

# The Bangsamoro Cause and its Political and Legal Track: Choosing Between Federalism and Autonomy Within A Unitary Government

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## ABSTRACT

The main argument of this article centers on *federalism* and *autonomy* within a unitary government as two legal and political tracks that may possibly cause the full fruition of the *Bangsamoro's* fundamental right to self-determination. The article begins with a proposition that the concept of self-determination encapsulates the Bangsamoro cause, which the author asserts as an aggregate of the legitimate aspirations and demands of the Muslims in the southern Philippines. Against this backdrop, the article establishes in general terms why the concepts of federalism and autonomy within a unitary government are suitable to propel the Bangsamoro people toward achieving their full potentials in the exercise of the fundamental right to self-determination. The article concludes that both *paradigms* can achieve the same goal of realization of the Bangsamoro self-determination within the national Filipino community. However, this goes with the parameter that for autonomy to have potency equivalent with federalism vis-à-vis the realization of the Bangsamoro cause through self-determination, it must be a '*strong autonomy*'. This however would require constitutional amendment. Thus, the '*strong autonomy*' espoused in this article cannot even be accommodated in the Bangsamoro Basic Law, for the latter cannot go beyond the 1987 Constitution. The article ends with a final note that whatever condition in life the Bangsamoro people seek to achieve depends on themselves whatever legal and political track is adopted to facilitate their fundamental right to self-determination.

**Keywords:** Federalism, Autonomy, Self-determination, Bangsamoro cause, Shari'ah

## I. INTRODUCTION

The thrust of the government under President Rodrigo Roa Duterte for the possible shift to a federal government triggers a variety of reactions from different sectors. Even before he was elected President, Mr. Duterte has constantly alluded to federalism as one of his flagship projects in his platform of government. Soon enough, the pervasive preoccupation with the idea of federalism engulfed the country. This intensified upon the completion of the draft Federal Constitution prepared by the Consultative Committee that the President created. Whether the Muslims in the Philippines like it or not, they are inextricably affected by the ongoing efforts to lay down the foundation for a shift to federalism. In his previous speeches, Pres. Duterte himself suggested a thought-provoking proposition that federalism is the form of government that can resolve the conflict in Mindanao. Meanwhile, the Bangsamoro Basic Law (BBL)<sup>1</sup> traversed a separate track and is now in its final version after the Bicameral Conference Committee has reconciled the Senate and the House of Representatives versions. The BBL is aimed at legislating into law the government's

political commitments to the Bangsamoro under the Comprehensive Agreement on the Bangsamoro (CAB) that can be accommodated under the 1987 Constitution. The BBL is intended to establish an autonomous political entity that will replace the existing government in the autonomous region in Muslim Mindanao. According to the government through former President Benigno Simeon Aquino, III, ARMM is a 'failed experiment.' This admission inspired the mantra of the need to change the *status quo* governed by R.A. 9054, the existing ARMM organic law. However, the Bangsamoro Basic Law, the perceived game changer, cannot go beyond the concept of autonomy contemplated under the 1987 Constitution of the Philippines.

This article revisits the Bangsamoro cause and evaluates the potentials of federalism and autonomy within a unitary government as political and legal tracks that may be productive of a field where the Bangsamoro cause can be nourished to grow like a rare flower under a clear blue sky. However, there is a need to lay down first the predicate that will link federalism and autonomy to the Bangsamoro cause. This requires an understanding of what the 'Moro Problem' is. In discussing this subject, however, the present writer is mindful of the caveat that perceptions on the matter could vary widely. This discussion requires the indulgence of the

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non-Muslim reader for there is an underlay of Islamic thought in the writing of this paper. This is unavoidable considering that, in the mind of the present writer, the Islamic political and legal system is indispensable to any discussion concerning the political and legal track for the Bangsamoro cause within the Philippine Republic.

This article attempts to shine the light on realities that are attendant to an effort to address the pervasive Bangsamoro Question through a change in the *status quo*. It is hoped that this paper will fire up optimism and positive outlook on the effort of the present administration to resolve the Bangsamoro issue.

## II. METHODS AND MATERIALS

This article relied heavily on documentary research. The books and articles cited in this work are all in the actual or personal collections of this writer. These books and articles were extensively examined in the writing of the book authored by the present writer himself entitled *Shari'ah for the Muslim Region in the Philippines: The Essence of Moro Self-Determination*, published in 6451. As used in this article, the books authored respectively by Datu Michael O. Mastura, *Bangsamoro Quest, The Birth of the Moro Islamic Liberation Front*, and Sukarno D. Tanggol, *Muslim Autonomy in the Philippines: Rhetoric and Reality*, and the articles written respectively by Benedicto Bacani, *Autonomy and Federalism as a Solution to the Mindanao Conflict*, and Nasser Marohomsalic, *The Framework Agreement on the Bangsamoro: Towards Hurdling the Constitutional Obstacle to Moro Self-Determination*, supply the necessary platform for the analysis of this article on Bangsamoro cause or self-determination in relation to the political and legal tracks that can facilitate it.

The works of Muslim scholars, particularly Muhammad Muhsin Khan, *The Translation of the Meanings of Summarized SAHIH AL-BUKHARI, Arabic-English*, and Abu Ameenah Philips, *Islamic Studies, Book I*, were utilized to supply the necessary background and framework in the discussion of Islamic law implications embedded in the Bangsamoro cause.

In the discussion on the basics of federalism, the author referred to two books of foreign authorship especially the book of Karen O'Connor and Larry J. Sabato, *The Essentials of*

*American Government: Change and Continuity*. The book of Aquilino Pimentel, Jr., *The Local Government Code Revisited*, and the decisions of the Supreme Court affecting the Autonomous Region in Muslim Mindanao supplied the benchmark of ARMM autonomy in comparison with a strong autonomy elaborated in this article.

The legal provisions cited in this work were taken from actual copies of the 1987 Constitution of the Philippines and P.D. 1083. Some relevant cases decided by the Supreme Court of the Philippines were also cited in this article. These cases are available in the Supreme Court Reports Annotated and in the website of the Supreme Court.

## III. RESULTS AND DISCUSSION

### The 'Demand' of the Bangsamoro in a Nutshell

An understanding of the 'demand' of the Bangsamoro is necessary to determine if said 'demand' may be pursued in the political and legal tracks that this article seeks to evaluate. This is imperative to place our observations in the proper perspective<sup>2</sup>. We cannot rely on the lay public's perception of the Bangsamoro cause as our own basis in judging whether the Bangsamoro even understand in highly technical terms what they want from the Philippine government. However, just because the lay among the Bangsamoro people are not conversant with technical terminologies does not mean that they do not know what their demand is from the Philippine government. Their collective history as a people is more than sufficient cue for an outsider to know their aspirations. In fact, it is the Philippine government that finds difficulty in responding to the Bangsamoro aspirations.

In fairness though, the author concedes that it is necessary to articulate with clarity the 'demand' of the Bangsamoro for the Philippine government to comprehend. They say that one word is enough for a wise man. And the living framers of the 1987 Constitution of the Philippines are wise men for they have summed up the philosophy of the Bangsamoro Agreements in one line, i.e., the Bangsamoro is about the development of people and not constitutionality of words. There are non-Bangsamoro who are familiar with the plight of the Muslims in the Philippines. Cardinal Quevedo is able to discern what the demand of the Bangsamoro is<sup>3</sup>. Retired SC Justice Chico-



Nazario understood the bigger picture of the MOA-AD<sup>4</sup>. SC Associate Justice Carpio understands that there is a need 'to see the problem in the Muslim South in the larger canvas of the Filipino Muslims' centuries-old struggle for self-determination.'<sup>5</sup> Judge Soliman Santos<sup>6</sup>, Dean Sedfrey Candelaria<sup>7</sup>, Associate Justice Marvic M.V.F. Leonen<sup>8</sup>, etc., have concrete ideas about what the Bangsamoro issue is. A long list of non-Moros who understand the plight of the Bangsamoro is available for reference. Therefore, Muslim lawyers should not find difficulty in forwarding the right to self-determination as a concept that represents what the aforesaid 'demand' is.

Courtesy of MSU-IIT Chancellor *Sukarno D. Tanggol*, DPA, there are two standard themes of the 'Moro Problem.' One is social justice and the other is self-determination<sup>9</sup>. In his book entitled *Shari'ah for the Muslim Region In the Philippines: The Essence of Moro Self-Determination*, this author used self-determination as the paradigm. Hence, the 'Moro Problem', the 'Bangsamoro Question', the 'Bangsamoro Cause', the 'Bangsamoro Struggle', or whatever name it is called, is about the aspiration of the Bangsamoro people for their fundamental right to self-determination.

#### Self-determination in relation to the Bangsamoro

The Supreme Court of the Philippines elucidated in part the concept of self-determination in *The Province of North Cotabato*<sup>10</sup>, as follows:

International law has long recognized the right to self-determination of "peoples," understood not merely as the entire population of a State but also a portion thereof. In considering the question of whether the people of Quebec had a right to unilaterally secede from Canada, the Canadian Supreme Court in *REFERENCE RE SECESSION OF QUEBEC* had occasion to acknowledge that "the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond 'convention' and is considered a general principle of international law."

Among the conventions referred to are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which state, in Article 1 of both covenants, that all peoples, by virtue of the right of self-determination, "freely determine their political status and freely pursue their economic, social, and cultural development."

The people's right to self-determination should not, however, be understood as extending to a unilateral right of secession. A distinction should be made between the right of internal and external self-determination. *REFERENCE RE SECESSION OF QUEBEC* is again instructive:

#### "(ii) Scope of the Right to Self-determination

126. The recognized sources of international law establish that the **right to self-determination of a people is normally fulfilled through internal self-determination a people's pursuit of its political, economic, social and cultural development within the framework of an existing state.** A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances. x x x

*External self-determination can be defined as in the following statement from the Declaration on Friendly Relations, supra, as*

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a **people** constitute modes of implementing the right of self-determination by that people. (Emphasis added)

127. **The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states.** The various international documents that support the existence of a people's right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state's territorial integrity or the stability of relations between sovereign states.

x x x x (Citations omitted; boldfacing, italicizing and underscoring supplied)

The Canadian Court went on to discuss the exceptional cases in which the right to external self-determination can arise, namely, where a people are under colonial rule, is subject to foreign domination or exploitation outside a colonial context, and less definitely but asserted by a number of commentators is blocked from the meaningful exercise of its right to internal self-determination. The Court ultimately held that the population of Quebec had no right to



secession, as the same is not under colonial rule or foreign domination, nor is it being deprived of the freedom to make political choices and pursue economic, social and cultural development, citing that Quebec is equitably represented in legislative, executive and judicial institutions within Canada, even occupying prominent positions therein.

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It would appear that in relation to the Bangsamoro and based on international law, the Supreme Court of the Philippines made a distinction between *internal self-determination* and *external self-determination*. As should be immediately apparent, self-determination is a very broad concept. However, it is an established fact that the Bangsamoro's entitlement to the right to self-determination rests on solid foundation in international law. Nevertheless, there is no need to wrangle with the Supreme Court over this. For the meantime, this paper will bite the implication of *The Province of North Cotabato* that the kind of self-determination to which the Bangsamoro people are entitled is *internal self-determination*, i.e., a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. In fact, the Supreme Court, in the same case, elaborated on the concept of indigenous peoples who "do have rights amounting to what was discussed...as the right to *internal self-determination*." This underscores the need to examine if the Bangsamoro can enjoy a meaningful exercise of the pursuit of its political, economic, social and cultural development within the framework of the Republic of the Philippines under the 1987 Constitution as presently worded.

#### **Bangsamoro concerns in relation to self-determination**

Certainly, if the Moro farmer, fisherman, and hunter are asked about their expectations or demand from the government in relation to farming, fishing, and hunting in the forest, each would probably mention fertilizers, mechanized harvesters, etc., fishing boats and nets, etc., and bow and arrow, machete, etc., respectively. However, to say that the 'demand' of the Bangsamoro in relation to farming, fishing, and hunting is all about farming tools, fishing tools, and hunting tools is a proposition that is best proffered in silence for it holds no soundness at all. Lest it be forgotten, the 'Moro Problem' involves *injustices* as elaborate as land grabbing ironically, with the imprimatur of the State,

imposition of colonial property laws, displacement that makes the original inhabitants the minority in their own homeland, laws that are incompatible with the uniqueness and culture of the Bangsamoro, and other historical injustices.

Perhaps it is necessary to cite illustrations for even the Holy Qur'an exemplifies with parables to make the verses clearer for men of understanding. To illustrate: a Moro named Baguinda<sup>2</sup> lived sometime in 1500s A.D. All his life, he has been cultivating, as an owner, a parcel of land somewhere in Marawi. One day a Spaniard, armed with sword and bayonet, came to Baguinda and told him that he is now a subject of Spain. The land he is cultivating is now a public domain so it belongs to the Crown of Spain because under Spanish law, all lands of the public domain belong to the Crown (the State) under the *Regalian Doctrine*. But Baguinda told the Spaniard that he is a Muslim and his ancestors had been Muslims for two centuries already and in Islam, the bounties of the earth are *Haqqullah* (Right of Allah). Hence, he told the Spaniard that the land is his (Baguinda) because he has been cultivating it as a bounty granted to him by his God, *Allah* (s.w.t.), without need of a Royal grant from the Spanish Crown. However, the Spaniard said that he does not care about the religion of Baguinda. In fact, he (Spaniard) came also to change his (Baguinda) religion. In response, Baguinda said he will defend to death his ownership of the land. So, the Spaniard shot Baguinda but as a brave Muslim, the latter fearlessly took the bullet with his chest and, with his remaining strength, killed the Spaniard with the Moro *kris*. Since then, the other Spaniards and their friends described deceased Baguinda and the likes of him as "barbaric."

For centuries, the heirs of Baguinda had been intrepidly defending their lands. Then one day, an American came and told the heirs of Baguinda that they are now under the sovereignty of America and that he (American) bought the land from the successor of the Spaniard who was the previous owner under the *Regalian Doctrine*. The land is now a public domain so it belongs to America because under American law, all lands of the public domain belong to the State. The heirs of Baguinda also fought the American to death in defending their land. In 1946, the American gave the land of the heirs of Baguinda to a Filipino. The latter then told the heirs of Baguinda to get out of the land since it is part of the public domain so it is now



owned by the Philippines because under Philippine law, all lands of the public domain belong to the State under the Regalian Doctrine. This Filipino and his government also recruited inhabitants from Luzon and Visayas to help him in grabbing lands from the heirs of Baguinda and other natives. Today, year 2018 A.D., Section 2, Article XII of the 1987 Constitution of the Philippines provides in part as follows:

Section 2. **All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. (Boldfacing supplied)**

Today, the heirs of Baguinda are still pursuing their claim over the land grabbed from them. And every time they resort to arms in asserting their claim to their ancestral domain and ancestral land, they mutate in the eyes of the non-Muslim Filipino majority into 'troublemakers' at best or "barbaric" beings and sometimes "terrorists" at worst.

So, during recent peace negotiations with the government, the *Meranaos* are told not to claim a larger share in the proceeds from the utilization of the Lake Lanao because the lake does not belong to the Meranaos. It belongs to the State by the provision of Section 2, Article XII of the 1987 Constitution of the Philippines. The Bangsamoro are further told that the minerals in their own private lands do not belong to them. The forests do not belong to them. Their traditional waters do not belong to them. The petroleum, coal, and other mineral oils in their lands do not belong to them. In fact, all other natural resources do not belong to them. This is simply the Regalian Doctrine, a doctrine that is replete with colonial characteristics. The Regalian Doctrine has extensive implications today.

Lake Lanao powers the hydroelectric power plants that power Mindanao and the Meranaos are powerless to free themselves from power bills or even to reduce the same. The Meranaos can fish whatever fish there is in Lake Lanao. This is self-determination on what fish to catch, isn't it? They can fish on *katulong* and *kadurog*<sup>2</sup>, sell them in the market place and earn millions or perhaps billions to construct roads, school buildings and *madrash*, etc. And they still ask for more from the government Peace Panel in relation to the centavos that the National Power Corporation derives from the utilization of Lake Lanao. What *ungrateful*

partners in peace these Meranaos sometimes become. Sometimes a lawyer-writer must resort to sarcasm and omit law jargon, if only to nail the point.

True, the government can argue that despite the Regalian Doctrine, Philippine law allows Muslims to vindicate their property claims through the courts. However, in a court of law in the Philippines, as between a Torrens title and testimonial evidence, the former will prevail. This is because the system of registration of lands adopted in the Philippines is the Torrens system. The problem is that the predecessors-in-interest of the Muslim land owners did not document their ownership. Thus, proofs of their ownership are usually in the form of testimonies of their elders. This is to the disadvantage of the Muslim claimants. For instance, there is litigation before a regular court between a Muslim and a non-Muslim involving the issue of ownership of a parcel of land, the non-Muslim party will normally win the case because his evidence is a Torrens Title. This is the strongest evidence concerning the issue of ownership of lands under Philippine property law and law of evidence. This legal phenomenon remains potent notwithstanding the rule in *Shari'ah* that *Yamin* (oath) is a recognized mode of proof or evidence because the same is stronger evidence than a mere document such as a paper title.<sup>13</sup>

In the regular courts, *Shari'ah* procedural laws are not binding even if all the parties to ~~the case~~ are Muslims. In fact, in several occasions, the Supreme Court of the Philippines has demonstrated the subordination of *Shari'ah* substantive rules to Philippine law.<sup>14</sup> This is expected because the Supreme Court of the Philippines is not a court that is competent in matters of *Shari'ah*. The problem is that this predicament is not easy to rectify. Our legislative bodies like the ARMM Regional Legislative Assembly or even the Congress of the Philippines cannot create a *Shari'ah* Supreme Court of the Philippines that will exist alongside the Supreme Court of the Philippines. This is simply impossible under the 1987 Constitution, which provides that only one Supreme Court of the Philippines is recognized.<sup>15</sup> The least that can be done, as now envisioned in the BBL, is the creation of the *Shari'ah* High Court, which itself is still inferior to the Supreme Court.

There are instances of Supreme Court decisions that show error in the application of Muslim law. This is expected for not a single member of the Supreme Court is conversant



with *Islamic law and jurisprudence*. To the Supreme Court, the views of Abu Hanifa, Shafi'i, Hanbali, *Maliki* do not matter. In fact, they may even find it strange that the sayings and deeds of even Prophet Muhammad (p.b.u.h.) with legal implications are sources of Muslim law. Therefore, it is not surprising for the Supreme Court to overlook on *obiter* the rationale of Yamin (oath) as a procedural rule in Muslim law.<sup>16</sup> *Bondagjy v. Bondagjy*,<sup>17</sup> the case that caught the attention of Muslim regular and Shari'ah lawyers in the Philippines, is another Supreme Court decision that sidestepped the clear applicability of the 'Code of Muslim Personal Laws of the Philippines'<sup>18</sup> in the matter of custody of Muslim minor children. We cannot expect the Supreme Court to arrive at the correct application of Muslim law in certain Shari'ah cases whose resolution requires minimum level of competence in Muslim law that all members of the Supreme Court lack. This must be rectified for we cannot allow a mechanical engineer to perform brain surgery.

#### ***The Greatest Factor that shapes the 'demand' of the Bangsamoro***

In the author's book entitled *Shari'ah For The Muslim Region In The Philippines: The Essence of Moro Self-Determination*, he wrote, "The Muslims in the Philippines are bonded to *Islam*, which is not a mere religion only (*sic*) but also a complete way or system of life."<sup>19</sup> Knowing this fact is a condition *sine qua non* in any effort to understand the demand of the Bangsamoro. Needless to state, the religion of the *Bangsamoro* is an important component in formulating the right solution to the *Moro Problem*. This was understood as early as 1915 by an American, *John Finley*, who wrote that:

[I]t is well to remember that any solution of the Moro Problem by the American, or any other government, must count upon this element of his life (his religion), as the largest factor of the equation.<sup>20</sup>

Hence, the Philippine government of today, borrowing the words of John Finley, must count upon this element of the life of the Moro, as the largest factor of the equation to solve the Moro Problem. In the mind of the *uninitiated*, this seems to be a complicated observation. This is where the concept of *Islamization of thought* plays a vital role. Therefore, in determining the demand of the Bangsamoro, they must constantly be considered generally as a people whose religion is *Islam*. This is the most distinctive feature of the Muslims in the

Philippines that segregates them from the rest of the non-Muslim majority. *Islam*, which is a complete way or system of life, has infused in the Muslims in the Philippines throughout the centuries. This complete system encompasses legal, political, economic, social, cultural, moral, spiritual, scientific, and other areas of human activities. Islam has its own legal system. To be more precise, there is Islamic political law, Islamic international law, Islamic commercial law, Islamic civil law, Islamic criminal law, Islamic labor law, Islamic taxation law, Islamic remedial law, and Islamic ethics applicable to lawyers.

One finds difficulty to understand the 'demand' of the Bangsamoro if the approach is to consider the elements of said 'demand' as scattered and incapable of being amalgamated. Of course, the Bangsamoro cause is a broad spectrum that encompasses economic, political, social, cultural, and moral components *inter alia*. This notwithstanding, correct syllogism can lead us to a comprehensive concept that represents the set of demands of the Bangsamoro. This is where the *academic* plays a vital role. He ought to enlighten the lost traveler that the paper he is looking at, containing pictures and names of places and directions, is a *map*. He ought to enlighten the lay that the humanization of laws and equalization of social and economic forces by the State is *social justice*. More significantly, he ought to enlighten the people that a certain set of demands may be subsumed in the right to *self-determination*, which does not necessarily mean independence from a national community.

To reiterate, John Finley knew in 1915 that to solve the Moro Problem, any government must recognize the religion of the Moro as the largest factor of the equation. As *legal academicians*, do we understand then the import of what John Finley meant? Again, this is where *Islamization of thought* assumes greater saliency. One illustration will suffice. The operation of nationally permitted lotto cannot be legally prohibited in ARMM even if gambling is absolutely prohibited in Islam. No true Muslim in his right mind would indulge in any form of gambling even if it is permitted by national law. Yet, the law-making body of ARMM cannot prohibit this activity through a law, no matter how desirable that law is in Islam. Therefore, a law-making body that is designed to regulate activities affecting Muslims will not be responsive if it cannot legislate on certain matters that are desirable or disliked in Islam.



### **Economic Context of Moro Self-Determination**

The economic aspect of development in conjunction with the pronouncement of the living framers of the 1987 Constitution of the Philippines that the Bangsamoro is about the development of people also provides rich ramifications for the concept of self-determination.

To begin with, the economic narrative of the Bangsamoro cannot be likened with exactitude to the story of the ditch-digger whose reason for digging the ditches represents the phenomenon of poverty. He said: "I dig the ditch to earn the money to buy the food to give me strength to dig the ditch." However, even at the height of poverty, there is a clear distinction between the ditch-digger of Luzon or Visayas and the Muslim ditch-digger. The latter will probably say: "I dig the ditch *in the name of Allah*, to earn the money *as my halal income for me and my family*, to buy the food *which is a blessing of Allah*, to give me strength *Alhamdulillah*, to dig the ditch *with excellence in sha Allah*, and to worship Him so He may grant me entry to Paradise in the Hereafter, *Allahumma ameen*."

Poverty is an economic concept. And to the present writer's mind, what will alleviate poverty is development. As observed earlier, according to the living framers of the 1987 Constitution, the Bangsamoro is about the development of people. In the author's book he wrote, "*The Muslim* ought to be an 'economic' being for he needs the decent diet to keep him going. The Holy Qur'an directs him to seek the bounty of *Allah* (s.w.t.) as follows,

And when the Prayer is finished, then may ye disperse through the land, and seek of the bounty of Allah: and remember Allah frequently that ye may prosper. [Surah Al-Jumu'a, Qur'an 62:10]"<sup>21</sup>

The Bangsamoro can develop economically, choosing from variety of economic blueprints that are not repugnant to the Constitution. In fact, they can adopt the economic development plan utilized by the non-Muslim majority. So, the Muslims in the Philippines may *determine* after all what economic design they want. However there's the rub. The Muslims in the Philippines cannot develop their economy by nourishing it with economic activities prohibited by the Shari'ah. In seeking the bounty of Allah (s.w.t.), a Muslim cannot enter into commercial transactions that Shari'ah prohibits. For instance, Shari'ah does

not allow commercial transactions with *riba* (interest) or those characterized by *maiser* (gambling)<sup>23</sup>. What if these transactions are prohibited by the Shari'ah? In ruminating on this question, the view of Prof. Hj. Salleh Hj. Buang suggests itself. Concerning the doctrines of The Islamic Economic Policy, he wrote, "The unique and distinctive nature of the policy is its infusion with the spiritual element of *Tawhid*, something non-existent in the capitalist and Marxist doctrines."<sup>24</sup> To put it in context, a Muslim commits a spiritual sin if he enters into a usurious transaction even if the object involved is a legal one. Similarly, he commits a sin if he engages in any form of gambling including those allowed by Philippine law. If Allah s.w.t. does not forgive him of this sin and his sins outweigh his righteous deeds on the Day of Judgment, it can be an adequate cause for him to be among the dwellers of Hell in the Hereafter. To believe this is not discretionary on the Muslim. This is a requirement for the completeness of his faith. Hence, a usurious commercial transaction involving even just ¼ kilo of rice, or gambling involving money even as low as 25 centavos, is directly relevant to his belief to Allah, his Almighty God, Who commanded the believers to avoid *riba* and *maiser*.

### **Alleviation of Poverty**

According to Mastura, "the quest for peace through autonomy was meant to work out **good governance** and to address the **issue of poverty** in ARMM, which breeds corruption and nepotism practices."<sup>25</sup> Hence, the issue of poverty presents another specimen of the Bangsamoro 'demand' in relation to self-determination.

One of the Islamic devices that can be used to alleviate poverty in the ARMM is the institutionalization of *Zakat*.<sup>26</sup> *Zakat* is a certain fixed proportion of the wealth and of each and every kind of the property liable to *Zakat* of a Muslim to be paid yearly for the benefit of the poor in the Muslim community.<sup>27</sup> The payment of *Zakat* is obligatory as it is one of the five pillars of Islam.<sup>28</sup> *Zakaah* is a form of worship which has as its main goal the spiritual development of the believer just as in the case of *Salaah*, *Sawm*<sup>29</sup> etc. Therefore, it should not be looked at as being only an economic duty.<sup>30</sup>

The funds of the *Bayt al-Maal* (central treasury of the Islamic state) come mostly from the collection of *zakaah*.<sup>31</sup> And it is with these funds that the Islamic state looks after the needs of the poorer members of society.<sup>32</sup> State care for



the weak and poor is based on the collection of zakaah.<sup>33</sup> Zakat is the major economic means for establishing social justice and leading the Muslim society to prosperity and security.<sup>34</sup> This is because another significance of zakat is that it "also keeps wealth circulating in society resulting in the growth of businesses and an increase in the number of jobs available."<sup>35</sup> If wealth is taken out of circulation by hoarding, more zakaah has to be paid on it than if it were invested.<sup>36</sup> Therefore, the wealthy are forced to keep their wealth working for themselves, as well as for the society, in order to prevent it from being eaten all up by zakaah.<sup>37</sup>

Hence, if the concept of zakat is institutionalized in the Bangsamoro, poverty incidence can be greatly reduced if not eradicated. However, there is no institutionalized system of zakat collection and distribution in the Bangsamoro. Consequently, some seem to have neglected their duty to give zakat. When Prophet Muhammad (p.b.u.h.) died, some of the Muslim tribes stopped remitting their zakat to the government. To compel them to honor their obligation, the successor of the Prophet (p.b.u.h.), Abu Bakr, the first Caliph, declared war against them until they reverted to giving their zakat remittances.<sup>38</sup> There is a "unanimous agreement (*Ijmaa'*) of the *Sahaabah* to fight those Muslims who refused to pay Zakaah after the death of the Prophet Muhammad [p.b.u.h.]."<sup>39</sup> But obviously, the *status quo* does not permit the imposition of disciplinary measures on the Muslims in the Philippines who do not fulfill their Zakat obligations.<sup>40</sup>

#### ***Self-Determination vis-à-vis Economic Context and Alleviation of Poverty***

In retrospect, the Bangsamoro as Muslims may choose from the available blueprints for economic development. However, in making the choice, they cannot settle for an economic development plan that propels the economy with commercial transactions or activities that Shari'ah prohibits. To remain a true Muslim, one cannot engage in transactions that his religion prohibits. Otherwise, his compliance with the spiritual element of *Tawhid* is compromised considering that the Islamic Economic Policy is infused with it. The key, therefore, for the Muslim not to be anti-Allah and His Messenger in his economic dealings is to make his economic policy compliant with the Law of Allah as practiced by Prophet Muhammad (p.b.u.h.).

However, can the Bangsamoro validly prohibit through their appropriate lawmaking-bodies commercial transactions characterized by *riba*, *maiser*, and *khamr*? The present constitutional legal framework as elaborated in jurisprudence forces thoughtful Islam adherents to respond in the negative. In *Basco v. Philippine Amusements and Gaming Corporation*<sup>41</sup> or what came to be known as the *Basco* doctrine, the Supreme Court held that the principle of local autonomy does not make the local governments sovereign within the state or an *imperium et imperio*.<sup>42</sup>

"In the Philippines, local governments cannot prohibit nationally permitted enterprises. For instance, the operation of nationally permitted lotto cannot be prohibited by local governments. This could very well apply to the Bangsamoro Government under the 1987 Philippine Constitution considering that the autonomous government in Muslim Mindanao is a form of local government as held in *Kida v. Senate*. Hence, the ARMM cannot prohibit the operation of lotto in the area of autonomy."<sup>43</sup>

Similarly, the Regional Legislative Assembly of ARMM cannot validly enact a law that the taxes withheld from Muslim government employees in the Philippines shall be considered as their zakat; therefore the same shall be used only in accordance with the Shari'ah. Neither can the Regional Legislative Assembly of ARMM validly enact a law that the Muslim government employees in the Philippines who fulfill their zakat obligations are entitled to deduction on their taxable income. Neither can the ARMM, through a criminal law, penalize the non-fulfillment of zakat obligations by a Muslim.

In the endeavor to develop economically, the American cannot dictate the Russian to do it the American way nor can the Russian dictate the American to do it the Russian way. Neither can the Chinese dictate the Filipino to do it the Chinese way. The former Union of Soviet Socialist Republics accelerated economic growth through communist strategies. China slept for a while, operated within its own dreams, and after waking up, asserted its might in its own way. The United States dominates world economy through capitalist strategies. They do it in their own way. They do it as determined by themselves, i.e. American, Russian, or Chinese self-determination of their economic strategies, respectively. This is self-determination on



what blueprint suits a nation's vision for economic prosperity. If given the chance to choose the blueprint for his own economic prosperity that is infused with the spiritual element of Tawhid, what will a *true* Muslim choose, the American way, the Russian way, the Chinese way, or the way laid down by his God? This question is pregnant with its own answer.

### Federalism, Autonomy, and the Bangsamoro

The phenomenal results of the 2016 Presidential elections brought about tremendous changes unseen before at the national level, courtesy of President Duterte. His 'war on drugs' and 'war on corruption' have not remained as campaign slogans. He delivers. But there is another war that this article will emphasize, *i.e.*, the 'war on war' or the peaceful strategy to end the conflict in Mindanao and bring lasting peace to the entire country.<sup>44</sup> "One of the vocal proponents for a form of government that may possibly accommodate the clamor of the Bangsamoro is no less than the President himself. Even during the national campaign, he was categorical in proposing that the best form of government that suits the demands of the *Bangsamoro* is *federalism*."<sup>45</sup> The present table now provides for two political and legal tracks that may accommodate the Bangsamoro. One is federalism, and the other is the autonomy envisioned in the Bangsamoro Basic Law. As the nation is preoccupied with federalism, the same has become the prominent topics in various fora, symposia, seminars, discussion, etc., all over the country. Autonomy, on the other hand, is nothing new to us. Since the creation of the Autonomous Region in Muslim Mindanao, the Supreme Court has already decided several cases where the concept of autonomy in relation to ARMM has been explored in different angles. Thus, this article will not focus on the legal niceties of federalism and autonomy.

Federalism and autonomy are political and legal tracks that can address the Bangsamoro people's right to self-determination on the assumption that the Bangsamoro struggle is limited to internal self-determination by implication of *The Province of North Cotabato*. Autonomy and *federalism* do not necessarily annihilate each other if comparison makes them contenders.<sup>46</sup> The more interesting question pertains to the issue of viability of these tracks in relation to the Bangsamoro struggle given the realities of the Philippine setting today.

### Autonomy and reality

Speaking about the concept of autonomy, Pimentel explains that:

The word autonomy comes from the Greek word *autonomos* — *to live under one's own laws*. It is the state of independence. It is the power of self-government. The philosophical underpinning of autonomy is that the subject has the power to determine its own destiny.<sup>47</sup>

The concept of autonomy, insofar as ARMM is concerned, is articulated in the pertinent provisions of Article X of the 1987 Constitution of the Philippines. For instance, Section 1 thereof provides in part, "There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided." Further, Section 2 of the same Article provides, "The territorial and political subdivisions shall enjoy local autonomy." Similarly, the autonomy of local governments has been constitutionalized as a State policy by the provisions of Section 25, Article II of the Constitution, which provides, "The State shall ensure the autonomy of local governments." In view of these provisions, *inter alia*, one may assert that the Muslims in the Philippines are enjoying *internal* self-determination already given the fact that it is no less than the Constitution of the Philippines, which granted autonomy to the ARMM. However, the Organic Act of the Autonomous Region in Muslim Mindanao, passed pursuant to autonomy provisions of the present Constitution, failed to deliver a meaningful exercise of Bangsamoro people's right to self-determination. This is needless to state considering the official admission of the government that ARMM is a 'failed experiment.' As observed by the living framers of the 1987 Constitution:

"We believe that a new organic law is necessary to fulfill the vision and spirit that guided the constitutional provisions on autonomous regions since RA 6734 and RA 9054 have clearly not gone far enough to give life to the concept of autonomy for Muslim Mindanao as envisioned by the Constitution."<sup>48</sup>

There are several decisions where the Supreme Court elucidated on the concept of autonomy vis-à-vis the ARMM under the 1987 Constitution of the Philippines. However, a reading of these cases would show that the concept of autonomy as articulated in the



present Constitution is not capable of delivering to the Bangsamoro a meaningful exercise of their right to self-determination.

In *The Province of North of Cotabato*, the MOA-AD was declared unconstitutional for the provisions of which indicate that "the Parties aimed to vest in the BJE (*Bangsamoro Juridical Entity*) the status of an *associated state* or, at any rate, a status closely approximating it," and thus indicative of 'concept of association' which "is not recognized under the present Constitution."<sup>49</sup> The creation of the Bangsamoro Juridical Entity has its roots in the autonomy provisions of the present Constitution. However, according to the Supreme Court, such a contemplated entity is repugnant to the present Constitution for the concept of *association* is not recognized by said Constitution. In the case of *Kida v. Senate*,<sup>50</sup> the Supreme Court of the Philippines declared that the ARMM is just a form of local government. In other words, the autonomy provisions for Muslim Mindanao do not permit an *associated* status for the ARMM.

In *Sema v. Comelec*,<sup>51</sup> the creation of the Province of Sharief Kabunsuan by the ARMM Regional Legislative Assembly (RLA) is declared unconstitutional even if such creation was pursuant to Sec. 19, Article VI of R.A. 9054 authorizing the RLA to create provinces and cities. The creation of a Province will, in effect, result in the creation of a separate legislative district for said province because under the Constitution, "each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative."<sup>52</sup> However, the power to increase the allowable membership of the House of Representatives and to reapportion legislative districts is vested exclusively in Congress, a power which cannot be validly delegated to the Regional Legislative Assembly of ARMM. Hence, Section 19, Article VI of R. A. 9054 is void for being contrary to Section 5, Article VI, and Section 20, Article X of the Constitution.<sup>53</sup> Essentially, the autonomy granted to ARMM does not include the power to create cities and provinces within the territory of the autonomy.

"*Kida v. Senate* was a choice between synchronization of elections and regional autonomy. In this case, the Supreme Court declared that R.A. 10153, the law that postponed the scheduled ARMM elections, is constitutional despite the formidable argument that such a law violates the constitutionally

recognized regional autonomy of ARMM. Said the Supreme Court:

In relation with synchronization, both autonomy and the synchronization of national and local elections are recognized and established constitutional mandates, with one being as compelling as the other. If their compelling force differs at all, the difference is in their coverage; synchronization operates on and affects the whole country, while regional autonomy – as the term suggests – directly carries a narrower regional effect although its national effect cannot be discounted."<sup>54</sup>

Clearly, unlike synchronization which is a national policy and concern, in the mind of the Court regional autonomy is just a concern that is regional in scope. Accordingly, a mere regional concern should be subordinate to a policy that the 1987 Constitution implies to be a national concern and national in scope. However, under the 1987 Constitution, the creation of ARMM is the constitutionally mandated solution to the '*Moro Problem*.' Hence, stabilizing and upholding the regional autonomy of ARMM is of greater importance than the economy and convenience arising from synchronization of national and local elections. Men of understanding in this country do not need long explanation for the reasons thereof.<sup>55</sup>

It is true that the Regional Legislative Assembly of ARMM can enact laws that apply within the area of the autonomy. Hence, one may argue that this is another mechanism for the Bangsamoro to enjoy a meaningful exercise of self-determination. However, an important factor must be considered in the grant of legislative power to the lawmaking-body of the ARMM. The legislative mechanism must be responsive to the political, economic, social, cultural, and moral traits of the Bangsamoro people from the point of view of Islam.<sup>56</sup> For instance, the lawmaking body of the Bangsamoro must have the authority to enact laws that prohibit within the Bangsamoro territory commercial transactions that are characterized by *riba*, *maiser*, and *khamr*.<sup>57</sup> These are prohibited by the Shari'ah. The lawmaking body of the Bangsamoro must have the authority to enact laws that institutionalize zakat collection and penalize non-fulfillment of zakat obligations with the imposition of fines.<sup>58</sup>

However, we must not be oblivious of the concept of autonomy under the present Constitution. Autonomy under the present Constitution does not contemplate ARMM as a



sovereign within the state. The autonomy granted to ARMM operates within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.<sup>59</sup> Thus, as earlier explained, the ARMM cannot prohibit forms of gambling that are nationally permitted. This is notwithstanding that under the Shari'ah, gambling is a prohibited activity. Likewise, the lawmaking body of ARMM cannot prohibit the drinking of liquors, the express prohibition of the *Holy Qur'an* to that effect notwithstanding. Similarly, the lawmaking body of ARMM cannot prohibit banking institutions whose operations are nourished by *riba*. In other words, there are legislations desirable under Shari'ah but which, nevertheless, the RLA of ARMM cannot validly pass into law in the *status quo*.

Ideally, legislations that are meant to apply to Muslims must comply with the Shari'ah. In other words, an Islamic legislative body is supposed to be free in determining what transactions or activities to regulate based on the parameters of the Shari'ah. However, the reality of today is that the RLA of ARMM must respond to the guidelines of Congress and the Constitution regardless of the non-compliance of some of these guidelines with Shari'ah. This does not necessarily mean that the concept of autonomy should be thrown to the garbage bin in view of the reality of what the 1987 Constitution of the Philippines projects in relation to the ARMM. The present writer has previously observed that:

"The concept of autonomy does not preclude a very strong autonomous *Muslim* region in the Philippines. The 1987 Philippine Constitution can be amended to make the autonomy for ARMM stronger over its present status under said constitution. For instance, vis-à-vis the autonomous *Muslim* region in the Philippines, the national government shall have power over national defense, foreign affairs, citizenship, and coinage or currency only. This can be done even if the Philippines remains adopting a unitary government. However, while it is legally possible, yet it may not be politically wise. Amending the Constitution only to make the autonomy of ARMM stronger may just be an invitation for the 'no-vote' of the non-Muslim majority of the Philippines during the plebiscite."<sup>60</sup>

This observation provides a glimpse on the concept of autonomy vis-à-vis the reality that is prevailing in the *status quo*. However, one should not condemn the concept of autonomy

simply because the Philippine-context of the same has not squarely addressed the clamors of the Bangsamoro. The present writer would even push this further. Autonomy is not conceptually weak. What is frail is not the concept of autonomy itself but the kind of autonomy that the 1987 Philippine Constitution granted to ARMM.<sup>61</sup>

What can be done therefore is to strengthen the autonomy to be given to ARMM. For instance, the Constitution can be amended to redefine the governmental power relations of ARMM and the central government. As mentioned above, vis-à-vis the autonomous *Muslim* region in the Philippines, the national government shall have power over national defense, foreign affairs, citizenship, and coinage or currency only. In other words, with respect to other powers, ARMM will exercise full discretion without the intervention of the national government, subject only to the limitations of the amended Constitution. For instance, the legislative body of ARMM may be given the authority to legislate in accordance with Shari'ah, subject only to the limitations of the Constitution that grants strong autonomy to ARMM.

However, the reality is that the strong autonomy we propose, albeit without claim of originality, is one that the present Constitution may not allow. The 1987 Constitution of the Philippines will have to be amended to pave the way for such a strong autonomy. This is not very good news at all. The proposal stage of the process of amendment itself constitutes an obstacle, not because it is an extremely difficult process to do but because the non-Muslim majority may not be willing to even start talking about constitutional change for the sake of the Bangsamoro. The proposed amendment that carries in its womb the strong autonomy contemplated here constitutes a prelude to the second obstacle. Any proposed amendment to the Constitution is subject to ratification by the people in a plebiscite. This instantaneously highlights the reality that the non-Muslim voters will enjoy the tyranny of the majority. In other words, the process that the essential amendment must go through programs the proposal for failure.

To reiterate, the strong autonomy that this paper contemplates cannot be realized through any BBL to be passed in the *status quo*. The BBL cannot go beyond autonomy as contemplated under the present Constitution, i.e., the ARMM is not a sovereign within the state. It is just a form of local government.<sup>62</sup>



### *Federalism and reality*

When students of *International Relations* such as this author come across the concept of *federalism*, the first country that usually comes to their mind is the United States of America's kind of model of *federalism*.<sup>63</sup> There are other countries which are likewise adopting the federal form of government. However, it has been observed that the concept of federalism as applied in these countries appears to vary. In other words, the United States, Malaysia, Mexico, and all other federal countries, do not share the same version of federalism. Some fear this as posing a predicament to the present administration in its desire to shift to federalism: which version to adapt. This does not have to be a problem. It is not mandatory for the Philippines to adopt a current type of federalism. In fact, it can design its own version. The Philippines had tried its hand at designing a presidential unitary government under the 1987 Constitution. Why cannot it design a federal government based on a revised Constitution? The draft Federal Constitution prepared by the consultative committee created by the President proves this.

As emphasized earlier, this article will not also concentrate on the legal niceties of federalism. Others out there are far, far knowledgeable on this subject than the present writer. Federalism will be discussed here as a political and legal track available for the Bangsamoro cause to flourish. In connection with federalism vis-à-vis Moro self-determination, this was written by the author.<sup>64</sup>

The theoretical definition of federalism is that it is a division of power between the federal government and state governments.<sup>65</sup> The relationship between the national and state governments, and their intertwined powers, are the heart of **federalism** (from the Latin *foedus*, or "covenant"), the philosophy that defines the allocation of power between the national government and the states.<sup>66</sup>

In Federalist No. 9 Hamilton states, "This form of government is a convention by which several smaller states agree to become members of a larger one, which they intend to form. It is a kind of assemblage of societies that constitutes a new one, capable of increasing, by means of new associations, until they arrive to such a degree of power as to be able to provide for the security of the united body."<sup>67</sup> Those who feared that the federal government would become too strong were assured by Madison in Federalist No. 14 that "in the first place it is to be

remembered that the general government is not to be charged with the whole power of making and administering laws... The subordinate governments, which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity."<sup>68</sup>

In *Federalism*, the age at which one may marry is a state issue, as are laws governing divorce, child custody, and most criminal laws, including how or if death penalty is implemented.<sup>69</sup>

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*Federalism* could be the politically correct direction to accommodate the clamor of the Bangsamoro that requires constitutional change. Nevertheless, this is not because autonomy is conceptually weak. The problem with constitutional change is that it is susceptible to the tyranny of the majority for it requires the plebiscitary consent of the people. However, with *federalism*, everyone in the non-Muslim majority will be interested because the constitutional change is not only for the Moros but also for the entire nation as a whole. The approval of *federalism* by the non-Muslim majority will carry with it the realization of a state government for the Bangsamoro.

A federal setup considers the differences in the geographic, cultural, social and economic contexts of the component states or regions. In the same setup, there will be a state government for the Bangsamoro. Hence, there is a greater possibility for that state government to function in accordance with the unique needs, aspirations, and culture of the Bangsamoro, without the far-reaching intervention from the national government. In other words, the Bangsamoro will decide for themselves certain issues for which they have perspectives that are different from others. For example, all state governments may allow same sex marriage but the same can be prohibited in the Bangsamoro state. In other words, the legislative body of the Bangsamoro state has the discretion to legislate against the prohibition of same sex marriage, a union that is prohibited by the Shari'ah under all circumstances. In the status quo, any law to be passed by the national legislature allowing same sex marriage is applicable also within ARMM even if the dominating sentiment therein is the impermissibility of such a union.

As mentioned above, the imposition of death penalty including how it is to be implemented is a state issue. Therefore, states in Luzon and Visayas where Roman Catholics



dominate, may opt not to impose death penalty because of the opposition of the Catholic Church. On the other hand, the Bangsamoro state may allow the imposition of the death penalty for certain heinous crimes because its imposition under certain parameters is not repugnant to the religious belief of the Muslims in the Philippines. In the same vein, the Bangsamoro state may impose on Muslims criminal laws penalizing certain activities whose prohibition finds its basis in Shari'ah, like usurious transactions, gambling activities, and consumption of intoxicants. As stated above, most penal laws are issues for the state to decide in a federal setup. In a nutshell, the legislative department of the Bangsamoro state may legislate Shari'ah-compliant laws which it cannot pass in the status quo.

In a federal setup, the Bangsamoro can establish its own Shari'ah Supreme Court freed from too much subservience to the Supreme Court of the national government. Hence, it is neither the latter court that will define who is *learned* in Islamic Law and Jurisprudence nor is it the specific court that is competent to declare, even on *obiter*, that Yamin (oath) as a mode of proof or evidence does not even have a place in the special rules of procedure governing the Shari'ah Courts.

In a federal setup, the federal constitution may provide that insofar as the Bangsamoro state is concerned, the principle of separation of church and state shall be relaxed. Hence, the qualifications of probity, integrity or morality may now be viewed from a different angle that focuses on Shari'ah standards. In the status quo, convicted plunderers and rapists can possibly become Mayors or Congressmen even if they have morally lost the right to lead.

If banking in the status quo is engulfed in interest, banking in the Bangsamoro state can be freed of the vices of usury.<sup>70</sup> The Bangsamoro can modify capitalism to make it attuned to the Islamic economic policy. There is a myriad of issues based on the unique needs, aspirations, and culture of the Muslims in the Philippines. These issues the Bangsamoro state may decide upon without the intervention of the national government. In other words, federalism can cater to the Bangsamoro a meaningful exercise of their right to internal self-determination. However, as posited earlier, a very strong autonomy can likewise deliver the same extent of enjoyment to the Bangsamoro.

But, of course, federalism, or a very strong autonomy for the Bangsamoro, is not a

magical formula that will automatically bring forth an instant Utopia in the Muslim region in the Philippines. There are legitimate concerns that cannot be ignored. For instance, it has been widely proffered that in a federal setup, there will be an uneven development among the various regions. This is true. However, development should be viewed against the backdrop of each region's uniqueness. Urban development and rural development are quite different things. Development in the rural areas should not mean the replacement of tall trees with skyscrapers. Development in Lanao del Sur should not mean the replacement of flowing rivers with flowing factory wastes to Lake Lanao. Development in the ARMM does not mean the clearing of virgin forests to give way for first class golf courses. If development in rural areas means converting them into highly urbanized modern cities, then the United States should not have been the top producer and exporter of certain agricultural products. We should cut down all the coconut trees in the Philippines to give way to urbanization if the meaning of development is the presence of skyscrapers.

However, there is a disparity also in the funds and resources of the regions. Certainly, there are regions which are richer over others. From the standpoint of modern urbanization, ARMM appears to have dismally failed to keep pace with other regions. However, in terms of natural resources, ARMM stands to be among those endowed with abundance. Hence, the judicious use of natural resources for sustainable development is a challenge to the Muslims in the Philippines - how can and should they prove that they are worthy descendants to greater forefathers. If they can overcome this initial challenge, then they can expect greater benefits in a federal setup, the Bangsamoro state will enjoy more power over funds and other resources. At times, Shari'ah funds amounting to billions of US dollars are announced. The Bangsamoro, as Muslim people, have the greater potential to access these funds. If Muslim countries will give financial aid to the Philippines, then logically the principal recipient should be the Bangsamoro state, and not the national government for the latter is not a Muslim government. If the halal industry is firmly integrated in the regional economy in ASEAN, the Bangsamoro can obviously benefit therefrom. These, among others, constitute the potentials of the Bangsamoro for development.

The writer has read a news article that asserts leadership as an issue that must be



considered in determining the readiness of regions for federalism. However, leadership is always an issue whatever form of government is adopted by a state. In other words, whatever political and legal track is adopted to accommodate the Bangsamoro cause, leadership will be a dominant issue for the success of the Bangsamoro. It is the author's humble opinion that the leadership issue over the Bangsamoro does not mean that there are no good leaders that the Bangsamoro can produce. There are a lot of them who, with due respect, are not traditional politicians. The more challenging issue pertaining to leadership is the fact that within the Bangsamoro itself, ethnicity is diverse. There is no assurance that a Meranaw Chief Minister or State Governor is acceptable to other groups who are not members of the Meranaw community. The same point is true if the Chief Minister or State Governor comes from another major ethnic community. This is another challenge that the Bangsamoro people must overcome in a federal setup. This is the challenge of unity within diversity. In fact, one of the disadvantages of federalism that some assert is that it has the potency to be divisive. It promotes regionalism and provides the platform for the probability of antagonism between major ethnic groups. However, the key is in the challenge itself, i.e., unity. Yet, this is easier said than done.

Another concern that is connected to the leadership issue is the proposition by certain quarters that political dynasties will intensify in a federal setup. This is not a remote possibility. But one way to eradicate political dynasties is to constitutionalize its prohibition in the federal constitution. The flaw of the 1987 Constitution of the Philippines pertaining to political dynasties is that it leaves its prohibition at the mercy of Congress. If Congress will not pass a law prohibiting political dynasties as may be defined in said law, the policy of the State against political dynasties remains an unimplemented policy in the status quo.

As a final encouragement for those who advocate federalism as a solution to end the conflict in Mindanao, this writer quotes Atty. Benedicto Bacani of the Institute for Autonomy and Governance, who wrote:

"Federalism has always been considered one of the sound political options to resolve the long-standing secessionist rebellion in the southern Philippines. MNLF and MILF leaders Nur Misuari and Salamet Hashim had publicly expressed their openness to

explore federalism as a solution to the historical grievances of the Moro people. We assume among others the following: First, that federalism offers a higher degree of self-determination than mere administrative decentralization to LGUs and regions. A federal Philippines in this case may be more responsive to the clamor of the Moro people for meaningful self-governance. Second, a Bangsamoro federal state vests control of natural resources including strategic minerals in the Moro people. Third, under the federal system, the Moro people can fully evolve their own system of education, internal security and social institutions including the Shari'ah. In the context of the demand of Moro revolutionary groups for self-determination and jurisdiction over their ancestral domain, the federal system undoubtedly holds more promise than the current unitary system."<sup>71</sup>

#### IV. CONCLUSION AND RECOMMENDATIONS

The set of aspirations that the Bangsamoro people demand from the Philippine government is subsumed under or summed up in the fundamental right to self-determination. However, in giving them a measure of self-determination, the Moros' religion must always be taken into consideration since it is the greatest element of their lives. *Shari'ah* therefore plays a dominant role in the workings of the political and legal track that will be chosen to cater to the Bangsamoro in their meaningful exercise of their right to self-determination. Both *federalism* and *strong autonomy* within a unitary government are compatible with the realization of the aspirations of the Bangsamoro. However, a Bangsamoro state in a federal government and a strong Bangsamoro autonomous political entity within the unitary government of the Philippines are abstract ideas. It is the Muslims in the Philippines who shall give life to any of these ideas with how they will conduct their affairs individually as leaders of the governed, and collectively as a people, in accordance with their complete way or system of life, i.e., Islam. The achievement of the best quality or the formation of the poor quality of the condition of the Bangsamoro depends on the Bangsamoro people themselves. Indeed, it is the baldest truism that Allah (s.w.t.) will not change the condition of people unless the people change themselves.



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The 1987 Constitution of the Philippines

<sup>1</sup>The nomenclature used on the Bicameral Committee final version is Bangsamoro in Autonomous Region in Muslim Mindanao (BARMM). However, Bangsamoro Basic Law (BBL) is maintained in this article for purposes of familiarity.

<sup>2</sup>The author recently attended a simple forum about federalism in relation to the Bangsamoro, which the Mindanao State University Legal Aid Clinic (MSULAC) conducted upon the author's suggestion as the Faculty Adviser thereof. The forum was very fruitful and interactive. Profound questions and issues permeated the discussions. Despite its simplicity, I consider that forum as momentous for I have discovered that among our young professionals, some entertain the *stray* proposition that the Bangsamoro do not even know what their demand is from the Philippine government. This is absurd the very least. It is surmised that this sentiment comes from Manila minds and this author could only hope he received the idea out of context. However, if he did absorb it right, then it is more interesting than the unwelcome remarks of Senator Escudero that the Moros do not even know how to make *pandesal*.

<sup>3</sup>See Orlando V. Quevedo, *Two Fundamental Postulates for Lasting Peace in Mindanao*.

<sup>4</sup>See Dissenting Opinion, MOA-AD CASE.

<sup>5</sup>See Dissenting Opinion, *Kida v. Senate*.

<sup>6</sup>Peace advocate and writer on the peace process.

<sup>7</sup>Dean of Ateneo de Manila Law School; former member of Government Panel that negotiated with the MLF for the MOA-AD.

<sup>8</sup>Associate Justice of the Supreme Court; formerly, Dean of UP College of Law, Chairman of the Government Panel that negotiated with MLF for the FAB and CAB.

<sup>9</sup>See Sukarno D. Tanggol, *Muslim Autonomy in the Philippines: Rhetoric and Reality*. Mindanao State University, Press and Information Office, December 1993.

<sup>10</sup>*The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008. (Hereinafter *The Province of North Cotabato*)

<sup>11</sup>This name is imaginary. Any similarity to an actual name of a person, deceased or living, is purely coincidental.

<sup>12</sup>Species of fish of very minimal value in the market.

<sup>13</sup>The rationale behind *Yamin* (oath), as a recognized mode of proof or evidence, is that no Muslim in his right mind would ever testify with lies in court. On the other hand, it is not difficult to fabricate documentary evidence even if the same is a *Torrens Title*.

<sup>14</sup>In this connection, I previously wrote, "in the case of *Tampar vs. Usman* (G.R. No. 82077, August 16, 1991.), *Yamin* (Oath) as a mode of proof or evidence recognized in *Shari'ah* was declared on *obiter* as unconstitutional and should not have a place even in the Special Rules of Procedure of *Shari'ah* Courts in the country." "It is a legal



reality in this jurisdiction that an elementary Islamic procedure such as *Yamin* (oath) or even an Islamic substantive law for that matter, can be rendered inoperative by the *ponencia* of a non-Shari'ah court whose *ponente* never had a background in Shari'ah or who does not even know how to read and write the first letter of the Arabic alphabet." "It might be difficult for a Muslim...to say that in this part of the south there is Islam in its entirety inclusive of the legal system inherent in it when he may have no choice but to accept that no matter how Islamic or "Qur'anic" a rule is, if it contravenes the Constitution, the same rule will be considered as null and void in the Philippine legal system." (See Barodi, 144-146, *parenthesis supplied*)

<sup>15</sup>The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. (Section 1, Article VIII, 1987 Constitution)

<sup>16</sup>*Tampar vs. Usman*, G.R. No. 82077, August 16, 1991.

<sup>17</sup>*Bondagjy v. Bondagjy*, G.R. No. 140817, December 7, 2001.

<sup>18</sup>Presidential Decree No. 1083.

<sup>19</sup>Norhabib Bin Suod S. Barodi, *Shari'ah For The Muslim Region In The Philippines: The Essence Of Moro Self-Determination* (Marawi City: MSU College of Law, KFCIAAS, IIIT Representative for the Philippines, ISBP, Mindanao SULAC, 2017), 5.

<sup>20</sup>John P. Finley, *The Mohammedan Problem in the Philippines*. In the *Journal of Race Development*, Vol. 5, No. 4, April 1915 cited in Nasser A. Marohomsalic, *The Framework Agreement on the Bangsamoro: Towards Hurdling the Constitutional Obstacle to Moro Self-Determination*, IBP Journal, Special Issue No.2, December 2012, p. 20.

<sup>21</sup>Barodi, 117.

<sup>22</sup>*Ibid.*

<sup>23</sup>*Ibid.*

<sup>24</sup>See Barodi, 120, citing Prof. Hj. Buang, pp. 107-108, citing AL-FANGARI, Prof. Dr. Muhammad Shawqu, "The Islamic Economic Policy", *Proceedings of the 7<sup>th</sup> Conference of the Academy of Islamic Research*, Al-Azhar, 1972, p. 325.

<sup>25</sup>Barodi, 121 citing Datu Michael O. Mastura, *Bangsamoro Quest, The Birth of the Moro Islamic Liberation Front*, 71-72.

<sup>26</sup>Barodi, 123.

<sup>27</sup>See Barodi, 123, citing Note 1, Book of Zakat, Chapter 1, The Translation of the Meanings of Summarized SAHIH AL-BUKHARI, Arabic-English, Compilation: Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef Az-Zubaidi, Translated by Dr. Muhammad Muhsin Khan.

<sup>28</sup>*Ibid.*

<sup>29</sup>See Barodi, 124, citing Abu Ameenah Philips, *Islamic Studies, Book I*, 148.

<sup>30</sup>*Ibid.*

<sup>31</sup>*Ibid.*

<sup>32</sup>See Barodi, 125, citing Abu Ameenah Philips, *Islamic Studies, Book I*, 148.

<sup>33</sup>*Ibid.*

<sup>34</sup>See Barodi, 125, citing Note 1, Book of Zakat, Chapter 1, The Translation of the Meanings of Summarized SAHIH AL-BUKHARI, Arabic-English, Compilation: Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef Az-Zubaidi, Translated by Dr. Muhammad Muhsin Khan.

<sup>35</sup>See Barodi, 125, citing Abu Ameenah Philips, *Islamic Studies, Book I*, 148.

<sup>36</sup>*Ibid.*

<sup>37</sup>*Ibid.*

<sup>38</sup>See Barodi, 126, citing from the Omar series, a reliable film showcasing Islam during the time of Prophet Muhammad (p.b.u.h.) until the death of Omar bin Khattab, the second Caliph. Available in CD.

<sup>39</sup>See Barodi, 126, citing Abu Ameenah Philips, *Islamic Studies, Book I*, 148, citing *Sahih Al-Bukhari* (Arabic-English), vol. 2, p. 274, no. 483 and *Sunan Abu Dawud* (English Trans.), vol. 2, p. 403, no. 1551.

<sup>40</sup>Barodi, 127.

<sup>41</sup>197 SCRA 52 [1991].

<sup>42</sup>Barodi, 200.

<sup>43</sup>Entire paragraph lifted in Barodi, 192.

<sup>44</sup>This is evidenced by the on-going peace talks between the Duterte government and rebel groups such as NPA and MILF.

<sup>45</sup>Barodi, 217.

<sup>46</sup>*Ibid.*, 220.

<sup>47</sup>Aquilino Q. Pimentel, Jr., *The Local Government Code Revisited* (Quezon City: Central Book Supply, inc., 2011), 6-7, citing Roger, Scrouton, *A Dictionary of Political Thought*, 337 (1982 Ed.), Bouvier's Law Dictionary (8<sup>th</sup> Ed. 1914), and Black's Law Dictionary, 134 (6<sup>th</sup> Ed.).

<sup>48</sup>January 9, 2015.

<sup>49</sup>Entire paragraph lifted from Barodi, 182.

<sup>50</sup>G.R. No. 196271, October 18, 2011.

<sup>51</sup>G.R. No. 177597, July 16, 2008.

<sup>52</sup>Section 5(3), Article VI, 1987 Constitution.

<sup>53</sup>Entire paragraph lifted from Barodi, 182.

<sup>54</sup>Barodi, 183, quoting the Supreme Court in *Kida v. Senate*.

<sup>55</sup>*Ibid.*

<sup>56</sup>This author has already laid down the predicate why Islam is the greatest element of the life of the Moro.

<sup>57</sup>Usury, gambling, and liquors, respectively.

<sup>58</sup>Payment of *zakat* is mandatory. Hence, the lawmaking body of the Bangsamoro should be given the authority to impose fines to those who intentionally refuse to fulfill their *zakat* obligations.