muslim homelands declared 'public domain' by the courts of Manila. Newcomers prospered, while the indigenous were displaced and abandoned to poverty.<sup>7</sup>

The case of the Philippines provides an interesting example of how post-colonial governments in Southeast Asia are trying to govern multiethnic nations. Despite being the country in Asia with the most vibrant civil society, the country is still dealing with a war in Mindanao – a war fuelled by, rather than abated by, national dynamics of identity- construction and social practices of democracy.<sup>8</sup>

The aim of this article is to understand the multi-dimensional nature of the Moro problem and how the rigid application of the Constitution is actually counterproductive to peacebuilding. It is

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<sup>4</sup> Rizal G. Buendia, *The Mindanao Conflict in the Philippines: Ethno-Religious War or Economic Conflict?* [http://academia.edu/1433739/Mindanao\\_Conflict\\_in\\_the\\_Philippines\\_Ethno-Religious\\_War\\_or\\_Economic\\_Conflict](http://academia.edu/1433739/Mindanao_Conflict_in_the_Philippines_Ethno-Religious_War_or_Economic_Conflict) (last accessed Feb 21, 2017).

<sup>5</sup> MACAPADO A. MUSLIM, *THE MORO ARMED STRUGGLE IN THE PHILIPPINES: THE NONVIOLENT AUTONOMY ALTERNATIVE* 166 (1994).

<sup>6</sup> BUENDIA, *supra* note 4.

<sup>7</sup> Fred Hill, *Ethnic Cleansing in Mindanao*, [http://bugsbytes.tripod.com/bb\\_newsletter\\_0004\\_03.html](http://bugsbytes.tripod.com/bb_newsletter_0004_03.html) (last accessed Feb 22, 2017).

<sup>8</sup> Hannah Neumann, *Identity-Building and Democracy in the Philippines: National Failure and Local Responses in Mindanao*, 3 *Journal of Current Southeast Asian Affairs*, 61-90 (2010).

settled that the Constitution is the supreme law of the land, but is its supremacy the heavy price of peace – such as “building a just and humane society”<sup>9</sup> for everyone, minorities included?

## II. BRIEF HISTORY

Long before the coming of the Spaniards, each tribe in the islands, before these were named *Islas Filipinas*, had a kind of social system that served well the tribe. From historical accounts, it was known that tribes in Mindanao and Sulu, even before the coming of Islam, had the most superior culture and civilization. This culture and civilization rose to greater heights when infused with the spirit and philosophy of Islam, the tribes becoming Muslim.<sup>10</sup> Don Velasco, the Viceroy of Nueva España, who was appointed by King Philip II of Spain to commission the expedition of Miguel Lopez de Legaspi to the Philippines, apprised the former in 1564 that “the people (Moros) in those islands are men of sense and quality...well-developed and affluent.”<sup>11</sup> The pre-colonial Philippine culture was greatly enriched through trade relations with its neighbors in Southeast Asia. In the southern islands of Islamized Mindanao emerged sultanates (of Jolo, Sulu, and Maguindanao) which had extensive ties with the region and the Muslim world beyond,<sup>12</sup> long before the Spaniards consolidated their control over the northern part of the Philippines.<sup>13</sup>

When the Spaniards came, the tribes in the north were easily conquered and Christianized. As a consequence, they gave up most of their culture, customs and traditions, embraced Christianity and learned to live according to the new culture from Europe. On the other hand, the Muslims resisted Spain. As a people, Muslims were never effectively controlled and colonized.<sup>14</sup> They resisted and having survived, saved their culture from disintegration and preserved the country’s only link with the rest of Southeast Asia.<sup>15</sup> The same resistance met the Americans.

For Vic Hurley, history can never forget the Moros, for they did something in the 1500’s, the 1600’s and the 1700’s, and clear down into the 1800’s that was supposed to be impossible. They proved too strong for the Spanish conquistadores...” who possessed superior weaponry against the Moro

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<sup>9</sup> Preamble, 1987 Constitution.

<sup>10</sup> PATRICIO P. DIAZ, UNDERSTANDING MINDANAO CONFLICT 3 (2003).

<sup>11</sup> NASSER A. MAROHOMALIC, ARISTOCRATS OF THE MALAY RACE: A HISTORY IN THE PHILIPPINES 8 (1995).

<sup>12</sup> ABRAHAM SAKILI, PHILIPPINE MUSLIMS: OUR LINK TO SOUTHEAST ASIA, 15 KASARINLAN, 27-34 (2000).

<sup>13</sup> BUENDIA, *supra* note 3.

<sup>14</sup> DIAZ, *supra* note 10, at 3.

<sup>15</sup> SAKILI, *supra* note 12, at 27-34.

*kris*.<sup>16</sup> Up to the dying years of the Spanish period in 1899, as the 19<sup>th</sup> century drew to a close, Moroland was still a bastion of its many sultanates and principalities, unconquered, unbowed, proud, and free, and according to an American who was in the country at that time, “unsafe for Europeans without escort.”<sup>17</sup>

In the words of Fr. Romeo Intengan, “the Bangsamoro people are a distinct nationality with a distinct history from us Christian Filipinos. They simply are not Filipinos who happen to be Muslims. Historically, they (Bangsamoro) are ahead of us Filipinos in terms of becoming a nation.”

In the Philippines, the terms ‘Muslim’ and ‘Moro’ have been used interchangeably to refer to the various ethnolinguistic groups. Whereas the term ‘Muslim’ refers to a universal religious identity, the term ‘Moro’ denotes a political identity distinct to the Islamized peoples of Mindanao and Sulu. The Spanish colonizers originally used the term for peoples of Mindanao who shared the religion of the Moors who had once colonized Spain. The term ‘Moro’ was used in the same derogatory way as the epithet ‘Indio’ for Filipinos whom they converted to Christianity.<sup>18</sup>

At the end of the Spanish-American war, Spain was forced to sell the Philippines to the United States for \$20,000,000. They included the mostly un-subjugated, unconquered region of the southern Philippines along with the rest of the country in the sale.<sup>19</sup> When the Americans came as an overload in Mindanao in 1899, they found the same Moro, the unconquered, experienced in the ways of foreign men, and brought up by history and accidents of high birth as conquerors, still “hardly, self-willed, and a terrific fighter”, in the words of an American Governor-General of the country, W. Cameron Forbes,<sup>20</sup> with the same kris, they fought the Americans who possessed far more superior weapons like Remington rifles, .38 and .45 caliber pistols, artillery batteries and steamboats.<sup>21</sup> The Americans held in reverential awe, nay, envy, the martial character and fighting prowess of the Moro who was responsible for the change in regulations of the United States Army, providing for the substitution of the .45 caliber pistol for .38 caliber weapon formerly carried as a sidearm. Experience in action against

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<sup>16</sup> VIC HURLEY, SWISH OF THE KRIS 10 (1936).

<sup>17</sup> RICHARD BRINSLEY SHERIDAN, THE FILIPINO MARTYRS: A STORY OF THE CRIME OF FEBRUARY 4, 1899 21 (1991).

<sup>18</sup> Macapado A. Muslim & Rufa Cagoco-Guiam, Compromising on Autonomy: Mindanao in Transition, <http://www.c-r.org/accord-article/mindanao-land-promise-1999>, last accessed (Feb 20, 2017).

<sup>19</sup> SUSAN D. RUSSELL, LEARNING THE PEACE PROCESSES IN CONTEMPORARY CONFLICTS: EXPERIENCES OF PEACEBUILDING 59-60 (2014).

<sup>20</sup> WILLIAM CAMERON FORBES, THE PHILIPPINE ISLANDS 276 (1945).

<sup>21</sup> MAROHOMSALIC, *supra* note 11, at 25.

the Moro proved that the .38 caliber bullet was incapable of stopping the fanatic in time to save the soldier who had fired the shot.<sup>22</sup> American Dean C. Worcester, Secretary of Interior during the American occupations, writes:

The Moros exemplify what may be considered the highest stage of civilization to which the Malays have attained.<sup>23</sup>

In Mount Bud Dajo in Jolo, with few rifles and krisses against the machine guns and artillery shells of mighty American forces of 900 soldiers, in the face of certain defeat and captivity the Tausog warriors chose death. But before they charged at the Americans and achieved martyrdom, they slew first their young ones and their women preferred death either by their hands or by a volley of gunfire from enemy forces.<sup>24</sup> It is also in Moroland, in a cotta called Pandapatan in the town of Bayang along the fabled Lanao Lake, where to quote an American newspapers, “the fiercest battle of the entire insurrection.”<sup>25</sup> An American General who commanded troops in Mindanao and Sulu in 1903, General Samuel S. Summers, believed that it was necessary to eradicate all the customs of the Moros and their religion Islam because they constituted a serious bar to any efforts towards Christian civilization.<sup>26</sup> Americans preferred Christianization of the Moro by educations, employments in the colonial government and American plantations and businesses and delivery of basic services; they hoped that with the newly gained stature and the following upliftment in the economic conditions of the Bangsamoro, the latter would grow in the perception that they owe their comforts in life to American liberality and Christian charity, and they would thereby gradually become Christians and law-abiding subjects of America.<sup>27</sup> In the armed struggle, America was faced with the Moro whose best weapon only was his faith in the superiority of his religion and ancestry.<sup>28</sup>

The Muslim leaders rightly resented the fact that Spain, their enemy, had sold them to the United States. Subsequently, they went to war with the United States army for the first thirteen years of American colonization of the Philippines. At the same time, what Muslim leaders hated even worse was the idea that the United States was going to leave the Philippines and put them (as they saw it)

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<sup>22</sup> HURLEY, *supra* note 16, at 230.

<sup>23</sup> *Id.* at 148.

<sup>24</sup> MAROHOMSALIC, *supra* note 11, at 26.

<sup>25</sup> *Id.* at 27.

<sup>26</sup> PETER G. GOWING, *MUSLIM-FILIPINOS – HERITAGE AND HORIZON* 36 (1979).

<sup>27</sup> MAROHOMSALIC, *supra* note 11, at 111.

<sup>28</sup> *Id.* at 131.

under the control of Filipinos, the Moro people's former enemies. They feared that Christians would try to prevent them from following their own religion and way of life, including exercising sovereignty. This complicated post-colonial situation was made worse by vast streams of immigration of Christian Filipinos to southern Philippine lands. In 1900, the Moros were four percent of the total Philippine population but controlled thirty percent of that country's current territory. This singular fact is a key part of the Moro narrative of why they want independence, since today Moros are only sixteen to eighteen percent of Mindanao's population and have become minoritized in their homeland. The actual territory that is within the Autonomous Region of Muslim Mindanao is really a small percentage of what they (and indigenous groups like Teduray) once claimed as their own.<sup>29</sup>

The grant of independence (by United States) to the country perpetrated colonization of the Moros by northerners who, to the present, control the reins of government. Due to the resettlements programs of the government, the people from the north were settled in Moroland and by 1961 the immigrants outnumbered the Moros. Since then, the Moro has carried again his kris of freedom, fighting a war started centuries ago for his rightful place in the sun, this time with an organized army and under revolutionary organizations including the Moro National Liberation Front which was organized in 1970 and the Moro Islamic Liberation Front.<sup>30</sup>

### III. HISTORICAL RIGHTS TO MOROLAND

All the major Philippine constitutions, except the 1899 Malolos Constitution, contain an article (the first) on National Territory. This is not usual practice, as for example the US Constitution (main model for the 1935 Philippine Constitution) has no such article. "But the 1935 constitution had a very special reason for defining the National Territory...there was still some fear that the United States government might dismember Philippine territory, the delegates to the (1934 Constitutional Convention) believed that such dismemberment could be forestalled by including a definition of Philippine territory in the Constitution." For example, in 1926, the Bacon Bill was introduced in the US Congress providing for the separation of Mindanao and Sulu from the rest of the Philippines partly for American business interests and partly due to Moro sentiments but the bill did not prosper and

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<sup>29</sup> RUSSELL, *supra* note 19, at 61.

<sup>30</sup> MAROHOMSALIC, *supra* note 11, at 32.

Christian Filipino nationalist aspirations for Philippine independence and territorial integrity prevailed.<sup>31</sup>

In the 1935 Philippine Constitution, the definition of national territory specifically cites three references: 1) the Treaty of Paris between the US and Spain on 10 Dec 1898; 2) the Treaty of Washington between the US and Spain on 7 Nov 1900; and 3) the treaty between the US and Great Britain on 2 Jan 1930. Spain ceded the Philippines to the US against two historical facts: 1) the Philippines had already declared independence from Spain on 12 June 1898; and 2) neither Spain nor the newly independent Philippines had effective sovereignty or jurisdiction over Moroland. In fact, “The Christian and Muslim Filipinos would not be united under a single government and sovereignty until 1914,” with the final crushing by the US of armed resistance of the Christian Filipinos by 1906 and of the Moros in 1913.<sup>32</sup>

The 1973 Philippine Constitution’s definition of national territory dropped the specific treaty references but inserted the phrase “all other territories belonging to the Philippines by historic right or legal title” in addition to “areas over which the Philippines has sovereignty and jurisdiction” and to the archipelagic principle. The 1987 Philippine Constitution dropped the “historic right or legal title” phrase because it was provocative to Malaysia as a reference to the Philippine claim to Sabah (North Borneo), without necessarily dropping the claim. Documents supporting that claim, the aforementioned three treaty references, and at least 50 other documents, including certain treaties of the Sulu and Maguindanao sultanates with several colonial powers, collectively constitute the historical and legal basis for the delineation of the Philippine national territory.<sup>33</sup>

Some of these documents, especially the Moro treaties with foreign powers, might also constitute historical and legal basis for a Bangsamoro homeland. Interestingly, the Sulu sultanate once encompassed Sabah. And it is ironic when the Philippine government makes use of this for its Sabah claim but denies any historic right to a Bangsamoro homeland. It is ironic that the Treaty of Paris, which disregarded the Philippine independence, is used by an independent Philippines to justify the inclusion of Moroland in the national territory.<sup>34</sup>

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<sup>31</sup> SANTOS, *supra* note 2, at 20-21.

<sup>32</sup> *Id.* at 21.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 21-22.



## A. Struggle for Self-Determination

The struggle for self-determination of Muslims in Mindanao started when the Philippines was still a colony of the United States. Beginning in the early 1920s, 25 years before the American-sponsored Philippine independence in 1946, Muslim leaders began a peaceful movement that asserted sovereign rule from the would-be Republic of the Philippines. They yearned to live as a separate people from the Christian Majority.<sup>35</sup>

The decision of the USA government to grant independence to the Philippines, with the integration of the Muslim people and their lands into a single Philippine statehood, compelled Muslim leaders to abandon their quest for either a sovereign nation state or a semi-sovereign state under American tutelage. Muslim leaders instead focused their attention on creating a political niche for themselves in the soon-to-be formed Philippine Republic by trying to redefine their identity from ‘Moro’ to ‘Filipino.’<sup>36</sup>

In the international law literature on self-determination, two main views are pulling in opposite directions. The first tendency is the more restrictive view which limits the exercise of the right of self-determination within the confines of the territorial jurisdiction of existing states; the right cannot be invoked if the territorial unity of the state will be transgressed. The second view is expansionary which acknowledges and, to varying degrees, validates recent state-busting practice in a reformulated legal approach that admits that the character and scope of the right are more unsettled than ever. This latter view takes due note of the degree to which non-sovereign territories of the Soviet Union, Yugoslavia, and Czechoslovakia were given diplomatic recognition and admitted to the UN as sovereign states.<sup>37</sup>

The linkage between Moro identity and territory is intricately intertwined. Poulantzas, emphasizing the importance of territory to the notion of group self-identity, refers to the “historicity of a territory and territorialization of a history”—a territorial tradition concretized in the homeland.<sup>38</sup> Therefore, a territory by itself is a human construct which serves as the material basis in defining and re-defining human, group, ethnic, and social relations. It is the source of one’s social security, assistance, dependency, sociability, and intimacy. It assures the continuity of culture and endurance of

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<sup>35</sup> BUENDIA, *supra* note 4.

<sup>36</sup> *Id.*

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

<sup>38</sup> NICOS POULANTZAS, *STATE, POWER, SOCIALISM* 114 (1978).

collective memory of peoples. As such, the concepts of space and territory are of extreme importance in ensuring the tenacity of one's identity and survival as a people.<sup>39</sup>

The absence of or restriction to such control may invariably threaten the fulfillment of the peoples' rights and imperil their identity to a particular territory. In this respect, the anxiety of the Bangsamoro over the future of their homeland simply infers their lack of full control over their lives. The right of a group with a distinctive politico-territorial identity to determine its own destiny is the political translation of aspirations in the demands for self-determination.<sup>40</sup>

In Kofi Annan's address to the UN General Assembly in 1999, the Secretary- General probed on the right of any state to hide behind sovereignty while committing flagrant violations of human rights. He argued that, "the state is now widely understood to be the servant of its people—and not vice versa." Invoking the UN Charter, Annan called upon states to protect and safeguard human rights and fundamental freedoms of each and every citizen.<sup>41</sup> Interestingly, in 1997, Prince Hans Adam II of Liechtenstein presented a similar standpoint in his exposé "Democracy and Self-Determination," where he made the case that the state should principally offer services to its citizens; they in turn should have the right to "choose their states and citizenship freely—in self-determination."<sup>42</sup>

The search for a nation-state that is more responsive and relevant to the needs of people who are culturally distinct from the others, oftentimes the majority, is contingent more importantly on the character, ability, and capacity of the state to make itself a "servant of its people" rather than simply a ruler of its people. The so-called "internal" dimension of self-determination, as what Prince Hans Adam II alludes to, is as essential as to the right to one's statehood.<sup>43</sup> In as much as peoples' right to "internal" self-determination is hinged on the legitimate claim of the minorities to cultural and political autonomy, it becomes imperative that the grounds and sources where such demand springs from be analyzed.<sup>44</sup>

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<sup>39</sup> BUENDIA, *supra* note 3.

<sup>40</sup> *Id.*

<sup>41</sup> KOFI ANNAN, ADDRESS TO THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 20 SEPT 1999.

<sup>42</sup> Hans Adam II, speech delivered at the International Institute for Strategic Studies entitled "Democracy and Self-Determination" on 5 May 1996.

<sup>43</sup> BUENDIA, *supra* note 3.

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

## B. Struggle for Peace

A policy of peace may be made out from some provisions of the 1987 Constitution though these are admittedly not as strong or as direct as they could be in relation to a comprehensive peace process, especially negotiating settlements with rebel groups.<sup>45</sup>

First, there is the Preamble which mentions the aspiration, *inter alia*, for “a regime of truth, justice, freedom, love, equality and peace” – all of which actually, not just peace, have resonance for the Mindanao Peace Process.<sup>46</sup> Second, there is a constitutional declaration of principle that “renounces war as an instrument of national policy...and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”<sup>47</sup> Although this is usually understood in the context of international or foreign affairs, it might be argued that there is no cogent reason why the renunciation of war cannot be applied to internal or domestic affairs. Or why the policy of peace, etc. cannot also apply to the State’s relations with its own indigenous nations.<sup>48</sup> Thirdly, there is another constitutional declaration of principle that “The maintenance of peace and order...are essential for the enjoyment by all of the blessings of democracy.”<sup>49</sup> Although this is usually understood in the context of law and order maintenance by the police, it should also embrace a more lasting peace that comes from peacebuilding.<sup>50</sup>

Based on at least those three constitutional provisions and also in relation to other provisions, a case can be made for an implied constitutional right to peace. In other jurisdictions, particularly Australia, the High Court has drawn sources for the rights from “implications” in the Constitution, whether based on “the legal tradition on which the formation of the Constitution was based” or based on constitutional text and structure. Then, there is also the possibility of what American constitutional law professor Lawrence H. Tribe calls “construing the sounds of constitutional silence” though the Philippine Constitution is not exactly silent about peace.<sup>51</sup>

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<sup>45</sup> SANTOS, *supra* note 2, at 102.

<sup>46</sup> *Id.*

<sup>47</sup> CONST., art. II, sec. 2.

<sup>48</sup> SANTOS, *supra* note 2, at 103.

<sup>49</sup> CONST., art. II, sec. 5.

<sup>50</sup> SANTOS, *supra* note 2, at 103.

<sup>51</sup> *Id.*

The struggle for peace is costly as shown by the remnants of the less cordial Estrada Administration's "all-out war." As a result of this long period of conflict, tens of thousands of lives and billions of dollars have been lost and wasted. Calculating only from the early 1970s, the World Bank had estimated that between 60,000 to 80,000 civilians, mostly Moros, were killed.<sup>52</sup> According to a report, as many as 1 million Moros became homeless or displaced, and about 200,000 to 300,000 Moro refugees fled to Sabah, and until now, with the exception of few, have not returned to their various villages.<sup>53</sup> Even more casualties and damages were claimed; the Moros objecting that there were more than 200,000 who were killed, nearly 8,000 women raped and sexually abused, 500 mosques burned, more than 300 Islamic schools destroyed, and countless houses and communities devastated.<sup>54</sup>

As a result of decades of on-again, off-again war and peace talks, the provinces in the ARMM are the poorest in the country<sup>55</sup> as shown in the surveys conducted by the Philippine Statistics Authority (PSA).<sup>56</sup>

### C. Equal Protection...Also of Indigenous People

Recent American and Canadian legal scholarship on North American Indian sovereignty and self-government has shed light on equality of peoples and not just individuals as a ramification of the equal protection clause. We should be able to infer the relevance of this to the status of the Bangsamoro people, to the likening of "non-Christians" in the Philippines to the American Indians, and to the *tri-people* (Muslims/Moros, Christians, Lumads) equation in Mindanao. According to a Canadian law professor Patrick Macklem:<sup>57</sup>

"Equality of peoples refers to the outcome of a distribution among peoples of a good, in our case, sovereignty...Respecting the *formal equality* of indigenous peoples entails placing them in the position they would have been in had they been treated as formally equal to settling

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<sup>52</sup> Salvatore Schiavo-Campo & Mary Judd, *The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend*, 24 *Social Development Papers – Conflict Prevention & Reconstruction* 1 (2005).

<sup>53</sup> THOMAS M. MCKENNA, *MUSLIM RULERS AND REBELS: EVERYDAY POLITICS AND ARMED SEPARATISM IN THE SOUTHERN PHILIPPINES* 156 (1998).

<sup>54</sup> ABDUL AZIZ MIMBANTAS, *MIYASAYANA SO TAO NA TIYAAWI SO INGD [A PITIFUL PEOPLE IN A DISSERTEED HOMELAND]*, 12 (2012).

<sup>55</sup> RUSSELL, *supra* note 19, at 62.

<sup>56</sup> See Lyza R. Sabornido, *The 10 Poorest Provinces in the Philippines*, <http://faq.ph/the-10-poorest-provinces-in-the-philippines> (last accessed March 2, 2017).

<sup>57</sup> SANTOS, *supra* note 2, at 98.

nations in the distribution of sovereignty...demands recognition of Indian government as an expression of inherent Indian sovereignty...*substantive equality* suggests that the state attempt to remedy the oppression experienced by Indian nations...**the state ought to remedy the oppression** experienced by Indian nations...the state ought to remove alien forms of economic, social, political, and legal organization that have been imposed on Aboriginal societies. Acknowledging a measure of sovereignty by the recognition and reconstruction of forms of Indian government would allow Indian nations to obtain greater control over their individual and collective identities...**Equality of peoples is a moral and political ideal that exists independently of positive legal constitutional provisions**...One should not see justifications for recognizing Indian forms of government by looking to the Constitution of the United States or the Constitution of Canada. Instead, constitutional provisions ought to be interpreted in light of a prior, more basic, commitment to equality of peoples.”<sup>58</sup>

Nell Jessup Newton, an American law professor, says that tribal sovereignty and self-government should be protected not only as a fundamental political liberty based on a retained right of the people under the Ninth Amendment of the US Constitution but also by the due process clause’s protection of liberty. Quoting Justice Powell in *Moore v. City of East Cleveland*: Appropriate limits on substantive due process come not from drawing arbitrary lines but rather from careful “respect for the teachings of history [and] solid recognition of the basic values that underline our society.” One such value is cultural diversity: “valued fostering diversity in our pluralist society support tribal claims to sovereignty, for a tribe having governing powers over its own territory can better maintain a cohesive nature. The assimilationists recognized this link between tribal self-government and cultural identity, viewing the destruction of tribal government as essential to their civilization scheme.” As for equal protection, the angle here is the advocacy of strict scrutiny rather than a less rigid standard of

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<sup>58</sup> Patrick Macklem, *Distributing Sovereignty*, 45 *Stanford Law Review* 1311, 1355, 1358, 1361, 1365-6 (1993).

judicial review when it comes to legislation whose classification may prejudice Indian tribes, not just individuals.<sup>59</sup>

More important than the letter is the spirit of social justice provisions that aim to<sup>60</sup> “reduce social, economic and political inequalities, and remove cultural inequalities by equitably diffusing wealth and political power.”<sup>61</sup> It should not be hard to relate this to the Mindanao Problem and the aspired political equality of and diffused sovereignty to the tri-peoples. In the case of the Moros, social justice together with self-determination constitutes the core of the Moro grievance.<sup>62</sup> Incidentally, in the classic definition of social justice in Philippine jurisprudence, *Calalang vs. Williams*, there is a reference to allowable *extra-constitutional* means by way of police power: “the promotion of the welfare of all the people...constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle *of salus populi est suprema lex*.”<sup>63</sup>

#### IV. OPPOSING PARADIGMS

The contraposition of the Constitution and the Qur’an represents the contraposition of two (or more) legal families of the world. On one hand is the Philippine hybrid of the Spanish civil and American common law systems of the Western legal tradition. On the other hand is the Islamic legal system which is a religious family of law and which had been adapted to the indigenous customary law (*adat*) of the Moros, both considered of the Eastern legal tradition. Indeed, “legal systems reflect the values of diverse cultures.” In the context of cultural globalization and Islamic revival, the contraposition also represents an element of the new post-Cold War “clash of civilizations.”<sup>64</sup>

The 1987 Constitution is explicit on the inviolability of the separation of Church and State. On the other hand, it clashes with Islam’s integration of religion and politics. John L. Esposito, a Professor of Religion and International Affairs and of Islamic Studies at Georgetown University puts it, “appreciation of the relationship of religion to politics and society in Islam is essential...religion is

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<sup>59</sup> SANTOS, *supra* note 2, at 99.

<sup>60</sup> *Id.* at 101.

<sup>61</sup> CONST., art. XIII, sec. 1.

<sup>62</sup> SANTOS, *supra* note 2, at 102.

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

<sup>64</sup> *Id.* at 14-15.

not separate but rather integral to every aspect of life: prayer, fasting, politics, law, and society.”<sup>65</sup> In fact, as regards religion and politics, it is more like “religio-politics.”<sup>66</sup>

## V. MOTIVATING FACTORS

### A. Unredressed Massacres of Moros

- Jabidah Massacre (or Corregidor Massacre, March 17, 1968)

This involved the killing of 64<sup>67</sup> young Muslim recruits in the Philippine Army (PA) by their Christian superiors. These recruits were trained in sabotage, jungle warfare, and guerilla tactics, and were told that they would be integrated into the Armed Forces of the Philippines (AFP) to fight the “Communists.”<sup>68</sup> *Jabidah* was the name of the commando group involving hundred of recruits under the pseudo code “Project Merdeka.”<sup>69</sup> According to the lone survivor of the massacre, Jibin Arola, the Muslim trainees wanted to back out upon knowing that the real mission was to invade Sabah<sup>70</sup> because “how could they attack the Malaysians when they are our brothers and we do not have any quarrel with them?”<sup>71</sup> Since the nature of the project was a top military and political secret, the military officer decided to kill all the trainees in order to prevent it from being disclosed to the public. The Army Chief subsequently order to clean up the mess by collecting all the charred flesh and bones, together with the bullet shells lying on the airstrip, and dumped them into the sea with heavy stones tied to them to make sure that nothing would float on the surface.<sup>72</sup>

The incident caused much furor in the country, with the members of the then political opposition using it in lambasting the Marcos administration. Internationally, the incident caused the Philippine government to earn the ire of several Muslim countries. Most outraged among them was Malaysia, who saw the incident as an indication of the strong determination of the Philippine government to annex the state of Sabah. It was the “most thrusting force” to take up arms against the

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<sup>65</sup> JOHN L. ESPOSITO, INTRODUCTION: ISLAM AND MUSLIM POLITICS 3-4 (1983).

<sup>66</sup> JOHN L. ESPOSITO, ISLAM: THE STRAIGHT PATH 163 (1988).

<sup>67</sup> SALAH JUBAIR, BANGSAMORO: A NATION UNDER ENDLESS TYRANNY 132 (1999).

<sup>68</sup> MUSLIM, *supra* note 5 at 92.

<sup>69</sup> MARITES D. VITUG & GLENDA M. GLORIA, UNDER THE CRESCENT MOON: REBELLION IN MINDANAO 4 (2000).

<sup>70</sup> CESAR ADIB MAJUL, THE CONTEMPORARY MUSLIM MOVEMENTS IN THE PHILIPPINES 40 (1985).

<sup>71</sup> JUBAIR, *supra* note 67, at 132.

<sup>72</sup> VITUG & GLORIA, *supra* note 69, at 2.

oppressive government.<sup>73</sup> Libyan leader Qaddafi at the UN charged the Philippine Government with genocide.<sup>74</sup> Although investigation committees were created, the embarrassment of the government grew as investigations went on, especially with some major blunders made in the cover-up efforts, all of the accused PA officers were acquitted.<sup>75</sup> Notwithstanding a few senate and congressional hearing on the issue, no one was arrested and held responsible for the ghastly massacre.<sup>76</sup>

After the incident, the “Muslim Mindanao was never the same again,”<sup>77</sup> it radicalized the young Moros, and it sent some kind of a danger signal to the Moro masses who had long been alienated and saddened by the continuing government neglect of their welfare. And the incident became all the more mobilizing considering that the perpetrators were men in uniform who represented the law. The acquittal of all the accused military officers was an additional sign of the government’s low regard for Muslim lives. It sustained the resentment by many of them over the brutalities and overkill approaches that had accompanied some law enforcement works in the Muslim areas in the past.<sup>78</sup>

The Jabidah massacre was perceived as the state’s assault against Muslims who offered their services to the Republic, but had been duped, subjugated, and perfidiously murdered by Christians acting on behalf of the state. Both Muslim political elite and traditional leaders have experienced the contradictions in their hyphenated identity and felt the frustrations in their bid to be integrated in the body politic.<sup>79</sup>

Reports of “genocide” and a series of Philippine military and Christian paramilitary massacres,<sup>80</sup> and atrocities against Muslims in Mindanao<sup>81</sup> are some of the triggering events<sup>82</sup> of the contemporary Moro struggle. For Muslims, these operations seemed to be part of the plan to wipe out the Muslims in the Philippines<sup>83</sup> that some of them anticipated even before the declaration of

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<sup>73</sup> MUSLIM, *supra* note 5 at 93.

<sup>74</sup> SANTOS, *supra* note 2, at 75.

<sup>75</sup> MUSLIM, *supra* note 5 at 93.

<sup>76</sup> BUENDIA, *supra* note 4.

<sup>77</sup> VITUG & GLORIA, *supra* note 69, at 3.

<sup>78</sup> MUSLIM, *supra* note 5, at 94.

<sup>79</sup> BUENDIA, *supra* note 3.

<sup>80</sup> See MACAPADO A. MUSLIM, THE MORO ARMED STRUGGLE IN THE PHILIPPINES: THE NONVIOLENT AUTONOMY ALTERNATIVE 94-104 (1994) & MARJANIE SALIC MACASALONG, THE LIBERATION MOVEMENTS IN MINDANAO: ROOT CAUSES AND PROSPECTS FOR PEACE,

[http://www.academia.edu/4845226/THE\\_LIBERATION\\_MOVEMENTS\\_IN\\_MINDANAO\\_ROOT\\_CAUSES\\_AND\\_PROSPECTS\\_FOR\\_PEACE](http://www.academia.edu/4845226/THE_LIBERATION_MOVEMENTS_IN_MINDANAO_ROOT_CAUSES_AND_PROSPECTS_FOR_PEACE) (last accessed March 2, 2017).

<sup>81</sup> SANTOS, *supra* note 2, at 59.

<sup>82</sup> MUSLIM, *supra* note 5, at 92.

<sup>83</sup> See MAMINTAL A.J. TAMANO, AUTONOMY: TO KEEP THIS NATION INTACT 54-55 (1986).



Martial Law. These operations were also characterized by brutalities that did not spare many non-combatants, including women and children. Several towns were razed to the ground. More houses, mosques, and Islamic schools burned. But instead of being daunted by these operations and the brutalities involved, the Moro forces continued to persist with more vigor, as more young Moros (including women) came to offer their services on battlefields. The explanation is the same: the imperative to survive under the climate of fear of extermination.<sup>84</sup>

Although the war in Mindanao has been a continuing threat to the stability of the Philippines and a tremendous drain on its resources, not much of it was reported in the media and in academic fora, a fact which may be explained by the muzzling of the press under the Marcos regime. This news blackout on the struggle was aptly captured by Fred Poole and Max Vanzi by referring to it as “Marcos’ hidden war.”<sup>85</sup> For Lualhati Abreu, the infamous Jabidah Massacre, and the equally heinous series of massacres perpetrated by the military-backed *Ilaga*, a cultic group of armed migrant-settlers and electoral fraud and terrorism all contributed to the galvanization of the rebellious unrest among Moro leaders and people.

## **B. Marginalization**

Muslims of the southern Philippines have been victims of economic development. The wealth of their lands and seas has not been transformed in material development and progress for the people. Wealth has simply been siphoned out of their homelands in the service of the economic interests not only of Christian settlers but also of foreign multinational corporations. The political order, seen as the structure that breeds economic deprivation and social discrimination, became one of the rallying causes of some Muslim leaders to undertake the process of self-governance outside of the Philippine system of political administration.<sup>86</sup>

Development planners allocate resources to benefit Christian settlers at the expense of native Muslims. The National Power Company (NPC) has crowded 7 hydroelectric dams along a 30-km. stretch of the Agus River, to power the factories of Iligan and Cagayan de Oro. This enormous strain is destroying Lake Lanao, the river’s source, which covers 100, 000 acres to depths of up to 300 feet. For centuries the Maranao (“people of the lake”) have relied on this lake for the subsistence of

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<sup>84</sup> MUSLIM, *supra* note 5, at 114.

<sup>85</sup> MUSLIM, *supra* note 5, at 2.

<sup>86</sup> BUENDIA, *supra* note 4.

thousands. Now more than half of it has been drained away to power coastal factories, while Muslim cities like Marawi suffer diminished resources.<sup>87</sup>

ARMM and western Mindanao have the lowest access to safe drinking water, electricity, toilet and health facilities. Moreover, Mindanao has the lowest share of the country's health practitioners and visit rates of health personnel. This deplorable situation is reflected in the island's high crude death rates with ARMM having the highest at 9.8 deaths per 1,000 people.<sup>88</sup> They also have the lowest per capita incomes, largest poverty incidence and least access to physical and social infrastructure as well as basic services, despite the teeming resources of their lands and seas. The people, especially the minority Muslims and other non-Muslim/non-Christian peoples, have yet to benefit from their natural and human wealth.<sup>89</sup>

According to Samuel Tan, the political economy of Mindanao demonstrates how the power elite, and the multinational and national entities have remarkably developed the mining and agro-industrial potentials of the region through the years and yet, have reserved to themselves the greater part of the resources and benefits of development leaving a very small portion to the indigenous people to divide among themselves.

As expressed by Majul, it is very difficult to erase from the minds of Muslims that the government is not party to having more and more Christian settlers enter their ancestral homes to eventually displace them. In the 17<sup>th</sup> century, the Spaniards tried to populate Zamboanga, Jolo, Dapitan and other points with Christian settlers. In the 19<sup>th</sup> century, they began to have some success in Iligan, Tamontaka, and Cotabato. During the Commonwealth period, there were additional inducements for Christian settlers to go to Mindanao. The point emphasized is that these inducements were more for Christian settlers to found colonies in Mindanao while there were no constructive or positive measures to secure to the Muslims titles to lands where they were living. To the ordinary Muslim, such a situation leads him to believe further that the present government is no less colonial than the previous governments. This belief gains further credence when they discover that in some provinces where they were in the majority a generation or two ago, they have now been reduced to a minority in spite of their natural increase. Muslims need not be very intelligent or sophisticated to

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<sup>87</sup> HILL, *supra* note 7.

<sup>88</sup> BUENDIA, *supra* note 4.

<sup>89</sup> *Id.*

observe that the towns inhabited mainly by Christians in their midst have better schools, roads, municipal buildings, irrigation projects, etc.<sup>90</sup>

In discussing the political economy of Mindanao, there exists a contradiction between poverty and wealth in Mindanao. This paradox of “high growth rates and the simultaneous existence of an impoverished population” is due to the effects of “internal colonialism – the transfer of wealth from the southern regions to the nucleus of economic and political power in the north.” For instance, the Mindanao’s natural resources and actual contribution to the national economy surpass any other region. Yet, the people do not receive commensurate benefits from Mindanao’s development. The problem appears to be one of equitable growth, or lack of meaningful participation by the residents in the development process.<sup>91</sup>

- *Legalized Land-grabbing*<sup>92</sup>

The Legislative Act No. 4197 or otherwise known as the “Quirino-Recto Colonization Act” was enacted on February 12, 1935. This was the turning point of the land settlement phenomenon, when the government declared settlement as the “only lasting solution” to the problem in Mindanao and Sulu, thus shelving all other long-range solutions as secondary and of less importance. The choice of the term “colonization” in the very title of this enactment obviously bespoke Manila’s sinister designs. It had no scruples in openly calling the Moro country its colony.<sup>93</sup>

The Commonwealth Act No. 141 was signed on November 7, 1936 by Pres. Manuel Quezon, it declared ancestral landholdings as public lands. Under this Act, a Moro was allowed only to apply for a piece of land, not exceeding four hectares, while a Christian was entitled to own up to 24 hectares, and a corporation, wholly owned by non-Moros, was permitted to get 1, 024 hectares.<sup>94</sup>

The Commonwealth Act No. 441 was signed by Pres. Manuel Quezon in June 1939, it created the National Land Settlement Administration (NLSA). Given the priority slots in this program were those who had completed military training in preparation, as the proponents put it, to meet impending Japanese invasion. But the Moros viewed it from a different angle. Their suspicions were not

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<sup>90</sup> TAMANO, *supra* note 83.

<sup>91</sup> Eduardo Climaco Tadem, *Development and Distress in Mindanao: A Political Economy Overview*, 48 *Asian Studies* 19-34 (2012).

<sup>92</sup> See SALAH JUBAIR, *BANGSAMORO: A NATION UNDER ENDLESS TYRANNY* 102-108 (1999).

<sup>93</sup> JUBAIR, *supra* note 67, at 102.

<sup>94</sup> *Id.* at 102-103.

unfounded because a similar condition was required to be fulfilled by those who made up the first batch of fifty settlers in 1912. The colonial government saw to it that members of this batch were required to be experts in *arnis* or sword-play. This was obviously in anticipation of encounters with the *keris*-wielding Moros of Mindanao. NLSA opened up three major settlement projects and two of these were in the Cotabato Valley. That in Koronadal Valley in Cotabato was spearheaded by Gen. Paulino Santos, one-time Governor of Lanao and who in 1944 was appointed Commissioner for Mindanao and Sulu. In this project, 200 Christian families were given each twelve hectares of farmland and financial assistance reaching up to P7.5 million. The first batch of settlers, when they arrived in the vast Cotabato plain, cried unashamedly and kissed the ground which was theirs to own at last.<sup>95</sup>

### C. The Torrens System

The Regalian Doctrine is the cornerstone of our public land law system. Under this, all lands presumptively belong to the state or the sovereign. No title to land could be acquired by any person except by grant of the king. Any person, therefore, claiming ownership of a piece of land must show that he has acquired title through a grant from the government. This feudal doctrine as applied to the Muslims provided legal cover to the usurpation of their ancestral lands by settlers who came to Mindanao particularly after the Second World War “by the shiploads” (in the words of Sen. Espina) everyday. The “legal cover” meant that they were backed up by the might and power of the government, represented by the Constabulary and the Armed Forces.<sup>96</sup>

For instance, in the EDCOR settlement in Buldon, a Muslim community was told to move out because the area happened to be a proposed “seed” farm in the over-all plans for the settlement. So the Muslims were relocated. Afterwards, the same area was not used for a “seed” farm, but was parceled out to some officers for which they filed in due time application for title. No compensation was given to the original Muslim occupants.<sup>97</sup>

Then naked force was used against them. They were simply told that they were “squatters” on “public land”. They were not told that even assuming that the tract was “public land” they had a better right thereto than the newcomers, because as citizens they also were entitled to occupy and claim for

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<sup>95</sup> Id at 103-104.

<sup>96</sup> TAMANO, *supra* note 90, at 56.

<sup>97</sup> Id.

public land. The legal props justified the invasion and wanton disregard of the prior rights of the natives to the land they and their ancestors have occupied since time immemorial.<sup>98</sup>

In being deprived of their ancestral lands by settlers and immigrants backed by the authority of the government and even with government assistance as in settlements like the LASEDECO, NARRA, EDCOR, etc., it is important for us to find out whether the Muslims have legal or equitable grounds under our system of laws to feel aggrieved against their Christian brothers and also against the government.<sup>99</sup>

The Philippines 2000 project of the Ramos government, which aims at industrializing the country to be at par with the other economic "tigers" of Asia, is viewed with antagonism by the Moro people. Like in the past, this can be another ploy, in the guise of development, to grab the ancestral lands of the Moro people to give way to infrastructure, road expansion, big industries and agricultural plantations, which will drive away the Bangsamoro and the other indigenous communities.<sup>100</sup>

The institutionalized immigration of Christians in Mindanao has made Moros and Lumads minorities in their own land. The Mindanao, the approximate population percentages are 75% Christian, 20% Moros, and 5% Lumad. Out of Mindanao's 23 provinces, the Christians are a majority in 18 provinces, the Moros are a majority in five provinces and 11 municipalities in four other provinces, and the Lumad are a majority in eight municipalities if four other provinces.<sup>101</sup>

There is a case in point, *Carino v. Insular Government of the Philippines Islands*. Carino was a native of a Benguet province, a member of the Igorot tribe. He sought to register 64 hectares of land in Baguio which was denied by the Court of First Instance of Benguet. The decision was affirmed by the Philippine Supreme Court. It was brought on appeal by writ of error to the United States Supreme Court which reversed the decision of the Philippine Supreme Court.<sup>102</sup> Mr. Justice Holmes in his reversal states that:

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<sup>98</sup> Id.

<sup>99</sup> Id.

<sup>100</sup> Guiamel M. Alim, *The Bangsamoro Struggle for Self-Determination*, [http://www.seasite.niu.edu/tagalog/Modules/Modules/MuslimMindanao/bangsamoro\\_struggle\\_for\\_self.htm](http://www.seasite.niu.edu/tagalog/Modules/Modules/MuslimMindanao/bangsamoro_struggle_for_self.htm) (last accessed Feb 24 2017).

<sup>101</sup> SANTOS, *supra* note 2, at 44.

<sup>102</sup> TAMANO, *supra* note 90, at 57.

“...The position of the government, shortly stated, is that Spain assumed, asserted, and had title to all the land in the Philippines except so far as it saw fit to permit private titles to be acquired; that there was no prescription against the Crown, and that, if there was, a decree of June 25, 1880, required registration within a limited time to make the title good; that the plaintiff's land was not registered, and therefore became, if it was not always, public land; that the United States succeeded to the title of Spain, and so the plaintiff has no rights that the Philippine government is bound to respect.”

“The acquisition of the Philippines...our first objective in the internal administration of the islands is *to do justice to the natives, not to exploit their country for private gain*. By the organic act of July 1, 1902...all the property and rights acquired there by the United States are to be administered *“for the benefit of the inhabitants thereof...”* It also provides that “no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws...” it is hard to believe that the United States was ready to declare in the next breath that “any person” did not embrace the inhabitants of Benguet, or that it meant by “property” only that which has become such by ceremonies of which presumably a large part of the inhabitants never has heard, and that it proposed to treat as public land what they, by native custom and by long association -- one of the profoundest factors in human thought -- regarded as their own.”

“...We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat...”

“...Every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been

held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land...”

“...Upon a consideration of the whole case we are of the opinion that law and justice require that the applicant should be granted what he seeks, and should not be deprived of what, by the practice and belief of those among whom he lived, was his property, through a refined interpretation of an almost forgotten law judgment reversed.”<sup>103</sup>

Although we are no longer under American sovereignty, Tamano submits that the Carino Case is applicable in the Philippines. American jurisprudence is part of the Philippine jurisprudence and American decisions are applicable here no longer by reason of their authority, but by authority of their reason. When we consider, therefore, the import of the Carino Case, we can visualize the rancor and the feelings of the Muslims when they were labeled as “squatters” in their own land, when in law and in fact it is the government and the settlers brought by it, who are the true “squatters” in the land of the Muslims.<sup>104</sup>

#### **D. Policy of Assimilation** <sup>105</sup>

According to Peter Gowing, Protestant scholar-missionary, the present integration policies of the Philippine Republic are actually a continuation and improvement of policies pursued by the Americans, who in turn continued policies the Spaniards had begun. <sup>106</sup> In the words of Gowing:

“The integration policies of the two colonial powers, and now the Philippine Republic, were predicated on a notion which was (still is) anathema to the Muslims, that there is no essential difference between the Muslims and Christian Filipinos except the comparative

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<sup>103</sup> Carino vs. Insular Government, 212 U.S. 449 (1909).

<sup>104</sup> TAMANO, supra note 90, at 60.

<sup>105</sup> It is the adaptation of one ethnic or social group – usually a minority – to another... involves the subsuming of language, traditions, values, mores and behavior... assimilation will lead one group to be socially indistinguishable from other members of the society. It is the most extreme form of acculturation. See Rachel Anderson, Redressing Colonial Genocide under International Law: The Herero’s cause of Action against Germany <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1293&context=californialawreview> (last accessed February 19, 2017).

<sup>106</sup> TAMANO, supra note 90, at 78.

backwardness of the former which can be corrected by a sort of *missione civilisatrice*. Certainly, many Christian Filipinos are persuaded that underneath, Muslim and Christian Filipinos are the same except that through the misfortunes of history the Muslims were somehow left behind in their economic, political, social and educational development. The whole integration program of the Government seems to revolve around the philosophy that is the Muslims are provided with more roads, schools, health facilities, civic centers and industrial plants, and if they are instructed in more modern methods of farming or are given more scholarships for higher education in Manila or are offered more jobs in government, then in time they will be “integrated,” that is, they will resemble the Christian Filipinos. While Muslims do in fact want many of these things, they fear this philosophy behind the integration program because it is really a philosophy of assimilation reflecting a basic contempt for the religious, cultural and historical factors upon which they anchor their psychological and social identity.”

The policy of integration meant two things, first is the unrelenting resistance of the Muslims to Spanish colonialism was treated not as a glorious chapter in the history of a people that refused to be subjugated but as simple piracy.<sup>107</sup> As Gowing says:

“(This) image of the “Moro” as a cruel, cunning, treacherous savage, a pirate, a raider and a slaver, is operative today and colors Christian-Muslim relations. The image is perpetuated not only in the anti-Moro tales and innuendoes handed down from one generation of Christian Filipinos to another, but also in the history books and other study materials on the Philippines used in the public schools.”

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<sup>107</sup> Id at 79.



Second, the positive contributions of Islam and the Muslims to philosophy, medicine, science, art and human civilization, in general, were belittled and even ignored.<sup>108</sup>

The sad part of the whole things is that what should be the common heritage of Muslim and Christian Filipinos alike is lost to both. For example, when we speak of our diplomatic history, we draw only upon the negotiations of Aguinaldo to find foreign support for the short-lived First Philippine Republic in 1898. We think that this is the start of our diplomatic history. We do not realize that we have a much more glorious and ancient past. In 1417 or more than a hundred years ago before the first white man came to our shores, the Sultan of Sulu sent a mission to the Imperial Court of China. We can rightfully say that the members of that mission were our first ambassadors and plenipotentiaries. The emperor Yung Lo of the Ming Dynasty reciprocated by sending a Chinese mission to Sulu. At that time, the Sultan of Sulu had dominion not only over Sulu, but most of the Visayas, including Mindoro, and Southern Luzon up to Manila.<sup>109</sup>

The account of our first recorded essay into international relations is not mere tradition. It is recorded in the Ming Annals. In fact, the gifts presented by the Sultan's emissaries are still to be found in the Chinese Imperial Museum.<sup>110</sup>

### **E. Injustice to Moro Identity**

Beyond economic and political grievances, the issue of separatism is one of subjective feelings, perceptions and language that Muslim minorities are being 'summarily discriminated [against] and exploited by the Christian majorities.'<sup>111</sup>

Anti-Muslim preconceptions linger in the dominant Christian consciousness. The name 'Moro', which designates the shared identity for Philippine Muslims, is still categorically and pejoratively associated with piracy, savagery, slavery, treachery, running amok (juramentado) and other negative connotations.<sup>112</sup> For instance, the Moro-Moro theatrical play which enacts the defeat of Muslim 'villains' against Christian 'heroes' during Christian celebration of fiestas.<sup>113</sup>

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<sup>108</sup> Id.

<sup>109</sup> Id. at 80.

<sup>110</sup> Id. at 80-81.

<sup>111</sup> BUENDIA, *supra* note 4.

<sup>112</sup> Id.

<sup>113</sup> Id.

We cannot overlook the unconscious indoctrination of our young generation by textbooks in circulation which picture the Moros as piratical and blood thirsty, and their religion as having been spread principally by sword and fire – in contrast to the “faith, hope, and charity” of Christianity. Without going into a refutation of these myths, the fact remains that such unconscious indoctrination tend to mold in the majority a feeling of distrust for and superiority over the minority group, while tending to inculcate in the young minority members feelings of antagonism and inferiority.<sup>114</sup> The centuries of tenacious resistance of the Moros against imperialism remains suppressed in Philippine history books written by authors who are mostly products of colonial education. In national symbols, the Moros are a non-entity... In history textbooks the commendable anti-imperialist struggle of the Moros is nowhere to be found. Instead, Moro personality and culture are continually vilified, suggesting the efficacy of colonial efforts to project their Moro victims as culprits. The Philippine press is also a major participant in the unceasing chauvinistic campaign to project an image of some form of a savage chemistry for the Moro personality or an Islamic culture of terrorism.<sup>115</sup>

The Filipino national histories have the tendency to represent Filipino Muslims as “Other,” rather than depicting them as constituent members of the nation. For instance, Zaide and Zaide’s *Philippine History and Government* and Agoncillo’s *History of the Filipino People*, misrepresent, downplay, or at points even denigrate Moro contributions to national history.<sup>116</sup>

## F. The Philippine Flag

The 1987 Philippine Constitution itself contains not only a number of exhortations to “patriotism and nationalism” but also general provisions on Philippine flag and a possible new name, anthem or seal “which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people...”<sup>117</sup> but the historical fact is that the Moro sultanates or people had no part or input in the unchanged Philippine flag of 1898 for the simple reason that their struggles were not part of but parallel to the Philippine Revolution of 1896 and independence declaration of 1898 which the flag symbolizes so as well. The Moros and for that matter the Igorots “cannot identify with the symbolisms of the Filipino flag. Their struggle is not reflected in the Filipino flag.” Where is the *kris* (Moro sword),

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<sup>114</sup> TAMANO, supra note 90, at 5.

<sup>115</sup> MUSLIM, supra note 5, at 126.

<sup>116</sup> Brandon Reilly, Imaginable as Other: The Representation of Muslims in Zaide and Zaide’s *Philippine History and Government* and Agoncillo’s *History of the Filipino People*, 24 *The Mindanao Forum* 43-67 (2011).

<sup>117</sup> SANTOS, supra note 2, at 22.

the crescent or the green of Islam? <sup>118</sup> In the Philippine flag, there are eight rays of the sun representing the eight Christian areas that fought against the Spaniards which is ironic because the Moros who were never conquered by the Spaniards for more than three centuries are not represented, while all the eight areas represented succumbed to the imperialists.<sup>119</sup>

## VI. Reform in Education

Formal education must be a purposeful instrument of social cohesion inculcating certain common values and national objectives. It must be realized that national unity on a basis acceptable to both Christian majority and the Muslim minority must be forged on the anvil of mutual respect and appreciation. Tamano recommended that (1) Islamic history, culture and civilization must be part of the curriculum of the College of Education; (2) textbooks on world history for use in secondary schools must also be revised to give proper emphasis to the history of Islam and its contribution to human civilization; (3) deprecatory references to Muslim Filipinos in textbooks and instructional materials must be eliminated.<sup>120</sup> A new and integrated history of the Philippines must be prepared which will give due prominence to the Muslim culture of Pre-Spanish Philippines and the unrelenting struggle of Filipino Muslims against Spain as part of our aspirations for nationhood.<sup>121</sup>

The House Bill 270 or the Integrated History Act was filed by Senator Jose Edgardo Angara. Under this bill, Angara proposes for the Department of Education to open and maintain a subject on Moro history, culture, and identity in all levels in both public and private schools across the country. According to him, there is a need to integrate the history, culture and identity studies of Filipino-Muslims and indigenous people in the grand narrative of Philippine history if we want to create an inclusive history that accounts for all Filipinos.

The expansion of public education is often seen as an effective tool for the promotion of national identity and the mitigation of ethno-religious tensions in diverse post-colonial states. The expansion of education to foster a cohesive national identity without careful reconsideration of the religious, cultural and political biases inherent in its content is likely to fail in achieving peaceful,

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<sup>118</sup> Id. at 23.

<sup>119</sup> MUSLIM, *supra* note 5, at 126.

<sup>120</sup> TAMANO, *supra* note 90, at 83.

<sup>121</sup> Id. at 97.

cohesive relations between different ethno-religious communities in religiously diverse multicultural states.’<sup>122</sup>

The full complexity of the “Mindanao problem” is underscored not only by the historical past but also by the demographic present: an Island of three peoples – the Moros, the even more marginalized indigenous Lumad, and the dominant Westernized Christians. The problem of tensions and conflicts between/among these peoples is often felt at the local community level. As said by Peter M. Sales, an Australian academic, “the best and most positive initiatives of all must foster knowledge between the diverse ethno-religious communities of Mindanao. A Mindanao academic says: “An enduring regime of peace and development is one in which the three communities – Muslims, Christians, and Tribal Communities – live together with dignity.” Such a pluralist future in Mindanao depends on multi-level and multi-dimensional peace initiatives, in which the academe has much to contribute.<sup>123</sup> This will not be achieved if the source of information such as the textbooks in the academe is not reviewed in order to eliminate derogatory Moro reference and not give them the credit that they deserve in history. For Bara, the history of the Philippine Muslims is part of the backbone of the historical development of the whole country. Filipino historians like Dr. Renato Constantino asserted that no Philippine history can be complete without a study of Muslim development.<sup>124</sup> The proud history of Moro resistance against imperialism, which should be the source of Filipino pride, is instead being suppressed in Filipino history that even the young generations of Moros are not aware of such pride.

## VII. Sham “Autonomy”

ARMM is a cosmetic independence.<sup>125</sup> Previous attempts to resolve the conflict between the Moros and the Philippine state by offering autonomy for Muslim Mindanao failed largely because of the inadequate powers assigned to the autonomous governments.<sup>126</sup>

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<sup>122</sup> Jeffrey Ayala Milligan, Faith in School: Educational Policy Responses to Ethno- Religious Conflict in the Southern Philippines, 1935–1985, 36 *Journal Of Southeast Asian Studies* 67-86 (2005).

<sup>123</sup> SANTOS, *supra* note 2, at 84.

<sup>124</sup> Hannibal Bara, The History of the Muslim in the Philippines, <http://ncca.gov.ph/subcommissions/subcommission-on-cultural-communities-and-traditional-arts-sccta/central-cultural-communities/the-history-of-the-muslim-in-the-philippines/> (last accessed March 1, 2017).

<sup>125</sup> HILL, *supra* note 6.

<sup>126</sup> MACAPADO A. MUSLIM, SUSTAINING THE CONSTITUENCY FOR MORO AUTONOMY, [http://www.c-r.org/downloads/Accord%2006\\_4Sustaining%20the%20constituency\\_1999\\_ENG.pdf](http://www.c-r.org/downloads/Accord%2006_4Sustaining%20the%20constituency_1999_ENG.pdf), (last accessed Feb 20, 2017).

The low degree of political autonomy granted to ARMM manifest itself in formal powers or administrative arrangements that are purportedly decentralized but in fact politically controlled or influenced by central government. In spite of the pronouncement that the government promotes ‘unity through diversity’, policies have been centrally formulated and conceived with little regard to the heterogeneous requirements, needs and demands of local communities, especially minority peoples. The unitary system gives central government the political legitimacy to rule over minorities and other indigenous communities who do not feel they are part of the nation-state in terms of culture, identity and religion.<sup>127</sup>

The permanent embedding into the body of the Constitution a limited autonomy under central authority has narrowed the constitutional space for a more self-determinative Islamic subsystem. The failed approach of government unilateralism on Moro matters cannot be rationalized by this kind of sophistry: “the autonomy that will be the final outcome of the Tripoli Agreement can no longer be, under the circumstances of today, merely a bilateral act...it must be the result of multilateral consensus, and not a bilateral agreement.”<sup>128</sup> Bilateralism can go hand in hand with multilateralism (as in dialogue and multilogue). But multilateral acts deliberately intended to undercut a bilateral agreement are another matter.<sup>129</sup> For as long as the government continues to play Moro-Moro in dealing with the Mindanao conflict there will be more Nur Misuari to come.<sup>130</sup>

As a consequence of the unitary governmental structure and top-down approach in development, Mindanao’s economic growth path has been altered minimally throughout the post-colonial years. Its economic performance since the country’s independence has always been relegated to the role of an agricultural products supplier, typifying the classic dependency function of being a satellite of the country’s major urban and metropolitan centers. It has the least access to basic services and infrastructure and has the highest and most constant incidence of poverty.<sup>131</sup>

The World Bank in 2003 stresses the lack of financial autonomy in ARMM that “although autonomous in name and in legal status, the ARMM regional government has almost no independent source of income and has little flexibility in budget management. It depends hugely on the National

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<sup>127</sup> BUENDIA, *supra* note 4.

<sup>128</sup> Joaquin G. Bernas, *The Challenge of Autonomy*, 3 *Mindanao Law Journal* 123, 126 (1988).

<sup>129</sup> SANTOS, *supra* note 2, at 19.

<sup>130</sup> MUSLIM, *supra* note 5, at 143.

<sup>131</sup> BUENDIA, *supra* note 4.

Government for financing of significant devolved responsibilities, including human development. In contrast, LGUs in the region enjoy fiscal autonomy in management of their IRAs...but have few mandated responsibilities for the human development sectors.”

### VIII. MNLF, MILF, ABU SAYYAF: Where lies the difference?

Factionalism in the Bangsamoro struggle, either among and between traditional political elite or new intellectual and counter-elite, has not only hobbled the quest of the Moros towards achieving their goal but more importantly, highlighted the fundamental and continuing question of Moro identity and Moro national unity.<sup>132</sup>

When the MNLF was founded, its objective was to create an *Independent Bangsamoro homeland*. However, under pressure from the Islamic states, it has accepted autonomy within the Philippine state. Nur Misuari’s vision of a secessionist war was emphatically secular in orientation rather than Islamic; neither ethnic nor religious.<sup>133</sup> On the other hand, the objective of MILF is an *Independent (sovereign) Moro Islamic State*. They assert that only through the establishment of the would-be Moro sovereign Islamic system that the real economic development in Mindanao can be achieved.<sup>134</sup> In its perspective, the lasting political solution is to establish a system quite different from the Philippine system, which represents the aspiration of the Bangsamoro people that is of a qualitatively different level, one which goes to the core of cultural diversity, a people’s identity and way of life, and “longing for self-rule: to rule themselves in accord with their customs and ways,”<sup>135</sup>

The MNLF and MILF, notwithstanding their ideological differences – the former being more secular and the latter more Islamic – see themselves as ‘one people’, bound together by a common ancestry, history, society, institutions, territory, and more importantly, religion. As a minority people in a predominantly Christian nation, they perceive themselves to be marginalized, persecuted and powerless both politically and economically. Regardless of organizational affiliation, independence remains the underlying essence of political autonomy for Muslim socio-political movements.<sup>136</sup> Julkipli M. Wadi describes the complementarity of the two Moro liberation fronts: “The MNLF and the MILF

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<sup>132</sup> BUENDIA, *supra* note 3.

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

<sup>134</sup> The Bangsamoro Struggle for Self-Determination: A Case Study, <http://manoa.hawaii.edu/ccpv/assets/docs/CCPV%20-%20The%20Bangsamoro%20Struggle%20for%20Self-Determination%20-%20A%20Case%20Study%20-%20By%20Caecilia%20Noble.pdf> (last accessed Feb. 20, 2017).

<sup>135</sup> JAMES TULLY, *STRANGE MULTIPLICITY: CONSTITUTIONALISM IN AN AGE OF DIVERSITY* 4 (1995).

<sup>136</sup> BUENDIA, *supra* note 4.

are separated ideologically, they like security guards with shifting schedules. When one takes a nap, the other takes over.”<sup>137</sup>

The Abu Sayyaf Group (ASG) is mainly composed of young and disgruntled elements of MNLF and MILF. It advocates the creation of a “purely Islamic government” through “*Jihad Fi-Sabil-lillah*” (Islamic war) to end “oppression, injustice, capricious ambitions, and arbitrary claims imposed on the Muslims.”<sup>138</sup> However, it has been known for its hostage-taking and kidnapping for ransom, robberies, beheadings, and other ghastly acts that victimized both Muslim and Christian civilians. The MNLF and MILF view the ASG with consternation and dismay. The MNLF had given tacit support to the AFP military action against the ASG while the MILF renounces its activities and calls it a group of bandits that have given Islam a bad name.<sup>139</sup>

We must begin by recognizing that these groups are different from each other and should, thus, be treated differently. The Abu Sayyaf should be dealt with as a police matter, which means that the police should go after these hoodlums hammer and tongs and bring them before the bar of justice. The MILF should be dealt with as a political matter, which means that the government should exert every effort to bring them back to the negotiating table and discuss all possible avenues that will lead to a just and lasting peace to the region that is now wracked by violent unrest. The distinction bears underscoring because even the government treats the Abu Sayyaf and the MILF as one and the same brutal gang simply because their adherents are for the most part Moros or Muslims.<sup>140</sup>

Indeed, the “national character” of the Moro struggle has yet to be strengthened. Its weakness is portrayed not only in terms of the Moros historical difficulty to stand as one people united under a single leadership that effectively engages the state into a vision of self-governance but also in categorically defining and qualifying the national identity of people. Moro identity is far from dense and vulnerable to political manipulation either by the state or non-state actors as witnessed by the formation of innumerable groups, some of them involved in criminal activities, using “Islam” as their protective shield.<sup>141</sup>

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<sup>137</sup> SANTOS, *supra* note 2, at 41.

<sup>138</sup> Samuel Tan, *The Juma'a Abu Sayyap: A Brief Assessment of its Origin, Objectives, Ideology and Method of Struggle*, a paper presented at the National Defence College of the Philippines Strategic Studies Group Meeting, 2 May 2000.

<sup>139</sup> BUENDIA, *supra* note 3.

<sup>140</sup> Aquilino Pimentel Q. Jr., *Is Federalizing the Republic the Solution to Mindanao?*, [http://bugsnbytes.tripod.com/bb\\_newsletter\\_0004\\_05.html](http://bugsnbytes.tripod.com/bb_newsletter_0004_05.html) (last accessed Feb 21, 2017).

<sup>141</sup> BUENDIA, *supra* note 3.

### IX. The “Moro Problem”

The first notable definition of Moro Problem was made in 1913 by Najeeb M. Saleeby, an American colonial official in charge of Moro affairs:<sup>142</sup>

“By the Moro problem is meant that method or form of administration by which the Moros and other non-Christians who are living among them, can be governed to their best interest and welfare in the most peaceful way possible, and can at the same time be provided with appropriate measures for their gradual advancement in culture and civilization, so that in the course of a reasonable time they can be admitted into the general government of the Philippine Islands as qualified members of a republican national organization.”

Joel de los Santos wrote that the Moro problem is a “Christian problem” because “Christian society is deeply implicated in the Muslim problem. Christian institutions created it, Christian institutions maintain it, and Christian society condones it.” There is an element of Muslim-Christian conflict in the continuing Mindanao conflict but this is *not* a religious war per se or essentially a religious problem. But neither should the religious dimension, whether in its positive or negative aspects, be understated.<sup>143</sup>

As for Cesar Adib Majul, the most respected Filipino scholar on Muslims in the Philippines, the problem is “actually multi-faceted or represents a constellation of various problems” but for him, it is “mainly a national problem,” the result of the policies of the central government.

Patricio P. Diaz distinguished between the Muslim or Moro Problem, on one hand, and the Mindanao Problem on the other, thus:<sup>144</sup>

“Muslim or Moro Problem, which henceforth will be referred to as ‘Muslim,’ concerns the socio-cultural and economic life of the people.

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<sup>142</sup> SANTOS, *supra* note 2, at 41.

<sup>143</sup> *Id.* at 42.

<sup>144</sup> *Id.* at 43.



In its present state, it is seen as inherent to and having developed from the socio-cultural traits of the Muslim society which resisted change.”

“Mindanao Problem concerns the socio-economic and political struggles of Muslim leaders among themselves and against intruders into their homeland starting with the Spaniards about 1600, followed by the Americans 300 years later, and now with the Manila government and the dominant Christians.”<sup>145</sup>

## X. ANTIDOTE TO SECESSION

The hardest obstacle to overcome is the revision of the Constitution.<sup>146</sup> It is the tendency of the Government to stick to the existing Constitution (although constitutional amendments were a possibility) and not to explore beyond it. In other words, the search for a political solution did not include necessary reform of constitutional arrangements between two peoples, Filipino and Moro.<sup>147</sup> The natural tendency of the Government was to hold on to as much power and control over Muslim Mindanao even though it could let go of more under the Constitution.<sup>148</sup> Constitutionalism has been a key tradition of the Philippine legal system. All major political and legal acts should be within the framework, or at least not violative of the Constitution. But in its application and interpretation, one can be either rigid or creative.<sup>149</sup>

### A. Genuine Autonomy

The present democratic system is not sufficient for real autonomy the Muslims may accept short of total independence. It must be something where the Christian majority has no more say or influence in Muslim affairs except ceremonial and nominal requirements of symbolic sovereignty.<sup>150</sup>

Autonomy has certain advantages compared to federalism. Basically, autonomy is more purposively addressed to the particularities of an ethno-cultural region, including serving as a conflict-

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<sup>145</sup> SANTOS, *supra* note 2, at 52.

<sup>146</sup> PIMENTEL, *supra* note 143.

<sup>147</sup> SANTOS, *supra* note 2, at 47.

<sup>148</sup> *Id.* at 62.

<sup>149</sup> *Id.*

<sup>150</sup> Samuel K. Tan, Understanding the Mindanao Conflict, [http://bugsbytes.tripod.com/bb\\_newsletter\\_0004\\_02.html](http://bugsbytes.tripod.com/bb_newsletter_0004_02.html) (last accessed Feb 21 2017).

solving mechanism, while federalism applies across the whole country as a national structure. Autonomy is, therefore, more flexible, with a wide range of options from minimum to maximum (short of full independence). It can also assume a personal nature (e.g., personal or cultural autonomy) while federalism is always territorial and functional. Autonomy is likewise much broader than self-government because the former covers non-political aspects like the economy, culture, education and so on. Finally, its flexibility also extends to the instrument of creation such as a constitution, statute, treaty or a combination, while federalism is usually created only by a constitution.<sup>151</sup> It must be noted that (Genuine) Autonomy is appropriate to the situation in Mindanao. The archipelagic nature of the Philippines and the plurality and diversity of its composition require a set up where each of the component groups is given substantial control of its affairs.<sup>152</sup> This suggests giving the government of the area of autonomy the capability to be adequately self-reliant or self-sustaining, not mendicantly dependent on the central government. A basic aspect of this is financial capability. Autonomy is a sham if they are not given sufficient internal financial capability. Specifically, the regional government to be established must have adequate powers for revenue generation and utilization. Increased direct dole outs from the central government cannot substitute for this requirement.<sup>153</sup> An autonomous government will also assure the rapid development of the seriously depressed areas in Mindanao. The financial, technical and educational (e.g., scholarship) assistance from the Middle East will be systematized, regularized, enhanced and consequently made more responsive.<sup>154</sup> A long-standing demand of the Muslims is the institutionalization of the *madrasah* (Islamic schools) as autonomous component of the Philippine educational system and their treatment in the same manner as local public schools.<sup>155</sup> Autonomy will strengthen the *madrasah* in Mindanao – which presently lacks financial support from the government and survives only on meager donations – to enhance the education of their youths in Islamic and Arabic studies the same way their Christian counterparts are enriched with Christian theology.

Autonomy should not be seen as either “a means to avoid secession” or as “the first step to statehood.” Such a utilitarian or partisan orientation can only be counterproductive and miss the best that autonomy has to offer for the peoples, minorities and indigenous populations. Yoram Dinstein, an international lawyer and authority on autonomy said that the failure or success of autonomy

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<sup>151</sup> SANTOS, *supra* note 2, at 130.

<sup>152</sup> MUSLIM, *supra* note 5, at 141.

<sup>153</sup> *Id.* at 151.

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

<sup>155</sup> *Id.* 125-126.

depends on the state of mind of the parties. The legal or procedural intricacies of the arrangement cannot guarantee the outcome. Success is contingent on the good will of the parties and their desire to live jointly under one legal-political roof. The indispensable condition for a viable autonomy is the existence of a spirit of togetherness which unites two groups despite their differences.<sup>156</sup>

Autonomy is appropriate to the Mindanao conflict because of the logical compatibility with the archipelagic nature and the plural and diverse composition of the Philippines, aside from the historical fact that Mindanao was originally a separate political unit. These features, among others, suggest the unresponsiveness of the unitary system of government (which is characterized by a high degree of centralization of political power) to the Philippine situation. This means that effective and responsive public governance in the country entails a political structure where a region like Mindanao is given a substantial amount of autonomy enabling it to play the role of being an active partner of the central government in the development process. And the required decentralized political system should include not only decentralization of the administration but most importantly decentralization of political power.<sup>157</sup>

The autonomy to be established must be historically informed, meaning, the past relations between the Philippine government and the Moros must be revisited and analyzed without blinkers which entails acknowledging how the Moros have been neglected and discriminated against by the government, and how the government has allowed and even participated in the plunder of the Moros' resources, particularly their lands. Unless the past, especially its muddy aspects, is taken into account, it would be hard to view or treat the Moros and their problems as a special case requiring extraordinary attention, and the Moros (the victims) will continue to be viewed as culprits, as troublemakers or destabilizers. Without revisiting the past, the Moros' struggle will continue to be viewed by some as morally and legally baseless, their demand for autonomy unrealistic, and even the title "Muslim Mindanao" to be "too much" of a concession to them.<sup>158</sup>

## **B. Federalism**

Federalism remains an important option for relatively new-nation states, especially newly independent former colonies. These countries seek to address unity of a divided multi-cultural or

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<sup>156</sup> SANTOS, *supra* note 2, at 130-131.

<sup>157</sup> MUSLIM, *supra* note 5, at 168.

<sup>158</sup> *Id* at 145.

multi-national citizenry. On the other hand, countries that have long operated under the unitary system and those that have explored varying degrees of decentralization have looked to federalism as an option for greater, constitutionally guaranteed separation of powers between the central and sub-national governments.<sup>159</sup> The effect of federalism for Muslim Mindanao, according to Samuel Tan, is it liberates the Philippine government and the Christian majority from the psychological and real burden of a people who no longer want to be called Filipinos but Bangsamoro with a government, territory, and Islamic institutions of their own.

Pimentel proposed that Luzon may have four federal states. One, the federal state of northern Luzon; two, the federal state of central Luzon; three, the federal state of southern Tagalog; and four, the federal state of Bicol. Metro-Manila may be converted into a special federal administrative center, like Washington, D.C., or Kuala Lumpur in Malaysia. The Visayas may have three federal states. One, the federal state of eastern Visayas; two, the federal state of western Visayas; and three, the federal state of central Visayas. Mindanao may have three federal states. One, the federal state of northern Mindanao; two, the federal state of northeastern Mindanao; and three, the federal state of the Bangsamoro. As for the powers of government, the federal states may have powers over matters that are not reserved to the federal republic. The powers of the federal republic may cover, among other things, foreign affairs, national defense, federal taxes, customs and immigration, basic education curriculum, basic justice. Other powers may be assigned to the federal states, including primacy in matters of development, environment, local taxes and police.<sup>160</sup>

Adoption of this form of government would enable the Bangsamoro a fuller opportunity to promote their own identity and culture and their own economic development at their own pace without the need of seceding or declaring their independence from the republic. It would, likewise, address the concerns of the rest of the country that their respective development efforts are being thwarted by the bias shown by Manila-based bureaucrats in favor of what is now popularly called 'imperial Manila.' In their own federal states, the state governments, including that of the Bangsa Moro, would have greater leeway to plan, push for, fund and implement projects that will speed up the development of their own regions.<sup>161</sup>

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<sup>159</sup> RAPHAEL N. MONTES, UNDERSTANDING FEDERALISM AND MULTICULTURALISM 157 (2006).

<sup>160</sup> PIMENTEL, *supra* note 140.

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

In more recent times, federalism has been the response of unitary countries that are plagued by internal unrest caused by clashes between various ethnic groups or violence against the majority group from a minority group or vice versa. Such internal conflict is mitigated by granting self-government to these divergent ethnic groups, thus, preserving domestic tranquility and the unity of the nation-state.<sup>162</sup>

For modern unitary states, having multi-cultural societies, federalism is an attractive option to solving inter-ethnic/cultural conflicts that are detrimental to development and political stability. Many of these multi-national or multi-cultural states stemmed from former colonies in Asia, Africa and the Americas, whose national borders have not been redrawn according to ethnic or linguistic lines; and whose central governments persistently try to preserve the territorial integrity of the nation-state.<sup>163</sup>

Many of these countries are plagued by insurgencies or secessionist movements of sizeable minorities. Some that have a long democratic tradition are often hounded by political opposition from minority regions. Many of these countries, like the Philippines, have also decentralized but are still continually faced by calls for more autonomy or secession.<sup>164</sup>

Federalism offers constitutionally guaranteed autonomy for minorities concentrated in certain territories and a way where some powers of the majority could be shared to them. In short, federalism is a tool to evade disintegration or secession by providing constitutional means for conflict management and self-determination.<sup>165</sup>

According to political scientist Arend Lijphart, power sharing is better suited for a segmented society than a democracy ruled by simple majority. What federalism offers is consensus democracy, which is far more superior to majoritarian democracy.<sup>166</sup> Countries such as Belgium and Spain have opted to federalize to address lingering cultural divides that were exacerbated by an insensitive unitary system.<sup>167</sup>

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<sup>162</sup> MONTES, *supra* note 159, at 160.

<sup>163</sup> *Id.* at 160-161.

<sup>164</sup> *Id.* at 161.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

Multi-cultural communities form most federations. Such a mixture of ethnicities, confessions/religions, or cultural backgrounds demands for the recognition of the diversity within the federation as well as, the guarantee for the preservation and development of cultures. Federalism is particularly relevant for unitary countries considering it as a solution to their lingering ethnic conflicts or inequalities that seek to eliminate its territorial integrity.<sup>168</sup>

Designing a federal system is not a very easy task. Besides its basic principles, federalism is very customizable. The peculiarities of a country would define the different features of its own brand of federalism. It would be useful to seek out relevant models but these models would only serve as guideposts since a country's federal system should reflect the unique conditions of its society. If the Philippines were to federalize, the constitutional framers should consider models guided by the Philippine's own political history, its preferred federal structure, and its multicultural situation.<sup>169</sup>

The most immediate choices for models would be countries that have undergone "federalism by devolution." The Philippines' recent political history has been defined by devolution of political, administrative and financial powers and functions to local governments through the Local Government Code. The experiences of Belgium and Spain would be very relevant because their federalization was achieved through devolution that responded to their respective multicultural realities, as well. Belgium's devolution was precipitated by cultural and economic inequalities among its three cultural groups while Spain's case was a response to addressing separatist and anti-centralist movements by non-Castilian language speakers.<sup>170</sup>

Religion and language, in addition to race or ethnicity are often the multicultural characteristics that some federations seek to address. Managing diversities is a main feature of their federal systems, which are marked by mechanisms that seek to recognize the uniqueness of each cultural identity and their right to be different from other cultural groups within the federation. The recognition of the multicultural nature of a nation-state usually preserves the country's territorial integrity and fosters peaceful ways to solving conflict. The Philippines has a wide array of choices from the experiences of Belgium, Canada, India, South Africa, Spain, and Switzerland.<sup>171</sup>

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<sup>168</sup> Id. at 168.

<sup>169</sup> Id. at 170.

<sup>170</sup> Id.

<sup>171</sup> Id. at 171.

The skeptics fear that federalism will only enhance the ethnic cleavages, regionalism, and secessionist sentiments characterizing Philippine society today. However, history points out that secession and disintegration are events that are more often than not happen in unitary and centralized countries, and rarely under federations. Furthermore, it is the insistence on symmetry and integration of different cultures that promote secessionism. In addition, centralism spelled the demise of federations like the former USSR and Yugoslavia. These federations were in many ways exhibiting unitary characteristics than federal traits.<sup>172</sup>

## XI. REPARATION

States have a legal duty to acknowledge and address widespread or systematic human rights violations, in cases where the state caused the violations or did not seriously try to prevent them. Reparations initiatives seek to address the harms caused by these violations. They can take the form of compensating for the losses suffered, which helps overcome some of the consequences of abuse. They can also be future oriented—providing rehabilitation and a better life to victims—and help to change the underlying causes of abuse. Reparations publicly affirm that victims are rights-holders entitled to redress, and symbolic measures such as formal apologies or public commemorations.<sup>173</sup>

One of the essentials for a meaningful Moro autonomy, aside from the capability to be adequately self-sustaining (*i.e.*, sufficient internal financial capacity), is some degree of *compensatory justice* for the Muslims. This means that the regional government must have the capability to correct or make up for some of the past injustices (*i.e.* neglect and discrimination and the plunder of their resources). This does not mean some form of ‘an eye for an eye’ compensation, but Muslims cannot be expected to embrace autonomy in their present dispersed, disadvantaged, and impoverished situation. Autonomy for them must include a capability to overcome the crippling effects of their depressed and unjust conditions.<sup>174</sup>

Since it is not possible to turn back the hand of time by restoring to the Muslims the lands that they have lost to settlers and immigrants, the government must set up by way of reparation to the

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<sup>172</sup> Id. at 168, 172.

<sup>173</sup> ICTJ SOURCE <https://www.ictj.org/our-work/transitional-justice-issues/reparations> (last accessed Feb 19, 2017).

<sup>174</sup> MUSLIM, *supra* note 5, at 126.

Muslims a Special Development Fund to be spent for the economic development of the Muslim areas. The development of the Muslim areas will redound to the benefit of the nation.<sup>175</sup>

The idea of granting compensation or reparation to Muslims for the land they have lost is not new. In 1970, the United States Congress approved a bill granting the native population of Alaska more than 10 million acres of land and \$1 billion in cash for the settlement of their claims. Previous payments to the Indians have also been made. In 1964, the Indian Claims Commission awarded about 36 million dollars to the Seminole Indians after it was established that they once owned the State of Florida.<sup>176</sup>

## XII. CONCLUSION

The (Bangsamoro) problem is historical, political, economic, social, educational, cultural, religious, moral, ideological, legal, “all of the above,” and more.<sup>177</sup> Therefore, it is a complex problem that requires extraordinary solutions. Underlying its complexity is the fact that the Muslims in the Philippines constitute a nationality distinct and older than the Filipino nationality. American colonization forced the two nationalities to unite and interact in ‘unleveled playing field’ of a new political system that is governed through a unitary and highly centralized government. Reduced to a deplorable state by an unsuitable government structure and by unjust policies, the Muslims now seek justice through genuine autonomy.<sup>178</sup> For Rudy Rodil, it is not only the issue of constitutionality that we have to face in our search for the solution to the Bangsamoro problem, we must also confront the emotions that come with the basic issues of identity, ancestral domain, self-governance, control of natural resources, and the right to determine one’s final political status.

Peace, unity and justice may be advanced by recognizing the importance of multiculturalism.<sup>179</sup> A form of compensatory justice<sup>180</sup> or Astrid Tuminez’ territorial compensation is also required for a

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<sup>175</sup> TAMANO, *supra* note 90, at 63.

<sup>176</sup> *Id.* at 64.

<sup>177</sup> SANTOS, *supra* note 2, at 43.

<sup>178</sup> ABRAHAM SAKILI, MUSLIM PERSPECTIVE OF THE MINDANAO PROBLEM: CONTEXTUALIZING THE SPCPD, 11 KASARINLAN 18 (1996).

<sup>179</sup> Rudy B. Rodil, *Achieving Peace and Justice in Mindanao through the Tri-People Concept*,

<https://www.scribd.com/document/43483652/Achieving-Peace-and-Justice-in-Mindanao> (last accessed March 3 2017).

<sup>180</sup> See MACAPADO A. MUSLIM, THE MORO ARMED STRUGGLE IN THE PHILIPPINES: THE NONVIOLENT AUTONOMY ALTERNATIVE 140 (1994).



just peace and healing of deep-wounds which will serve as the Government's recognition of the historical injustices committed against the Moros. This recognition is a step to national reconciliation.

Sesha Samarajiwa, in her comparative study of secessionist movements, proposed various theories as to why ethnic minorities desire autonomy: primordial sentiments involving religion, race, language, relative deprivation, power disparity between a majority and a minority, and the paradox of resurgent nationalism amidst rapid globalization. Further stating that the "causes of such divisions and the dynamics of secession are as varied as the polyglot of ethnic communities that call Asia home. Yet, one factor is common: the perceived disparity of power relations between a dominant and subordinate group, usually, but not as a rule, involving a dominant majority and a minority, and the real or perceived deprivations emanating from these inequalities." David Wurfel compared the Moro struggle for independence with that of East Timor and argued that in both the East Timorese and Moro resistance the fear of cultural genocide, made credible by a policy of assimilation from the center, was a major factor motivating continued struggle. As for Fred Hill, "ethnic cleansing" is a harsh term to apply to the Philippine government because no cattle cars herd the population into detention camps, as seen in Bosnia; no bulldozers destroy family homes as in the West Bank and Jerusalem. However, the tools of Philippine's ethnic cleansing are more subtle, and easier for the outside world to ignore.

One point that must be stressed is that the Moro armed struggle is not the problem, but just a symptom;<sup>181</sup> it is a culmination of a series of Moro protests against the government. The armed struggle and the demand for secession are not goals in themselves, but largely as means to cause redress of their grievances. It was their last resort after they had already exhausted available nonviolent or legal remedies (the armed struggle was preceded by sending of manifestoes or declarations, rallies and demonstrations, aside from the parallel parliamentary efforts of Muslim leaders in the government service) and that the only approach available to make the government start giving serious attention to their plight was armed struggle.<sup>182</sup> Although Islam highly disvalues the use of violence, it allows it when an individual or group is placed under intolerable oppression. The Moros are fighting against the Philippine government not because they are Muslims and the Philippine government is manned by Christians but because of the long period of oppression, exploitation, neglect and discrimination they suffered with their incorporation into the Philippine polity and certain triggering incidents. The

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<sup>181</sup> MUSLIM, *supra* note 5, at 137.

<sup>182</sup> *Id.* at 163.

struggle was not caused by the Moros, but by the unbearable conditions they were in. What precipitated the struggle are the Moros' sufferings and insecurities associated with their economic marginalization and destitution, political domination and incapacity, the inroads and constraints to their identity (which includes their faith, territory and culture), and the threats (consummated and potential) to their individual and collective physical existence or security.<sup>183</sup> The government not only functioned as a participant in the plunder of the Moroland's resources but also as a major threat to the individual and collective physical security of the Moros. The cases in point are the Jabidah incident and the 1970-1972 Ilaga and military atrocities that preceded the Moro armed struggle.<sup>184</sup>

As of now, we are still living in history – the history of Moro struggle that started more than 400 years ago. Although the government has played a negative role in the gradual loss of sovereignty and fundamental rights of the Moro as a people and their freedom to exercise their religion without constraints, the undeniable truth is also that many Moro leaders who served in the government failed their own people and acquiesced to the injustice to promote their own interest.

Nevertheless, we must not lose time to finally seal this centuries-old and continuing armed struggle – and this will require constitutional concessions coupled with addressing the root causes of this conflict instead of addressing only its effects as manifested by previous administrations. The longer we keep it at bay the more it is exploited by extreme forces and individuals with vested interests. We can have as many peace talks every time the previous one fails but not unless we start approaching the Moro struggle beyond the letters of the constitution and get into the heart of it, only then can we remedy the widening gap between the dominant Christian Filipinos and the Moro/Muslim minorities brought about by their respective prejudices. Otherwise, our differences will continue to drag us down as a nation instead of being a model country of multiculturalism that equally regards “otherness” as redemption of Filipino pride. As Buddha said, “If you want to strike water, you don't dig six 1-foot well; you dig one 6-foot well.

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<sup>183</sup> Id. at 137.

<sup>184</sup> Id. at 163.