FILIPINO MUSLIMS AND ISSUES OF GOVERNANCE IN THE PHILIPPINES: SOME THOUGHTS BY A LOCAL PRACTITIONER

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Abstract: This article adopts the general theme of governance to provide an institutional framework for law reform and constitutional regime. To look into the political culture and religion of Filipinos is to ask why there is much reliance on law with an internal dynamics of hostility to all things religious in public life. The author employs the democracy argument to raise asymmetrical issues in a constitutional regime within the context of 'the national state' rather than problematise it as a majority versus minority relation. This makes it possible, for instance, to consider the Bangsamoro in the Philippines as a 'people' in legal terms and in reference to 'state-nations' instead of 'nation-states'. The author also treats the dimension of international law regarding the right to self-determination with respect to the current peace negotiations between the government of the Philippines and armed non-state actors (MILF and MNLF). One might not necessarily agree with all that is stated in this contribution, which is intended to be an essay rather than a scholarly paper, but, nevertheless, it grants some insights into the mindset of contemporary Muslims in the Philippines.

Introduction

This article adopts the general theme of governance to provide for an institutional framework in law reform and constitutional regime in Southeast Asia that would allow for a greater presence of Islam in the public sphere. The twentieth century has produced progressive development in various fields. Just about the time when the era of decolonisation was almost coming to an end, the secular humanists triumphed once again in the Western world. Today, in the countries of the West, we come across certain internal dynamics of hostility towards all things religious in public life, especially in mass democracies where popular culture dominates.

In the following, we would like to elaborate on the impact of those developments on Southeast Asia. We would like to argue that the point of procedure in this decline of the role of religion in the public sphere is early modern period of European history, which brought about an essentially secular basis of the Western 'Westphalian' state system. Inter-state conflicts of European powers have shifted from seeking religious dominance to competition in power and territory. From the perspective of Muslim Modernist insight, according to which a territory becomes hostile not on an *ideological*, but on a *political* basis, the question is less one of the category of Muslim territory where Islamic law is valid. This would amount to solving the issue of whether Muslims and non-Muslims could coexist peacefully in a country with a non-Muslim majority and government based on some sort of pact or agreement.

Jurisprudential Antecedents

Why is the most negative aspect of the contemporary influence of religion on world politics focused on Islam? Early on, the legalistic tenor that Islam in history had been assuming was considered unsuitable by many Muslims themselves. In reaction to the legal formulation of Islam mitigated jurisprudential antecedents had to be developed.

Perhaps there has always been a tension between religion and political authority, between what juridical-religious authority wants the people to believe when dealing with state power. Sovereign authority is legitimate because it is *limited* (e.g. bill of rights) and exercised by *consent*. This idea of a self-governed community is a manifestation of democracy. The crucial point, I think, about legitimacy is that it constitutes a 'free people' – somewhat skewed to a liberal state. Legitimacy is capable of taking different historical forms. In terms of the approach of Islam, if one insists on illustrative constraint in Islam, then the restrictive benchmark would be the clear verdict of the Qur'ān, according to which "there is no coercion in religion" (2:256).

To be more precise (and in terms of the experience in the Philippines), I deliberately would like to apply the term 'plurinational', because one of the key elements in the conflict and peace process in Mindanao – the second largest and easternmost island in the Philippines with a large Muslim minority of about 32 per cent – is a sense of belonging to a 'Bangsamoro identity' distinct from the rest of the Filipino nation. Given this, imposed political structures on the Moro people are contested 'constitutional issues' which altogether are often renounced as an extension of past colonial control. All known advanced societies are inherently pluralistic and diverse. Because expansion of citizenship rights is a concept of legitimacy, grounded on democracy as collective self-government, the solution to the asymmetrical issues should be sought within the context of *state-nations* rather than in the standard formation of *nation-states*.

Powerful Abstractions and Explications

Religion and culture produce both social and political forms. This article advances some basic aspects of sociological explanation between private troubles and public issues as they relate to political identity. Questions of the sectarian (religious) conflict in Mindanao need to be seen within a historical perspective. A related problem is that of political identity – in other words, one important social issue of our time: "Who are we?" This introduces the powerful abstraction of three dimensions of political identity:

- *religion*, as a community of faith;
- *ethnicity*, as a source of ancestry or common descent;
- *nation*, as a feeling of belonging to a larger political entity.

Consideration of the division of territory and 'peoples' outside the context of decolonisation also deploys common ideology, resulting in a fourth dimension of political identity:

- *class*.

As Marxist praxis encoded 'class' in the Catholic 'theology of liberation' in Latin America, it subsequently was very briefly diffused to the Catholic-dominated Philippines as well. Ruling conservative populists often resort to oppressive political restrictions, officially referred to as 'political correctness'. Yet in popular culture, 'political correctness' often amounts to 'cultural Marxism'. Through some sort of 'culture war' the progressive Left controls culture in its own interpretative apparatus, arguing for 'multiculturalism'. In this manner, 'class' – in terms of a Maoist ideological option – is not a rare occurrence in mainland Asia (to wit, Myanmar, Vietnam, and Nepal). Beyond such definitions by an elite, the political class in the Philippines, in turn, would not develop 'sectoral' forms of publicly controlled socialisation of land for the popular classes to devise a more expansive definition of the nation. This is why in spite of additionally granted social rights, the Bangsamoro reject their classification by progressives and the democratic Left as simply ordinary 'sectors' for the sake of mere 'social protection' measures.

Template of Governance

In the following, I shall develop my thoughts within an assumed framework for the study of 'fragile states' as the template for interim governance, where partition or secession might be impractical. Complications relating to the various formations

of adventurist sectors of the military contemplating *coups d'état* on the one hand and Muslim 'jihadist' armed groups on the other (that is to say, differing contexts of contestations) have defined the secularity of the Filipino centralised symmetrical unitary state. Therefore,

- to clarify contemporary 'Islamism' as a form of activism, it is useful to employ several key terms – 'Islamic revivalism', the 'Islamist phenomenon', and 'political Islam' – in defining various aspects of Islam as an ideology for an Islamic movement, an organising structure for societal reform, and an institutional system of Islamic governance (*al-niẓām al-islāmī*), as vested authority (*walāyah*) that favours collective values over individual ones.
- Moreover, in order to clarify 'political Islam' as consistent with an absence of a hierarchical 'church', Islamist activists in the Philippines often contend that their power-sharing arrangements mark a shift in their struggle. Political non-violent forms of resistance aim at achieving a situation of balance. This is seen as more necessary for unconditional amnesty rather than negotiating the position of the *'ulamā'* within such a setting.

However, where armed conflicts lead to ethnically, religiously, or tribally homogeneous or 'sanitised' areas, the redrawing of boundaries to match these diversities as historic 'nationalities' or 'plurinationalities' could produce stability and normalisation of life. In my view, the ongoing negotiations aiming at power-sharing with constitutional status, transitional wealth-sharing arrangements, and the preparatory transfer of authority through interim governance may be achieved with a lasting effect by concluding a deal based on 'devolution through union' in compact agreements.

I thus would like to argue in favour of a *negotiated* political settlement of the conflict in the troubled areas in Mindanao – a settlement that requires the reframing of the 'nation-state' framework into a 'state-nations' template of governance.

Asymmetrical Issues in Plurinational State

My intention here is not so much to discuss the structure of power (as pluralists tend to do), but rather to mark out asymmetrical issues in a plurinational state. Some preliminaries are in order: There is no real model for an 'Islamic state'. Therefore, some scholars problematise the issue by focusing on the question of who is enjoying real political authority in a Muslim polity. The other reason for my not discussing the issue of power-structure has to do with some sort of mere outer resemblance between the US Constitution and the Filipino setting. As a matter of fact, however, the Constitution of the United States was transposed to the Philippine polity *without* a due process of federal restructuring.

At a time of escalating nationalism and accelerating globalisation, there are also tensions over the remnants of 'big power' quasi post-imperial ambitions from the part of the nation-state imposed on in the meantime *de facto* autonomous juridical entities. Yet religion in general (and the continuing role of Islam in public life in particular) are of pivotal importance in the current debate regarding the mode of popular representation and the concept that also haunts the media towards greater freedom of expression. Some might argue that Muslim social and religious life rejects secularism in principle. This view – erroneous or not – can be considered a legacy from the often romanticised and supposedly (but, from a historian's perspective, not really) 'non-sectarian' phase of the early caliphal period, a period that was to establish the 'consubstantiality' of the religious and the political constants for centuries to come.

However, modernising the juridical spirit of the modern nation-state, following the patterns of the republican model, would actually also capture the consultative approach (or *shūrā*) of classical Muslim political thought. Conversely, this also poses a dilemma inherent in the theological–political divide – namely, when the governance of religion is subordinated to that of *de facto* political authority.

If we then equalise (and thus signify) 'sovereign authority' simply with Modernity (or its modern expressions), it is crucial to go beyond the modernist view that the state is *separate* from the society it penetrates. What makes territorial integrity of the state explicit is the fact that it is public rather than private, which enables us to see how unsettled the meaning of sovereignty really is – 'as if' a 'static' citizenry would actually exist.

I would like to take a different position regarding struggles that are aimed at establishing sovereign foundations that shift from the ruler to the people and that are intertwined with the 'establishment of the faith' (*tamkīn*) in Muslim polity. This is an asymmetrical issue in a shared state, which is a dimension we have to bear in mind. The Catholic-dominated Philippines imparts a majority-versus-minority aspect owing to the religious orders who match the territorial state with their own symmetrical, hierarchic Church. Thailand and Sri Lanka – although both Buddhist countries – have shown distinct preference for the symmetrical unitary state model as well.

Religious Tension and Ethnic Separatism

Religion in general – not just Islam – takes centre stage in politics in the twenty-first century. Fundamentalist Evangelical Christians, too, tend to make political issues out of the issues of reproductive rights, same sex marriage, stem-cell research all in the name of 'freedom' and 'liberty'. Religious freedom is not the same as the separation of church and state. The constitutional arenas for separation of church and state are

tested by a new generation which is vernacular or 'bi-conceptual' in its concepts of morality. Many people live by moral laws that require discipline and sacrifice, but the politics of 'double standards' readily erode the mental constructs which we use to understand the world and to live our lives. If we are to understand the politics of religious conflict we must know the questions that are currently being raised.

The Constitution of the Philippines guarantees us freedom of speech and religion. The right to practise our religious faith freely, openly, and in public is guaranteed as well. In Malaysia, "Islam is the religion of the Federation." It also 'confers' on the *Yang di-Pertuan Agong* – Malaysia's paramount ruler, His Majesty the King – the position of the 'Head of Islam'. As a matter of fact, Islam does not constitute a structured, coherent entity. Under the effect of Modernity, the *ʿulamā'* have over a long period of Islamic history long accepted nominal caliphs who ruled while *real* power resided with other officials, in most cases the military. In Indonesia, the contemporary discourse about religion and politics is evidenced by the rise of Muslim parties and movements which are seen as a new engagement with democracy, comparable to the trend in contemporary Turkey. Participatory politics entails Islamist parties to frame their discourse as 'Muslim democrats' in a secular state. They often tend to turn their respective grassroots movement or party into an 'electoral franchise'. Thus, a proper understanding of the electoral process is politically crucial for the role played by 'political Islam' for contesting power.

As a matter of fact, the legitimacy of the democratic process was also accepted by the Moro National Liberation Front (MNLF), and its strategy was to resort to alliances with governmental figures. If the narrative of the expansion of political Islam in Mindanao is to be told appropriately, weaning the Bangsamoro from armed struggle and transposing them to 'electoralism' would demand different governance strategies. Organised non-state actors like MNLF and MILF (Moro Islamic Liberation Front) employ agitation and propaganda to achieve their respective political ends. MILF proselytising (*daʿwah*) provides popular support based on religious ideology and the need for humanitarian assistance. Because of religious tension and ethnic separatism, the inadequacies of government to restrain private armies and other armed groups in effect grant impunity to Muslim political clan allies that have weakened the state, thus allowing them to subordinate politics to their interests. Such *de jure* as well as *de facto* constraints are currently limiting a fully functioning democracy and are contributing to what I would like to refer to as a 'democracy deficit'. All this might even suggest to speak of a 'fragile state' status.

Constitutionalism accommodates *consensus* when laid down as fundamental law and the central concept governing the Muslim polity. Its origin and basic purpose remain constant from which there is no deviation. In so far as shared rule can give adequate expression to the desires of the Muslim community – the *ummah* – as sociological reality, it has a humanising effect. However, a different course

of political evolution has shaped the church–state dichotomy within the modern democracies. It also pivots on separation between economy and politics. Moreover, it left unaffected the claims to sovereignty *vis-à-vis* the outside as a modality for sovereign representation.

And that seems to be the main issue: A paradoxical case is that even with the borders of the modern 'state-nations' drawn, certain ungovernable geographic areas (for brevity, 'ungoverned territories') do not possibly exclude some staging hegemonic outposts spawned by the archipelagic doctrine of the Filipino state. Thus the Bangsamoro being a viable and continuous geographical entity represent an illustrative case when Muslims aspire to share in political power in order to recast the democracy argument to their favour. In standard treatments, the issue of 'asymmetrical arrangements' occurs, for instance, in the establishment of 'autonomous regions', as 'devolution' or 'home rule' (Northern Ireland) and in other parts of the world as historic 'nationalities' (Basque Country) or as 'federacies' for compact union and political associative relationships.

Comparable Constitutional Status in the Southeast Asian Region

During the colonial period, the sequence of discourses and the redrawing of the political map of the then British Straits Settlements (Penang, Malacca, and Singapore) cannot be projected backwards uncritically. Once British defence facilities in the years between the two World Wars were reduced, decolonisation accelerated. Today, the price that was paid for modalities involving shared sovereignty provides useful treaty frameworks and case studies to confront issues in self-determination. Collective rights instituted comparable constitutional status.

In the regional context, the intriguing strategic plans in the 1960s to federate the British Borneo territories with Malaya, for instance, have ended up with Sabah and Sarawak joining the Federation of Malaysia under the structure of a parliamentary political system. The tiny territory of Brunei, in turn, became an independent monarchy. Singapore, embraced full independence under a republican regime and ultimately left Malaysia. Indonesia swayed between federalism and republicanism based on a unitary state structure after the long experience of Dutch mercantilist governance and colonial exploitation. The Philippines evolved from a mercantilist idea of commonwealth in transition towards a republican state based on the presidential model of the United States.

A contravention of the discursive practice of *securatio* – Latin for 'surety', 'security' – creates identity by the rhetoric of otherness and enmity. The troublesome restructuring of the template of sameness or diversities of identities and amity is resolved in the diplomatic practice of reputation provided by mutual recognition. In the first decade of the twenty-first century, when new nations are being inscribed

on the map of Europe, the new 'world order' has spawned the genesis of new states like Palau in 1994 and Timor-Leste in 1999. In many cases, the final status as an ultimate solution to a conflict through popular consultation was preceded by arrangements based on a constitutional framework for autonomy.

Adherents of integration can become disillusioned when the mood of political freedom springs from the expansion of citizenship participation or the links between citizenship construction and social rights as well as collective rights. In any case, the task of the public intellectuals is to incorporate into the public agenda key items that can mobilise organisations of the people around concerns of common citizens. While Latin America, perhaps, has seen in many of its countries 'governments of politicians' rather than 'governments of the *people*', the fact is also that there is not so much public harping on so-called 'originalist' readings of the Constitution. By now it has perhaps become a bit clearer why I often tend to refer instead to the 'justness' of 'the original position' invoking parity of esteem and equality of peoples.

Political and governmental institutions face structural adjustments but cannot hurt the labour market, nor do they submit to the logic of an alleged 'vicious circle of poverty'. The unfettered 'free-market freedom' is the mechanism that allows large corporate bodies to rightfully assume governing power. Both Church and 'self-interest democracy' support a 'moral foreign policy', which is somehow similar to the foundations of fundamentalist religion. Both are concerned with the spread of right-wing interpretations of 'freedoms' and their respective 'good news' in order to justify their proselytising missions. Contrary to what this 'family of resemblances' depicts, however, a 'dogmatic choice' to emulate will face serious problems for governability. Here is an outline of adaptability to substantial legitimacy:

- Desirability of democracy and self-determination invites external peace-builders as a viable alternative to the conceptual framework of trusteeship;
- the abandonment of grand visions for a future place in the Pacific Ocean, except in so far as existing international law provides for humanitarian intervention;
- the demise of the 'domino effect' scenario – the fall of pro-Western countries into the hands of Communists – in Mainland Southeast Asia in the wake of globalisation in trade relations;
- the increased geostrategic significance of the Malay Peninsula and the Straits of Malacca and the archipelagic islands of Indonesia and the Philippines offer some regional role to a number of smaller territories for governance.

In the Philippines, metropolitan strategic intervention in a new 'plurinational' form perceived as 'national identity' may just be one discourse of identity that appeals to a 'state-nations' and their future aspirations. At the conceptual level, the

pluralist theory is used to prevent a discussion of majority-minority situations, such as in the Mindanao areas of conflict.

Humanitarian Intervention

The issue of more than half a million internally displaced persons in Mindanao raises the question of responsibility in terms of their protection. Ethnic-majority Moro towns have been evacuated and the abandoned villages burned to the ground just because they happen to be Muslims and considered by the military as 'fifth column' of the MILF. This is not a description of the composite Armed Forces of the Philippines and the Christian *Ilaga* militias which operated during the 1970s in Southern Mindanao and fought against Moro Islamist guerrillas. There seems to be a rather new pattern of collective punishment which, in practice, is a strategically motivated state repressive 'hamlet programme' reminiscent of the humanitarian catastrophe in the late 1960s and early decades of the 1970s. As a matter of fact, the ethnic conflict in Mindanao was one justification for the declaration of martial rule in the Philippines in 1972. However, this scenario resulted in the Organisation of the Islamic Conference (OIC) initiative to report on the situation of Muslim minorities in the Southern Philippines. Various OIC-backed attempts to negotiate an agreement in Tripoli (1976) and in Jakarta (1996) made actual progress on expanding the area of autonomy, but they left the overall Bangsamoro status unresolved.

In the aftermath of the aborted signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) between the government of the Philippines and MILF, open hostilities escalated in the year between August 2008 and August 2009. In the 1970s, atrocities and massive human rights violations created large numbers of displaced persons – according to some sources about 600,000.

As the violence escalated so did international pressure. The resumption of the Government–MILF peace negotiations in late 2009 had led to the conclusion of the International Contact Group and the Civilian Protection Component. The impact was real in that the Malaysian-led International Monitoring Team (IMT) was augmented. Just as the strength of the political argument for the IMT to hang on prevailed, it was now bracing itself for returning to the field when emergency rule was followed by declaration of martial law on account of an election-related massacre in Maguindanao.

Balancing Between Sovereignty and Self-Determination: Some Conclusions and Recommendations

Conceptual principles are helpful in understanding restorative justice in order to deal with the collective rights of the Moros and their political status of deprivation of

shared or 'earned' sovereign authority. Towards the closing years of the nineteenth century, fate intervened when the United States tangled with Spain over the Philippines and annexed the Moro lands, without the assurance that the majority of our people was actually desiring such a move. One might well ask: Was the American annexation and subsequent surrender of the Moro homeland to the Republic of the Philippines legal and moral? After eight years of peace negotiations, facilitated by the Government of Malaysia, between the Filipino government and the MILF to settle the Bangsamoro homeland and territorial claims, Manila unilaterally aborted the signing of the MOA-AD.

In reality, there remains the issue of governance and the solution to the project of hybrid self-determination. The emerging approach after the end of the era of the protectorate (known as 'trusteeship arrangement') leaves room for resolving violent tensions that are usually associated with sovereignty-based conflicts. The MOA-AD was established contrary to the Constitution because the judges of the Supreme Court failed to appreciate our associative new formulation of shared authority which could have led to federative or associative arrangements. The failure was, perhaps, due to its resemblance to the category of associated 'free states' or compact states under a quasi 'colonial' status of overseas territories. These are negotiated forms of political dependency that assumed transition into a sovereign state. In the formulation of the MOA-AD with earned/shared sovereignty, however, a particular possibility could have opened in order to debate anew the meaning of sovereignty.

We would refrain from suggesting here any outward political form concerning the conceptual basis of authority in Islam. It may well be possible to write a 'basic law' (*al-dustūr*) for a future Bangsamoro state that is different from the Lockean constitutional canon adopted by the Republic of the Philippines.

National liberation and political independence are assumed to coincide. Underlying debates on changing the political and economic status raises the key issue of relationships with Manila and with other regional or local units. In concluding then, I would like to argue that

- *powerful reasons do exist for continuing political ties with 'imperial Manila'*, but the MOA-AD approach pursues a path for long-term resolution of the Mindanao conflict. Shared sovereign authority as negotiated, if handled constructively with a cooling off transition period during which the central authority as well as our aggrieved people will have a defined legal preclusive effect.
- This transitive process should also lead to a *stop to political violence*. The interest in outright independence would be substantially lessened and bring about an end to the conflict through some form of perpetual autonomy or self-governance.

- To steer stabilisation and a political association process, an *outward tracking mechanism* rather than *an inward-looking political culture for a final status plan is in order*. The Filipino government and the MILF have exchanged drafts for a comprehensive compact accord. Concern for the plight of the Bangsamoro (or Moro Nation) should always be a key concern.
- Finally, there never was an attempt to draw a catalogue of new institutions after the OIC-brokered political process began in late 1976 and got reformulated in 1996. Subsequent Tripartite Meetings have been criticised and are widely resented for their failure to achieve many of their substantial objectives. While also authorised in a limited degree to create legal framework the Filipino government has been slow to transfer *real* competencies to the autonomous institutions. It is hoped that there will be changes for the better under the administration of the newly elected President of the Philippines, Benigno Simeon Cojuangco Aquino.