BURYING "NATIONAL TRAUMA": MEMORY LAWS AND THE MEMORY OF THE MARCOS REGIME*

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"The evil that men do lives after them; The good is oft interred with their bones."
—Antony in *Julius Caesar*[1]

I. INTRODUCTION

In 2016, 30 years after the ouster of Ferdinand Marcos Sr., the Supreme Court of the Philippines allowed his interment in the Libingan ng mga Bayani or the Heroes' Cemetery in *Ocampo v. Enriquez*.[2] Denying petitions from lawmakers, concerned citizens, and victims of human rights violations under the Marcos regime, the Supreme Court found that Marcos was qualified for interment in the Libingan ng mga Bayani as a veteran of World War II, a Medal of Valor awardee, and as a president; and that there was no law prohibiting his interment thereat in the face of these qualifications.

While the Court acknowledged that the Philippines is obligated under international and domestic law to recognize victims of human rights violations and to provide them with reparations, it nonetheless concluded by saying that "*the country must move on and let this issue rest.*"[3] At the same time, it distanced itself from the idea that the judiciary has an obligation to influence the country's social memory of the Marcos regime, stating in its conclusion that "there are certain things that are better left for history - not this Court - to adjudge."[4]

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[1] William Shakespeare, JULIUS CAESAR, act 3, scene 2 (1599).

[2] Ocampo v Enriquez [hereinafter "Ocampo"], G.R. No. 225973, 807 SCRA 223, Nov. 8, 2016.

[3] *Id.* at 324. (emphasis in the original).

[4] *Id.*

It also brushed aside arguments grounded on the interment's revisionist implications, stating that "our nation's history will not be instantly revised by a single resolve of President Duterte [...] the lessons of Martial Law are already engraved, albeit in varying degrees, in the hearts and minds of the present generation of Filipinos."[5]

I argue that this decision, as well as the domestic laws it cited, may be understood as declarative memory laws. Memory laws are laws which enshrine state-sponsored interpretations of history, holding up certain figures for commemoration and veneration, acknowledging past injustices and victories, and marginalizing competing interpretations of history. They range from laws which give official recognition and acknowledgment, such as the resolutions passed in several countries recognizing the 1915 killings of Armenians in Turkey as a genocide, to laws which criminalize the spread of certain historical interpretations, and to the laws passed in many European countries criminalizing Holocaust denial. Through memory laws, states create and propagate an official history, influencing how their people understand their past and thereby make sense of the present.

I argue that, in *Ocampo v. Enriquez*, the Supreme Court created a memory law affirming a revisionist interpretation of the Marcos regime, marking a clear shift in how Marcos is remembered in Philippine law. At the same time, the Court also legitimized a revisionist interpretation of Marcos and the Marcos regime, which was long advocated by his family and their allies. Through the revisionism it embodied and enabled, the Court violated the Philippines' obligation to recognize as well as provide reparations to victims of human rights violations under the Marcos regime, for whom social acknowledgment is both a need and a right.

In Part II, I will discuss the definition of memory laws, particular examples of them, and their effects on collective memory. I will then discuss their significance in protecting the rights of vulnerable groups and in combating impunity, as established in international tribunals and research on victims of serious human rights violations. In Part III, I will discuss existing memory laws in the Philippines regarding the Marcos regime and the growing ambivalence in public opinion regarding them. Finally, in Part IV, I will discuss how *Ocampo v. Enriquez* reflects and exacerbates ongoing historical revisionism regarding the Marcos regime, and how it thus violates the State's legal duty to recognize and to provide reparations for human rights violations victims.

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[5] *Id.* at 284.

II. MEMORY LAWS, COLLECTIVE MEMORY, AND HUMAN RIGHTS

A. Definition of memory laws

In their general sense, memory laws may be defined as laws which deal with the "legal regulation of memory."[6] Memory laws "enshrine state-approved interpretations of crucial historical events, commemorating the victims of past atrocities as well as heroic individuals or events emblematic of national and social movements." [7] While such laws are not a new phenomenon, they have been given increased attention as a result of the growing "institutionalization of memory"[8] in countries transitioning from periods of violence, such as the end of civil wars, foreign occupations, or violent dictatorships.

This institutionalization of memory has led to the passage of memory laws and the creation of memorial museums which "represent identity, canonize official memory and make visible the dominant historical narrative."[9] Often, they are the result of "collective claim[s] for recognition"[10] by minority groups who, through legislation, are able to persuade the majority to recognize and to legitimize their perspective of history. They are also used to enshrine founding myths within and among nations, such as the Holocaust among the countries of the European Union and struggles against communist regimes within Central and Eastern European countries.[11]

Memory laws are generally divided into two categories. In its narrow or punitive sense, the term refers to laws which criminalize the spread of certain historical interpretations, such as laws penalizing Holocaust denial which proliferated in Europe.[12] All other memory laws would fall under the term's declarative or non-punitive sense, which encompasses laws, judicial

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[6] Vivian Grosswald Curran, *History, Memory, and Law*, 16 ROGER WILLIAMS U. L. REV. 101 (2011).

[7] Grazyna Baranowska & Aleksandra Gliszczyńska-Grabias, *'Right to Truth' and Memory Laws: General Rules and Practical Implications*, 47 POLISH POL. SCIENCE Y.B. 97, 98, 99 (2018).

[8] Olivia Muñoz-Rojas Oscarsson, *Granite Remains: Francoist Monuments Today*, 2 PUB. ART DIALOGUE 147, 148 (2012).

[9] Ljiljana Radonić, *Post-communist invocation of Europe: memorial museums' narratives and the Europeanization of memory*, 19 NAT'L IDENTITIES 269, 271 (2017).

[10] Stiina Loytomaki, *Law and Memory*, 21 GRIFFITH L. REV. 1, 11 (2012).

[11] Radonić, *supra* note 9, at 284.

[12] Nikolay Koposov, *Memory Laws: Historical Evidence in Support of the "Slippery Slope" Argument,* VERFASSUNSBLOG: ON MATTERS CONSTITUTIONAL, Jan. 8, 2018, *at* https://verfassungsblog.de/memory-laws-historical-evidence-in-support-of-the-slippery-slope-argument/ (last visited Sept. 28, 2018).

pronouncements, and administrative decisions which seek to regulate the way people interpret history, such as official state actions on access to archives, content of school textbooks and curricula, subsidies to museums, regulation of broadcasts, and public celebrations of historical figures insofar as they "create a depiction, interpretation, or understanding of the society's past."[13]

What the state chooses to commemorate, how it commemorates these events and figures, and what it does not commemorate are all embodiments of declarative memory laws in that they declare state-approved interpretations of history. In their most explicit form, declarative memory laws concern the creation of monuments, which serve to "stabilize a specific image of the state and the cultural world [...] recall[ing] events crucial to national identity and the story of national triumphs."[14] Given the wide scope of memory laws, "the state can never be fully agnostic about the collective past."[15]

What the state decides to commemorate and what it decides to suppress affect the collective memory of its people, which in turn has pedagogical, moral, and political implications. Collective memories are "individual memories shared across a community that bear on the community's identity."[16] They serve as a framework by which past events are interpreted and given contemporary significance.[17]

This aspect of collective memory is of particular importance in the context of struggles for justice, since "how a community frames past events and connects them to current conditions often determines the power of justice claims or of opposition to them."[18] In relation to this, collective memory also transmits "imperatives of the 'Never again!' type"[19] across

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[13] Uladzislau Belavusau & Aleksandra Gliszczyńska-Grabias, *Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice*, *in* MEMORY LAWS: TOWARDS LEGAL GOVERNANCE OF HISTORY 18 (2017).

[14] Zuzanna Dzubian, *Architecture as a Medium of Trans-National (Post)Memory*, *in* ARCHITECTURE AND NATIONALISM 271 (Raymond Quek et al. eds., 2012).

[15] *Id.* at 18.

[16] Alin Coman et al., *Collective Memory from a Psychological Perspective*, 22 INT'L J. POL., CULTURE & SOC'Y 125, 129 (2009).

[17] Marek Kucia et al, *The Collective Memory of Auschwitz and World War II among Catholics in Poland: A Qualitative Study of Three Communities*, 25 HISTORY & MEMORY 132, 150 (2013).

[18] Sharon Hom & Eric Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1748, 1771 (2000).

[19] W. James Booth, *Communities of Memory: On Identity, Memory, and Debt*, 93 AM. POL. SCIENCE REV. 249, 256 (1999).

generations, making possible a sense of "responsibility, a liability for the past and for those deeds that were produced from the core of 'our life together.'"[20]

The memory of the Holocaust in post-World War II Germany, for example, has embedded a sense of responsibility among generations of Germans and has influenced its views on nationalism and multiculturalism.[21] This understanding of how memory affects present values is also reflected in France's and Belgium's laws criminalizing Holocaust denial, which are not within laws concerning the Holocaust *per se*, but in laws concerning xenophobia and racism, implying a belief that criminalizing Holocaust denial is in the interest of preventing the spread of the xenophobia and racism.

B. Memory laws and their effect on collective memory

Punitive memory laws have been passed in many European countries in the 1980s and the 1990s to criminalize Holocaust denial. These memory laws have inspired heated academic and political debate in Europe due to fears of their abuse, but they have also been applied and upheld by international tribunals to protect the right to dignity of members of vulnerable groups.

An example of a punitive memory law is the Gayssot Act in France, which prescribed the penalty of imprisonment or a fine for any person who disputes the crimes against humanity perpetrated by the Nazis or who publishes or publicly expresses opinions which encourage others to "pass a favorable moral judgment on one or more crimes against humanity and tending to justify these crimes (including collaboration) or vindicate their perpetrators."[22]

As observed by Nora, unlike the other punitive memory laws that came after it, the Gayssot Act did not provoke as much controversy due to how similar laws concerning Holocaust denial had "taken on a sacred quality thanks to the increasingly pregnant memory of the Shoah."[23] The memory of the Holocaust has carried such weight that "post-war Europe is understood as a collective that developed shared structures and institutions in order to avoid a recurrence of the catastrophe of the Holocaust."[24]

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[20] *Id.* at 255.

[21] *Id.* at 256.

[22] Law on the Freedom of the Press of 29 July 1881 (France), art. 48-1.

[23] Pierre Nora, *History, Memory and the Law in France, 1990–2010*, 11 HISTOREIN 10, 12 (2011).

[24] Radonić, *supra* note 9, at 270.

Belavusau and Gliszczyńska-Grabias discussed three observations regarding how laws concerning Holocaust denial, such as the Gayssot Act, affected how World War II and the countries involved in it are remembered.[25] *First*, they observed that memory laws advanced a "Judaic version of repentance,"[26] by which "only direct victims can pardon perpetrators and several generations provide extensive mourning."[27] *Second*, these laws encouraged a black-and-white view of the Axis powers and the Allies, absolutizing the guilt of the former and brushing away the atrocities committed by the latter.[28] Events that do not fit this view, such as the carpet bombing of Dresden or the systemic rapes committed by Soviet soldiers against German and Hungarian women, have been pushed into relative obscurity. *Lastly*, memory laws have shaped generations of Germans, encouraging a more tolerant German society as well as the concept of militant democracy, which is hostile to the spread of anti-democratic sentiment.[29]

Unlike the laws concerning Holocaust denial that have proliferated in Western Europe, memory laws in Eastern Europe have been criticized as a means for governments to "use history as a means of nationalist mobilization."[30] Unlike other memory laws which were the product of lobbying by minority groups, these laws are backed by "pro-state right-wing politicians that seek to create a heroic national narrative and legislate away any doubt about the state's historical righteousness."[31]

The Law against the Rehabilitation of Nazism in Russia, for example, has been used to prosecute people who contradict Russian President Vladimir Putin's description of World War II as a "Great Patriotic War."[32] Putin's efforts to portray World War II as a defining moment for Russia are reflected in the views of his supporters, who are more likely to view World War II as Russia's "most important historical touchstone."[33]

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[25] Belavusau & Gliszczyńska-Grabias, *supra* note 13, at 8.

[26] *Id.* at 8.

[27] *Id.* at 8.

[28] *Id.* at 8.

[29] *Id.* at 12.

[30] Koposov, *supra* note 12.

[31] Ivan Kurila, *The Implications of Russia's Law against the "Rehabilitation of Nazism,"* PONARS EURASIA: NEW APPROACHES TO RESEARCH AND SECURITY IN EURASIA, Aug. 2014, *at* http://www.ponarseurasia.org/memo/201408_Kurilla

[32] Jacob McHangama, *First They Came for the Holocaust Deniers, and I Did Not Speak Out*, FOREIGN POLICY, Oct. 2, 2016, *available at* https://foreignpolicy.com/2016/10/02/first-they-came-for-the-holocaust-deniers-and-i-did-not-speak-out

[33] Dorothy Manevich, *Russians see World War II, not 1917's revolution, as nation's most important historical event*, PEW RESEARCH CENTER, Nov. 7, 2017, *at*

Article 301 of the Turkish Penal Code has received similar criticism, as it has been used to prosecute people who refer to the 1915 killings of Armenians in Turkey as a genocide.[34] The policy of denial applied by this law regarding the genocide has been reflected in what Turkish citizens believe. A survey conducted a century after the killings found that only 9% of Turks agreed that the government should label the atrocities a genocide.[35]

In contrast with punitive memory laws, declarative memory laws have been less controversial as they do not prescribe criminal penalties for their violation. Nonetheless, they have been noted to have an effect on the politics and public opinion of their respective countries. Constitutions in general may be considered memory laws, as shown by the analysis conducted by Miklóssy and Nyyssönen on the Hungarian Constitution. According to them, constitutions canonize "an interpretation of the past to be remembered as the ground of the whole legal system." [36] After the fall of the communist governments in Eastern Europe, the constitutions that were drafted in these countries sought to stress continuity of citizenship and statehood and, in doing so, crystallized interpretations of history that were viewed as formative of each country's identity.

The 2011 Hungarian Constitution in particular enshrined significant traditions in Hungarian history. The first is the *Szent Korona Tan* or the Holy Crown Doctrine, which signifies the consolidation of Hungary under King Stephen I and Hungary's historical boundaries. The Holy Crown Doctrine is a rallying point for right-wing nationalist groups. It is also inseparable from the second tradition acknowledged in the Hungarian Constitution: Christianity. The National Avowal of the Hungarian Constitution recognizes "the role of Christianity in preserving nationhood." [37] By connecting Hungarian nationhood with Christianity, the Hungarian Constitution legitimizes the "prevalent interpretation of history stating that the nomad Hungarian tribes of the 9th century would have disappeared from the map had they not been settled by forceful conversion."[38] Since this interpretation

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http://www.pewresearch.org/fact-tank/2017/11/07/russians-see-world-war-ii-not-1917-revolution-as-nations-most-important-historical-event

[34] Koposov, *supra* note 12.

[35] Tim Arango, *A Century After Armenian Genocide, Turkey's Denial Only Deepens,* NEW YORK TIMES, Apr. 16, 2015, *available at* https://www.nytimes.com/2015/04/17/world/europe/turkeys-century-of-denial-about-an-armenian-genocide.html

[36] Katalin Miklóssy & Heino Nyyssönen, *Defining the new polity: constitutional memory in Hungary and beyond*, 26 J. CONTEMP. EUR. STUD. 322, 322 (2018).

[37] THE FUNDAMENTAL LAW OF HUNGARY, National Avowal, ¶ 6.

[38] Miklóssy & Nyyssönen, *supra* note 36, at 329.

of the past is embedded in the constitution itself, it "turns into canonic history"[39] beyond the reach of debate. The realization of the "Christian democracy" envisioned in the Hungarian Constitution is reflected in the rhetoric of Hungary's nationalist prime minister, Viktor Orbán, who has attempted to equate "Christian democracy" with his concept of "illiberal democracy."[40]

Legal proceedings have also been observed to have an effect on how societies remember. Curran provided a general definition of memory laws as laws which deal with the "legal regulation of memory,"[41] particularly "law's interface with historical memory."[42] She presented the South African Truth and Reconciliation Commission ("TRC") as an embodiment of this interplay between law and memory and how the latter is socially mediated. Through this proceeding, individual memory was utilized to create an official historical account of South Africa's experience of apartheid. However, she also made it a point to caution against viewing such Commissions, or alternative legal proceedings in general, as the panacea in the struggle for justice: "not just law, but *also* law, has a role to play in this process."[43]

Curran contextualized the work of the TRC in the earlier work of Halbwachs in order to point out how memory in both its individual and collective senses may be affected by law. Drawing from the concept of collective memory developed by him, Curran stated that "memory, by its nature, is a socially mediated phenomenon."[44] As such, the findings of alternative legal proceedings such as the TRC would influence not only how post-apartheid South Africa would remember and reconstruct its past as a society, but even how individuals would make sense of their experiences and the experiences of others, making it impossible "for the average South African to suffer from selective amnesia or to deny the nature and extent of the gross human rights violations that took place."[45]

Multiple empirical studies have been conducted supporting these statements regarding the effect of the TRC on collective memory and

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[39] *Id.* at 330.

[40] Heino Nyyssönen, *The East is different, isn't it? – Poland and Hungary in search of prestige*, 26 J. CONTEMP. EUR. STUD. 258, 263 (2018).

[41] Vivian Grosswald Curran, *History, Memory, and Law*, 16 ROGER WILLIAMS UNIV. L. REV. 100, 101 (2011).

[42] *Id.* at 101.

[43] *Id.* at 109.

[44] *Id.* at 103.

[45] DOROTHY SHEA, THE SOUTH AFRICAN TRUTH COMMISSION: THE POLITICS OF RECONCILIATION 6 (2000).

reconciliation in South Africa. A study conducted among South Africans of different ethnic groups found that all the participants perceived the TRC to have been effective in bringing out the truth, even though their perceptions on its other effects varied.[46] South Africans who accept the truth presented by the TRC are more likely to hold "reconciled racial attitudes."[47] Another study conducted six to eight years after the TRC began found that, while the process itself was imperfect, the global reaction to the Commission, and the positive attitudes toward it among the members of the population surveyed, supported the view that the Commission "helped provide knowledge and acknowledgment of the past."[48]

Traditional legal proceedings are also "particular sites for the framing of collective memories of injustice." [49] Without exception, courts are "storytelling institutions,"[50] since they sift through the competing truth claims presented by adverse parties and from there create a definitive narrative. International criminal trials, such as the Tribunal of Nüremberg, are "often a focal point for the collective memory of whole nations [...] consolidat[ing] shared memories with increasing deliberateness and sophistication."[51]

This storytelling function is also performed by domestic courts. For example, in *Dred Scott v. Sandford*,[52] the U.S. Supreme Court articulated an interpretation of American history that effectively denied African-Americans legal standing and citizenship on the basis of the U.S. Constitution, galvanizing the "articulation of a northern collective memory that encouraged a different understanding of America's founding and the experiences of African Americans in the early republic."[53] Similarly, in *Rice v. Cayetano*,[54] the U.S. Supreme Court utilized "selective, often euphemistic, historical

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[46] Jay Vora & Erika Vora, *The Effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans*, 34 J. BLACK STUD. 301, 317 (2004).

[47] James Gibson, *Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process*, 48 AM. J. POL. SCIENCE 201, 202 (2004).

[48] Dan J. Stein, et al., *The impact of the Truth and Reconciliation Commission on psychological distress and forgiveness in South Africa*, 43 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 462, 468 (2008).

[49] Susan Serrano, *Collective Memory and the Persistence of Injustice: From Hawaii's Plantations to Congress—Puerto Ricans' Claims to Membership in the Polity*, 20 S. CAL. L. REV. & SOCIAL JUSTICE 353, 363 (2011).

[50] *Id.* at 364.

[51] MARK OSIEL, MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW 6 (1997).

[52] Dred Scott v. Sandford, 60 U.S. 393 (1856).

[53] Todd McDorman, *History, Collective Memory, and the Supreme Court: Debating "the People" through the Dred Scott Controversy*, 71 S. COMM. J. 213, 229 (2006).

[54] Rice v. Cayetano, 528 U.S. 495 (2000).

framing"[55] to justify its invalidation of the Office of Hawaiian Affairs' Hawaiians-only voting structure, portraying Native Hawaiians as savages civilized through American colonization. In so doing, the Court legitimized an interpretation of history that denied the damage it did as a colonial power, an interpretation irreconcilable with that of the Native Hawaiians.[56]

In contrast, the role of memory laws in shaping collective memory has been noted in a positive light in Spain. Weedon and Jordan noted that "the mass killings of Republicans were erased from collective memory"[57] following the Spanish Civil War. After the passage of the *Ley de Memoria Histórica* or the Historical Memory Law in 2007, these human rights violations were "placed on the agenda for both public and collective memory."[58] The strong reactions it provoked unearthed issues that had been kept buried for decades after the war, breaking almost 70 years of silence.[59]

Spain's Historical Memory Law did not impose sanctions for the denial or revisionism; rather, it recognized its victims, ordered the removal of Francoist symbols in public buildings, and provided support for descendants of victims. Regarding the role of such memory laws in shaping collective memory, Weedon and Jordan observed that "state supported cultural and educational institutions and practices, together with the cultural industries, play crucial roles in creating and sustaining collective memory. Above all they serve as gatekeepers facilitating processes of remembering and forgetting."[60]

C. The right to dignity and the right to truth

Literature on memory laws *vis-à-vis* human rights tends to emphasize either the way memory laws encroach on freedom of speech or on how restrictions are necessary to protect vulnerable groups. The origin and development of the pro-dignity and pro-speech perspectives were explored by Knechtle.[61] He noted that the development of First Amendment jurisprudence in the United States made it the foremost proponent of the pro-

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[55] Hom & Yamamoto, *supra* note 18, at 1775.

[56] *Id.* at 1776.

[57] Chris Weedon & Glenn Jordan, *Collective memory: theory and politics*, 22 SOC. SEMIOTICS 143, 149 (2012).

[58] *Id.* at 150.

[59] Jo Labanyi, *The languages of silence: historical memory, generational transmission and witnessing in contemporary Spain*, 9 J. ROMANCE STUD. 23, 26 (2009).

[60] Weedon & Jordan, *supra* note 57, at 150.

[61] John Knechtle, *Holocaust Denial and the Concept of Dignity in the European Union*, 36 FLA. ST. U. L. REV. 41, 41 (2008).

speech perspective, while European countries were more willing to impose content-based restrictions for the protection of human dignity.

American jurisprudence on free speech lays emphasis on the harm done to the speaker by the suppression of speech, while many European countries "view harm to the listener as violating a right—the right to human dignity—which results in a balancing of these competing rights by courts."[62] Thus, while the U.S. Supreme Court voided the conviction of a teenager for burning a cross on the lawn of his African-American neighbor on the ground that states may not prohibit offensive political speech,[63] the European Court of Human Rights ("ECHR") upheld a far-right politician's conviction for anti-Muslim statements he made in an interview, finding that the restraint imposed on his right to freedom of expression was necessary in a democratic society.[64]

Their responses to the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") also illustrate this difference in perspective. Article 4 of the ICERD provided that state parties "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred." [65] While the United States ratified the convention with the reservation that it would not take any measures that violate the First Amendment, Knechtle observed that the ICERD had a significant impact on the passage of hate speech legislation among European countries, as they have all passed legislation prohibiting racist speech following ICERD.[66] This is also done in keeping with the Council of the European Union's Framework decision on racism and xenophobia, which provided that publicly condoning, denying, or grossly trivializing crimes of genocide, crimes against humanity, and war crimes committed against particular groups or members of particular groups would be punishable within the Union.[67]

In line with the view that memory laws are necessary to prevent the violation of a right, Belavusau and Gliszczyńska-Grabias argued that memory laws have aims which are similar to that of criminal laws, i.e. the prevention and punishment of social evils. They used laws against Holocaust denial as

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[62] *Id.* at 51.

[63] R.A.V. v. City of St. Paul, 505 U.S. 379 (1992)

[64] Le Pen v. France, no. 18788/09 (April 20, 2010).

[65] International Convention on the Elimination of All Forms of Racial Discrimination, art. 4, 993 U.N.T.S. 3, Dec. 16, 1966.

[66] Knechtle, *supra* note 61, at 48.

[67] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, at 55 (2008).

illustrations. According to them, even Robert Batinder, a French politician opposed to the passage of memory laws, admitted that France's law criminalizing Holocaust denial "primarily targets revisionism, which in this case is simply a camouflage for anti-Semitism, incitement to racial hatred and hatred of a community, all of them offences subject to the force of criminal law."[68] In seeking to regulate how people understand their past, memory laws seek to influence how people understand the present, preventing further injustice by curbing the resurgence of the same ideology that led to the same historical injustice. At the same time, it prevents the minimization and non-recognition of its victims.

This is consistent with the view taken by the ECHR in the case involving the conviction of French academic and former politician Roger Garaudy.[69] Garaudy was the author of *The Founding Myths of Modern Israel*, which disputed what he called the "myth of the six million," claiming that the deaths of six million Jews in the Holocaust were not a historical fact but propaganda used by Zionists to displace Palestinians. He was convicted to five suspended prison sentences for disputing the existence of crimes against humanity, public defamation of a group of people, and incitement to discrimination and racial hatred.

Before the ECHR, he argued that his right to freedom of expression had been infringed, and that his book was a political work criticizing Zionism and Israeli policy. The ECHR found that the statements in his book disputed the existence of the crimes against humanity committed against the Jews during World War II, and that disputing these facts could not be characterized as genuine historical research. Moreover, his statements "undermined the values on which the fight against racism and anti-Semitism was based and constituted a serious threat to public order."[70] The ECHR went on to state Garaudy's acts were "incompatible with democracy and human rights."[71]

The effect that revisionist statements could have on the beliefs and dignity of others was also emphasized by the UN Human Rights Committee ("HRC") in *Faurisson v. France*.[72] Robert Faurisson, an academic, contested his conviction for violations of the Gayssot Act and the validity of the Gayssot Act before the HRC, contending that it unduly restricted freedom of speech and academic freedom in violation of the International Covenant on Civil and

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[68] Belavusau & Gliszczyńska-Grabias, *supra* note 12, at 19.

[69] Garaudy v. France, no. 65831/01 [Extracts] (June 24, 2003).

[70] *Id.* at 23.

[71] *Id.*

[72] Faurisson v. France, Merits, Communication No. 550/1993 (July 7, 1993).

Political Rights ("ICCPR"). Article 19 of the ICCPR provides that the right to freedom of expression may be subject only to limitations provided by law for respect of the rights or reputations of others; and for the protection of national security or of public order, or of public health or morals.[73]

Although the HRC noted that, in other factual circumstances, the Gayssot Act may lead to violations of the ICCPR, the HRC found that the restriction on Faurisson's freedom of speech was necessary and lawful, as it was done in accordance with a law and for a lawful purpose, i.e. the prevention of the spread of anti-Semitism. The HRC declared that "[s]ince the statements made by the author, read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism."[74]

The atmosphere of fear described by the HRC has effects on the mental health and well-being of members of vulnerable communities. The importance of recognition to victims of serious human rights abuses has been highlighted by the research conducted on former political exiles who returned to their home country.[75] Building on earlier literature framing trauma as a psychosocial process, it was found that "the most important need of survivors is an acknowledgement from the surrounding society of the atrocities they underwent."[76]

Similar findings have been made in studies concerning veterans of the Vietnam War, political prisoners, and even victims of crimes in general.[77] A lack of social acknowledgment and the perpetuation of the same "historical interpretation of the repressors"[78] prevent survivors from healing from what they experienced. A lack of official acknowledgment on what was done to their relative has serious psychological consequences, resulting in a "strong feeling of lack of control and powerlessness [...] [and] lack of confidence and serious mistrust between people." [79] The importance of social acknowledgment was also highlighted by the effect the Vietnam War

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[73] International Covenant on Civil and Political Rights, art. 19(2), 999 U.N.T.S. 171, Dec. 19, 1966.

[74] Communication Faurisson v. France, no. 550/1993 (July 7, 1993), at ¶ 9.6.

[75] Knut Rauchfuss & Bianca Schmolze, *Justice heals: The impact of impunity and the fight against it on the recovery of severe human rights violations' survivors*, 18 TORTURE 38, (2008).

[76] *Id.* at 41.

[77] Brigitte Lueger-Schuster, *Supporting Interventions After Exposure to Torture,* 20 TORTURE 32, 38 (2010).

[78] Rauchfuss & Schmolze, *supra* note 75, at 40.

[79] Margriet Blaauw & Virpi Lähteenmäki, *'Denial and silence' or 'acknowledgement and disclosure,'* 84 IRRC REVIEW 767, 781 (2002).

Memorial had on veterans of the Vietnam War, as the construction of the memorial had "probably the most significant contribution to the healing process of these veterans"[80] who suffered higher rates of post-traumatic stress disorder ("PTSD") due to the negative perceptions of the war among the general public.

The right to dignity and the emerging concept of the right to truth converge in the aims of memory laws. A study of the UN Office of the High Commissioner for Human Rights regarding the right to truth said that this right, "together with justice, memory and reparation [...] constitutes one of the mainstays of action to combat impunity for grave human rights violations and breaches of international humanitarian law."[81] The right to truth was also subject of a resolution by the UN Human Rights Council, which recognized the "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights."[82]

The interrelatedness of these rights is also shown by the UN Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity ("UN Principles to Combat Impunity"), which established guidelines "to assist States in developing effective measures for combating impunity."[83] This instrument, which was invoked by the petitioners in the case of *Ocampo v. Enriquez*, "reflect[s] established principles of international law while in some respects affirming nascent developments."[84] In particular, its third principle calls for states to enact measures "aimed at preserving the collective memory from extinction and [...] at guarding against the development of revisionist and negationist arguments."[85]

Memory laws thus have a part to play in combating the cultures of impunity, as they seek to prevent at once historical revisionism and protect the dignity of victims of human rights violations and members of vulnerable groups. This is especially significant given that some of the obstacles faced by

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[80] JUDITH HERMAN, TRAUMA AND RECOVERY 31 (2001).

[81] Right to the truth: Report of the Office of the High Commissioner for Human Rights, U.N. Doc. A/HRC/5/7, 16 (June 7, 2007).

[82] UN Human Rights Council, Right to Truth, U.N. Doc. A/HRC/RES/9/11 (Sept. 24, 2008).

[83] Updated set of principles for the protection and promotion of human rights through action to combat impunity, at pmbl., U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005).

[84] Diane Orentlicher, *Prologue,* THE UNITED NATIONS PRINCIPLES TO COMBAT IMPUNITY: A COMMENTARY 1 (Frank Haldemann & Thomas Unger eds., 2018).

[85] *Supra* note 83, principle 3.

victims of human rights violations are political in nature. Apart from shortcomings in law and economic factors, political obstacles explain the gap between the rights given to human rights violation victims and the realities on the ground.

These political obstacles "operate so as to ignore the rights and interests of victims, notably the unwillingness of authorities and society to acknowledge that serious wrongs were committed."[86] Laws that acknowledge the commission of serious human rights violations make the fact of their commission a matter of law, running counter to the culture of impunity that at once enabled and obscured them. They thus support the central goal of reparations, which is "recognition of victims as human beings whose fundamental rights were violated."[87]

In sum, memory laws are laws which embody state-approved historical interpretations, which may be either punitive or non-punitive. In either form, they have had effects on the countries in which they operate, bringing knowledge and acknowledgment to certain historical events such as apartheid in South Africa and the Spanish Civil War.

The converse is also true: a historical interpretation that is denied in law is often also denied by society, such as the genocide of Armenians in Turkey and the crimes committed by the Allied powers during World War II. Punitive memory laws have been upheld in international tribunals on the basis of the rights that they safeguard, since memory laws protect the right to dignity of members of vulnerable groups and prevent the spread of revisionism and the ideologies buttressed by revisionism. They also help safeguard the rights of victims of human rights violations to truth and to reparations, since they make the acknowledgment of victims and of the commission of human rights violations a matter of law.

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[86] Theo van Boven, *Victim-Oriented Perspectives: Rights and Realities* in VICTIMS OF INTERNATIONAL CRIMES: AN INTERDISCIPLINARY DISCOURSE 18 (Thorsten Bonacker & Christoph Safferling eds.), (2013).

[87] Independent Study on Best Practices, including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity: Final report submitted by Diane Orentlicher, at ¶ 59, U.N. Doc. E/CN.4/2004/88 (Feb. 27, 2004).

III. THE MEMORY OF MARTIAL LAW IN THE PHILIPPINES

A. The Marcos regime in Philippine law

Like other countries transitioning from a period of violence, the Philippines institutionalized its memory of the Marcos regime through numerous laws. The 1987 Constitution, drafted and ratified shortly after the 1986 People Power Revolution that led to Marcos' ouster, was a reaction to the Philippines' experience of authoritarianism under his rule. As a constitution, it encapsulates "an interpretation of the past to be remembered as the ground of the whole legal system"[88] and canonizes a negative image of the Marcos regime.

For example, the word "truth" was added to the Preamble as a "protest against the deception which characterized the Marcos regime."[89] The Bill of Rights was written in such a way as to "more jealously safeguard[ ] the people's fundamental liberties in the essence of a constitutional democracy;"[90] in particular, persons under custodial investigation were given the right to "competent and independent counsel, preferably of his own choice"[91] as a response to the military's practice of detaining persons and having only lawyers selected by the military defend the detainees. [92] The transitory provisions also extended the president's authority to issue freeze orders and orders of sequestration for the recovery of "ill-gotten properties amassed by the leaders and supporters of the previous regime to protect the interest of the people."[93]

There are also laws and Supreme Court decisions addressing the corruption of the Marcos family and their allies. For example, Executive Order No. 1 created the Presidential Commission on Good Government ("PCGG"), which was charged with "the recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad."[94] After 30 years of operation, the PCGG recovered more than 170 billion pesos worth of ill-gotten assets from the Marcos family and their

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[88] Miklóssy & Heino Nyyssönen, *supra* note 36.

[89] JOAQUIN BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 2 (2009).

[90] I RECORD CONST. COMM'N 674 (1986).

[91] CONST. art. III, § 12.

[92] Bernas, *supra* note 89, at 113.

[93] Proc. No. 3 (1986), art. 2, § 1.

[94] Exec. Order No. 1 (1986), § 2.

allies—assets which included bank accounts, corporations, shares of stocks, buildings, and collections of art and jewelry.[95]

Moreover, the Supreme Court in *Republic v. Sandiganbayan and Marcos*[96] ordered the forfeiture of USD 658,175,373 worth of Swiss deposits, finding that the Marcos family failed to justify the lawful nature of their acquisition of said funds, since the same was *"manifestly and patently disproportionate* to their aggregate salaries as public officials."[97] In *Republic v. Tuvera*,[98] which involved "one of the most daunting and noble undertakings of our young democracy—the recovery of the ill-gotten wealth salted away during the Marcos years,"[99] the Supreme Court held that a Marcos aide and the latter's son took advantage of their connection to Marcos to illegally amass wealth.

Regarding human rights abuses, Republic Act (R.A.) No. 10368 or the "Human Rights Victims Reparation and Recognition Act of 2013" was passed in order to recognize victims of human rights violations under the Marcos regime and to provide them with monetary and non-monetary compensation. Through R.A. No. 10368, it was a declared state policy "to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced disappearance, and other serious human rights violations committed during the regime of former President Ferdinand E. Marcos [...] and restore the victims' honor and dignity."[100]

To achieve this state policy, the Human Rights Victims' Claims Board ("Claims Board")[101] and the Human Rights Violations Victims' Memorial Commission ("Memorial Commission")[102] were created. The Claims Board was tasked with processing applications for compensation,[103] providing monetary compensation to accepted applicants,[104] and identifying necessary services for non-monetary compensation.[105] Of the 75,730 applicants it processed in its five years of operations, the Claims Board approved the claims

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[95] PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PCGG AT 30: RECOVERING INTEGRITY 3 (2016).

[96] Republic v. Sandiganbayan & Marcos, G.R. No. 152154, 406 SCRA 190, July 15, 2003.

[97] *Id.* at 268.

[98] Republic v Tuvera, G.R. No. 148246, 516 SCRA 113, Feb. 16, 2007.

[99] *Id.* at 152.

[100] Rep. Act No. 10368, § 2 (2013).

[101] § 8.

[102] § 27.

[103] § 10.

[104] § 15.

[105] § 5.

of 11,103 applicants, while 126 victims were recognized *motu proprio*.[106] Most of the human rights violations found to have been committed fell within the category of "Unlawful Arrest, Physical Injuries, Destruction of Properties and Deprivation of Livelihood," while "Killing and Enforced Disappearance" was the second most common.[107]

Regarding the right to monetary compensation, two cases filed against the estate of Ferdinand Marcos were cited in the text of R.A. No. 10368 itself, namely, the *Human Rights Litigation against the Estate of Ferdinand E. Marcos*,[108] decided by the U.S. Federal District Court of Hawaii, and *Republic v. Sandiganbayan and Marcos*,[109] decided by the Supreme Court of the Philippines. As to the former case, R.A. No. 10368 provided that the plaintiffs in said case would be afforded a conclusive presumption that they are victims of human rights violations.[110] Around 3,000 of the 9,539 plaintiffs applied and were recognized by the Claims Board.[111]

Regarding the second case, the R.A. No. 10368 provided that the amount of 10 billion pesos, as well as the accrued interest transferred to the government and adjudged by the Supreme Court as ill-gotten wealth, would be the source of reparations to victims of human rights violations under the Marcos regime.[112] The funds that were the subject of *Republic v. Sandiganbayan and Marcos* were transmitted to the Philippine government from Swiss banks by virtue of the decision of the Swiss Federal Supreme Court in the case of *Federal Office of Police Matters v. Aquamina Corporation*.[113]

As for the commemoration of victims of human rights violations under the Marcos regime, the Memorial Commission was created for the establishment of a "memorial, museum, library, or compendium" in their

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[106] Aurora Parong, Evidence of Human Rights Violations During Martial Law under Marcos: From the Files of the Human Rights Victims' Claims Board, presented at the Essential Truths Workshop on Martial Law 1972-86 and organized by the Human Rights Violations Victims' Memorial Commission (July 6, 2018).

[107] *Id.*

[108] *In re* Estate of Marcos Human Rights Litigation, 910 F. Supp. 1460 (D. Haw. 1995).

[109] Republic v. Sandiganbayan and Marcos, G.R. No. 152154, 406 SCRA 190, July 15, 2003.

[110] Rep. Act No. 10368, § 17.

[111] Interview with Dr. Aurora Parong, Former Member, Human Rights Victims Claims Board, Commission on Human Rights (Feb. 28, 2019).

[112] Rep. Act No. 10368, § 7.

[113] Federal Office of Police Matters v. Aquamina Corp., BGE 123 II 595, Dec. 10, 1997.

honor.[114] Museums and archives such as these are of particular importance in preserving the memory of these victims, as they serve as "vehicles for the intergenerational transmission of historical memory,"[115] preserving memory and passing it on. In this regard, a Memorandum of Understanding has also been signed between the University of the Philippines and the Memorial Commission for the construction of a Memorial/Museum/Library on the campus grounds of the University of the Philippines, Diliman.[116] Memorabilia provided by victims of human rights violations to the Claims Board, such as letters they wrote during their illegal detention, will also be housed therein.[117] In addition, the Memorial Commission was also tasked with ensuring that the "teaching of Martial Law atrocities, the lives and sacrifices of [human rights violations victims] in our history"[118] is included in basic education. For this purpose, the Memorial Commission has been developing modules for training teachers on educating students about the Marcos regime.[119]

No law has been passed prohibiting statements that are favorable to the Marcos regime or ordering the removal of Marcos-related names or symbols from public spaces. Neither was a Truth Commission called to ascertain the crimes committed and identify those who were responsible for the same. If one had indeed been created, the Philippines would have then been able to establish a definite account of the Marcos regime. However, the laws and jurisprudence discussed above would fall under the definition of memory laws given how they "enshrine state-approved interpretations of crucial historical events, commemorating the victims of past atrocities."[120]

Like the memory laws passed in Spain after its Civil War, each of the discussed laws that responded to the Marcos regime "was constituted by a narrative of violence, a statement of wrongs about who are the deserving victims, and an underpinning political consensus."[121] These declarative memory laws regarding the Marcos regime establish an official history

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[114] Rep. Act No. 10368, § 27.

[115] Brandon Hamber, Repairing the Irreparable: Dealing with Double-Binds of Making Reparations for Crimes of the Past, presented at the INCORE Conference "Dealing with the Past," June 8-9 1998.

[116] University of the Philippines, *Memorial for victims of martial law to rise in UP,* UNIVERSITY OF THE PHILIPPINES, Sept. 20, 2018, *at* https://www.up.edu.ph/index.php/memorial-for-victims-of-the-marcos-regime-to-rise-in-up

[117] Parong, *supra* note 111.

[118] *Id.*

[119] *Id.*

[120] Baranowska & Gliszczyńska-Grabias, *supra* note 7.

[121] Michael Humphrey, *Law, Memory, and Amnesty in Spain*, 13 MACQUARIE L.J. 25, 39 (2014).

condemning him as a dictator whose regime was a "national trauma"[122] characterized by deceit, serious human rights abuses, and corruption of such magnitude that three decades later, the Philippines has neither fully recovered the wealth stolen nor fully compensated the victims of human rights violations.

B. Shifts in public opinion and *Ocampo v. Enriquez*

However, notwithstanding these laws denouncing the Marcos regime, public opinion has been steadily shifting in its favor. In 1998, 12 years after the exile of the Marcos family, a nationwide survey conducted among Filipinos found that public opinion softened towards Ferdinand Marcos and his wife, Imelda Marcos.[123] The opinion that Ferdinand Marcos was a "thief of the nation's wealth" shifted from "unfavorable" to "neutral," and the same goes for the opinion that he was a "brutal or oppressive president."[124] Despite the survey form's reminder to its respondents that Imelda Marcos was convicted of graft, only half of the respondents believed that Imelda Marcos was definitely guilty, 14% said that she was definitely not guilty, and the remaining 38% responded that they did not know enough to have an opinion.[125] This change in perception is also apparent in the results of the 2016 national elections, wherein vice-presidential candidate Ferdinand Marcos Jr. received 14,155,344 of the votes, only 263,473 or 0.61% behind the eventual winner.[126]

In 2011, 25 years after Marcos' ouster, House Resolution No. 1135 was passed by the House of Representatives urging then President Aquino III to order the interment of Marcos in the Libingan ng mga Bayani.[127] The Resolution described Marcos as a "soldier, writer, statesman, President and Commander-in-Chief [...] [who] served his country in the best way he knew how," and declared that interring Marcos' remains in the Libingan ng mga Bayani would not only be an "acknowledgment of the way he led his life as a

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[122] Republic v Tuvera, G.R. No. 148246, 516 SCRA 113, 152, Feb. 16, 2007.

[123] Social Weather Stations, Softening of public opinion about the Marcoses (Media Release) (Oct. 9, 1998).

[124] *Id.*

[125] *Id.*

[126] Yuji Vincent Gonzales, *Duterte seals presidency in Congress official tally*, PHILIPPINE DAILY INQUIRER, May 27, 2016, *available at* https://newsinfo.inquirer.net/787870/duterte-seals-presidency-in-congress-official-tally

[127] H. Res. 1135, 15th Cong., 1st Sess. (2011). A Resolution Urging the Administration of President Benigno C. Aquino III to Allow the Burial of the Remains of Former President Ferdinand Edralin Marcos at the Libingan ng mga Bayani.

Filipino patriot,"[128] it would also be "a magnanimous act of reconciliation."[129] The resolution was signed by more than 200 members of Congress, and only a few militant members of Congress signed a counter-resolution opposing the interment.[130]

Nonetheless, it would take another five years for the resolution's aims to be realized, when in 2016, President Rodrigo Duterte issued an order for the interment of Marcos' remains in the Libingan ng mga Bayani in fulfillment of a campaign promise made to the Marcos family.[131] Polls conducted during the passage of the House Resolution in 2011 and Duterte's order in 2016 showed that public opinion was almost completely even with regard to whether or not Marcos ought to be interred in the Libingan ng mga Bayani. The least favorable responses in the more recent survey came from the National Capital Region and Class E at 40% and 44% respectively.[132]

To make sense of the disconnect between the Philippines' memory laws regarding the Marcos regime and the political resurgence of the Marcos family and their allies, it must be noted that, *first*, there has been a lack of education regarding these crimes, and *second*, allies of the Marcos regime have remained in positions of power. The forgetting of the abuses under the Marcos regime by "a new generation [...] exposed only to the dismal failure of the democracy that followed"[133] created an opening for the revisionism of recent history and the return to power of the people who benefited from having the Marcos family in power.

A study conducted on the perceptions of the Marcos regime among Filipino college students found that the classes they took often glossed over the Marcos regime and the human rights abuses committed therein, and that

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[128] *Id.*

[129] *Id.*

[130] Andreo Calonzo, *Militant lawmakers file reso vs hero's burial for Marcos*, GMA NEWS ONLINE, May 24, 2011, *at* https://www.gmanetwork.com/news/news/nation/221474/militant-lawmakers-file-reso-vs-hero-s-burial-for-marcos/story

[131] CNN Philippines Staff, *Duterte confirms Marcos burial at the Libingan ng mga Bayani*, CNN PHIL., Aug. 9, 2016, *at* http://cnnphilippines.com/news/2016/08/07/marcos-libingan-ng-mga-bayani-burial.html

[132] Gerry Lirio, *Is the Philippines ready for a state burial for Marcos?*, ABS-CBN NEWS, Mar. 14, 2016, *at* https://news.abs-cbn.com/halalan2016/focus/03/13/16/is-philippines-ready-for-a-state-burial-for-marcos

[133] Raul Pangalangan, *The Philippines: the persistence of rights discourse vis-à-vis substantive social claims*, *in* HUMAN RIGHTS IN ASIA: A COMPARATIVE LEGAL STUDY OF TWELVE ASIAN JURISDICTIONS, FRANCE, AND THE USA 360 (Randall Peerenboom et al. eds., 2006).

students whose curriculum devoted more time to the topic tend to have a more definite and negative view of that period of history.[134]

The Department of Education has also been criticized for textbooks used in public schools which discussed supposed merits of the Marcos regime such as "*katahimikan at kaayusan*" ("peace and order") or "*reporma sa lupa*" ("land reform") without discussing any of the human rights violations that were perpetrated.[135] This revisionist commemoration of the Marcos regime through the omission of the abuses committed parallels how he was also commemorated in the Libingan ng mga Bayani. While the Claims Board made plans with the Department of Education for the creation of modules, curriculum reviews, and the training of teachers in educating students about the Marcos regime, no formal agreement was reached, with the Department of Education citing a lack of funds.[136]

Moreover, although the Constitution was drafted in such a way as to respond to the abuses of the Marcos regime, many individuals who were complicit in those abuses remained in power in post-Marcos administrations. While punitive measures were put in place and many regional and local officials were removed, Marcos loyalists were able to assimilate into the post-Marcos government and were elected into national positions.[137] The political coalition that was formed to support Corazon Aquino became almost like a "rehabilitation program"[138] for former Marcos-allied politicians. Unlike other countries where amnesty laws were passed to enable a smooth transition from the deposed government to the new administration, no amnesty law was needed in the Philippines as amnesty was extended by practice.

The Marcos regime has been publicly glorified through government action, statements made by prominent politicians, regional literature, and social media. His birthday has been publicly celebrated in his home province, under the direction of his relatives who have continuously occupied positions

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[134] Gretchen Abuso, Collective Memories of the Filipino Youth on the Human Rights Violations during the Marcos Regime (forthcoming).

[135] Janine Peralta, *Senators slam DepEd for 'one-sided' history textbooks glorifying the Marcos regime*, CNN PHIL., Sept. 20, 2018, *at* http://cnnphilippines.com/news/2018/09/19/deped-senators-marcos-history.html

[136] Parong, *supra* note 111.

[137] Carl Lande, *Collaboration and Reconciliation in a No-Fault Polity: A Philippine Approach to Conflict Management*, 40 PHIL. SOCIOLOGICAL REV. 32, 36 (1992).

[138] Edicio de la Torre & Lester Edtwin Ruiz, *On the Post-Marcos Transition and Popular Democracy*, 4 WORLD POL'Y J. 333, 336 (1987).

of power in the local government.[139] President Duterte also endorsed this practice when he issued a proclamation declaring Marcos's 100th birthday as a holiday in his home province to allow the people therein to commemorate the life of a "World War II veteran, distinguished legislator, and former president."[140]

These roles—soldier, lawmaker, and president—were also the roles emphasized by the members of Congress who pushed for the interment and the Supreme Court that upheld it as valid. Literature from his home province has also continued to valorize Marcos, with only a few younger writers having produced literature that is critical of him.[141] Social media has also been a powerful source of propaganda for the Marcos family. A recent report found that there are around a hundred pro-Marcos pages active on Facebook, all of which provided a sanitized image of the Marcos regime.[142]

It was in this context of shifting public opinions that *Ocampo v. Enriquez* was promulgated. Voting 9-5, the Supreme Court held that Duterte's order regarding the Marcos burial was not done with grave abuse of discretion, and did not violate the Constitution, R.A. No. 10368, or international human rights law.[143] The Supreme Court held that Duterte's order, "inspired by his desire for national healing and reconciliation,"[144] carried with it the presumption of regularity which was not overcome by petitioners. The Supreme Court also found that interment in the Libingan ng mga Bayani did not require or grant the title of "hero," and that the name of the cemetery was a misnomer given the lax requirements of burial there.[145]

Moreover, as a "former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel [*sic*], a veteran, and a Medal of Valor awardee,"[146] Marcos was found to have met several of the requirements set by the Armed Forces of the Philippines for interment in the Libingan ng mga Bayani. Echoing the growing ambivalence in public

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[139] Cristina Arzadon, *What 'Da Real Makoy' means to Ilocano folk*, PHIL. DAILY INQUIRER, Sept. 11, 2012, *available at* https://newsinfo.inquirer.net/268694/what-da-real-macoy-means-to-ilocano-folk

[140] Proc. No. 310 (2017).

[141] Roderick Galam, *Narrating the Dictator(ship): Social Memory, Marcos, and Ilokano Literature after the 1986 Revolution*, 56 PHIL. STUD. 151, 177 (2008).

[142] Mariejo Ramos, *Troll armies wage 'history war' to push Marcos comeback*, PHIL.DAILY INQUIRER, Dec. 31, 2018, *available at* https://newsinfo.inquirer.net/1068051/troll-armies-wage-history-war-to-push-marcos-comeback#ixzz5frlNsq52

[143] *Ocampo*, 807 SCRA 223.

[144] *Id.* at 299.

[145] *Id.* at 271.

[146] *Id.* at 313.

opinion, the Court stated that Marcos ought to be judged in his entirety as a person, and that while he "was not all good, he was not pure evil either [...] just a human who erred like us."[147]

Regarding the argument that the interment would amount to historical revisionism, the Supreme Court said that "our nation's history will not be instantly revised by a single resolve of President Duterte [...] the lessons of Martial Law are already engraved, albeit in varying degrees, in the hearts and minds of the present generation of Filipinos."[148] The Court also minimized the role of the executive and the courts in shaping popular consciousness on history, saying that the responsibility of educating people on history is "not the sole responsibility of the Chief Executive; it is a joint and collective endeavor of every freedom-loving citizen of this country."[149] It also brushed aside the petitioners' arguments grounded on the 1987 Constitution, finding that although it was "a product of our collective history,"[150] it did not provide any guiding principle regarding the interment.

The Supreme Court also held that the rights of victims under R.A. No. 10368 and under international law were not violated. It found that R.A. No. 10368 did not prohibit Marcos' interment at the Libingan ng mga Bayani, and that to hold otherwise would be an act of judicial legislation.[151] It also brushed aside arguments grounded on various international human rights instruments such as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("UN Principles on Reparation"). The Supreme Court emphasized the fact that the preamble to the UN Principles on Reparation provides that the principles "*do not* entail new international or domestic legal obligations."[152] It also found that what the international human rights instruments invoked by petitioners require is the passage of legislation, and that the Philippines has passed numerous laws to safeguard human rights.

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[147] *Id.* at 313.
[148] *Id.* at 284.
[149] *Id.* at 284.
[150] *Id.* at 267.
[151] *Id.* at 276.
[152] *Id.* at 280. (Emphasis in the original.)

IV. REVISIONISM AND ACKNOWLEDGMENT

A. The Marcos burial and historical revisionism

Ocampo v. Enriquez marks a shift in the language used to describe Marcos in Philippine law, from an autocrat whose rule was marked by deceit, corruption, and violence to "a human who erred just like us."[153] But while the Supreme Court may have been right to say that Philippine history will not be revised by a single action of Duterte, it failed to appreciate its role in propagating that history. In both the language it used and the interment it allowed, *Ocampo v. Enriquez* unsettled laws and jurisprudence ascribing responsibility for systemic corruption and human rights abuses to the Marcos regime. It legitimized a selective interpretation of recent Philippine history advocated by the Marcos family and their allies, supported a false narrative propagated by Marcos during his own presidential campaign, and implicitly denied the human rights abuses committed during the Marcos regime.

Like memorial museums, memorial cemeteries such as the Libingan ng mga Bayani perform a legitimizing function and carry with them a moral imperative to remember. Heroes' cemeteries, by law and by their nature, concretize certain state-sponsored interpretations of the past. They are sites of memory, "points of reference not only for those who survived traumatic events, but also for those born long after them,"[154] where "people remember the memories of others, those who survived the events marked there."[155] Memorial cemeteries are not only bearers of memory, they are also born out of consensus about the importance of an event.[156]

In the context of the Marcos burial in particular, it is important to note that the Libingan ng mga Bayani has been described by Marcos as a national shrine,[157] and in *Ocampo v. Enriquez*, as a "national shrine for military memorials."[158] In 1954, President Magsaysay changed the cemetery's name from "Republic Memorial Cemetery" to "Libingan ng mga Bayani" to "truly express the nation's esteem and reverence for her war dead."[159]

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[153] *Id.* at 313.

[154] Jay Winter, *Sites of memory, in* MEMORY: HISTORY, THEORIES, AND DEBATES 312, 313 (Susannah Radstone & Bill Schwartz eds., 2010).

[155] *Id.*

[156] *Id.*

[157] Proc. No. 208 (1967).

[158] *Ocampo*, 807 SCRA at 295.

[159] Proc. No. 56 (1954).

A common feature among memorial cemeteries is identical tombstones, which "indicate that each individual buried in the cemetery was a part of a greater whole."[160] However, the tombstone used for Marcos, in spite of the assertion of the Marcos family that he wished to be buried as a soldier, is not identical to the tombstones used for the soldiers interred there. The soldiers interred at the Libingan ng mga Bayani have identical white crosses as tombstones, with only their name, the year of their birth, the year of their death, and their identification number engraved thereon. Neither is his tombstone similar to those used for individuals who are buried there for their service to the government, who have the positions they held in government listed on their tombstones with no other seals or insignias engraved thereon.

Instead, Marcos' tombstone lists his name, the year of his birth, the year of his death, and the word "Filipino" engraved in large gold lettering. His marble tomb also bears the seal of the Office of the President of the Philippines and his signature, with two portraits of him on each side of the tomb. There is no indication of the justification given by the executive department or the Supreme Court regarding his status as a soldier; he is entombed as a president and a Filipino in a cemetery intended by law to be a national shrine. Neither is there any mention or suggestion of the systemic human rights violations and corrupt practices committed under his authority.

This commemoration of Marcos as a president and a Filipino, in addition to the historical revisionism it promotes, is an example of implicatory denial. In implicatory denial, the facts themselves are not denied, rather, "what are denied or minimized are the psychological, political or moral implications that conventionally follow."[161] The way Marcos has been valorized in the Libingan ng mga Bayani denies the moral implications of the human rights violations that the Philippines is obliged to acknowledge under R.A. No. 10368.

Contrary to the Supreme Court's position that the interment has "no causal connection and legal relation to [R.A. No. 10368],"[162] the decision and the interment it allowed enshrined an image of Marcos that disregards the moral implications of the human rights violations acknowledged to have been committed under his authority by R.A. No. 10368. It is also a reflection of the

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[160] Madeleine Mant & Nancy C. Lovell, *Individual and group identity in WWII commemorative sites*, 17 MORTALITY: PROMOTING THE INTERDISCIPLINARY STUDY OF DEATH AND DYING 18, 32 (2012).

[161] STANLEY COHEN, STATES OF DENIAL, KNOWING ABOUT ATROCITIES AND SUFFERING 8 (2001).

[162] *Id.* at 276.

historical revisionism that the Marcos family and their supporters have promoted, which highlights his having been a soldier, statesman, and president and makes no mention of the fabrications and crimes Marcos committed with each role.

Marcos' interment at a national military memorial also helps to advance the false masculine image that Marcos sought to project through his claims regarding his acts as a soldier in World War II. Marcos claimed that he led a guerilla unit called *Ang Mga Maharlika* that offered intelligence to U.S. forces in the Philippines during World War II, acts for which he was allegedly given more than thirty military awards.[163] Officials of the U.S. Army dismissed Marcos' claims as "fraudulent and absurd."[164] However, Marcos perpetuated the name of his fictitious guerilla unit in the transportation networks connecting the Philippines (Maharlika Highway), the government-owned broadcasting channel (Maharlika Broadcasting), a wing in the official residence of the President of the Philippines (Maharlika Hall), and at one point, he even considered renaming the country "Maharlika."[165] Duterte has also expressed agreement with this name change, explicitly ascribing the idea to Marcos.[166]

The language used in *Ocampo v. Enriquez* in discussing his qualifications for burial is also an implicatory denial of the human rights violations committed under his regime. While the Supreme Court did not go so far as to deny that human rights violations were committed during the Marcos regime, it put into question the culpability of Marcos therefor by describing them as "his *alleged* human rights abuses and corrupt practices."[167]

Describing the human rights abuses and corrupt practices as "alleged" suggests that his culpability has not been proven, which is contrary to the laws and jurisprudence unequivocally ascribing them to him and to individuals acting under his authority. This description also legitimizes the doubts expressed by members of the Marcos family and their allies regarding the abuses committed. Duterte, who ordered the interment, has also denied there being anything definitively proven regarding the Marcos regime, saying that

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[163] *Ocampo*, 807 SCRA at 322.

[164] Jeff Gerth, *Marcos war-time role discredited in US files,* NEW YORK TIMES, Jan. 23 1986, at A01.

[165] *Id.*

[166] Virgil Lopez, *Duterte wants Philippines renamed* Maharlika, GMA NEWS ONLINE, Feb. 11, 2019, *at* https://www.gmanetwork.com/news/news/nation/684595/duterte-wants-philippines-renamed-maharlika/story

[167] *Ocampo*, 807 SCRA at 313. (Emphasis supplied.)

"whether or not he performed worse or better, there is no study, there is no movie about it."[168]

The positions taken by the Supreme Court in the petitions filed to challenge the interment, namely, that the interment will not revise Philippine history and that the rights to recognition and reparations of victims will not be violated thereby, overlook the fact that the interment and the decision enshrine particular historical interpretations. They are memory laws which commemorate Marcos for roles he held in government without any mention or contextualization with the abuses ascribed to his regime.

Thus, there now exists two competing images of Marcos in Philippine law: that of a plunderer and dictator, and that of a bemedaled soldier, statesman, and former president. The Constitution, laws, and jurisprudence until *Ocampo v. Enriquez* promoted the former image through the implementation of safeguards to prevent a repeat of his regime, the creation of agencies aimed at recovering the wealth stolen by him and his allies, and the acknowledgment of the serious human rights violations enabled, perpetuated, and obscured under his regime. However, a lack of education regarding the crimes committed by the Marcos family and their allies, their return to power, and the active misinformation campaign they have spread have promoted a more ambivalent—even positive—view of the Marcos regime, casting a positive light on him, his allies, and the authoritarian politics he espoused.

B. Social acknowledgment and the right to an effective remedy

More than furthering revisionist narratives, *Ocampo v. Enriquez* also violates state policy and the rights of human rights violations victims to an effective remedy provided for in domestic and in international law. Apart from declaring it state policy to recognize victims of human rights violations under the Marcos regime, the Philippines through R.A. No. 10368 also recognized its obligations under the 1987 Constitution and under international human rights laws and conventions "to ensure that any person whose rights or freedoms have been violated shall have an *effective remedy* even if the violation is committed by persons acting in an official capacity."[169] It

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[168] Richard Paddock, *Hero's burial for Ferdinand Marcos draws protests from dictator's victims*, NEW YORK TIMES, Nov. 18, 2016, *available at* https://www.nytimes.com/2016/11/19/world/asia/philippines-marcos-burial.html

[169] Rep. Act No. 10368, § 2. (Emphasis supplied.)

was also acknowledged in R.A. No. 10368 that the right to a remedy is a peremptory norm from which no derogation is allowed.[170]

The meaning of the right to an effective remedy in the context of serious human rights violations was laid out in the UN Principles on Reparation, adopted by the UN General Assembly in 2005.[171] While the Supreme Court in *Ocampo v. Enriquez* correctly noted that the UN Principles on Reparation does not entail new obligations, the Court disregarded the fact that this instrument lays out guidelines and principles for the implementation of rights already existing by virtue of multiple international conventions, all of which have been ratified by the Philippines. It "represents the first comprehensive codification of the rights of victims of international crimes to reparations, remedies, and access to systems of justice"[172] and lays down "foundations of reparative justice"[173] from a victim-oriented perspective. As it does not establish new obligations, "mandatory language had been used only where a particular international obligation existed."[174]

In the particular context of victims of serious human rights violations, it provided that the right to an effective remedy includes: (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms.[175] The full and effective reparation referred to includes "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."[176]

Thus, reparations that victims of serious human rights violations are entitled to as a matter of right are not limited to the payment of monetary compensation. It also involves acknowledging the harm done, undoing its consequences, and guaranteeing that it will not recur. Undoing the

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[170] *Id.* at § 2.

[171] Theo van Boven, *Victims' Right to a Remedy and Reparation*, *in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES, AND CRIMES AGAINST HUMANITY 32 (Carla Ferstman et al eds., 2009).

[172] Kelly McCracken, *Commentary on the basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, 76 REVUE INTERNATIONALE DE DROIT PÉNAL 77 (2005).

[173] Theo van Boven, *The need to repair*, 16 INT'L J. HUM. RTS. 694, 695 (2012).

[174] Report of the Third Consultative Meeting on the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," ¶ 11, U.N. Doc. E/CN.4/2005/59 (Dec. 21, 2004).

[175] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ¶ 11, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).

[176] *Id.* at ¶ 18.

consequences of serious human rights violations requires official acknowledgment that these violations were committed in the first place, as victims require acknowledgment to recover.[177] The UN Principles on Reparation, in particular, provides that the right to satisfaction of victims of serious human rights abuses should include a "public apology, including acknowledgement of the facts and acceptance of responsibility."[178]

As discussed earlier, acknowledgment is indispensable for the recovery of victims from their traumatic experiences. Social acknowledgment, defined as "a victim's experience of positive reactions from society that show appreciations for the victim's unique state and acknowledge the victim's current difficult situation,"[179] has been found to have a relation to the development of PTSD. A perception of general disapproval by society has the strongest association with the development of PTSD compared to disapproval from family or from friends.[180]

The need for acknowledgment is also not limited to the direct victims of torture and other forms of state terror. The suffering inflicted on the families of victims of forced disappearances can itself amount to torture.[181] The distrust of society felt by victims of torture and their relatives has been described as "one of the most detrimental effects of torture,"[182] which acknowledgment helps alleviate. Calls for survivors and their families to forgive the perpetrators of human rights violations against them "may demand too much psychologically from survivors," subordinating their needs in the interest of nation-building.[183] Thus, acknowledgment is not only a right provided under international law, but also a basic need for victims for their recovery.

However, there is a considerable gap between the right to an effective remedy in law and the reality on the ground for victims of the Marcos regime. The Claims Board and the Memorial Commission have faced significant challenges in delivering on their mandates. For one, Congress underestimated

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[177] Rauchfuss & Schmolze, *supra* note 75.

[178] *Supra* note 175, ¶ 21.

[179] Andreas Maercker & Julia Muller, *Social acknowledgment as a victim or survivor: A scale to measure a recovery factor of PTSD,* 17 J. TRAUMATIC STRESS 345, 345 (2004)

[180] *Id.* at 350.

[181] Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/56/156 (July 3, 2011)

[182] CULLINAN, TORTURE SURVIVORS' PERCEPTIONS OF REPARATIONS: A PRELIMINARY SURVEY 31 (Sarah Cullinan, Miranda Bruce-Mitford & M.F. Perutz, eds., 2001).

[183] Brandon Hamber & Richard Wilson, *Symbolic closure through memory, reparation and revenge in post-conflict societies,* 1 J. HUM. RTS. 35 (2002).

the number of applicants who would apply with the Claims Board. Congress anticipated that 10,000 would apply based on the number of plaintiffs who participated in *Human Rights Litigation against the Estate of Ferdinand E. Marcos*; but in reality, more than 75,000 applicants filed claims.[184] The term for processing was extended by two years, but processing such a large number of applicants was still taxing on the Claims Board's limited time and resources.[185]

Meeting the standard of substantial evidence for state-sponsored crimes committed decades after their commission was also difficult. Official documentation was difficult to come by given the fact that the human rights violations were committed by people acting in their official capacity. Some applicants complained that the requirements of the Claims Board were too demanding.[186] For example, some families who were applying on behalf of relatives who were killed under the Marcos regime did not even have death certificates to prove that their relatives had died.[187] Documentation from human rights organizations and from the Commission on Human Rights, as well as contemporary national, regional, and local publications, aided the process of acquiring evidence for applicants.[188]

The provision of monetary and non-monetary compensation itself was attended by difficulties. A joint resolution extending the availability of funds for claimants was necessary after they experienced difficulties obtaining and even cashing the checks provided to them.[189] As for non-monetary compensation, reaching an agreement with the Department of Social Welfare and Development and the Department of Health was also difficult because neither had any pre-existing psycho-social rehabilitation services or programs, in spite of the passage of the Anti-Torture Act which required these government agencies to formulate a rehabilitation program for victims of torture.[190]

Also, as noted earlier, the Claims Board and the Department of Education were unable to reach an agreement regarding the education of

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[184] RUBEN CARRANZA ET AL., FORMS OF JUSTICE A GUIDE TO DESIGNING REPARATIONS APPLICATION FORMS AND REGISTRATION PROCESSES FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS 12 (2017)

[185] *Id.* at 3.

[186] Parong, *supra* note 111.

[187] *Id.*

[188] *Id.*

[189] Alexis Romeo, *Duterte Oks longer period for martial law victims' claims*, PHILSTAR, Mar. 2, 2019, *available at* https://www.philstar.com/headlines/2019/03/02/1898014/duterte-oks-longer-period-martial-law-victims-claims

[190] Parong, *supra* note 111.

Filipino students regarding the atrocities committed during the Marcos regime due to the Department citing a lack of funds for that purpose.[191] Little media attention has also been given to the process of applying and providing compensation to victims, lessening its impact on the memory of the Marcos regime among the general public.

The interment of Marcos in the Libingan ng mga Bayani only widens the gap between the acknowledgment that victims are entitled to in law and the difficulties they have faced in reality. It is worth noting that some petitioners in *Ocampo v. Enriquez* were victims of the Marcos regime who opposed the interment on the basis of their "re-traumatization, historical revisionism, and disregard of their state recognition as heroes."[192] As narrated in Justice Leonen's dissent, some of these petitioners testified on the abuses they experienced under the Marcos regime, which included rape and sexual abuse, various forms of torture, forcible abduction, and illegal detention.[193] Nevertheless, the Supreme Court held that these victims of human rights violations did not even have legal standing to question the interment, finding that they were not able to show that they will suffer direct injury as a result of the interment and that their opposition was based on their alleged misunderstanding that the interment would confer Marcos honor.[194]

However, the interment is inimical to the acknowledgment and reparations that these victims need and are entitled to. On top of the difficulties they have faced in attaining acknowledgment from the government and the general public, they must now also contend with state-sponsored revisionism. Honoring Marcos in a national shrine without any reference to the systemic abuses committed under his authority obscures the fact of their commission, calling into question the suffering experienced by his victims and their families. The interment also creates a site of memory which promotes a selective image of Marcos and by extension the Marcos regime—a place where his supporters may honor him as a president and soldier without any reminders of the abuses he committed and the fabrications he promoted regarding those roles. By valorizing Marcos, the interment perpetuates the "historical interpretation of the repressors,"[195] preventing their victims from being acknowledged as such.

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[191] *Id.*

[192] *Ocampo*, 807 SCRA at 261.

[193] *Id.* at 527 (Leonen, *J.*, *dissenting*).

[194] *Id.* at 260.

[195] Rauchfuss & Schmolze, *supra* note 75, at 40.

The revisionism promoted by the interment is also antithetical to the UN Principles to Combat Impunity, the third principle of which requires the enactment of measures to safeguard against the development of revisionism. Far from safeguarding against revisionism, the Philippine government has itself promoted revisionism both in the interment itself and in the language used to justify it. It has promoted a selective account of Philippine history that omits the fact that human rights violations were committed with impunity.

As noted in the preceding section, the Supreme Court's description of the human rights abuses committed under the Marcos regime as "alleged" misleadingly implies that the fact of the commission of these human rights abuses have not been unequivocally ascribed by law to the Marcos regime, contradicting the state policy to recognize its victims in R.A. No. 10368. In a press conference concerning the interment, Duterte noted that the "question of his abuses"[196] would always be attached to Marcos, speaking as if the fact that abuses occurred has not been settled in law. He instructed them to seek relief from the courts if they have remaining claims, as their right to compensation was only a "matter of distributing the award,"[197] and dismissed their objections to the burial as being grounded on hatred instead of acknowledgment they are entitled to by law.

Moreover, the explicit call from the Supreme Court for the country to "*move on and let this issue rest*"[198] also places undue demands on human rights violation victims. Describing the issues surrounding the burial as issues which "*have lingered and festered for so long and which unnecessarily divide the people and slow the path to the future*" [199] disregards the unmet right to reparation and recognition of the victims of the Marcos regime in the interest of national reconciliation. It pressures them to forego these unfulfilled rights for the sake of forgiveness and national reconciliation, though how these interests would be served by moving on has not been explained by any of the government officials who have encouraged it.

In addition to this, "forgiveness without appropriate actions from the perpetrators or the perpetrator group"[200] can cause new injury to the victims

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[196] Aries Hegina, *Duterte won't change mind on hero's burial for Marcos*, PHIL. DAILY INQUIRER, May 26, 2016, *available at* https://newsinfo.inquirer.net/787590/duterte-wont-change-mind-on-heros-burial-for-marcos#ixzz5ltN6hFQS

[197] *Id.*

[198] *Ocampo*, 807 SCRA at 324. (Emphasis in the original.)

[199] *Id.* at 253. (Emphasis in the original.)

[200] Ervin Staub, *Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory*, 27 POL. PSYCHOLOGY 867, 886 (2007).

of systemic violence. Even admissions from perpetrators which do not express regret can have the same effect; it is admission of wrongdoing that promotes forgiveness from victims.[201] In the Philippines, no apology or acknowledgment has been made by any member of the Marcos family, and public opinion is so favorable to them that even after Ferdinand Marcos Jr. asked, "What am I to say sorry about?"[202] before his campaign for the vice presidency, he lost the vice-presidential race by only a quarter of a million votes.

Like the victims of the Franco dictatorship in Spain, "two consecutive layers of silence regarding human rights violations"[203] have been imposed on the victims of the Marcos dictatorship: *first*, the dictatorship itself, which silenced its opposition and committed human rights violations with impunity; and *second*, the absence of accountability that followed the end of the dictatorship. While "*in law, as much as in life, there is need to find closure,*"[204] closure cannot come by demanding silence from victims that have not been given the recognition and compensation they need. Undoing the moral harm done requires acknowledgment that the harm was committed in the first place. Far from acknowledging human rights violations victims, the Philippine government, through the interment of Marcos at the Libingan ng mga Bayani and the orders they have issued calling for and justifying the interment, honored the president under whose authority their rights were violated with impunity.

V. CONCLUSION

In *Ocampo v. Enriquez*, the Supreme Court failed to appreciate its role in creating and propagating an official history. State actions such as laws and resolutions from Congress, orders from the Chief Executive, and decisions of the Supreme Court enshrine interpretations of history, canonizing certain figures and events and marginalizing others. What the state holds up as worthy of commemoration through these memory laws influences what their people remember and value. In the aftermath of cultures of impunity, this ability to influence collective memory takes on a moral significance, as victims of traumatic experiences require social acknowledgment to recover from their experiences. The strength of their claims for justice also depends in part on

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[201] *Id.*

[202] Ayee Macaraig, *Marcos on dad's regime: What am I to apologize for?*, RAPPLER, Aug. 26, 2015, *at* https://www.rappler.com/nation/103772-bongbong-marcos-regime-no-apologies

[203] Rosa Ana Alija Fernández & Olga Martin-Ortega, *Silence and the right to justice: confronting impunity in Spain*, 21 INT'L J. HUM. RTS. 531, at 533 (2017)

[204] *Ocampo*, 807 SCRA at 253.(Emphasis in the original.)

how they are remembered by the community they are demanding justice from. The state also has the duty to implement safeguards to prevent the spread of revisionist interpretations of history that legitimize and lead to the recurrence of the same abuses against vulnerable groups.

The situation in the Philippines shows both the weakness of memory laws and their necessity. Memory laws provide a measure of safety against the complete denial of the crimes committed by making acknowledgment a matter of law and state policy amid shifts in public opinion. The doubts publicly expressed by government officials regarding the commission of abuses under the Marcos regime have no effect on the existence of the victims' right to recognition and reparations and the state's concurrent obligation to realize these rights provided under domestic and international law. Moreover, the subsistence of government agencies tasked with acknowledging and providing reparations to victims ensures that an official counter-narrative persists with the authority of law notwithstanding the revisionist narratives promoted by the Marcos family and their allies.

However, since memory laws are implemented from the top-down, they may be stifled by institutional problems and politicians sympathetic to the past regime. Even interpretations of history canonized in the highest law of the land will remain entombed therein if they are not supported and made concrete through education, active efforts to curb revisionism, and the creation of public sites of memory. The recognition of the human rights abuses and the corruption of the Marcos regime in the 1987 Constitution, law, and jurisprudence did not prevent the promotion of revisionism by the Marcos family and their allies. Instead of informing collective memory, Philippine law has instead shifted to reflect changes in public opinion regarding the Marcos regime, honoring him as a soldier, a president, and a Filipino through textbooks, declared holidays, resolutions of Congress, statements by members of the executive branch, and his interment in the Libingan ng mga Bayani.

This selective interpretation of Marcos and the Marcos regime was echoed by the Supreme Court in *Ocampo v. Enriquez*, which commemorated him in the same way, described the human rights abuses committed under the Marcos regime as "alleged," and subordinated the unmet needs of human rights violations victims in the interest of a baseless idea of national reconciliation. More than sanitizing the image of Marcos and the Marcos regime in Philippine jurisprudence, this decision allowed Marcos to be interred in a national shrine with the imprimatur of the Supreme Court and without mention of the abuses committed. All this was done notwithstanding the fact that the money stolen has not been recovered, the victims have neither

been fully compensated nor acknowledged, and some of the persons killed under his regime do not even have certificates of death to prove that they died.

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