

Islam and the 1987 Philippine Constitution: An Issue on the Practice of Religion

Edilwasif T. Baddin*

I. INTRODUCTION

The Republic of the Philippines has been beset by the Moro struggle for self-determination from the time of its inception. It has pursued policies of attraction, integration and assimilation to remedy the situation. As embodied in the 1987 Philippine Constitution, the Republic of the Philippines has posited a policy of separation of Church and State or State neutrality towards religion in Article II, Section six and Article III, Section five. However, these provisions fail to understand the Muslim's concept of religion and the practice of Islam, and, in fact, contravene the Islamic concept. Therefore, there must be a constitutional accommodation of the Islamic concept for an effective resolution to the *Bangsa Moro* Struggle for self-determination.

A. The Muslim People in the Philippines and their Struggle for Self-Determination

On the very eve of the presidential approval of the Tydings-McDuffie Act granting Philippine independence after a ten-year transition period, a mass meeting of Muslim Datus sent the United States President and Congress a declaration which read as follows:

Because we have learned that the United States is going to give the Philippines independence, we want to tell you that the Philippines is populated by two different peoples with different religious practices and traditions. The Christian Filipinos occupy the islands of Luzon and the Visayas. The Moros (Muslims) predominate the islands of Mindanao and Sulu. With regard to the forthcoming independence, we foresee what condition we and our children who shall come after us will be in. This condition will be characterized by unrest, suffering and misery.

Should the American people grant the Philippines independence, the islands of Mindanao and Sulu must not be included in such grant.

Our practices, laws and decisions of our Moro leaders should be respected. ... Our religion should not be curtailed in any way. All our practices which are incidents to our religion of Islam should be respected because these

things are what a Muslim desires to live for. ... Once our religion is no more, our lives are no more.¹

These were the sentiments of the Muslim People² then. These are the sentiments of the Muslim People now.

The ratification of the 1935 Philippine Constitution on 14 May 1935 finally sealed the fate of the Muslim People of Sulu and Mindanao with that of the emerging Republic of the Philippines. On that day, the Muslim People's struggle for self-determination against the Philippines and the Philippines' policies of attraction, integration, and assimilation with the Muslim People were brought forth. They persist to this day.

The Philippines' policies of attraction, integration, and assimilation rest on the mistaken premise that the Muslim People of the Philippines and the Christian Filipinos are one and the same people. This premise fails to recognize the significant differences in history and religion of the two peoples. Moreover, the Philippines' policies are largely interpreted according to "Christian eyes," bolstering the fears of an estimated seven million Muslim People that drove them to war with Spain for 333 years³ — the fear

* '00 J.D., Ateneo de Manila University School of Law.

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1. PHILIPPINE MUSLIM NEWS, July 1968, at 7-12 (emphasis supplied).
2. There are now approximately 7 million Muslim Filipinos constituting ten percent of the 71 million Philippine population. In his book *THE MORO ARMED STRUGGLE IN THE PHILIPPINES: THE NONVIOLENT AUTONOMY ALTERNATIVE*, Dr. Macapado Muslim states that the Muslims comprise some 13 ethnolinguistic groups, namely: 1. *Kalagans* of the Davao Provinces; 2. *Sanguils* of South Cotabato and Davao del Sur; 3. *Maguindanaons* of the Cotabato provinces (Maguindanao, North Cotabato, South Cotabato and Davao del Sur; 4. *Iranuns* of the coastal areas of Cotabato, Lanao del Sur, and Zamboanga del Sur provinces; 5. *Maranaos* of the Lanao Provinces (Lanao del Sur and Lanao del Norte); 6. *Kalibugans* of the Zamboanga Provinces (Zamboanga del Sur and Zamboanga del Norte); 7. *Yakans* of Basilan province; 8. *Tausugs*, 9. *Samals*, and 10. *Badjaos* in Sulu Archipelago, the coastal areas of Zamboanga, South Palawan, and Davao; 11. *Jama Mapuns* of Cagayan de Sulu and South Palawan; and 12. *Palawanons* and 13. *Molbogs* of Southern Palawan.

An "Islamic Resurgence or Revivalism" presently takes place among the Muslims in the Philippines. This resurgence coincides with the one taking place in the world. Currently, there are more than 10,000 mosques, 92,000 converts, and 1,000 Moro students and/or graduates of Middle East universities in the Philippines.

3. In his book, *STILL CHASING THE RAINBOW*, Justice Jainal Rasul states, "Dr. Cesar Adib Majul calls this Muslim period as *Moro wars*, covering 333 years from 1565 to 1989. Vicente Barrantes and Jose Montero Y Vidal call it *guerras piraticas*.

of "Christianization and the loss of their tradition."⁴ The fear is real and happening. This fear has firmly intensified the Muslim People's aspiration for self-determination. This aspiration has been resoundingly communicated in the most prominent form of expression — armed struggle. Thus, the so-called Muslim Problem of the Philippines and the so-called Christian problem of the Muslim People.⁵

The Republic of the Philippines has changed its fundamental law twice, and twice it has failed to provide an effective response or working solution to the Muslim People's aspiration. While the 1987 Philippine Constitution has provisions that address the Muslim People's aspiration for self-determination and their distinct historical and cultural heritage, the same are negated and undermined by the same Constitution and the national laws. This limitation has prevented the Government of the Republic of the Philippines (GRP) from making a truly effective response that the Muslim People have been aspiring and fighting for.

There are two significant provisions of the 1987 Philippines that hamper an effective response from the GRP. These are:

Article II, Section 6. The separation of Church and State shall be inviolable.

Father Horacio de la Costa justifies the wars by saying Spain was to put an end to piracy. Dr. Najeeb Saleeby said Spain came to the Philippines not to suppress piracy but to uproot Islam. Dr. Gregorio Zaide maintains correctly that the Moro raids were the result of the Spanish invasion. If the Spaniards did not come, there would have been no Moro raids."

4. Interview with Nur Misuari, MNLF Chairman and ARMM Governor, Manila (Nov. 20, 1999).
5. In a paper written for the *Journal: Institute of Muslim Minority Affairs*, Dr. Peter Gowing states that the 'problem' is now, as it always has been, the integration of the Moros into the Philippine state and nation. The Moros are a problem to the Republic of the Philippines (as the Republic is a problem to them!) for much the same reason that they were a problem to the Spanish and American colonial regimes: they resist today, as they have always resisted, policies and structures which threaten their Islamic identity and selfhood. But certainly an important part of the fuel for the present conflagration is the deep-seated resentment Moros have against government policies aimed at 'cultural homogeneity' and hence the cultural 'genocide' of the Muslims — all in the name of national integration. For the Moros, the problem is how to bring about a restructuring of their political relationship with the Republic of the Philippines so as to mitigate threats of cultural assimilation by the Christian population, assure the patrimony of their homeland and resources for their descendants, and exercise control over those aspects of their political and social lives which most impinge on their selfhood as Muslims.

Article III, Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.⁶

These two constitutional provisions restate American and Christian principles that are totally foreign and contradictory to the Muslim People's Islamic principles. Islam espouses unity of Church and State (*Din wa Dawla*) and, consequently, requires laws that effectively establish religion. These constitutional provisions limit and unduly hamper the Muslim People's right to practice Islam as individuals and as a community. The Muslim People's aspiration for self-determination is but an assertion of their right to practice their religion. In fully upholding the right of the Muslim people to practice their religion, there must be an amendment of the Constitution.

B. Issue

The 1987 Philippine Constitution recognizes and grants the right to practice religion. For the Muslim People, religion is a way of life that governs each and every aspect of human life, including self-determination. However, the Muslim People's right to practice their religion is affected by the provisions in the Constitution providing for the inviolability of the separation of Church and State and the Non-Establishment Clause. The Muslim people are, therefore, unduly hampered from exercising their right to practice their religion and the situation calls for a Constitutional amendment.

C. Scope of the Study

This study presents constitutional provisions affecting the Muslim People's right to practice their religion. It aims to provide a rational basis for the amendment of the Constitution to accommodate and give a full recognition to this particular right of the Muslim Filipino People.

It reviews the history of the Muslim People in the Philippines in Chapter II. The historical background provides for a better understanding of their struggle for self-determination and the failure of the Republic of the Philippines to accommodate and give full recognition to their aspiration for full practice of their religion — an integral part of which is self-determination. Chapter II also shows the extent to which Islam has deeply permeated the lives of the Muslim People in the Philippines. Chapter III discusses the Islamic concept of practice of religion. It shows the interrelation between state and religion and the important Islamic principles that govern the Muslim People's way of life. Chapter IV states the Philippines Constitution's concept of practice of religion and the intricacies of its operation.

6. 1987 PHIL. CONST.

Chapter V presents a comparative analysis of the two concepts of practice of religion. It shows the irreconcilable principles and the instances when the Muslim People's practice of religion is affected. In its second subsection, it draws on two important principles that provide common grounds between the two systems of law.

This study concludes with a summation that reflects the need for a constitutional accommodation of the Muslim People's right to practice of religion. It shows the need to amend the Constitution in order to create space for the adequate practice of Islam which hampered by certain constitutional provisions. It also includes a chapter on recommendations for constitutional amendments. In closing, the ultimate aim of this study is to make a contribution to the ongoing peace process by proposing constitutional obstacles and to recognize the Muslim People's right to practice their religion.

D. Limitation of the Study

This study shall deal only with the separation of Church and State provision and the Non-Establishment principle in relation to the right to practice religion. The two provisions were chosen due to the fact that they controvert Islamic principles that are adhered to by the Muslim people of the Philippines.

Other constitutional provision and related laws pertinent to practice of religion will only be discussed in relation to the two particular constitutional provisions.

E. Definition of Terms

For purposes of this study, the following terms shall mean:

- (1) *Allah* — God
- (2) *Bangsamoro* — Moro Nation
- (3) *Dar ul-Islam* — world or abode of Islam
- (4) *Dar ul-Harb* — world or abode of war
- (5) *datu* — traditional leader of a Moro community
- (6) *Din wa Dawla* — unity of religion and politics; unity of church and state
- (7) *hadj* — one of the five pillars of Islam. It is the yearly pilgrimage to Mecca conducted by Muslims.
- (8) *Ibadah* — worship or practice of religion
- (9) *Indios* — Christianized native of the Philippines during Spanish rule

- (10) *jihad* — to strive to the utmost for self-reform (*jihad akbar* or greater *jihad*) and defense of Islam (*jihad asghar* or lesser *jihad*)
- (11) *khalifah* — representative or viceregent of God
- (12) *Khilafah* — concept of viceregency of man
- (13) *Luwaran* — the Islamic law encoded by the Sultanate of Sulu and Sultanate of Maguindanao
- (14) *Makkah* — present-day Mecca
- (15) *Maguindanaon* — the biggest group of Muslim Filipinos and inhabitants of the undivided Cotabato
- (16) *Maranao* — the second biggest group of Muslim Filipinos and the inhabitants of the Lanao region
- (17) *Moros* — Muslim Filipinos
- (18) *Muhammad, Prophet* (S.A.W.) — the last of the prophets to whom God revealed the *Qur'an*
- (19) *Panditas* — religious teachers
- (20) *Qu'ran* — the Holy Book of Islam, the Eternal Word of Allah as revealed to the Prophet Muhammad
- (21) *Ramadan* — the Islamic month of fasting and the months wherein the *Qur'an* was revealed
- (22) *Salam* — peace
- (23) *Shari'ah* — Islamic law, Allah's law
- (24) *Shayyid* — martyr
- (25) *Shura* — consultation
- (26) *Sultan* — the ruler of the Sultanate; the sovereign authority
- (27) *Sultanate* — traditionally, the State of the Moro people
- (28) *Sunnah* — the way of the Prophet Muhammad (S.A.W.), his practice or behaviour, or custom based on his example as recorded in the *hadith* including his consent to certain actions
- (29) *Tausug* — the third biggest group of Muslim Filipinos and the inhabitants of the Sulu Archipelago
- (30) *Tawhid* — absolute oneness of God, Unity of God, absolute monotheism. It is the affirmation that only Allah is to be worshipped. It is the foundation and essence of Islam. All

Islamic doctrines, beliefs, and principles spring from this concept.

- (31) *Ummah* — one Muslim world community. It is the community of Muslims bound by Islam and transcends geographical boundaries, race, nationality, language and other forms of group consciousness.

II. ISLAM IN THE PHILIPPINES

A. Advent of Islam

The geographical location of the Philippines caused it to be drawn gradually into the international maritime trade that extended from the Red Sea to the China Sea. In the present territory of the Philippines, Islam first arrived in the islands of Sulu.⁷ Historical accounts reveal that during the ninth century, or possibly earlier, Sulu was already a participant in the international trade — a trade practically controlled by Muslim merchants. By the last quarter of the thirteenth century, if not earlier, there existed a Muslim settlement or community in Sulu.⁸

In the history of Sulu, the period from around 1380 to 1450 witnessed the arrival of learned men in Islam and the rise of a centralized political bureaucracy — the Sultanate. This period was highlighted by the coming of Karim ul-Makhdom, the missionary scholar from Arabia, who reached Sulu at around 1380. About ten years after, Raja Baginda, a Sumatran prince, with some learned men in Islam arrived in Sulu. He settled in Buansa which later on became the Sultanate's first capital. Sayyid Al-Hashim Abu Bakr followed Raja Baginda and at around 1450, he established the Sultanate of Sulu.⁹

In Mindanao, Islamization started in around 1460 with the arrival of a missionary scholar, Sharif Awliya. In around 1515, Sharif Mohammad Kabungsuwan arrived on the shores of Maguindanao.¹⁰ He was said to have had a high degree of Muslim consciousness and a great proselytizing zeal. Most of Maguindanao *tarsilas* give the impression that the work of conversion was mainly his. He is also credited for establishing the Sultanate of Maguindanao. However, it was only during the reign of Sultan Mohammad Dipatuan Qudarat, that a leader of Maguindanao was invested

7. It included present day provinces of Sulu and Bongao-Tawi Tawi.

8. CESAR ADIB MAJUL, *THE CONTEMPORARY MUSLIM MOVEMENT IN THE PHILIPPINES 15* (1985) [hereinafter MAJUL].

9. CESAR ADIB MAJUL, *MUSLIMS IN THE PHILIPPINES 58-61* (1973).

10. *Id.* at 69.

with the real powers of a Sultan. At the height of the Sultanate's power, it ruled over more than three-fourths of Mindanao.¹¹

The existence of the Sultanates signifies that Islam had already established a very strong political and social foundation in Sulu and Mindanao.

The early start of Islam in Sulu and Mindanao and the absence of other major religions allowed it to spread to Visayas and Luzon. At the time the Spaniards reached Manila in 1571, it was already a Muslim principality with a long line of Muslim rulers of Brunei ancestry.¹²

B. The Sultanates

These were two notable sovereign powers — the Sultanate of Sulu and the Sultanate of Maguindanao. The Sultanates were a multi-ethnic state. At the height of their power, their territorial domains included the entire Sulu Archipelago (including Tawi-Tawi), Basilan, Palawan, North Borneo (now Sabah), most of Mindanao, and principalities in Visayas,¹³ Mindoro and Manila. They lasted for almost five centuries, i.e., from around 1450 to 1915.¹⁴

Throughout their existence, the Sultanates observed and implemented Islamic law and traditions. Islamic law was even encoded and called the *Luwaran*. The Sultan was the highest official of the state and he exercised both civil and religious functions. He was, however, not an absolute ruler. The *Ruma Bichara* (State Council), composed of the *Raja Muda* (heir apparent) and some powerful royal datus, was charged with the function of formulating laws and policies of the State.¹⁵ In His governance of the State, the Sultan was assisted by officers of the State like the *Amilbahar* (admiral), *Rajalawut* (minister of marine affairs), *Bandahara* (treasurer) and *Rajamuda* (heir apparent).¹⁶ On local affairs such as the administration of outlying provinces of island territories, the Sultan was represented by other lesser officials like the *Panglima*,

11. Asiri J. Abubakar, *Muslim Philippines: With Reference to the Sulus, Muslim-Christian Contradictions, and the Mindanao Crisis*, 11 *ASIAN STUDIES* 115 [hereinafter Abubakar].

12. MAJUL, *supra* note 8, at 79.

13. MNLF Chairman Nur Misuari, Speech before students of the Institute of Islamic Studies at the University of the Philippines (13 October 1999). MNLF Chairman Nur Misuari said that during the period of the Sultanates and before the arrival of Spain there were already the 12 Rajahs of Panay and that Lapu-Lapu was a Balanguingui Warrior sent by the Sultan of Sulu to give protection to the inhabitants of Mactan.

14. Abubakar, *supra* note 11, at 115.

15. MELVIN MEDNICK, *THE MUSLIM FILIPINO 18-19* (1974).

16. Najeed M. Saleeby, *The Moro Problem* (1913), reprinted in 5 *DANSALAN QUARTERLY* 37 (No. 1, 1983).

Maharaja, and *Ulangkaya*. On religious affairs, he consulted the *Qadi* (Judge) and the *Ulama* (Islamic Scholars) of various parts of his domain.¹⁷

In analysis, the legal status of the Sultanates then was that of nation-states. As defined in international law, a state is a "community of persons more or less numerous, permanently occupying a definite portion of territory, having a government of their own to which the great body of inhabitants render obedience, and enjoying freedom from external control."¹⁸ The definition provides for four requisites, namely: people, territory, government and sovereignty — internal and external and the Sultanates complied with all the requisites.

As to its external sovereignty, the status of the Sultanates as sovereign and independent states were even recognized by Spain, their chief colonial adversary, as well as by the United Kingdom, France, Germany, Netherlands and the United States.¹⁹ This is evident in the Kiram-Bates Treaty between the Sultanate of Sulu and the United States of America.

C. Spain

The Moros fought for home and country, for freedom to pursue their religion and way of life...

Peter Gowing Mandate in Moroland

I. The Beginnings

"We give you permission to make such Moros slaves, and seize their property ... You shall endeavour to persuade or convert them to our Holy Catholic faith."

Felipe II, King of Spain²⁰

17. Abubakar, *supra* note 11, at 115.

18. JOAQUIN G. BERNAS, THE 1987 PHILIPPINE CONSTITUTION A REVIEWER — PRIMER 14 (1997) [hereinafter Bernas].

19. Abubakar, *supra* note 11, at 115. In his book *Muslim Filipino Experience, A Collection of Essays*, Michael Mastura listed 30 Moro treaties with foreign powers (12 with the Sulu Sultanate and 18 with the Maguindanao Sultanate). The list, however, dialed to include the Rajah Sulayman-deGoite Treaty of Friendship of 1570 and the Kiram-Bates Treaty of 1898. According to Atty. Soliman Santos in his thesis *Constitutional Accommodation of a Moro Islamic System in the Philippines*, "[a]mong the more significant of these treaties were the Qudarat-Lopez treaty of 1645 defining territorial boundaries between Maguindanao Sultanate and the Spanish Philippines and the Bongsu-Lopez Treaty of 1646 for perpetual friendship and the military alliance, recognizing the jurisdiction of the Sulu Sultanate and for withdrawal of Spanish garrisons in Jolo."

20. MAJUL, *supra* note 8, at 91.

The coming of Spain to the Philippines was an accident. Ferdinand Magellan was on his way to the Moluccas²¹ where the coveted spices were grown and he ventured a westward route for his voyage. In the course of the voyage, he and his crew stumbled upon a group of islands at the southern tip of Samar that they never thought existed. Thus began Spain's history in the Philippines.²²

In 1564, another expedition was launched by Spain under the command of Miguel Lopez de Legazpi with the express objectives of colonization and Christianization. Six years later, the Moros²³ of Manila under the leadership of Raja Sulaiman Bun Mahmud came under attack from the Spaniards headed by Legazpi after the former refused to accept Spanish dominion. At the time of Legazpi's death in 1572, Spain had conquered one half of the Philippines.²⁴

Spain's conquest of Manila and its 1578 successful invasion of Borneo extinguished the northern expansion of Islam. According to Antonio de Morga, a Spanish official who lived in the Philippines from 1595 to 1603, "(H)ad the Spaniards' coming been delayed, that religion (Islam), would have spread throughout the islands (Luzon), and even through others, and it would have been difficult to extirpate it."²⁵ It also emboldened the Spaniards to pursue its expansion to Mindanao and Sulu.²⁶ Corollarily, it inflamed the Moros to resolute resistance.

The Spanish threat spurred an acceleration of proselytizing by the Moros. The Sultanates set about reinforcing their Islamic institutions and

21. It is the present-day Maluku province and a part of Indonesia.

22. MIGUEL A. BERNAD, THE CHRISTIANIZATION OF THE PHILIPPINES 3 (1972).

23. According to Justice Jinal Rasul in his book *Still Chasing the Rainbow*, the term Moro refers to the word "moor," "moriscos" or Muslim. Moor is a derivation of the Latin word Mauri used by the ancient Romans to describe the inhabitants of Western Algeria and Northeastern Morocco constituting the Roman Province of Mauritania. Spain was under the Moors for 781 years from July 19, 711 to Jan. 2, 1492 when Granada fell. The Spaniards used the term Moro to refer to the Muslim People of the Philippines. The term acquired a negative connotation because of the continued Muslim resistance to colonialism and subjugation as well as to Christianization. Among the non-Muslim population in the country, the term Moro came to refer to pirates, ignorant and uncivilized. Due to the negative connotation of the term, the Muslims became displeased of being called Moro until the MNLF popularized it to show their distinctiveness from the Christian population.

24. GEORGE VICTOR HURLEY, SWISH OF THE KRIS 50-51 (1936) [hereinafter HURLEY].

25. MAJUL, *supra* note 8, at 82.

26. HURLEY, *supra* note 24, at 51.

political hegemony in the southern islands. In the words of one eminent scholar:

Spain came to the Philippines to extend the domain of Spain and to introduce Christianity. The Moros, realizing that this meant they would become vassals of a foreign king and eventually lose both their faith and their freedom as an independent people, responded to the threat with greater loyalty to their sultans and datus, a greater respect for their panditas, and intensification of their incursions of the enemy in their lands. Thus was patriotism and Islam wielded into a force to preserve a long enjoyed freedom. In the end, 333 years of bitter warfare left the Moros a united community with a common determination for self-preservation of their identity and their homeland — Sulu and Mindanao.²⁷

2. The Adverse Consequence

In the 333 years of Spanish-Moro wars, Spain used the *Indios*,²⁸ the Christianized natives, in their campaign for Moro extermination. This participation of the *Indios* led the Moros to view them in the same way as they viewed the Spaniards. As described by Muslim scholar Dr. Cesar Majul:

The Spaniards made full utilization of native troops, principally Visayans, Pampangos, and Christianized natives of Northern Mindanao, to fight their wars against the Muslims of Sulu and Mindanao ... *Indios* were made to row the boats of the Spaniards, serve as spearmen or shock troops, act as spies, and perform other mercenary tasks for their conquerors ... As a response to all these, the Muslims began to hate and despise natives who not only failed to preserve their freedom but who were also used to deprive others of their freedom for the sake of aliens. In the vocabulary of the Muslims, the word

27. PETER GOWING & ROBERT MCAMIS, *THE MUSLIM FILIPINO* 6-7 (1974).

28. There four types of people during the Spanish period in the present Philippines: (1) *Indios* — the Christianized natives; (2) *Infieles* — the pagan people of the mountainous regions of North Luzon; (3) Filipinos — the *insulares* or full-blooded Spaniards born in the Philippines; (4) Moro — the Muslims in the Philippines.

How Indio became Filipino? Indio students in Spain, after being exposed to liberal ideas current in Europe, began to conceive themselves also as Filipino. The new Filipinos then engaged in a movement demanding reforms which included, among others, freedom of the press, speech and assembly, participation in the affairs of the government, and a stop to friar and *guardia civil* abuses in the colony. But despite its liberal rhetoric the movement's goal was still assimilation, that is, incorporation of the colony as a province of Spain with representation in the Spanish Cortes. Since the term Filipino cut across racial barriers between Spaniards, *Creoles*, and *Indios*, it gained prominence as a liberating concept, and when more radical elements back home founded a secret society, Katipunan, with a program of separation and independence from Spain, the term was readily embraced as a symbol of national identity.

"Visayan" became synonymous with "slave"; while the words "Filipino" and "Christian" became identified with each other. In brief, the Moro was, to his own mind, neither a slave nor a Filipino.²⁹

Apart from using the *Indios* in their wars against the Moros, the Spaniards and the Catholic Church conditioned the *Indios* to fear, dislike, and hate the Moros through educational and cultural performances such as the Moro-Moro play. These continue to be part of community festivals and school celebrations in some Christian areas in the Philippines. These plays helped sustain the still perceptible degree of Christian prejudice against the Moros in the Philippines. Fr. Pedro Salgado pointed out:

The Church also saw to that the ordinary faithful share (the) low, despicable view of the Moro-Moro plays which became an integral part of all folk and religious festivals, the Filipino Christians were taught how vile the Moros were. The plays centered on one theme: the fight between good (the Christians) and evil (the Muslims), leading always to the same shattering climax — the victory of the Christians against the Moros and their faith. There was nothing so wicked or treacherous that was not tried by the Moros; nothing so good and noble that was not done by the Christians.³⁰

This, in Muslim-Christian relations in the Philippines, is what Gowing has termed "the Moro image" and which he has called "the single most serious obstacle to Moro-Christian harmony in the Philippines."³¹ Due to the centuries of warring and raiding, "there existed in the minds of many Christian Filipinos the image of the Muslim as a treacherous savage, a pirate, a raider, and a slaver."³² The image persists to this day among many, if not all, Christians, perpetuated from generation to generation by word of mouth by pejorative accounts in school history books and by popular dramas. It is an image reinforced by Philippines media in its news reports that imply that the commission of a crime is somehow connected to the Muslim faith. Muslims are portrayed — primarily because of their religion — as ignorant and backward, as having low-grade civilization, and as tricky, violent,

29. CESAR ADIB MAJUL, *MUSLIMS IN THE PHILIPPINES: PAST, PRESENT AND FUTURE PROSPECTS* 14 (1971).

30. Fr. Pedro Salgado O.P., *The Rise of Mindanao — Sulu*, 1 EPISCOPAL COMMISSION ON TRIBAL FILIPINO RESEARCH SERIES 12 (Third Quarter, 1981).

31. Peter G. Gowing, *Christian and the Moros: The Confrontation of Christianity and Islam in the Philippines*, 10 *SOUTH EAST JOURNAL OF THEOLOGY* 93 (1968). [hereinafter Peter Gowing, *Christian and the Moros*].

32. Peter G. Gowing, *Muslim Filipinos Between Integration and Succession*, 14 *SOUTH EAST JOURNAL OF THEOLOGY* 64-77 (1973).

lawless, oversensitive and ultra conservative. They are pictured, in short, as people who deserve to be second-class citizens in a Christian country.³³

The adverse consequence of Spain's policies was a "heritage of suspicion, if not hatred,"³⁴ between the Moros and the *Indios* that remains one of the abominable vestiges of Spanish colonization.

3. In Retrospect

The coming of Spain has been understood in the context of "Gospel, Gold and Glory."³⁵ These policies, however, did not arise from a vacuum but were products of events that took place in the Iberian Peninsula. Spain came to the Philippines with a fanatical hatred of Islam, due to a long and bloody struggle to win Spain back to Christianity from the Moors. The fall of Granada, marking the end of Muslim rule in Spanish territory, had taken place only seventy years before Legazpi's arrival in the Philippines, and by that time the last of the Moors had yet to be driven out from the Iberian Peninsula.³⁶

These events strengthened Spain's determination to pursue similar policies against the Moros in the Southeast Asian/Philippine area, which they had automatically linked to the Moors in Spain. A kind of thought transference seems to have transpired: the enemy in Spain had suddenly appeared in this part of the world and must be treated in the same way.³⁷

For three centuries, Spain tried to conquer and Christianize the Moros but the latter resisted with awesome ferocity. Spain repeatedly launched military expeditions against the Moros only to be repulsed. In the end, Spain's intransigence only left a united Moro community intensely devoted to the preservation of their faith and identity, and a seething hatred between people of the same race but of different faiths — the Moros and the Christian *Indios*.

D. Interlude — The Filipino Nationalists

The notions of the first federation of nationalist of a liberated Philippines included Sulu and Mindanao, although these areas had never really become part of the Spanish domain. Andres Bonifacio had a vision that encompassed the whole archipelago which was sustained by an appreciation of its pre-

33. *Id.*

34. Cesar Adib Majul, Speech delivered for the Cultural Center, Spanish Embassy (August 16, 1975).

35. Carmen A. Abubakar, *Muslim — Christian Relations: A Moro Perception*, 110 SOLIDARITY 130 (1987).

36. *Id.*

37. *Id.* at 31.

colonial civilization. His clandestine newspaper *Kalayaan* declares: "We have wasted our wealth and blood and even given our lives in the Spaniards defense; we have fought our compatriots who would not willingly submit to their yoke."³⁸

This admiration for the Moros was shared by those who took up the banner from Bonifacio. Emilio Aguinaldo, who in turn broke up with Bonifacio, was particular about respecting the Muslim steadfastness to Islam. At the Republican Congress in 1899, Aguinaldo proposed that the Government be empowered to "negotiate with the Moros for purposes of establishing national solidarity upon the bases of a real federation with absolute respect for their beliefs and traditions." He wrote to the Sultan of Sulu, calling him "a great and powerful brother," offering greetings and friendship and announcing the resolve of the Republic government to "respect absolutely the beliefs and traditions of each island."³⁹

The Moro's response to Aguinaldo and the ides of the Republic was marred by indifference and derision. Given their disposition towards the Christian *Indios*, the Moros naturally rejected the call for an alliance.⁴⁰

E. America

A tribe of Moros, dark-skinned savages, had fortified themselves in the bowl of an extinct crater not many miles from Jolo; and as they were hostile, and bitter against us because we have been trying for eight years to take their liberties away from them ... General Wood's order had been to 'kill or capture those savages' ... The enemy numbered six hundred — including women and children — and we abolished them utterly, leaving not even a baby alive to cry for his dead mother.

Mark Twain "Grief and Mourning for the Night"⁴¹

The Treaty of Paris of 1898 sealed the Moros' fate with America. The treaty included the Sulu Archipelago among those islands to be ceded to the United States despite the fact that the issue of Sulu and Mindanao's sovereignty was far from settled. Although the Sultanates were on the decline due to the effective campaign of the Spaniards, they were still independent and exercised their rule over the people and the territory. Spain

38. T.J.S. GEORGE, REVOLT IN MINDANAO: THE RISE OF ISLAM IN THE PHILIPPINE POLITICS 71 (1980).

39. *Id.* See also MAJUL, *supra* note 8, at 370-372.

40. *Id.* at 72-73. According to Majul in his book, *Muslims in the Philippines*, "[w]hen the (Sulu) Sultan was apprised by the Americans regarding the struggle between the Spaniards and the Filipinos, the Sultan simply remarked that what happened in Luzon had ever since been happening in Sulu between Spaniards and Sulus."

41. MARK TWAIN, A PEN WARMED-UP IN HELL, MARK TWAIN IN PROTEST 97 (1910).

had failed to conquer the Moros and held sovereignty only by proclamation.⁴²

The Treaty of Paris provided that "[t]he inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion."⁴³ This was, however, betrayed by the attitude of the Americans toward the Moros and their beliefs which were revealed by two quotes from the period of early American rule. General Samuel Sumner, a United States military commander in the South, wrote:

[I]t will be necessary to eradicate about all (their) customs ... their religion will be a serious bar to any efforts towards Christian civilization.⁴⁴

General Leonard Wood, the first governor of the Moro province, made this observation:

[T]he Moros and other savage peoples have no laws — simply a few customs, which are nowhere general ... nothing has been found worthy of codification or imitation, and little or nothing which does not exist in better form wherever humane, decent and civilized laws are in force.⁴⁵

1. Bates Treaty

The Americans, however, knew that the Moros were in command of a territory fairly earned by more than 300 years of warfare. They found the Moros ill-disposed to give up this territory. In August of 1899, Brigadier General J.C. Bates was sent to Jolo to negotiate a treaty with the leading Muslim power, the Sulu Sultanate. In due time, an agreement was drawn up between General Bates, representing the United States, and his Highness, the Sultan of Sulu. This agreement, known as the Bates Treaty, was duly signed and approved by United States President William McKinley on 27 October 1899.⁴⁶

The Treaty was essentially a promise of American non-interference in the internal affairs of the Sultanate as well as the Moro's religion in exchange for a renunciation of Sulu sovereignty to the United States in matters involving foreign affairs. Thus, the treaty provides:

Article Three. The rights and dignities of the Sultan and his Datus shall be fully respected; the Moros shall not be interfered with on account of his religion.

42. PETER G. GOWING, MANDATE IN MOROLAND 26-34 (1977) [hereinafter Gowing].

43. Treaty of Paris, Dec. 10, 1899, U.S.-Spain.

44. GOWING, *supra* note 42, at 45.

45. *Id.*

46. GOWING, *supra* note 42, at 31 - 35.

Article Nine. When crimes and offenses are committed by Moros against Moros, the government of the Sultan will bring to trial and punishment the criminals and offenders, who will be delivered to the government of the Sultan by the United States authorities if in their possession. In all other cases, person charged with crimes or offenses will be delivered to the United States authorities for trial and punishment.⁴⁷

No sooner did the agreement take effect than it began to lose its relevance. Before the year 1899 was out, sporadic clashes broke out between Americans and local chiefs. By the middle of 1900 the treaty was all but dead. In 2 March 1904, United States President Theodore Roosevelt officially abrogated it.⁴⁸

2. Integration of the Moros

After some four years of military government, the Americans realized that their problem with the Moros was far different from that with the Christian Filipinos. The Moros were segregated by differences of religion, customs and mannerisms, and the problem was intensified by the Moros' hatred for the Christian Filipinos of Luzon and Visayas. Realizing the necessity for a separate form of government for the Moros, the Moro Province was created on June 1, 1903, to provide a form of civil government.⁴⁹

An Organic Act of the Insular Government authorized the formation of the Moro Province and defined the geographical limits of the territory affected.⁵⁰ It stated:

- (1) The Moro Province was designed as including all of the territory of the Philippines lying south of the eight parallel of latitude, excepting the island of Palawan and the eastern portion of the northwest peninsula of Mindanao.
- (2) The enactment of laws for the local government of the Moros and other non-Christian tribes, conforming as nearly as possible to the lawful customs of such tribes, and vesting in their local or tribal rulers as nearly as practicable, the same authority over their people as had hitherto obtained.⁵¹

In December 1913, Frank W. Carpenter succeeded General Pershing as the first civilian governor of the Moro Province. After two years of negotiation with the Sultan, Carpenter was successful in reaching an

47. Bates Treaty, Aug. 20, 1888, U.S.-Sultanate of Sulu.

48. GOWING, *supra* note 42, at 77-78.

49. HURLEY, *supra* note 24, at 64.

50. Act No. 787 (1903), amended by Act No. 1283 (1905).

51. *Id.* at 165.

agreement that transferred full control of the Sulu Archipelago to the United States.⁵²

The Carpenter Agreement provided that the Sultan, specifically and without reservation, recognize the sovereignty of the United States in the Sulu Archipelago with "all the attributes of sovereign government that are exercised elsewhere in American territories and dependencies."⁵³ This meant that the Sultan unequivocally abdicated all his temporal powers, including his prerogatives associated with the court and the collection of taxes. The Government, in turn, recognized the Sultan of Sulu as the "titular spiritual head of the Mohammedan Church in the Sulu Archipelago."⁵⁴ He and his adherents were guaranteed that they "shall have the same religious freedom had by the adherents of all the religious creeds, the practice of which is not in violation of the basic principles of the laws of the United States."⁵⁵

In 1920, the Moro Province was abolished and the Bureau of Non-Christian Tribes was established to deal with the Moros and other "non-Christians." It set forth as one of its goals the "complete fusion of these groups of Filipinos and the majority segment of the Filipino Christians."⁵⁶

3. In Retrospect

This process of integration to make the Moros more "humane, decent, and civilized" was not seen by the Americans as a religious matter. In fact, the American government repeatedly expressed its position as one of complete tolerance of Muslim religion and customs.⁵⁷ America saw their political regime in the Philippine colony as one in which Church and State were firmly and traditionally separate matters. This was, after all, a central and key concept in the political culture and heritage of the United States which was to be taught to the Filipinos under the "American mandate."⁵⁸

Accordingly, in the eyes of the government, the major programs of the American rule in the Muslim South were all entirely secular. Slavery was

52. GOWING, *supra* note 42, at 250.

53. Agreement between the Colonial Government of the Philippines and the Sultanate of Sulu, 1915, para. 2.

54. *Id.* at para. 1.

55. *Id.* at para. 2 (emphasis supplied).

56. Mamintal Tamano, *Problems of the Muslims: A National Concern*, 4 SOLIDARITY 13-23 (1969).

57. Stuart A. Schlegel, *Muslim — Christian Conflict in the Philippine South*, in THE SOUTHERN PHILIPPINE ISSUE: READINGS ON MINDANAO PROBLEM, TWELFTH ANNUAL SEMINAR ON MINDANAO-SULU CULTURE 6 (Alfred Tiamson and Rosalinda Caneda eds. 1986).

58. *Id.*

outlawed, American laws and notions of justice were imposed, taxes in support of the government were introduced, land ownership laws were enacted, public schools and other homesteaders were encouraged to migrate from overpopulated northern areas and settle on open lands in Mindanao. In all of this, the practice of Islam was freely allowed as long as it did not conflict with American programs or with American laws.⁵⁹

From the point of view of the Muslims, however, these activities, and the whole associated notion of integration with the Christian Filipinos, were far from secular. In their understanding, the American program was a fundamental assault on the Islamic Faith, and American rule struck not only at the political authority of Muslim leaders but at the very substance of *dar ul-Islam*, "the abode of Islam."⁶⁰

F. Philippines

1. Filipinization

We have been independent for 500 years. Even Spain failed to conquer us. If the U.S. quits the Philippines and the Filipinos attempt to govern us, we will fight.

Petition to the President of the United States of America from the People of the Sulu Archipelago, 9 June 1921

It was the avowed intent of the Americans to grant political independence to the Philippines as soon as the Filipinos learned the "science of self-government." The Moros, however, did not want to be part of an independent Philippine republic. By 1920, the Americans had turned over day-to-day governance of Sulu and Mindanao to Filipino civil servants in the Insular Government. Most of them were Christians, and the Moros harbored many grievances and deep resentment against these officials, whom they felt despised Islamic sensibilities.⁶¹

All through the period of American rule, the Moros continually asked the United States to be kept separate from the government of Christian Filipinos. They wanted America to grant them separate independence or at least to retain their territory within the American rule.

On 24 March 1934, the Tydings-McDuffie Law was signed into law by United States President Theodore Roosevelt, authorizing the Filipinos to draft a constitution for the Philippines. After the approval of the constitution, the Filipinos were to elect official for the Commonwealth

59. *Id.* at 7.

60. *Id.*

61. Peter G. Gowing, *Muslim — American Relations in the Philippines*, 6 ASIAN STUDIES 372-82 (1963).

government. It also provided for a ten-year transition period during which the Philippine government would operate and at the expiration of said period, the independence of the Philippines would be proclaimed.⁶²

The approved 1935 Philippine Constitution failed miserably to specify or imply due consideration for the Moro traditions, customs and laws, which in Islam still fell within the ambit of religion. In fact, Tomas Cabili, a Christian delegate from Lanao, refused to sign the Constitution, characterizing it as grossly discriminatory against the Moro people. The Moros campaigned against the ratification of the Constitution, denouncing it as an abridgment of their religion, rights and customs.⁶³ By sheer tyranny of numbers of the Christian Filipino populace, the Constitution was ratified.

In 1935, the Commonwealth government was established. One of its important policies was the integration of the Moros into Philippines society. Under the leadership of Manuel L. Quezon, it ended the official recognition of the civil title held by the Moros based on their traditional social system. It also abolished the administrative Code of Mindanao, which exempted the Moros from some national laws that were in deference to their belief system, and the Moro Board, which was tasked to settle Moro disputes according to Islamic and traditional laws.⁶⁴ Apparently,

[he] (Quezon) was unaware that the Muslims had their own cherished code of ethics and system of laws that governed virtually every aspect of their lives. He failed to realize that the national laws, which were enacted without representation of the Muslim constituency, upheld standards from Christian ethics and Western social history.⁶⁵

Integration was also carried out through resettlement of Christian Filipinos from Visayas and Luzon. On February 12, 1935, the government enacted the "Quirino-Recto Colonization⁶⁶ Act," which marked the beginning of a vigorous effort to open and colonize Mindanao. The following year, Quezon signed into law Commonwealth Act No. 141 which declared all Moro ancestral lands as public lands. By a simple piece of legislation, the Moros became landless. Under this Act, a Moro would only apply for a piece of land not exceeding four hectares while a Christian was

62. SALAH JUBAIR, *A NATION UNDER ENDLESS TYRANNY* 79 (1997) [hereinafter JUBAIR].

63. *Id.* at 80.

64. W.K. Che Man, *Muslim Separatism: The Moros of the Philippine and the Malays of Southern Thailand* 55 (1990) [hereinafter CHE MAN].

65. MAJUL, *supra* note 8, at 25.

66. The terminology of the law clearly indicated how the Christian Filipinos viewed themselves in relation to the Moros and how they viewed the Moros in turn.

entitled to own as much as 24 hectares, and a corporation whole owned by non-Moros was permitted to own 1,024 hectares. In 1939, Commonwealth Act No. 441 creating the National Land Settlement Administration was signed into law. This Act further opened the Moro areas to Christians from Luzon.⁶⁷ The Commonwealth government's policy was, in essence, exploitation of Moorland⁶⁸ for the benefit of Christian settlers and business.⁶⁹ Clearly, the colonized were now acting as colonizers.

2. The Philippine Republic

The Christian Filipinos have no right ... to determine the government of the Moro people nor to shape the solution of the Moro problem according to their particular interests. This right was not given to them by the Treaty of Paris, is in violation of the conditions whereby the Moro leaders gave ... obedience to American authority, and should never be conceded by the Congress of the United States. If a reversionary right of these southern islands ... exists in anyone, it is the Moro and not the ... Christian Filipino who is entitled hereto.

U.S. Congressman Bacon⁷⁰

With the declaration of the Philippine independence on 4 July 1946,⁷¹ the United States officially annexed Mindanao and Sulu into the territory of the Philippines. The Moros were never given the right to national self-determination or to vote on the issue through a referendum. The integration policies of the previous colonizers were continued such that in 1957 the Philippine government created the Commission on National Integration. It continued to enact laws that failed to take into consideration the legal system of the Moros.⁷²

The Philippine government was not only imposing new laws and a new culture but was also continually occupying Moro lands with such rapidity that by 1960, 77 percent of the population of Mindanao were non-Moros.⁷³

67. JUBAIR, *supra* note 62, at 82-84.

68. A term coined by Dr. Peter Gowing in his book *Mandate in Moroland* to refer to the Sulu Archipelago and a large part of Mindanao occupied by the Moros.

69. CHE MAN, *supra* note 64, at 55.

70. ABDURASAD ASANI, *MOROS NOT FILIPINOS* 10 (1992).

71. President Diosdado Macapagal, in a gesture of protest to the refusal of the United States to extend much-needed foreign aid, decided in the middle of the 1960s to revert to the original Declaration of Philippine Independence by Gen. Emilio Aguinaldo on June 12, 1898 at Kawit, Cavite.

72. JUBAIR, *supra* note 62, at 95-103.

73. According to MNLF Chairman Nur Misuari, "[w]hat cannot be denied is the fact that through the decades, Filipino Christian domination, after having arbitrarily annexed the Bangsa Moro people's homeland as part of the

In its policy of resettlement, the Philippine government failed to consider the Moro sentiments. For the Moros, land was communal property given in trust (*amanah*) by Allah. They could not understand why a piece of land that had been with the community for many generations had suddenly become the property of Christian settler. As a result, many Moros were dispossessed. Of their land and this gave the community a pervading persecution complex. According to Dr. T.J.S. George, this "was the single most important factor behind the Muslim unrest which was to spawn an insurrectionary movement in the Marcos era."⁷⁴

In 1961, the call for Muslim independence was heard again when Congressman Ombra Amilbanga of Sulu introduced a bill to the Philippine Congress asking for the independence of Muslim Mindanao and Sulu. Nothing came of the bill, but the yearning for independence was clearly still alive.⁷⁵ It would surface again a few years later, and Christians and Muslims would once more take up arms against each other in Mindanao and Sulu.⁷⁶

In March 1968, newspaper headlines screamed of a massacre by Philippine Army men of between 28 to 64 Moro youths who were part of 180 alleged trainees of the Jabidah Forces. The trainees were supposedly part of a secret Marcos scheme to split Islamic ranks and provoke a war between Sulu and Sabah, allowing the government to invade and reclaim Sabah. The lone survivor of the killing explained that the trainees were shot because they refused to attack Sabah and the army feared a leakage of the plan.⁷⁷ The massacre roused the Moros into fiercer opposition of the Philippine government and aroused the attention of the international Islamic community.⁷⁸

The Jabidah Massacre⁷⁹ gave birth to the contemporary movements that brought forth a re-emerging sense of Islamic identity to the Muslims of

Philippines and inheriting the evils of its Spanish and American predecessors, has systematically but subtly pursued craftily devised policies of dispersal through the settlers, of assimilation under the cloak of integration, and conversion through the proliferation of cultural, educational and religious institutions with evangelization motives. These policies gave become the unwritten code of laws of the Filipino colonialism vis-à-vis the Bangsa Moro people.

74. T.J.S. GEORGE, *REVOLT IN MINDANAO: THE RISE OF ISLAM IN THE PHILIPPINE POLITICS* 107 (1980) [hereinafter GEORGE].

75. Nur Misuari, *The Rise and Fall of Moro Statehood*, 6 PHILIPPINE DEVELOPMENT FORUM 1, 14 (1992) [hereinafter Misuari, *The Rise*].

76. JUBAIR, *supra* note 62, at 102.

77. Misuari, *The Rise*, *supra* note 75 at 16.

78. GEORGE, *supra* note 74, at 122-128.

79. Until the establishment of the MNLF, the Jabidah Massacre was followed by 23 other incidents of killings perpetrated by the Christian *Ilagas* with the assistance

Mindanao and Sulu. In May 1968, Datu Udtug Matalam announced the formation of the Muslim Independence Movement, later renamed Mindanao Independence Movement, whose original goal was the creation of an Islamic State in Mindanao and Sulu.⁸⁰ Later, the Moro National Liberation Front (MNLF) was organized under the leadership of Nur Misuari, a Tausug, Abul Khayr Alonto, a Maranao, and Hashim Salamat, a Maguindanaon representing the three major Muslim groups in the Philippines. The purpose of the MNLF was the creation of an independent *Bangsamoro* State. This demand was later softened to autonomy upon the insistence of the Organization of Islamic Conference (OIC).⁸¹ With the support of Islamic states, the MNLF started its armed struggle in 1972 and eventually came to be recognized as the representative of the Moro people, observer status in the 64 countries of the OIC.⁸²

The success of the MNLF in the war front coupled with the threat of an oil embargo from the Muslim countries forced Marcos to the negotiating table. By December 1976, the Tripoli Agreement⁸³ was signed setting forth principles (subject to negotiations on details) for a genuine autonomy of the Muslims in 13 provinces of Mindanao and Sulu. Marcos, however, unilaterally implemented his own version of autonomy, effectively renegeing

and cooperation of the Armed Forces of the Philippines. Among the worst of these massacres were the Manili Massacre, where 70 Muslims were killed and 17 wounded while inside the mosque, and the Tacub Massacre, where Philippine Army soldiers led by a certain Lt. Marquez massacred a convoy of 200 Muslims. See Misuari, *The Rise*, *supra* note 75, at 16.

80. Misuari, *The Rise*, *supra* note 75, at 133.

81. In May 1974, the Fifth Islamic Foreign Ministers' Conference, meeting in Kuala Lumpur, urged the Philippine government and the MNLF to begin negotiations in order to arrive at a "just solution to the plight of the Filipino Muslims within the framework of the national sovereignty and territorial integrity of the Philippines." This stance of the OIC compromised the MNLF stance for independence. In the words of Chairman Nur Misuari, "We cannot avoid listening to the advice of our Muslim brothers in the world. The OIC went to the extent of passing a resolution in 1974 in Kuala Lumpur and we had to face a very serious dilemma — to accept or not to accept the resolution. Had we decided to turn down the resolution, they would not have allowed us to become an observer."

82. Interview with Nur Misuari, MNLF Chariman and ARMM Governor, in Manila (Nov. 20, 1999).

83. Agreement between the Government of the Republic of the Philippines and Moro National Liberation Front with the Participation of the Quadripartite Ministerial Commission Members of the Islamic Conference and the Secretary General of the Organization of Islamic Conference, 23 December 1996 ("Tripoli Agreement").

on his commitment.⁸⁴ In order to soothe the Moros' disenchantment, the Marcos government paid attention to the Islamic sensibilities of the Muslims by such actions as officially recognizing Muslim holidays, promulgating a code of Muslim personal laws (Presidential Decree No. 1083)⁸⁵, and creating the Philippine Amanah Bank to meet the special banking needs of Muslims. Other actions include a setting up institutes of Islamic studies at two state universities, constructing a mosque in the heart of downtown Manila, appointing Muslims to government posts at all levels, regularizing the *hajj* (the annual pilgrimage to Mecca, and establishing the Ministry of Muslim Affairs.⁸⁶ Even so, many Moros regarded all this as "aspirin for the Moro headache." They said nothing substantial was done to restructure the relationship of the Muslim population with the Philippines body politic; that the regional governments were a farce; and that the development projects were insufficient and far behind those in the Christian areas of Mindanao.⁸⁷

During the negotiations of the Tripoli Agreement, the MNLF was wracked with dissension. The larger faction stuck to the leadership of Nur Misuari, while a smaller faction followed Salamat Hashim, and an even smaller group, calling itself the *Bangsa Moro* Liberation Organization (BMLO), rallied around former Congressman Rashid Lucman.⁸⁸ In March 1984, the Salamat Hashim faction formally declared the establishment of the separate organization called the Moro Islamic Liberation Front (MILF) while the BMLO went into oblivion.

After the overthrow of Marcos, the Philippine government under Corazon Aquino again sought to fulfill its commitment to the Tripoli Agreement and grant autonomy to the Moros.⁸⁹ After a hopeful start in the

84. Peter G. Gowing, *Religion and Regional Cooperation: The Mindanao Problem and ASEAN*, 4 JOURNAL INSTITUTE OF MUSLIM MINORITY AFFAIRS 17 (No. 1 & 2, 1982) [hereinafter Gowing, *Religion*].

85. Some provisions of this law have been criticized as being "un-Islamic." See Harron A. Pangcoga, *Some Un-Islamic Provisions of the Code of Muslim Personal Laws of the Philippines: A Critique*, MINDANAO ISLAMIC JOURNAL 130-46 (1991).

86. Gowing, *Religion*, *supra* note 84, at 17.

87. *Id.*

88. *Id.*

89. The expectations of many Muslims was that Corazon Aquino would follow her husband's general principles regarding the Muslims. Benigno 'Ninoy' Aquino had been one of those responsible for exposing the Jabidha massacre. According to Dr. Majul, Aquino, on his own initiative, went to Damascus, Syria in July 1980 to convince Misuari to resume talks with the government on the Tripoli Agreement, but without success. In May 1981, he went to Jeddah to try and convince the MNLF once again to resume talks. Realizing that friction between Misuari and Lucman prevented the Muslims from presenting a coordinated

negotiations, the Aquino government wanted to do it in accordance with its unilateral resolution. Under the principle of national integrity, the government pushed for the ratification of a new Philippine Constitution — which provided for the creation of an autonomous region in Muslim Mindanao. This was contrary to the MNLF's demand for full implementation of the Tripoli Agreement. Later, Congress enacted Republic Act No. 6734, the Organic Act for Muslim Mindanao. This was submitted for ratification to the people of the thirteen provinces and nine cities. As the campaign raged, the MNLF and the MILF were noncommittal but watched silently in the background.⁹⁰

Only four provinces ratified the Organic Act.⁹¹ The MNLF and the MILF rejected the result of the plebiscite and declared to continue the armed struggle. For them, it failed to conform with the provisions stipulated in the Tripoli Agreement, notably the coverage of 13 provinces instead of only four.⁹²

The administration of Fidel Ramos started with a move to resolve the problem in Mindanao. In his inaugural address, he called for the peaceful resolution of conflicts within the Philippines. Consequently, talks with the MNLF began anew. The MNLF stated that the framework for negotiation would be the 1976 Tripoli Agreement. On 2 September 1996, the talks

stand before the government, Aquino tried to effect some understanding between them. He even wanted to get Hashim Salamat into the picture but Salamat was not available. In a talk before the faculty and students at *Abdul Azia University* in Jeddah, Aquino outlines his program for Muslims: a genuine autonomy under the Tripoli Agreement, implementation of Islamic law and education, a security force under the region's control, a massive economic program with a well-considered budgetary allocation to reduce the income gap between the Muslims and the rest of the population by the year 2000. The following July he returned to Saudi Arabia and had an audience with King Khaled from whom he requested greater Saudi involvement in getting the MNLF to resume talks with the Philippine government. In spite of what he considered to be Misuari's rigidity, Aquino had many fine words for him. They kept occasional contact up to a few weeks before Aquino's assassination in Manila on Aug. 21, 1983. These contacts were later renewed by Agapito 'Butz' Aquino, a brother of the late Senator.

According to MNLF Chairman Nur Misuari, Ninoy came to see him the Middle East on several occasions and initially offered autonomy but later recognized the Moro's right to self-determination and independence.

90. Rosalita Tolibas-Nunez, *Roots of Conflict: Muslim, Christians, and the Mindanao Struggle 24-25* (1997) [hereinafter Nunez].

91. The four provinces are Sulu, Lanao del Sur, Tawi-Tawi and Maguindanao.

92. Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20, 1999).

finally came to a close with the signing of the Final Peace Agreement⁹³ in Malacanang Palace. The agreement formally ended MNLF armed struggle in Mindanao and Sulu that had lasted for 30 years.⁹⁴

The agreement was supposed to be a transitional mechanism for the full implementation of the Tripoli Agreement. It did not take long, however, before the Moros' optimism for peace and autonomy was doused. The Philippine government was, and still is, unable, to comply with its commitments.⁹⁵ History repeated itself. *And the fight goes on...*

3. Analysis

We [Moros and Filipinos] are two different peoples adhering to different ideologies, having different cultures, and nurtured by different historical experiences.

The Political Thought of Salamat Hashim⁹⁶

Understandably, the Moros have responded in different ways to having to live within a "foreign" Philippine political structure. A few have accepted the situation and found roles in the Philippine community, some even holding government positions. Most, however, are still averse to what they view as Christian political power over their land.

As they opposed initial integration sponsored by Spain and the United States, the Muslims now resist the integration policy of the Philippine Republic. This policy is obviously not only on the premise that the Muslim South is part of the Philippine territory, a notion refuted by historical facts, but in the premise that the chief distinction between the Muslim and Christian Filipinos is that the former are relatively backwards and, due to historical misfortune, bereft of the cultural enlightenment enjoyed by the Christian North. It does not help that the Philippine government, from their Christian Filipino point of view, continues to make laws and policies based on its erroneous assumptions of what Muslim community "needs," utterly

93. The Final Agreement on the Implementation of the 1976 Tripoli Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) with the Participation of the Organization of Islamic Conference Ministerial Committee of the Six and the Secretary general of the Organization of the Islamic Conference, Manila, 2 September 1996.

94. Nunez, *supra* note 90, at 26-27.

95. Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20, 1999).

96. Abhoud Syed Mansur Longga, *The Political Thought of Salamat Hashim* (1995) (unpublished theses, University of the Philippines) (on file with the Institute of Islamic Studies) [hereinafter Lingga].

neglecting to give more than a superficial look at the Muslim culture to see the complex religious and cultural differences between Islam and Christianity. If it did, it would see that its integration of Muslim Mindanao, which is tantamount to assimilation, is something completely unacceptable to the majority of Muslims. Secular though it may seem to the Philippine government, the Muslim mind obviously cannot view integration in such a simplistic manner.

Admittedly, a number of Muslims have begun to see themselves as part of the larger Filipino nation. However, a greater majority of the Moros, principally in rural areas, still do not see themselves as citizens of the Philippines the way Filipinos in the North do. They view themselves, first and foremost, as members of the local Muslim communities and, consequently, citizens of the larger Islamic world. The Philippines, to them, has taken the image of a foreign power that seeks to take Muslim lands and draw the Muslims away from their faith.⁹⁷

The Muslim Filipinos and Christian Filipinos are divided not only by origins but by culture, orientation, aspirations, beliefs, and language. Christians are oriented toward the West and the English-speaking countries while the Muslims are rooted in the Islamic civilizations and the Arabic tongue. Even as the Philippine government prioritizes trade, militarization, technological advancement, and the like, Muslims strive to deepen their Islamic consciousness by building more Islamic schools and public places of worship, inviting more religious teachers into their communities and making the *hajj* to Mecca. It is easy to see why the Moros view themselves as belonging to a completely different world from that of the rest of the Philippines.⁹⁸

III. ISLAM AND THE PRACTICE OF RELIGION

This day have I perfected your religion for you; completed my favour upon you, and chosen for you Islam as a religion.

Holy Qur'an 3:5

The word Islam is derived from the Arabic root *sa-la-ma*, which means peace. In the religious sense of the word, Islam means complete submission and obedience to the Will of God or *Allah* (Arabic for The God, *Ilahi* for

97. Peter Gowing, *Christian and the Moros*, *supra* note 31, at 80-98. The same was emphatically expressed by MNLF Chairman Nur Misuari.

98. *Id.* at 95.

God) through obedience to His Law.⁹⁹ Sovereignty belongs to Allah and no law is worthy of obedience except that which conforms to His law.¹⁰⁰

A Muslim, therefore, is one who submits to the Will of God. With this submission, the Muslim is able to make peace between himself and his fellow men on one hand, and between the human community and God on the other.¹⁰¹ This submission is an ideal for every Muslim. It is a submission that is defined by *Allah* through the two primary sources of *Shari'ah* or Islamic Law — the *Qur'an* and the *Sunnah* or the Way of the Prophet Muhammad (S.A.W.).¹⁰² According to Islam, all aspects of man's life is governed by *Shari'ah* which is described as the embodiment of Allah's Will. The *Shari'ah* provides for regulations regarding ritual prayers, moral behavior, beliefs, and for dealings covering the organization of the relations of individuals among themselves whether as individuals or as a community.¹⁰³ Thus, a Muslim's practice of religion encompasses all aspects of his life.

Consequently, the injunctions of *Shari'ah* also cover the Muslim community which is instrumental in ensuring the individual's right to practice religion. The community which is instrumental in ensuring the individual's right to practice religion. The community bears the responsibility of implementing the regulations of the *Shari'ah* and ensuring that it conducts its affairs in accordance with Allah's Will.¹⁰⁴ In Islam, the purpose of the individual and the community is the same — the execution and enforcement of Allah's Will.¹⁰⁵

Islam is not merely a religion but a total and unified way of life,¹⁰⁶ hence, there is not distinction between the religious and the secular. It is a way of life that binds the individual and the community. As such, it has been said that, "it is a way of worship, a vast and integrated system of law; it is a culture and a civilization; it is an economic system and a way of doing business; It is a policy and a method of government. It is a spiritual and

99. HAMMIDULLAH ABDALATI, *ISLAM IN FOCUS* 7 (1997) [hereinafter ABDALATI].

100. ABU'ALA MAUDUDI, *ISLAMIC LAW AND CONSTITUTION* 145 (1986) [hereinafter MAUDUDI]. See also the HOLY QUR'AN 3:26; 3:154; 3:189; 5:44; 5:120; 12:40; 16:116; 57:2; and 64:1.

101. ABDALATI, *supra* note 99, at 9.

102. ABDUR RAHMAN I. DOI, *SHARI'AH: THE ISLAMIC LAW* 21-58 (1984) [hereinafter DOI].

103. ABDUL KARIM ZAIDA, *INDIVIDUAL AND THE STATE* 1 (1982) [hereinafter ZAIDAN].

104. *Id.* at 19-20.

105. MAUDUDI, *supra* note 100, at 161.

106. MNLF Chairman Nur Misuari describes Islam as a total system of existence.

human totality, this-worldly and other-worldly."¹⁰⁷ Thus, there can be no separation of Church and State, religion and politics. In the same manner that Prophet Muhammad (S.A.W.) was not only a prophet but also a ruler. The true practice of religion in Islam, therefore, is not confined to ritual but encompasses all aspects of life.

For the minority Muslim Filipinos, however, practice of religion becomes merely a ritual. Although the 1987 Constitution has provided for an Autonomous Region in Muslim Mindanao in recognition of their "distinctive historical and cultural heritage," the same is subject to the provisions of the constitution and national laws.¹⁰⁸ Thus, the Muslims are bound by the constitutional proscription of separation of the religious from the secular, and forced to recognize that sovereignty is with the people. Some of their ritual practices are even constrained. A good example is that of the Muslim student or employee who is unable to fulfill the Islamic injunction of praying five times a day and observing the prescribed prayer and rest on Fridays.¹⁰⁹ If he is not within the predominantly Muslim areas, he is unable to enjoy the holy days of Islam without presidential proclamation.¹¹⁰ The banking practices of financial institutions in the

107. WILLIAM JANSEN, *MILITANT ISLAM* 17 (1979).

108. 1987 PHIL. CONST. art 10 §§ 15 and 20.

109. According to Professor Yoram Dinstein, "Legislation in an overwhelming Christian country pertaining to a weekly day or rest must take into account the religious practices of Jewish and Muslim minorities. Otherwise, it would amount to *de facto* discrimination," in YORAM DINSTEIN, *THE PROTECTION OF MINORITIES AND HUMAN RIGHTS* (1992).

110. Presidential Decree No. 1083 (Code of Muslim Personal Laws of the Philippines)

Book Five

Title 1. Muslim Holidays

Art. 169. Official Muslim Holidays.

The following are hereby recognized as legal Muslim holidays: a. *'Amun Jadid* (New Year), which falls on the first day of the first lunar month of *Muharram*; b. *Mauludun-un-Nabi* (Birthday of the Prophet Muhammad), which falls on the twelfth day of the third lunar month of *Rabi-ul-Awwal*; c. *Lailatul Isra Wal Mi'raj* (Nocturnal Journey and Ascension of the Prophet Muhammad), which falls on the twenty-seventh day of the seventh lunar month of *Rajab*; d. *Id-ul-Fitr* (*Hari Raya Puasa*), which falls on the first day of the tenth lunar month of *Shawwal* commemorating the end of the fasting season; and e. *Id-ul-Adha* (*Hari Raya Haji*), which falls on the tenth day of the twelfth lunar month of *Dhu'l-Hijja*.

Art. 170. Provinces and Cities Where Officially Observed.

Muslim holidays shall be officially observed in the Provinces of Basilan, Lanao del Norte, Lanao de Sur, Maguindanao, North Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur, and in the cities of

country contradict the principles of Islamic banking. Muslims working or studying in establishments such as government and private institution are put in a predicament in the observance of their five times a day prayer and having to practice *Ramadan*,¹¹¹ as these institutions do not have policies that ensure full liberty for their practice, especially in non-Muslim areas. The minority Muslim Filipinos are subjected to laws that do not conform or are contrary to the laws of their religion, the most notable of which is the constitutional doctrine that declares the people's sovereignty when his religion teaches him that sovereignty belongs to Allah alone.

For a better understanding of the practice of religion in Islam, some fundamental concepts must be explained. These concepts are interrelated in such a way that one cannot stand without the other.

A. Concept of Tawhid

Your God is One God: There is no God but He, Most Gracious, Most Merciful.

Holy Qur'an 2:163

He is Allah, the One. Allah, the Eternal, the Absolute, He begetteth not nor is He begotten. And there is none like unto Him.

Holy Qur'an 112:1-4

The quintessence and foundation of Islam is *Tawhid*.¹¹² The word *Tawhid* is rooted in the word *wahada* or *wahid*, which in Arabic means one. *Tawhid* itself denotes the unity of Allah or his Oneness. It is the affirmation of the

Cotabato, Iligan, Marawi, Pagadian, and Zamboanga and in such other Muslim provinces and cities as may hereafter be created.

Upon proclamation by the President of the Philippines, Muslim holiday may also be officially observed in other provinces and cities.

Art. 171. Dates of Observance. The dates of Muslim holidays shall be determined by the Office of the President of the Philippines in accordance with the Muslim Lunar Calendar (*Hijra*).

Art. 171. Observance by Muslim Employees.

All Muslim government officials and employees in places other than those enumerated under Article 170 shall be excused from reporting to office in order that they may be able to observe Muslim holidays.

The President of the Philippines may, by proclamation, require private offices, agencies or establishments to excuse their Muslim employees from reporting for work during a Muslim holiday without reduction of their usual compensation.

111. The five times a day prayer is the second pillar of Islam while fasting during the Ramadan is the fourth pillar.

112. ISMAIL RAJI AL FARUQI, *TAWHID: ITS RELEVANCE FOR THOUGHT AND LIFE* 18 (1983).

first pillar of Islam, the *shahada* — *La illaha illa Allah* — which means that Allah alone is to be worshipped.¹¹³ Islam is strictly monotheistic; divinity is ascribed neither to man nor to the universe and worship accorded to non-other than Allah. *Tawhid* refers to the existence, oneness, and uniqueness of Allah, the Creator; the unity and equality of man; and the concept that man, as the viceregent and custodian (*khalifah*) of Allah on earth, should rule in conformity to Allah's will.¹¹⁴ It is the unity and equality that culminates in Allah.

Tawhid is the visualization of human life as a direct relationship between the transcendent Creator and His creation, in which life is seen as a test of excellence and worth. This puts the final responsibility and initiative on the human individual of society. It leaves no room for man-made divisions based on distinctions of color, language, or wealth in determining the quality of human relationships or the worthiness of an individual. *Tawhid* lays the foundation for a human society built on the responsibility of each human being as Allah's *khalifah* or viceregent, where superiority and eminence are reserved exclusively for Allah. Differences in human life and society pertain to function and performance, not quality. The concept of *Tawhid* gives society as well as individuals the freedom of destiny and self-determination. It is also the basis for Muslim tolerance towards non-Muslims.¹¹⁵

Tawhid was the object of the prophethood of Muhammad (S.A.W.). In the worship of Allah, he sought to establish the fundamental unity of mankind on the basis of equality and liberty. It was a message of human equality in social status and legal rights.¹¹⁶

Allah's oneness or *Tawhid* is crucial to the self-perception of the Muslim as a servant of Allah. Oneness allows the Muslim to comprehend his God without defying logic. The concept of God as one is unambiguous; no partners are bestowed to Allah, whether they are prophets, deities of other religions, political leaders, money, or a nation-state.¹¹⁷ *Tawhid* is thus the unification of the three basic elements of Islamic metaphysics: the unity of purpose of God, humankind, and the universe. The universe was created for

113. ABU AMEENAH BILAL PHILIP, *THE FUNDAMENTALS OF TAWHID (ISLAMIC MONOTHEISM)* 1 (1990) [hereinafter PHILIP]. See also SHAYKH MUHAMMAD IBN 'ABD AL WAHHAB, *KITAB AL TAWHID: ESSAY ON THE UNICITY OF ALLAH' OR WHAT IS DUE TO ALLAH FROM HIS CREATURES* (1979).

114. ABDULHAMID A. ABUSULAYMAN, *TOWARDS AN ISLAMIC THEORY OF INTERNATIONAL RELATIONS: NEW METHODOLOGY AND THOUGHT* 128-29 (1993).

115. *Id.* at 129.

116. DR. M. AZIZ AHMAD, *IGBAL AS A THINKER* 233 (1990) [hereinafter AHMAD].

117. PHILIP, *supra* note 113, at 284.

the service of mankind, and mankind was created for the service of God and the ends Allah has ordained in the *Qur'an*.

It is through *Tawhid* that Muslims commit to and practice their worship of and obedience to Allah. It bestows unto itself the principles that govern all aspects of human life and the basis for conducting the individual and collective affairs of the Muslims. To further clarify such a statement, it is important to note that worship in Islam is not confined to rituals like prayer or the pilgrimage to *Makkah*. Worship or *Ibadah* is what ideally constitutes the Muslim life. Everything should be a form of worship, whether it be an academic undertaking, banking or governance.

According to Moro Islamic leader Salamat Hashim, Allah has provided the system for the affairs of men:

[T]hat through the Prophet (peace be upon him) Allah sent complete guidance for mankind and the *Shari'ah* (law); that he was ordained by God to apply such guidance and laws in his daily life as an example and pattern for Muslims to follow, and that we accept without reservation all the teaching and guidance of Prophet Muhammad (peace be upon him).¹¹⁸

He asserts further that *Tawhid* means recognition of Allah as the absolute Law-Giver, "No authority on earth can pass laws contrary to the laws handed down by Allah through His Prophet (peace be upon him)."¹¹⁹

In Islamic political thought, the belief in *Tawhid* and the sovereignty of Allah is the foundation of the social and moral system of the Islamic community. The basic principle in Islam is that the Muslim individual and community must surrender all rights of legislation and exercise of authority over other. No one is allowed to pass laws and make commands in his own right; and no one must obey such laws or commands.¹²⁰

The concept of *Tawhid* has numerous implications on Muslim life. First, it allows man a direct relationship with God without mediation. This is by virtue of the equality that naturally follows from the oneness of God as explained in the second implication. Second, it allows true brotherhood among mankind because of the existence of only one creator — nobody was created by beings other than Allah who might claim superiority or inferiority, whether they be of different religion or not. This allows Muslims to identify with the rest of humanity as the creation of Allah and not to appoint themselves as chosen ones. Third, it affects the conduct of man's affairs by disallowing the abuse of the environment and man-made institutions, including man himself and his government, not for the sake of

118. SALAMAT HASHIM, *THE BANGSAMORO MUJAHID* 53 (1985).

119. *Id.* at 52. See also ABU'ALA MAUDUDDI, *ISLAMIC LAW AND CONSTITUTION* 184 (1986).

120. MAUDUDDI, *supra* note 100, 145.

economic gain but mastery of nature or *Istikhlaf* in order to serve Allah. Fourth, by virtue of the above reasons, harmony naturally results between God and his creating, and between His creatures themselves, *salama*, the root word of Islam, or peace being an appropriate name to the order that it creates.¹²¹ Thus the Muslim life is one of jihad (meaning, "to strive") for peace by living out the straight path of the Islamic way of life and not any other way.

B. Concept of *Din* and *Ibadah*

And now We have set thee in the Right Way of Religion (*Din*); So follow thou that Way, and follow not the whims of those who know not.

Holy *Qur'an*, 45:18

That is Allah, your Lord! There is no god but He, the Creator of all things. Then worship (*Ibadah*) ye Him: And He hath power to dispose of all affairs.

Holy *Qur'an*, 6:102

In Islam, the word "religion" does not have the same connotation as the word "religion" has for other faiths. The Islamic term for "religion" is *Din*, originally Arabic but adopted in all the many languages, notable Hebrew and Aramaic, means law.¹²² *Din* is more accurately defined by the phrase 'way of life'. *Din* is the way of life prescribed by Allah in the *Qur'an* and *Sunnah*. It sets the boundaries within which one may maintain one's humanity; within the very purpose God had created humankind. *Din* is the regulator of the relationship of man with Allah and his relationship with the universe; it is the application of *Tawhid* as a concept in man's life.

Worship or *Ibadah* is what ideally constitutes the Muslim's life. It is the way he lives out *Din*. It is

the innermost purpose of the creation of all rational beings their cognition of the existence of God and, hence, their conscious willingness to conform their own existence to whatever they perceive of His will and plan and it is this two-fold concept of cognition and willingness that gives the deepest meaning to what the *Qur'an* describes as "Worship" (*Ibadah*).¹²³

In Islam, everything is a form of worship, whether it is an academic undertaking, banking or governance. *Ibadah* does not merely mean ritual or any special form of prayer. It means a life of continuous service and

121. Interview with Walid Abubakar, Ustadz from Damascus University, in Zamboanga (2 June 1999).

122. BERNARD LEWIS, *ISLAM AND THE WEST* 3 (1993) [hereinafter LEWIS].

123. KAMAL HASAN, *VALUES EDUCATION FOR MUSLIM MINDANAO* 41 (1989).

rendering obedience like the life of a slave in relation to his Lord.¹²⁴ One eminent Islamic philosopher described its implications as:

To wait upon a person in service, to fold one's hand in reverence to him, to bow down one's head in acknowledgement of his elevated position, to exert oneself in obedience to his commands, to carry out his order and cheerfully submit to all the toil and discipline involved therein and humble oneself in the presence of the master, to offer what he demands, to obey what he commands, to set one's faith steadily against the causes of his displeasure, and sacrifice even one's life when such is his pleasure.¹²⁵

It is not limited to the performance of prayer, fasting, pilgrimage or giving of *zakat*, although these are the basic requirements of Islam, but includes man's political affairs, business transactions, social relations, education, culture and all the other aspects of life. All these have to be pursued in accordance with the system provided by Allah. A Muslim may be able to perform his prayer perfectly and observe the rules of fasting, but if the political authority to which he owes obedience and allegiance does not recognize the supremacy of *Shari'ah*, he has not perfected his *Ibadah*.¹²⁶

The perfection of *Ibadah*, in a general sense, demands that a person fashion his life, all his utterances, actions, dispositions, and his relations with the people in accordance with *Shari'ah*.¹²⁷ According to the *Shari'ah*, it is not enough to do good and refrain as a personal choice. It is incumbent upon Muslims also to command and forbid — that is, to exercise authority. The same principle is applied in general to the *Shari'ah*, which must be not only obeyed but also enforced.¹²⁸ Only in the exercise of authority and the enforcement of the *Shari'ah* can the Muslim organize the society in a way that facilitates perfection of the *Ibadah*.

In Islam, the principle of unity as embodied in Tawhid permeates the life of the individual and the community. As stressed in the above discussion, there is no compartmentalization of religious and secular in Islam. Religion or *Din* is a way of life that covers all its aspects and is manifested in the *Ibadah* or both the individual and the community. As such, in Islam, there is the concept of *Din wa Dawla* or unity of religion and politics. This, again, is the antithesis of the principle of separation of church and state.

C. The Concept of Al-Shari'ah

124. MAUDUDDI, *supra* note 100, at 136.

125. *Id.*

126. Lingga, *supra* note 96, at 36.

127. ZAIDAN, *supra* note 103, at 3-4.

128. LEWIS, *supra* note 122, at 53.

To thee (Muhammad S.A.W.) We sent the Book (this Qur'an) in truth, confirming the Scripture that came before it, and guarding it in safety. So judge among them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To you, We have prescribed a law and a clear Way.

Holy Qur'an, 5:48

Al-Shari'ah literally means "the Way to a watering place."¹²⁹ It is the path not only leading to Allah but the path believed by all Muslims to be the one shown by Allah through Prophet Muhammad (S.A.W.).¹³⁰ In its technical sense, *Shari'ah* is Islamic law and embodiment of the Divine Will.¹³¹ It is the totality of God's commands that regulates every aspect of each Muslim's life.¹³² One Islamic scholar provides a simple account of the roots of *Shari'ah*:

Shari'ah law was historically developed by Muslim jurists by applying human reason to revealed texts with the aim to develop a normative system capable of regulating individual actions and social interaction. Early jurists relied primarily on the Qur'an and the practices of the Prophet to elaborate the rules of *Shari'ah*, and referred to the process through which *Shari'ah* rules were elaborated by the term *ijtihad* (creative reasoning effort).¹³³

Shari'ah is the revealed Will of God, "a divinely ordered system preceding and not preceded by the Muslim state, controlling and not controlled by Muslim society."¹³⁴ It has the character of religious obligation to be fulfilled by the Muslim.¹³⁵ The law primarily takes into consideration the interests of the community; the personal interests of the individual are protected only in so far as they conform to the common interest of Islam.¹³⁶

Shari'ah is what regulates the relationship among human beings themselves and between human beings and the environment.¹³⁷ The main objective of *Shari'ah* is to construct human life on the basis of *Manifat*

129. ABDUR RAHMAN I. DOI, *SHARI'AH: THE ISLAMIC LAW* 2 (1984) [hereinafter DOI].

130. *Id.*

131. DOI, *supra* note 122, at 53.

132. Jainal Rasul Jr., *Muslim Personal Law and Its Incorporation into the Philippine Legal System: A Constitutional Perspective* 49, Phil. L. J. 391 (1984).

133. LOUAY SAFI, *ISLAM AND HUMAN RIGHTS: THE IMPERATIVE OF LEGAL REFORM*, 34 (1992) [hereinafter SAFI].

134. N.J. COULSON, *A HISTORY OF ISLAMIC LAW* I (1964).

135. S.V. FITZGERALD, *NATURE AND SOURCES OF SHARIA, IN LAW IN THE MIDDLE EAST* 85 (1995).

136. M. KHADDURI, *WAR AND PEACE IN LAW OF ISLAM* 26 (1960).

137. Safi, *supra* note 133, at 34.

(virtues) and to cleanse it of the *Munkarat* (vices).¹³⁸ It provides the standards of right conduct and guidance not only in establishing a well-ordered society, but also in distinguishing between "good" and "evil"¹³⁹. It safeguards the rights of everyone and ensures the welfare of humanity. It is eternal and immutable yet contains principles broad enough to meet the growing needs of society.¹⁴⁰ It is an organic whole, parts of which cannot be treated in isolation from one another. Consequently, to function successfully, *Shari'ah* must be put into application in its complete character. Its worth cannot be judged by adopting only a part of it or some injunctions to the exclusion of others.¹⁴¹

It has five sources, namely: the *Qur'an*, *Sunnah* or the Way of the Prophet, *Ijma*, *Qiyas*, and *Ijtihad*.¹⁴² The first and primary source is the

138. BÉNSAUDI I. ARABANI, COMMENTARIES ON THE CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES WITH JURISPRUDENCE AND SPECIAL PROCEDURE 81 (1990) [hereinafter ARABANI].

139. *Id.*

140. DR. MOHAMMAD MUSLEHUDDIN, ISLAM AND ITS POLITICAL SYSTEM 25 (1998) [hereinafter MUSLEHUDDIN].

141. *Id.* at 167. According to Dr. Muslehuddin, "It is here that there is a failure to appreciate the intrinsic value of *Shari'ah*. For example, 'as to the thief, male or female, cut off his or her hand' is the *Qur'anic* verse, which appears to be brutal, but will be considered more justified if looked at against the background of Islamic society where the rich pay the poor due or zakat, where necessities of life are provided by the State, where citizens enjoy equal privileges and opportunities, where hoarding is prohibited and usury forbidden, where monopolistic tendencies are curbed, and where peace and prosperity reign supreme. Similar is the case of punishment meted out for adultery and fornication. *Shari'ah* prescribes a hundred stripes for the unmarried and stoning to death for the married parties to the crime. But, of course, it is applicable to a society where marriage has become easy, where promiscuity is prohibited, nude pictures and indecent literature are disallowed, and where virtue prevails and vice is condemned."

142. ARABANI, *supra* note 138, at 92-145.

Arabani identifies seven subsidiary sources of *Shari'ah*, namely: *Istihsan*, *Istislah*, *Istidlal*, *Istishab*, *Legal Maim*, *Customs*, and *Legislation*.

In the Organic Act of the Autonomous Region of Muslim Mindanao, Section 18 of Article IX recognizes the four sources of Islamic law, namely: *Qur'an*, *Sunnah*, *Qiyas*, and *Ijma*.

In his book *Islam and its Political System*, Dr. Mohammad Muslehuddin considered the Doctrine of Necessity or *Darura* as a source of law. He gave the following examples: a mounted soldier awaiting battle is allowed to say his prayers in the saddle instead of dismounting; fasting during the month of Ramadan is obligatory but its postponement is permitted while a Muslim is travelling; and a starving Muslim may eat pork to save his life. Bernard Lewis in *Islam and the*

Qur'an as it contains all the fundamental directives and instructions of Allah. The second source is the *Sunnah* as it shows the way in which Prophet Muhammad (S.A.W.) translates the ideology of Islam in the light of *Qur'anic* guidance into practical form, developed it into a positive social order and finally elevated it to an Islamic State. *Sunnah* is the practical application of the *Qur'anic* principles to the various affairs of man.¹⁴³ The third source is *Ijma*. It is the consensus of opinion of the Companions of the Prophet (*Sahabali*) and the agreement reached on the decisions made by the learned jurists on various Islamic matters.¹⁴⁴ The fourth source is *Qiyas*. It is a process of analogical deduction by which the law of a text is applied to cases that, though not covered by the language, are governed by the reason of the text. In exercising this, however, it must be based on the *Qur'an*, *Sunnah*, and *Ijma*.¹⁴⁵ The last source is *Etihad*. It literally means an effort or an exercise to arrive at one's own judgment.¹⁴⁶ It is a creative reasoning effort.

In most systems of law, actions are divided into two categories, permitted and forbidden, or, in religious matters, commanded and forbidden. *Shari'ah*, while dealing with both religious and worldly matters, divides action into five categories, namely: (1) *Fardhu* (*Wajib*) or Obligatory; (2) *Sunnah* or Desirable; (3) *Mubah* or Permissible; (4) *Haram* or forbidden; and (5) *Makruh* or Undesirable.¹⁴⁷

The notion of law in Islam is different from the prevailing Philippine conception of law. The basic distinction between Philippine law and *Shari'ah* is that the former is essentially secular whereas the latter is essentially religious. It is so because *Shari'ah* is an integral part of religion. As such, there is no separation of religion and politics unlike the Philippine constitutional principle of separation of Church and State. Another difference is that *Shari'ah* is enormously wider in scope than Philippine law. It covers the whole field of human conduct.

Shari'ah pervades all areas of Muslim life — it provides laws in the social, political and economic spheres; private and public domains of life; individual and community matters. It includes personal laws, such as those concerning the family and the individual, and public laws, like ownership laws and criminal statutes. Accordingly, comprehensiveness is its special

West gave the example, a seafarer may throw another seafarer's goods into the sea if their boat is overladen and about to sink.

143. MAUDUDI, *supra* note 100, at 218.

144. DOI, *supra* note 102, at 64.

145. *Id.* at 70.

146. *Id.* at 78.

147. LEWIS, *supra* note 122, at 46.

characteristic.¹⁴⁸ Its jurisdiction is, in principle, universal, since God's revelation is for all mankind but it is in practice personal and communal, since its enforcement is limited to those who accept it and submit to its authority. For Muslims its authority is absolute and applies to every aspect of human life and activity.¹⁴⁹

The practice of *Shari'ah* in the Philippines poses many difficulties to the minority Muslim Filipinos. For instance, while *Shari'ah* prescribes prayer five times a day, the regular class hours and work hours make it impossible for the Muslim to fulfill this obligation. Muslim holy days, which are days for worship, are observed only in predominantly Muslim areas, because this is what Philippine law allows.¹⁵⁰ Muslims in other areas are therefore effectively denied or affected in their right to worship. Furthermore, Muslims believe in an economic system that puts no one at an advantage over another, or deprive the majority of society of their wealth through usurious transactions. It is because of this that *Shari'ah* mandates a banking system that operates without *niba* or interest but thrives mainly on profit-sharing.¹⁵¹ The present system of banks and pawnshops in the Philippines, even in predominantly Muslim areas, is contrary to *Shari'ah*.

Consequently, the *Shari'ah* has little influence in the lives of Muslim Filipinos except in the limited personal sphere. They can practice their beliefs and ritual to a limited extent, but cannot implement laws that affect Muslim public life. This seems a satisfactory condition in the Philippine Constitution's viewpoint; however, the Constitution is shaped by Western and Christian experiences and therefore conceptualizes "religion" differently. For the Muslims, however, it presents a situation of persecution and injustice. Furthermore, this reality becomes more relevant when viewed in light of the clear *Qur'anic* injunction that just as one may not permit what Allah forbids, so one may not forbid what Allah permits.¹⁵² More importantly, it provides a situation for the Muslims to declare *jihad asghar* or the defense of Islam.

According to the *Shari'ah*, there are only two grounds for waging *jihad asghar*: in self-defense and for the establishment of conditions of universal peace, or to enforce the regime of law in human society.¹⁵³ The situation of the Muslim Filipinos can be placed in either grounds. The Qur'an, thus, enjoins them, "And fight them on until there is no more persecution and

there prevail justice and religion becomes Allah in its entirety."¹⁵⁴ At the same time, however, the Qur'an suggests for Muslims to have patience and to seek God's help with perseverance and prayer.¹⁵⁵ The question that remains: Until when must there be patience?

For a better understanding of *Shari'ah* as the guide of the Muslim individual and the community in their practice of Islam, and its political operation on the affairs of the community, the concepts of *amanah*, *khilafat*, and *shura* must be discussed.

1. *Amanah* (trust)

O you who believe! Betray not Allah and His messenger, nor betray knowingly your *Amanah* (things entrusted to you), and all the duties which Allah has ordained to you.

Holy Qur'an 8:27

Allah doth commands you to render back you *Amanah* to those to whom they are due.

Holy Qur'an 4:58

The word *Amanah* is an Arabic word which means "trust." In Islam, human life and the environment are entrusted to humankind by God; absolute ownership belongs to the Creator alone. The Muslim's life, his possessions, and his environment are mere trusts, making man a trustee individually and collectively. *Amanah*, therefore, is a trust relationship and it is governed by *Shari'ah*.¹⁵⁶

In his relation with fellowmen and the environment, the Muslim is bound by this trust relationship with Allah. Inasmuch as he is given the privilege to rule his environment in the service of his needs, he must not abuse it nor use it contrary to the trust as governed by the *Shari'ah*. *Amanah* is thus a concept that creates in the Muslim psyche a sense of responsibility or accountability for individual and state action.¹⁵⁷

The Muslim's trust relationship with Allah also enjoins the individual to respect the authority entrusted with administering the affairs of the community. Allah commands him to render the trust to whom they are due. Corollarily this injunction also applies to the people in authority.¹⁵⁸ The moment the people's authority violate the trust relationship, the Muslim

148. ZAIDAN, *supra* note 103, at 1.

149. LEWIS, *supra* note 122, at 43-44.

150. Refer to footnote 110 on PD 1083.

151. MUSLEHUDDIN, *supra* note 139, at 33.

152. The HOLY QUR'AN 5:87.

153. AHMAD, *supra* note 116, at 243.

154. The HOLY QUR'AN 8:49.

155. The HOLY QUR'AN 8:45.

156. Interview with Walid Abubakar, Ustadz from Damascus University, in Zamboanga (June 2, 1999).

157. Cesar Adib Majul, *The Qur'anic Concept of Power and Conflict in Human Life and Society*, 10 MUSLIM EDUCATION QUARTERLY 90 (1993).

158. MUSLEHUDDIN, *supra* note 140, at 171-72.

individuals are no longer bound to render obedience to them. Instead, they are enjoined to seek the establishment of an authority that works for the worship and service of Allah.¹⁵⁹

In this trust relationship, the Muslim is ultimately intended to worship and serve only Allah.¹⁶⁰ This service is not found only in ritual, but in the way one conducts his life in a manner that would serve the ends of Allah. It is a way that must be true to the Islamic metaphysical structure wherein the environment and the conduct of the affairs of men are for the mastery of mankind to enable him to serve Allah.¹⁶¹

Inherent in this concept of *Amanah* is the recognition of the sovereignty of Allah. It is a relationship governed by laws with Allah as its source. The exercise of authority by man is delegated power. It is a power that is ultimately accountable to its giver. In the fulfillment of the trust, man acts as a trustee. God has given creation to man as a divine trust (*amanah*)¹⁶²; and it is how man carries out his viceregency that becomes basis of whether he is to be either rewarded or punished.¹⁶³

2. Khalifat (viceregency of man)

Thy Lord said unto the angels: "Lo! I am about to place a viceregent on earth."

Holy Qur'an 2:30

Allah has promised to those among you who believe and do righteous deeds that He will assuredly make them succeed (the present rulers) and grant them Viceregency in the land just as He made those before them succeed other.

Holy Qur'an 5:55

Khalifat is the concept of viceregency of man. Its root word is the Arabic word *Khalifah* which means one who takes the place of another in his absence or a successor. In the Qur'an, *Khalifah* is used in the sense of a viceregent of God, i.e., the holder of delegated power on earth to enforce *Shari'ah*.¹⁶⁴ Moreover, it is mankind, as a whole, who is entitled to the authority of viceregency.¹⁶⁵

159. The HOLY QUR'AN 8:39.

160. The HOLY QUR'AN 2:21; 6:102; 36:60-61; 51:56.

161. Interview with Walid Abubakar, Ustadz from Damascus University, in Zamboanga (2 June 1999).

162. The HOLY QUR'AN 33:72; 31:20-29.

163. The HOLY QUR'AN 17:14.

164. MUSLEHUDDIN, *supra* note 139, at 103-104.

165. ABUL'ALA MAUDUDI, *ISLAMIC WAY OF LIFE* 42-52 (1968).

Corollary to viceregency of man is the concept of sovereignty¹⁶⁶ of Allah. This implies that man is but a representative of Allah, and therefore cannot be considered a sovereign in the real sense of the word.¹⁶⁷ This power, which entitles the *khalifah* to enforce the Law of God is a limited power. It is a power under and not above the Sovereign — Allah.¹⁶⁸ As God's viceregent or representative (*Khalifat*), man exercises authority within limits prescribed by God himself. Moreover, viceregency is an *Amanah* which imposes duties upon the trustee. Ultimately, the *Khalifah* is accountable to Allah as a result of the trust relationship.

In the conduct of man's affairs, it is necessary that a leader or leaders be chosen and vested with the authority to act for the community in the fulfillment of Allah's Will. It is in this sense that one Islamic scholar has said,

The authority over the affairs of the people is the greatest religious duty. In fact, religion cannot be established at all without this authority because Allah has prescribed as a duty the enjoining of the good, the prohibition of the evil and the support of the fighting for His sake, the establishment of justice and the enforcement of the penal code cannot be implemented without power and authority.¹⁶⁹

Similarly called *Khalifah*, the leader or leaders are granted the authority by Allah to administer the affairs of the community in accordance with the *Shari'ah*. For as long as they act in accordance with Allah's Will, the people are commanded to render allegiance and obedience to those invested with political authority. The Qur'an states, "O believers, obey God and obey the

166. *Id.* at 229. Maududi provides for the root word of sovereignty: Sovereignty is derived from the Latin word *supremus* which means supreme. The definition of terms are varied but "it always signifies a highest governmental and legal authority of some sort. (Francis W. Coker, "Sovereignty" *Encyclopedia of Social Sciences*, Vol. 14, p. 256). Jean Bodin, who first developed the concept in modern political thought defined it as "*Summa in civis ac subditis legibusque soluto potestas*," i.e. the supreme power of the state over citizens and subjects, unrestrained by law. Grotius defined it as "the supreme political power in him whose acts are not subject to any other and whose will cannot be overridden." Blackstone conceives it to be "the supreme, irresistible, absolute, uncontrolled authority in which the *jura summi imperi* reside." Jullinck defines it as that "characteristic by virtue of which it cannot be legally bound except by its own will, or limited by any other power than itself." He calls it "the undivided and independent power to command and to compel obedience." The attributes and characteristics of sovereignty are said to be permanence, exclusiveness, all-comprehensiveness, indivisibility and absoluteness.

167. Atty. Oga Mangarun Mapupuno, *Islamic Political Concept of Sovereignty and Viceregency*, MINDANAO LAW JOURNAL 63 (March 1989).

168. MUSLEHUDDIN, *supra* note 140, at 104.

169. ZAIDAN, *supra* note 103, at 3.

Messenger and obey those entrusted with authority from among you."¹⁷⁰ The moment, however, obedience to those in authority is disobedience to Allah, *Sharia'ah* enjoins the people to defy the authority and establish one that conforms to Allah's Will.¹⁷¹ There are, therefore, two requisites in the exercise of political authority — the consent of the community or the people and the allegiance¹⁷² to live and enforce the *Shari'ah*.

There are four conditions essential to the doctrine of viceregency assuming an important role on leadership or the political authority in the Muslim lives. First, real authority belongs to God; second, man merely administers the law; third, the administration of the law must conform to and remain within the limits prescribed by Him; and fourth, in the administration of His law, the Will of God shall be executed and His purpose shall be fulfilled.¹⁷³ The present situation of the Muslim Filipinos in the Philippines is wanting in all the conditions.

In addition to the four conditions, man's fulfilment of this viceregency must fully adhere to the *Shari'ah*. There must be obedience to His Will. In the conduct of man's affairs, *Shari'ah* requires the political authority to apply the concept of *shura* or consultation.

3. Shura (consultation)

Those who respond to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation.

Holy Qur'an 42:38

It is part of the Mercy of Allah that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee. So pass over (their faults), and ask for Allah's forgiveness for them; and consult them in the affairs. Then, when thou hast taken a decision, put thy trust in Allah. For Allah loves those who put there in trust in Him.

Holy Qur'an 3:159

In the affairs of the Muslim community, an important concept is *shura* or consultation. According to Prophet Muhammad (S.A.W.), it means "taking

170. The HOLY QUR'AN 20:19.

171. The HOLY QUR'AN 8:39.

172. See MAUDUDI, *supra* note 100, at 145. According to Maududi, the general proclamation of the head of an Islamic state must be: "Assist me when I act rightly; but if I go wrong put me on the right path. Obey me as long as I remain loyal to Allah and His Prophet; but if I disobey Allah and His Prophet then none is under obligation to accord obedience to me."

173. *Id.* at 42-52.

counsel" and acting upon it.¹⁷⁴ This consultation is part of how men conduct their affairs, as commanded by Allah: "consult with them upon the conduct of affairs."¹⁷⁵ It is the process prescribed by *Shari'ah* for the exercise of political authority in a state of mutual trust and unity. Consultation, therefore, is not only recommendatory but obligatory.¹⁷⁶ Its obligatory nature is such that its abandonment by the chosen leaders of the community merits their removal from such authority.¹⁷⁷

In accordance with the guidance of the Qur'an, Prophet Muhammad (S.A.W.) developed a culture of consultation among his companions. In spite of being a Prophet (S.A.W.), he had the penchant for consulting his followers on community affairs. There are three oft-cited examples of the conduct of consultation by the Prophet (S.A.W.). One is the Battle of Badr where the Prophet (S.A.W.) selected a certain position for his army. When asked whether his decision was guidance from Allah or of his own will, he replied that it was his own decision. He was then advised by the experienced among the community to change position — which he followed. The two other examples are the Battle of Uhud where the Prophet (S.A.W.) asked the opinion of the community and acted favourably upon it and the *Huddaybiyyah* Agreement between the *Quraysh* of Mecca and the Prophet (S.A.W.) where the community was adequately consulted.¹⁷⁸

The process of *shura* means that decision-making belongs to the community as a whole.¹⁷⁹ An analysis of the *Qur'anic* verses leads to the conclusion that "the *Ummah* is being honored to be consulted ... notwithstanding their absolute subservience to Divine laws and plans" in order to help fill the legislation for the community. With this, the view of the people "would appear to be binding."¹⁸⁰

It is not prescribed in the Qur'an, however, what institutional form by which *shura* is to be carried out. It gives the community the freedom to

174. Khalid M Ishaque, *State and Constitution in Islam*, 4 ISLAMIC & COMPARATIVE LAW QUARTERLY 9 (1984).

175. The HOLY QUR'AN 3:159.

176. MUSLEHUDDIN, *supra* note 140, 151.

177. ZAIDAN, *supra* note 103, at 34-35.

178. H. MUNAWIR SJADZALI, ISLAM AND GOVERNMENTAL SYSTEM: TEACHINGS, HISTORY, AND REFLECTIONS 12-14 (1991). See also MUSLEHUDDIN, *supra* note 140, 137-139.

179. Bernard Lewis, *Islam and Liberal Democracy, A Historical Overview*, 52 JOURNAL OF DEMOCRACY 73-74 (1996).

180. Khalid M. Ishaque, *People's Authority, Representation and Election Under the Islamic Legal Theory: Some Observations*, 8(2) ISLAMIC & COMPARATIVE LAW QUARTERLY 88-101 (1988).

decide the best way to hold consultation, based on the community's situation at the time. It insists, however, that all people must be consulted, either directly or through their designated representative. Furthermore, this consultation should be completely free and impartial. This rule of consultation applies in the very first instance in choosing the head of state.¹⁸¹

There are four essential conditions for *shura* to be an effective mechanism. One, the political authority and the people must be prepared and willing to listen to each other's conflicting views and differences. Two, the participants in the mutual consultation must be tolerant and open towards each other. It does not only involve one party out-arguing the other but that due consideration must be given to the merits of other's opinion. Three, there must be steadfastness, grounded in commonly accepted rational principles such as the commitment to follow through with the best judgment.¹⁸²

It is worth noting that both leaders of the MNLF and MILF actively practice this concept. MNLF Chairman Nur Misuari even declared, "I am obliged to observe one rule: consultation. I cannot impose my will on our people."¹⁸³

A present-day example of consultation among the Muslim People is that practiced by the MILF. In 1993, Salamat Hashim constituted the *Bangsamoro Majlis as-Shura* or Consultative Assembly. Its basic functions are to legislate laws on matters not specifically mentioned in the Qur'an and Hadith, to formulate policies of the jihad and to assist in the selection of leaders. It is also an institution through which the government can hold consultation with the citizens.¹⁸⁴

The same was also envisioned by the 1996 Final Peace Agreement which called for the creation of the *Darul Iftah* (religious advisory council) in order to assist the southern Philippines Council for Peace and Development (SPCPD). However, this was not included in the Executive Order implementing the SPCPD due to strong objections from various sectors of the Philippines society and the fear of the GRP that the same would be

181. Charles J. Adams, *Mawdudi and the Islamic State*, VOICES OF RESURGENT ISLAM 117 (John Esposito ed., 1983).

182. Yusuf Waghid, *Shura or Dialogue: A Procedure Towards Addressing the Problems in Madrasah Education in South Africa*, 12(2) MUSLIM EDUCATION QUARTERLY 40-46, (1995).

183. Ed Lingao, *Girding for War to Secure Peace*, POLITIK MAGAZINE (August 1999).

184. Lingao, *supra* note 96, at 56-57.

struck down as unconstitutional for violation of the Non-Establishment Clause.¹⁸⁵

D. Religious Liberty — Essential in Practice of Islam

Unto you your religion, and unto me, mine.

Holy Qur'an 109:99

Islam envisions a pluralistic society that is acknowledged as part of God's plan the Qur'an provides:

O mankind! We created you from a single soul (pair) of a male and a female, and made you into nations and tribes, that ye may know each other not that ye may despise (each other).¹⁸⁶

Equality among men is an important belief in Islam. This doctrine stems from the conviction that all mankind share a single origin and substance. As such, it is likewise asserted that all men are blessed with the same dignity and sacredness, and therefore entitled to the same right to self-determination here on Earth and in the Hereafter.¹⁸⁷

The implications here are two-fold: one, that man is free to choose his faith and to practice it; and two, that all men, Muslim or otherwise, are equal and share the same dignity. These beliefs are in accordance with the idea that man proceeds from Allah with a mission to fulfill and his destiny is to ultimately return to Allah. These beliefs constitute religious freedom in Islam.¹⁸⁸

Among all religious revealed texts, only the Qur'an emphasizes religious freedom in a definite and unequivocal way, thus:

Let there be no compulsion in religion: Truth stands out clear from error. Whoever rejects evil and believes in Allah hath grasped the most trustworthy handhold that never breaks.¹⁸⁹

Faith, therefor, needs to be voluntary if it is to be true. The above text was, in fact, aimed at reproving and condemning the attitude of some Jews and Christians who, after being converted to Islam in *Al-Mahdina* wanted to convert their children to their new faith. Islam does not condone coercion

185. Interview with Nur Misuari, MNLF Chairman and ARMM Governor, in Manila (Nov. 20 1999).

186. The HOLY QUR'AN 49:13.

187. MOHAMED TALBI, *Religious Liberty: A Muslim Perspective*, RELIGIOUS LIBERTY AND HUMAN RIGHTS IN NATIONS AND IN RELIGIONS 176 (Leonard Swindler ed. 1986) [hereinafter talbi].

188. *Id.*

189. The HOLY QUR'AN 2: 256.

to accept a certain faith, whether it be Christianity, Judaism or Islam itself. It views faith as a voluntary act born out of nothing less than conviction and freedom.¹⁹⁰

Even the Prophet Muhammad (S.A.W.), who was tasked to spread Allah's message, was helpless against those who would not convert to Islam because he was firmly ordered to respect human freedom.¹⁹¹ "If it had been thy Lord's Will, all who are on earth would have believed, all of them. Wilt thou then compel mankind, against their will, to believe!"¹⁹² Abdullah Yusuf Ali, in his translation of the Qur'an, comments on that verse in this way:

men of faith must not be impatient or angry if they have to contend against Unfaith, and most important of all, they must guard against the temptation of forcing faith, i.e., imposing on others by physical compulsion, or any other forms of compulsion such as social pressure, or inducements held out by wealth or position, or other adventitious advantages. Forced faith is no faith.¹⁹³

It is important to note that religious freedom does not mean that the Muslims need to remain indifferent to issues of faith. The correct behaviour is not to interfere in others' personal lives and not to be careless about people of different faiths. This is what is meant to be created as one community of different faiths.¹⁹⁴

Religious freedom in Islam manifests itself in the case of the religious minorities found in Islamic states. History reveals that these minorities, called *dhimmi*s,¹⁹⁵ have always enjoyed protection against the most awesome form of religious intolerance. They have never been persecuted because of their beliefs nor prevented from practicing their own religion.¹⁹⁶

A future *Bangsamoro* Republic, within or without Philippine sovereignty, under the rule of the Muslim Filipinos is enjoined by the teachings of Islam. Therefore, the religious minorities in such a republic would be secure in their practice of religion.¹⁹⁷

190. TALBI, *supra* note 187, at 178.

191. TALBI, *supra* note 187, 179.

192. THE HOLY QUR'AN 10:99.

193. ABDULLAH YUSSUF ALI, THE HOLY QUR'AN 510 (1976).

194. TALBI, *supra* note 187, at 180.

195. For rights and obligations of *dhimmi*s, see Maududi, at 293-321. See also ABDUR RAHMAN DOI, NON-MUSLIM UNDER SHARI'AH [ISLAMIC LAW].

196. Carmen A. Abubakar, *Is Islam Compatible with Democracy?*, 12 KASARINLAN 31-32 (3rd Quarter 1996).

197. Interview with Nur Misuari, MNLFC Chairman and ARMM Governor, in Manila (Nov. 2, 1999). According to Atty. Michael Mastura, MNLFC Chairman

IV. THE PHILIPPINE CONSTITUTION'S CONCEPT OF PRACTICE OF RELIGION: AN AMERICAN AND CHRISTIAN PERSPECTIVE

The 1987 Philippine Constitution concept of practice of religion is enshrined in two provisions, namely:

Article II, Section 6. The separation of Church and State shall be inviolable.

Article III, Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

The first provision is included in the Declaration of Principles and State Policies which is a statement of the basic ideological principles and policies that underlie the Constitution.¹⁹⁸ As such, the provisions contained therein shed light on the meaning of the other provisions of the Constitution and they are a guide for all branches of the government in the implementation of the Constitution.¹⁹⁹ Its importance is such that it is included as one of the six principles. As a state principle, it is a binding rule that must be observed in the conduct of government.²⁰⁰

The second provision is included in Article III, the Bill of Rights. The Bill of Rights is a guarantee that there are certain areas of a person's life, liberty, and property which governmental power cannot touch. It is basically a protection of individual rights from the great powers of government.²⁰¹ As such, Section 5 is actually a protection of religious freedom from government interference by insulating it from the powers of government.

In addition, it is important to discuss the ARMM provisions as well as other pertinent laws related to the Islamic practice of religion.

A. Definition of Religion

The word "religion" is derived from the Middle English *religioun*, from Old French *religion*, from Latin *religio*, and vaguely refers to a "bond between man and the gods."²⁰² This pre-Christian term for the cult and rituals of pagan Rome was first Christianized by Saint Jerom in his Latin translation of

Salamat Hashim is committed to the same position given the clear injunction of the *Qur'an* on the matter of religion.

198. *Id.*

199. *Id.*

200. BERNAS, *supra* note 18, at 14.

201. *Id.* at 30.

202. SYED MUHAMMAD AL-NAQUB AL-ATTAS, ISLAM AND SECULARISM 46 (1978).

the Bible.²⁰³ It was first defined by the United States Supreme Court in the 1890 landmark case *Davis vs. Beason*.²⁰⁴ Samuel Davis, a member of the Mormon Church, believed in and practice polygamy which was a criminal offense and constituted a disqualification of a voter under election laws. The Court herein upheld the lower court decision disqualifying Davis as a voter.²⁰⁵ In its decision, the Court gave a theistic definition of religion, as follows:

The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and obedience to his will. It is often confounded with the cults or form of worship of a particular sect, but is distinguished from the latter... With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and morals of its people are not interfered with.²⁰⁶

In addition to the presence of a "Creator," the Court also required certain conformity between the teachings of the group in question and the prevailing morality of "all civilized and Christian countries."²⁰⁷ Indeed, at least part of the reason the Court rejected Davis' establishment claim was that the latter deemed polygamy too outrageous a practice to be "a tenet of religion."²⁰⁸

According to one constitutional scholar, "Adherence to this narrow definition was facilitated by the relative religious homogeneity of the United States (at least as perceived by the Court)."²⁰⁹ This narrow conception of religion was made explicit in *United States v. Macintosh*,²¹⁰ a case that reaffirmed the theistic definition, where the Court said, "We are a Christian people, according to one another the equal protection of religious freedom, and acknowledging with reverence the duty of obedience to the will of God."²¹¹

203. LEWIS, *supra* note 122, at 3.

204. *Davis v. Beason*, 133 U.S. 333 (1890).

205. *Id.*

206. 133 U.S. 333, at 342 (1890).

207. *Id.*

208. 133 U.S. 333, at 341-42 (1890). ("To call their advocacy [of polygamy] a tenet of religion is to offend the common sense of all mankind.")

209. J. Gordon Melton, *The Development of America Religion: An Interpretative View*, 1 ENCYCLOPEDIA OF AMERICAN RELIGIONS. 14 - 15 (1996).

210. 283 U.S. 605 (1931).

211. *Id.* at 625.

This theistic definition, however, was to be challenged as society evolved. In 1944, the United States Supreme Court declared in *United States v. Ballard*²¹² that freedom of religion

Embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to follower of the orthodox faiths ... Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.²¹³

Ballard makes clear that the classification of a belief as religion does not depend upon the tenets of its creed. It need not be bound by reason and logic nor by orthodox non-rationality. Therefore, "the characterization of a belief as religious would seem to be beyond the competence of anyone other than the adherent."²¹⁴

In 1961, the United States Supreme Court expressly repudiated Davis' definition of religion in the case of *Torcaso v. Watkins*.²¹⁵ In this case, the Court struck down a provision of the Maryland Constitution requiring officeholders of public office to declare belief in God. The Court reasoned that such provision was in violation of the Establishment Clause as it favored one category of religions (theistic) over another (non-theistic).²¹⁶ The Court thus expanded the term "religion" to include non-theistic religions, or those which do not teach belief in the existence of God, such as Buddhism, Taoism, Ethical Culture and Secular Humanism.²¹⁷

The Court later confirmed the *Torcaso* ruling in the 1965 *United States v. Seeger*.²¹⁸ In construing the Universal Military Training and service Act's requirement of belief "in relation to a Supreme Being,"²¹⁹ the Court stated that "whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have

212. 322 U.S. 78 (1944).

213. *Id.*

214. *Id.* at 84.

215. 367 U.S. 488 (1961).

216. *Id.* at 489-490, 495.

217. *Id.*

218. 380 U.S. 163 (1965).

219. *Id.*

parallel positions in the lives of their respective holders we cannot say that one is "in relation to a Supreme Being' and the other is not."²²⁰

The Court, however, appears to have shifted back to a narrower conception of religion in *Wisconsin v. Yoder*.²²¹ The Yoder Court made a strong distinction between "secular considerations," which were not considered valid bases for challenging state regulation under the First Amendment, and "claims ... rooted in religious belief," which were.²²²

In the Philippines, the Supreme Court first defined religion in the 1937 case *Aglipay v. Ruiz*²²³ where Justice Laurel stated that it is:

A profession of faith to an active power that binds and elevates man to his Creator. And in so far as it instills into the minds of men the purest of morality, its influences is deeply felt and highly appreciated.²²⁴

In 1957, the definition of religion in the *Aglipay* case was reiterated in the case *American Bible Society v. Manila*.²²⁵ In addition, it cited the 1890 Davis definition of religion, as one which "has reference to one's views of his relations to His creator and to the obligations they impose of reverence to His being and character, and obedience to His Will."²²⁶ It is evident, therefore, that Philippine jurisprudence has lagged behind in developing an expansive definition of religion.

The definition of religion in American and Philippine jurisprudence connotes a limited application. It limits itself to a personal relationship with the Creator and that which gives life and meaning. Moreover, it is important to note that the determination of whether a certain act or ritual falls within the ambit of religion rests with the courts.²²⁷ Thus, there is the danger of bias. As pointed out by one American scholar, "[n]o Jewish, Muslim, or Native American plaintiff has ever prevailed on a free exercise claim before

the Supreme Court."²²⁸ There is reason to be concerned that bias might operate in judicial efforts to define religion²²⁹ and in the determination of what constitute religious acts. This is a major concern of the Muslim People in the Philippines.

B. *The Principle of Separation of Church and State*

"Is it lawful to pay tribute to Caesar or not?"

But he, considering their guile, said to them; Why tempt me? Show me a penny. Whose image and inscription hath it? They, answering said to him: Caesar's

And he said to them: render, therefore, to Caesar the things that are Caesar's and to God the things that are God's."

Holy Bible, Luke, 20:19-25

The idea of separation of Church and State²³⁰ in the Philippines was encountered as early as the Propaganda days when the prevailing principle was Spain's union of Church and State. In an article written by Marcelo H. del Pilar on 15 September 1892, he questioned the decree deporting Rizal to Dapitan. He claimed that it is absurd to punish a man politically for religious reasons. He argued that to challenge the friars and the Church was not an act of disloyalty to Spain. Clearly, the article was essentially an appeal for the separation of Church and State.²³¹

The early thoughts of separation took a wider stage in the drafting of the 1899 Malolos Constitution. All the sections of the proposed Constitution were approved as originally drafted with little opposition except on the provision concerning religion. The original section provided that the Catholic religion would be the official religion of the State, allowing non-Catholics, however, the freedom to practice their own religion.²³² This was,

220. According to Fr. Joaquin Bernas, this definition is theoretically founded on that branch of religious thought influenced by Paul Tillich which views religion as encompassing beliefs and views which illuminate the "very ground of one's being and which give life and meaning." In fact the Court explicitly claims that its understanding of "religion" was shared by modern theologians like Paul Tillich.

221. 406 U.S. 205 (1972).

222. *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972).

223. 64 Phil. 201 (1937).

224. *Id.* at 205 - 306.

225. 101 Phil. 386 (1957).

226. *Id.*

227. *Geron v. Secretary of Education*, 106 Phil. 2, 16 (1959).

228. FREDERICK MARK GEDICKS, *THE RHETORIC OF CHURCH AND STATE* 116 (1995).

229. ARLIN M. ADAMS & CHARLES J. EMMERICK, *A NATION DECIDED TO RELIGIOUS LIBERTY* 92 (1990).

230. In his book *ISLAM AND THE WEST*, Bernard Lewis asserts that the notion of separation of Church and state seems to have emerged in the Protestant countries of northern Europe and was first given legal and constitutional force in the United States of America. In John Locke's Letter Concerning Toleration, published in 1689, he concludes that "neither Pagan nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of his religion."

231. CESAR ADIB MAJUL, *THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION 162-163* (1996).

232. *Id.* at 153.

however, opposed with a proposal that there be recognition of the freedom and equality of all forms of religious worship as well as the separation of Church and State. As a manifestation of the prevailing influence of the catholic religion, the opposing position own be a margin of only one vote.²³³ The provision thus read:

The State recognizes the freedom and equality of religious worship as well as the separation of the Church and of the State.²³⁴

Evidently, the adoption of the above provision was a result of the Filipino experience with the friars during Spain's hegemony.²³⁵ This provision, however, was never brought into effect in order not to alienate the Filipino clergy who likewise performed an important role in the revolution.²³⁶

Although the Malolos Constitution lost its significance when the Americans started to assert their authority in the Philippines, American hegemony only reinforced the policy of separation of Church and State. In fact, the 1898 Treaty of Paris provided that "[t]he inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion."²³⁷ This was followed by United States President William McKinley's Instruction to the Taft Commission expressly stating that "the separation between State and Church shall be real, entire and absolute."²³⁸ In subsequent acts of the United States, such as the Philippine Bill of 1902 and Jones Law of 1916, it was clear that the spirit of separation was intended as each embodied the non-establishment clause and the free exercise clause.²³⁹ However, there was no such explicit provision that asserted the inviolability of the separation of Church and State until those found in both the 1973 and 1987 Constitutions.

1. Rationale and Concept

The historical experience of the Filipinos with the union of Church and state is a tragic and painful one. As observed by historian Fr. Horacio de la

Costa, "[u]nion ordinarily implies harmony; yet it is curious to note that during the three centuries of its existence, this particular union was characterized by an almost continuous series of conflicts between the elements that composed it."²⁴⁰ In the 1937 case of *Aglipay v. Ruiz*,²⁴¹ the Court said:

Our history, not to speak of the history of mankind has taught us that the union of Church and State is prejudicial to both, for occasions might arise when the State will use the Church and the Church the state, as a weapon in the furtherance of their respective ends and aims.²⁴²

This sentiment was shared by Fr. Joaquin Bernas during the deliberation of the Constitutional Commission when he opposed the proposed amendment on the separation principle by Fr. Bacani. He said:

There is always the danger that the Church will try to impose itself on the State or else there may also be the danger that the State will try to impose itself on the Church.²⁴³

According to Justice Isagani Cruz, "the rationale of the rule is summed up in the familiar saying, 'strong fences make good neighbors.'" He adds that the idea is to have a delineation of the boundaries between the two institutions. As such, encroachment by one on the exclusive jurisdiction of another is avoided. He further asserts, "[T]he demarcation line calls on the entities 'to render unto Caesar the things that are Caesar's and unto God the things that are God's.'"²⁴⁴ It allows the Church and the State to accomplish their objectives by leaving each unfettered from the other.²⁴⁵

The separation principle was designed to prevent two things: the use of religion by the state to reinforce and extend its authority and the use of the state power by the clergy to impose their doctrines and rules on others.²⁴⁶ The principle, therefore, cuts both ways.²⁴⁷ The State is constitutionally prohibited from interfering in purely ecclesiastical affairs. The Church is likewise barred from intruding in purely governmental matters.²⁴⁸ This principle essentially separates institutions — the Church and the State. For a

233. F.C. Borlongan, *Church and State Separation Gets Nod By One Vote*, PHILIPPINE JOURNAL (October 29, 1995) [hereinafter Borlongan].

234. MALCLOS CONSTITUTION, art. 5, title 3.

235. Borlongan, *supra* note 232, at 162.

236. Rosa Michelle C. Bagtas, *Separation of Church and State: A Search for Standards to Keep Its Inviolability* (1998) (unpublished J.D. thesis, Ateneo de Manila School of Law) (on file with the Ateneo professionals Library) [hereinafter Bagtas].

237. Treaty of Paris, December 10, 1898, U.S.—Spain, art. X.

238. Taft Commission was formed on April 7, 1900.

239. US. V. Balcorta, 25 Phil. 273, 276 (1913).

240. HORACIO DELA COSTA, *ASIA AND THE PHILIPPINES* 39 (1967).

241. 64 Phil. 201 (1937).

242. *Id.* at 205-206.

243. 4 RECORD OF THE CONSTITUTIONAL COMMISSION 971 (1986).

244. ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 62 (1987) [hereinafter CRUZ].

245. Miriam Defensor-Santiago, *The Clergy and the Political Agora*, Today, March 24, 1994 at 8.

246. LEWIS, *supra* note 122, at 186.

247. CRUZ, *supra* note 244, at 64.

248. *Id.*

complete understanding of the principle, there is a need to elaborate on the two institutions.

In Philippine jurisprudence, there is no legal definition for the term "Church" and it is often simply related with religion. Justice Jorge Coquia defined "Church" as an indefinite number of persons who have made a public confession of religion, and who are associated together by a covenant of fellowship, for the purpose of celebrating the sacrament and watching over the spiritual welfare of each other. It does not refer to a physical structure or building nor is it identical with religion.²⁴⁹

In this definition, "Church" refers to no particular religion. Thus, there may be different churches depending on what religion is professed by a group of persons. Church, a collective term, may pertain to all community of believers, whether Christian, Muslim or Buddhist, among others, although it is often used by Christians alone. The separation principle seeks to separate all these "Churches" from the State. However, despite this separation, the individuals who collectively make up the Church remain to be part of the State.²⁵⁰ In Islam, there is no Church, as an autonomous institution, to speak of. Church and State are one and the same.²⁵¹

A State, on the other hand, is a "community of persons more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience."²⁵² It is through the government that the State manifests itself to the population and the rest of the world. Acts of government are often referred to as acts of the State.²⁵³ The people who administer and benefit from the acts of government are most probably the same people who embody the Church.

It is, therefore, inevitable that there is interaction between Church and State.

2. Interaction of Church and State

The Church and the State are two separate and independent entities. The separation, however, does not necessarily mean complete alienation. In *Zorach v. Clauson*,²⁵⁴ the United States Supreme Court stated that, "[t]he

249. JORGE R. COQUIA, CHURCH AND STATE LAW AND RELATIONS 3 (1989) citing Declaration on Non-Christian Religions.

250. *Davis v. Beason*, 133 U.S. 333 (1890).

251. LEWIS, *supra* note 122, at 181.

252. JOAQUIN G. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 3 (1997) [hereinafter JOAQUIN BERNAS].

253. Bagtas, *supra* note 237.

254. 343 U.S. 306 (1951).

First Amendment does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency of one on the other."²⁵⁵ Further, the same Court declared that "[n]o perfect or absolute separation is really possible."²⁵⁶

Church and the State can actually participate in any particular activity aimed at promoting a common cause. This interaction is considered legitimate provided this is not "excessive." In the case of *Tilton v. Richardson*,²⁵⁷ the United States Supreme Court upheld the validity of a federal aid granted to institutions of higher learning, including Church-related colleges, for the construction of buildings and facilities. The Court said that there was no excessive entanglement of religion since it was given on a one-time, single purpose basis and the facilities to be built are religiously neutral.²⁵⁸

The same is also recognized in the Philippines. The government acknowledges that the Church makes a very important contribution in the moral upbringing and education of the people. The relationship of the Church and the State has been properly described as "a friendly cooperation on the morality side and although they are collaborating to that effect, it is best, however, that the principle separating them is recognized."²⁵⁹

In fact, the 1987 Philippine Constitution has provided for certain exceptions to the separation of the Church and State by according certain concessions to religious sects and denominations.²⁶⁰

255. *Id.* at 312.

256. *Walz v. Tax Commission*, 397 U.S. 664, 670 (1970).

257. 403 U.S. 672 (1971).

258. *Id.*

259. 4 RECORD OF THE CONSTITUTIONAL COMMISSION 972 (1986).

260. These are:

- (1) The exemption of religious institutions from real property taxation (art. 6, §28(3))
- (2) Public funds, while generally prohibited from being spent for religious purposes as an aspect of the Non-Establishment Clause, may be applied to priest rendering religious service to the Armed Forces of the Philippines, a penal institution, or a government orphanage or leprosarium (art. 6, §29(2))
- (3) The permission to have optional religious instruction during regular class hours upon written request of the parents or guardian, to be taught by a teacher approved by the authorities of the religion of which the child is a member, provided it is without cost to the government (art. 14, §3(3))
- (4) With the exception of sectarian schools, all schools must be owned by citizens or 60% Filipino corporations (art. 14, §4(2)).

A closer analysis of the permitted interactions, however, would reveal that they greatly benefit, if not provide outright accommodations for the Catholic religion. For instance, the exemption of religious institution from real property taxation greatly benefits the Catholic Church, which owns one of the largest, of not the largest, landholding in the country. The same is also evident in the sectarian aid given to a priest or preacher when such is assigned to the armed forces, or to any penal institution, orphanage, and leprosarium. In the case of *Aglipay v. Ruiz*,²⁶¹ the religion that benefited was the Catholic religion. In the same case, the Court noted that Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal holidays because of the secular idea that their observance is conducive to beneficial moral results. A mere glance at the holidays would clearly show that they are Christian holidays.²⁶² In *Garces v. Estenzo*,²⁶³ the barangay council passed a resolution to raise funds by solicitations and donations for the purchase of the patron saint's wooden image and making the image available to the Catholic Church. In setting aside the objection on the separation of Church and State, the Court held:

The image was purchased with private funds, not with tax money ... The wooden Image was purchased in connection with the celebration of the barrio fiesta honoring the patron saint, San Vicente Ferrer, and not for the purpose of favoring any religion ... If there is nothing unconstitutional or illegal in holding a fiesta and having a patron saint for the barrio, then any activity intended to facilitate the worship of the patron saint (such as acquisition and display of his image) cannot be branded as illegal.²⁶⁴

The Court further stated that the *barrio fiesta* is a socio-religious affair and its celebration is an ingrained tradition in rural communities.²⁶⁵ It would seem that the Court was advancing the idea that acquisition and display of a patron saint by the government, provided that it is not with public funds, is in consonance with the principle of separation of Church and State.

C. Freedom of Religion and its Practice

The principle of separation of Church and State is intertwined with the constitutional provision of freedom of religion. Freedom of religion is basically embodied in this provision:

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference,

261. 64 Phil. 201 (1937).

262. E.O. 292, Administrative Code § 26 (1987).

263. 104 SCRA 510 (1981).

264. *Id.*

265. 104 SCRA 510 (1981).

shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.²⁶⁶

As guaranteed, freedom of religion is composed of two clauses: (1) the non-establishment clause and (2) the free exercise clause. These clauses are the means by which the separation of Church and State is enforced in society.²⁶⁷ As enshrined in the Bill of Rights, religious freedom basically operates as a limitation on government.

There are two fundamental principles that concretely define religious freedom — separatism and voluntarism. Separation mandates the non-establishment clause, which means not only institutional separation of Church and State but also the ideal of mutual abstinence. This ideal has three facets: that the state should not become involved in religious affairs or derive its claim to authority from religious sources; that religious bodies should not be granted governmental powers and that sectarian differences should not be allowed unduly to fragment the body politic. Religious voluntarism mandates the free exercise clause that guarantees freedom of conscience by preventing any degree of compulsion in matters of belief. The clause prohibits both direct and indirect compulsion.²⁶⁸

1. Non-Establishment Clause

The Non-Establishment Clause was originally intended to perform the dual functions of protecting religious establishments from national displacements and the prevention of government from aiding some but not all religions.²⁶⁹ The modern context of these functions was manifested in the 1985 case of *Wallace v. Joffree*²⁷⁰ where the United States Supreme Court struck down statutes permitting silent prayer or meditation in school.

The clause calls for government neutrality in religious matters. Bernas summarized government neutrality in four general propositions:

- (1) Government must not prefer one religion over another or religion over irreligion because such preference would violate voluntarism and breed dissension;
- (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension;
- (3) Government action must not aid religion because this too would violate voluntarism and breed interfaith dissension;

266. 1987 Phil. Const., art 3 § 5.

267. JOAQUIN BERNAS, *supra* note 252, at 288.

268. *Id.* at 303-304.

269. JOAQUIN BERNAS, *supra* note 252, at 303.

270. 478 U.S. 38.

- (4) Government action must not result in excessive entanglement with religion because this too would violate voluntarism and breed interfaith dissension.²⁷¹

It is encapsulated in the phrase "the state cannot establish or sponsor an official religion." In the case of *Everson v. Board of Education*,²⁷² the United States Supreme Court elaborated on the non-establishment clause as follows:

Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion to another. Neither can it force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. Not tax in any amount can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. Neither a State nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.²⁷³

Despite the absolutist language of the *Everson* Court, it upheld a statute authorizing government to reimburse parents of Catholic school children for the cost of bus transportation to and from the parochial school.²⁷⁴

The non-establishment clause does not prohibit all government aid to religion provided the following are satisfied:

- (1) It must have a secular legislative purpose;
- (2) Its principal or primary effect must be one that neither advances nor inhibits religion; and
- (3) It must not foster "an excessive government entanglement with religion."²⁷⁵

The first two requirements are essentially related because for a government measure or a law to have a "secular" purpose, it must not advance nor inhibit any religion, including non-belief in God.²⁷⁶

While government measures may affect a religion, they must however, be neutral in the sense that the general welfare of the public is ultimately benefitted by the measure, although an incidental benefit may redound to a

form of religion.²⁷⁷ In the *Aglipay* case, the Court held that "while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any received by the Roman Catholic Church, was not the aim and purpose of the Government."²⁷⁸ In *Garces v. Estenzo*,²⁷⁹ the Court held that the barangay's acquisition of a wooden image of their patron saint was "not for the purpose of favoring any religion."²⁸⁰

The third requirement was first introduced in the case of *Lemon v. Kurtzman*²⁸¹ where the United States Supreme Court invalidated state aid to parochial schools in a system involving close government supervision. The Court said that there was a violation of the non-establishment clause due to "excessive entanglement with religion."²⁸²

2. Free Exercise Clause

The bases of the free exercise clause is the respect for the inviolability of the human conscience.²⁸³ As one of the most valuable rights accorded in the Bill of Rights, it is insulated from government intervention. It guarantees free exercise by explicitly prohibiting the legislature from passing any law that restrains the free exercise of religion.

The free exercise clause has a dual aspect — it prohibits compulsion and recognizes the freedom to act according to one's beliefs. In *Cantwell v. Connecticut*,²⁸⁴ the United States Supreme Court declared:

On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but in the nature of things the second cannot be. Conduct remains subject to regulation for the protection of society.²⁸⁵

277. *Id.* at 59-60.

278. *Aglipay v. Ruiz*, 64 Phil. 201 (1973).

279. 104 SCRA 510 (1981).

280. *Id.*

281. 403 U.S. 602 (1971).

282. *Id.*

283. *Everson v. Board of Education*, 330 U.S. 668 (1947).

284. 310 U.S. 296 (1939).

285. *Id.* at 303.

271. JOAQUIN BERNAS, *supra* note 252, at 303-304.

272. 330 U.S. 1 (1947).

273. *Id.* at 15-16.

274. 330 U.S. 1 (1947).

275. *Lemon v. Kurtzman*, 403 U.S. 602, at 612-13 (1971).

276. Bagtas, *supra* note 237, at 60.

The State, therefore, cannot compel anyone to accept any religious faith or practice any form of worship. It also guarantees the liberty to believe and to and worship according to one's belief. The freedom to act on one's belief, however, is not absolute.

According to Bernas, "the absoluteness of the freedom to believe carries with the corollary that the government, while it may look into the good faith of the person, cannot inquire into a person's religious pretenses."²⁸⁶ In *U.S. v. Ballard*,²⁸⁷ the United States Supreme Court declared, "Men may believe what they cannot probe. They may not be put to the proof of their religious doctrines or beliefs."²⁸⁸ The Court further added, "[m]an's relation to his God was made not a concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views."²⁸⁹ In *Gerona v. Secretary of Education*,²⁹⁰ the Philippine Supreme Court had occasion to state that "[o]ne may believe in most anything, however strange, bizarre and unreasonable the same may appear to others, even heretical when weighed in the scales of orthodoxy or doctrinal standards."²⁹¹

In the realm of action, the free exercise becomes subject to government regulation. In *Reynolds v. United States*,²⁹² the Court enunciated a "belief-action dichotomy" wherein the free exercise clause completely insulated the realm of belief from state action, while leaving religiously motivated action, including expression, subject to police power.²⁹³ The Court said, "[l]aws are made for the government of action, and while they cannot interfere with mere religious beliefs and opinion, they may with practice."²⁹⁴

Although the guarantee includes a full right to entertain any religious belief and to practice any religious principle, the right may not be exercised in violation of the laws of morality and property or used to infringe the personal rights of others. It does not afford justification for actions or practices that disrupt public peace and offend public morals. Hence, the government may enact and enforce measures prohibiting acts which though religious in nature, breach public peace and expose others to harm and danger.

286. JOAQUIN BERNAS, *supra* note 252, at 291.

287. 322 U.S. 78, 86 (1944).

288. *Id.*

289. *Id.*

290. 106 Phil. 2 (1959).

291. *Id.*

292. 98 U.S. 145 (1879).

293. *Id.*

294. *Id.* at 166.

Laws enacted for the purpose of restraining and penalizing acts which tend to disturb public order or to corrupt morals, although such acts may have been committed in furtherance and in conformity with what is believed to be a religious obligation, are not automatically repugnant to the Constitution. Thus, in reviewing a statute questioned on grounds of free exercise, the judicial task is one of balancing the interest of religion with the secular interest of the state involved.

In *Wisconsin v. Yoder*,²⁹⁵ the United States Supreme Court arrived at their decision after balancing the interest of religion and that of the state. The court said, "[t]hus a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interest, such as those specifically protected by the Free Exercise Clause."²⁹⁶

For a valid curtailment, the exercise of the freedom to act on one's belief, the same test used with respect to free speech is applied. In *American Bible Society v. Manila*,²⁹⁷ the Court said that the sole justification for a limitation on free exercise is "the existence of a grave and present danger of a serious evil to public safety, public morals, health or any other legitimate public interest that the State has a right to prevent."²⁹⁸ Thus, the Court upheld the free exercise clause that includes the right to disseminate religious information in the absence of a clear and present danger.²⁹⁹

D. ARMM and Presidential Decree No. 1083

The ARMM and the Code of Muslim Personal Laws in the Philippines are two important laws that are relevant to the present status of the Muslim People's practice of religion. Parenthetically, the Government of the Republic of the Philippines views the two laws as sufficient concessions to the Muslim People's aspirations to retain and enforce their "way of life." It is with this GRP perspective that there has been a continuous failure in a final resolution to the Muslim People's aspirations.

The enactment of the Code of Muslim Personal Laws of the Philippine, was a recognition of the distinctive character of the personal laws of the Muslim People. This recognition was long overdue, given the previous acts of the government in exempting the Muslim people from the application of the marriage laws of the Philippines, especially those prohibiting polygamy. Promulgated five months after the hostilities by the MNLF against the

295. 406 U.S. 205 (1972).

296. *Pierce v. Society of Sisters*, 268 U.S. 535 (1925).

297. 101 Phil. 386 (1957).

298. *Id.* at 398.

299. *Id.*

Marcos government began, P.D. 1083 was an appeasement measure done to pacify the Filipino Muslims.³⁰⁰

Unfortunately, there is an ironic twist to the GRP's commendable intention to appease the Muslims and to show respect for Islamic traditions and culture. The mechanism of the law is discriminatory of the Muslim. Thus, the very law which sought to respect their religion actually served as a vehicle for discrimination.³⁰¹ Moreover, some provisions of the law have been found to be "un-Islamic."³⁰²

Since the Islamic concept of practice of religion essentially involves governance, it is important to discuss the laws on the Autonomous Regions in Muslim Mindanao. In recognition of the "common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics" of the Muslims, the Constitution has mandated the creation of an autonomous region in Muslim Mindanao.³⁰³ The major purpose of the provision is the creation of a situation that will allow Muslim culture to flourish unhampered by the dominance of all other cultures and thereby to contribute more effectively to national progress. Another purpose was to furnish a possible solution to the regional conflicts that have arisen partly from cultural diversity.³⁰⁴ The Organic Act further adds, "to ensure

the peace and equality before the law of all people in the Autonomous Region."³⁰⁵

The ARMM was created in response to the persistent clamor and the fierce struggle for local autonomy, a government founded on Islamic laws and respectful of the Muslim way of life.³⁰⁶ Accordingly, the creation of such autonomous region must be within the framework of the Constitution and the national sovereignty of the people, the separation of the Church and State and the Non-Establishment Clause. The Constitution also mandates that Congress shall enact an Organic Act that shall provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of the Constitution and national law. It also granted limited legislative power to the autonomous region with the same restriction that it remain subject to the provisions of the Constitution and national laws.³⁰⁷ As the Organic Act now reads, these were sufficiently covered.

The preamble of the Organic Act provides that the people of the ARMM "establish and Autonomous regional Government that is truly reflective of their ideals and aspirations within the framework of the Constitution and national sovereignty."³⁰⁸ The ARMM provisions are, in effect, the recognition of the Moros' right to self-determination.

Self-determination is considered as the freedom to make one's own decisions without interference from others. On the political level, it relates to a nation's freedom to govern itself without outside control. To many racial minorities, the concept of self-determination may include the recognition and preservation of their culture and cultural identity, or the grant of autonomy where a degree of independent decision-making is allowed and central government control is minimized, or the complete separation or secession from the mother country and the formation of an independent nation state.³⁰⁹ For the Moros, self-determination is their right to live and judge their actions in accordance with *Shari'ah*.³¹⁰ The Qur'an states: "If any do fail to judge and command by the light of what Allah has revealed, they are unbelievers."³¹¹

300. CHE MAN, *supra* note 64, at 89.

301. Adel Fadel Tamano, Article 143 of P.D. 1083: *An Example of Discrimination Against Muslims of the Philippines* (1996) (unpublished LLB thesis, Ateneo de Manila College of Law) (on file with the Ateneo Professional Schools Library).

Basically, the thesis dealt with Article 143 of P.D. 1083 which granted *Sharia* District Court courts exclusive jurisdiction over majority of actions involving personal laws. The same law, however, limited the establishments of the *Sharia* Courts to Muslim dominated area. In effect, a Muslim Filipino residing in Manila must go to Sulu or Cotabato to file his case. In his conclusion, the proponent found Article 143 as violative of: (1) the constitutional guarantee of equal protection as there is no valid classification; (2) the constitutional guarantee of freedom of religion as it indirectly compels the Filipino Muslims to abandon their religion due to imposition of greater burdens; (3) the constitutional guarantee of freedom of religion as it imposes "religious test" in the exercise of the right to file an action or proceeding in the non-*Sharia* courts of justice.

302. Haron A. Pangcoga, *Some Un-Islamic Provisions of the Code of Muslim Personal Laws of the Philippines: A Critique*, 3(1) MINDANAO ISLAMIC JOURNAL 130-46 (1991).

303. 1987 PHIL. CONST., art. 10, § 15.

304. BERNAS, *supra* note 18 at 393.

305. Letty Tumbaga, *The Autonomous Region in Muslim Mindanao in Crisis*, POLITIK MAGAZINE 19 (August 1999) [hereinafter Tumbaga].

306. R.A. 6734, Organic Act for the ARMM, Article 1, § 2 (1989).

307. 1987 PHIL. CONST., art. 10, § 20.

308. R.A. 6734, Organic Act for the ARMM, Preamble (1989).

309. Mehol K. Sadain, *The Concept of Human Rights in Islam and Its Relevance to the Movement for Self-Determination by the Muslims in the Southern Philippines*, 1 THE HUMAN RIGHTS JOURNAL 40 (1995).

310. *Id.* at 43.

311. THE HOLY QUR'AN, 5:47

The people of ARMM thus view the kind of local governance endorsed by the GRP as incompatible with acceptable religious and traditional systems and is less popular with them. According to many Muslim leaders, the crisis in the ineffectiveness of the ARMM can be traced to a whole system of local governance endorsed by the national government that does not take Islam culture into consideration.³¹²

The 1987 Constitution has provided for the Moros the option of self-determination through autonomy. It is, however, a very limited form of self-determination. As enunciated in *Magtajas v. Pryce Properties Corporation*,³¹³ Congress now retains control of the local government units in a significantly reduced degree as compared to previous constitutions. In *Ganzon v. Court of Appeals*, the Court ruled that in spite of the autonomy, the Constitution places the local governments under the general supervision of the President. In effect, the acts of the ARMM can be effectively undermined by Congress and the President.

In this respect, the ARMM failed. On the one hand, "it raises regional autonomy to a constitutional level and thereby strengthens its legal foundation ... and also makes the rational for autonomy (diversity in cultures) part of the constitutional corpus."³¹⁴ On the other hand, by permanently embedding it into the body of the Constitutional limited autonomy under a central authority, it has also narrowed the constitutional space for a more self-determinative sub-system.³¹⁵

V. COMPARATIVE ANALYSIS

There is difficulty juxtaposing the two principles in a parallel paradigm. On one hand, the Islamic principle views practice of religion as intertwined with the political sphere. It defines religion as a way of life covering all aspects of human affairs. In Islamic concept, an important part of religion is the role of the political authority. On the other hand, the Constitutional principle views practice of religion as isolated from the affairs of the State. It leaves the practice of religion as a personal matter between the believer and his beliefs. This is the essence of the constitutional injunction of separation of Church and State.

312. Tumbaga, *supra* note 305 at 21.

313. 234 SCRA 255, at 258-59 (1994).

314. Joaquin G. Bernas, *The Challenge of Autonomy*, 3 MINDANAO-LAW JOURNAL 123 (1988).

315. Soliman M. Santos, Jr., *Constitutional Accommodation of a Moro Islamic System in the Philippines* (1999) (unpublished thesis, University of Melbourne) (on file with the University of Melbourne Faculty of law) [hereinafter Santos].

The Constitution, however, unconsciously³¹⁶ attempts to accommodate the Islamic concept of religion by addressing the Muslim People's aspirations for self-determination in the provisions for an Autonomous Region in Muslim Mindanao. It is an attempt that greatly fails as the ARMM is made subject to provisions of the Constitution and national laws that conflict with the Islamic way of life and governance.

A. Irreconcilable Principles

In order to lay the basis of constitutional amendment, the contrasting concepts of Islam and the 1987 Philippine Constitution on the practice of religion must be discussed.

1. Definition of Religion

In Islam, religion finds its rough translation in Din. Din is the way of life prescribed by Allah in the Qur'an and the *Sunnah*. Its legal embodiment is the *Shari'ah*. As a way of life, it covers everything from the religious to the secular. It involves all aspects of life including the affairs of the State.

For the Muslim, his life must one of *Ibadah* or worship. *Ibadah* is what ideally constitutes the Muslims' life and should be a manifestation of Din. Thus, worship or practice of Islam is not limited to rituals but includes the affairs of the State. If the political authority or the laws to which he is bound does not recognize the supremacy of Allah's law or *Shari'ah*, he has not perfected his *Ibadah*.³¹⁷

The Philippine Constitution views religion through the concept of separation of Church and State. As defined by the Courts, religion is defined in a theistic and non-theistic manner. In practice, however, while the Court has recognized relations to a Creator and the obligations such relations impose, it has insulated religion from the interference of the state. The State cannot be an instrument or part of the practice of religion. There is, therefore, a dichotomy between the religious and the secular. If it is religious, then it must not be secular and vice versa.

Under the Philippine Constitution, the Muslim Filipinos are denied the opportunity to perfect their *Ibadah*. The State or the political authority is barred from playing a part in the Muslim's practice of religion. The State cannot adequately accommodate the Muslim Filipinos because to do so would be unconstitutional.

316. It was unconscious effort because the reason of the framers for including the ARMM provision in the Constitution was to recognize and accommodate the Moro People's right to self-determination and not in consideration of their religion.

317. Lingga, *supra* note 96.

2. Tawhid (Din wa Dawla) and Separation of Church and State

In Islam, the Church and State relations are viewed through the concept of *Tawhid* (One-ness of God) or more specifically, *Din wa Dawla*. This concept is exemplified by Prophet Muhammad (S.A.W.) who was both a prophet and a ruler. There is no compartmentalization in Islam — the affairs of the state are ultimately tied in with the affairs of religion. Islam is a total system of existence. As such, the union of religion and politics is inherent. Therefore, the separation of Church and State in Islam is inconceivable.

In the Philippine Constitution, Church and State relations are viewed through the principle of the inviolability of the separation of Church and State.³¹⁸ The development of this principle in the Philippines was partly a result of the Christian Filipinos experience with Spain and largely due to American influence and rule. It advances that the Church and State should respect the principle of separation and neither should transgress it. There is, therefore, a compartmentalization between religious and secular. Despite the absolutist tone of the Constitution, jurisprudence has permitted State interaction with the Church. There is even recognition of the fact that absolute separation is not possible. It is, however, an interaction where the State's purpose is avowedly secular and there must be no excessive entanglement with religion. Even the Constitution has allowed certain exceptions to the principle of separation of Church and State. These exceptions, however, present a particular benefit to Christianity. As one legal expert posits, "[I]t might be the case that, in a country where most people are Christians, the laws are written in such a way that they do not interfere with the free exercise of the majority religion."³¹⁹

The Muslim Filipino is thus put in a precarious situation. The creed of his faith declares to him the union of religion and politics and that the State plays an important part in his *Ibadah*. On the other hand, the basic ideological principle of the Philippine Constitution proclaims the inviolability of the separation of Church and state. It frowns upon state interference in religion and views it as perilous to society.

The present state of things presents two realities to the Muslim Filipinos. One, abidance to the Constitution constitutes a violation of Islam. Two, abidance to Islam constitutes a violation of the Constitution. Given the Philippine history of Moro-Christian relations, these two realities become more glaring in light of the fact that the Constitution's principle is basically a tenet of Christianity. It does not help that the development of jurisprudence

³¹⁸ 1987 PHIL. CONST. art. 2 § 6.

³¹⁹ Eduardo Penalver. *The Concept of Religion*, 107 YALE LAW JOURNAL 791, 193 (1997).

on separation of Church and State is especially accommodating to the Christian religion.

The same Constitutional principle also posits a difficult situation for the GRP. It presents to the GRP two realities. One, it is bound to uphold the fundamental law of the land. Two, it needs to recognize and uphold the rights of its Muslim minority. The GRP can no longer play deaf to the yearning of the Muslim Filipinos for the full and real practice of their faith. Muslim Filipinos want to live under an Islamic system and be governed by *Shari'ah* in its full scope. This, however, is not possible under the present Constitution.

3. Religious Liberty: Non-Establishment and Free Exercise

Islam calls upon the Muslims to live a life of *Ibadah*. To be meaningful, the practice of Islam must be a free and voluntary act. *Ibadah* follows a belief-action singularity. It begins with an intention or *niyah*, which is an objective to serve Allah. It presupposes belief in the creeds of Islam. With this intention, the act itself or the living out of God's will consummated the *Ibadah*. Belief alone, without the action, is not worship but hypocrisy. In Islam hypocrisy is a grave sin.

The *Shari'ah* decrees that "there be no compulsion in religion."³²⁰ It is a resolute decree that even Allah refrain from forcing individuals to follow Islam. Allah has set us free to make our choice. Forms of compulsion include physical coercion, social pressure, inducements by wealth or position and other unintentional advantages. Islam, however, does not look at an Islamic political authority as a form of compulsion. It views it as part of the perfection of the practice of Islam. In its relations with a non-Muslim minority or *dhimmi*, the Islamic political authority is mandated to simply bear witness to the religious life of others. It must live in a courteous dialogue with the *dhimmi*.

In the Muslims' practice of his faith, it is important, therefore, that the political authority to whom he renders his allegiance follow the tenets of Islam. In his *Ibadah*, the political authority plays an integral part. It must embody the ideals of Allah, enforce the *Shari'ah*, and recognize the sovereignty of God.

The *Shari'ah* decrees that the state accommodate and render assistance to *dhimmi* and Muslims in equal terms whether the aid itself is religious or secular. The State must not distinguish, instead look at the assistance as essentially a mandate of Allah. *Shari'ah* makes the State part and instrument of religion. The State, therefore, must conform to the Will of Allah and ensure that the individuals that compose it are free to exercise their *Ibadah*.

³²⁰ The HOLY QUR'AN 2: 256

As part and instrument of religion, the state itself must embody Islamic principles and act in the Islamic way. In effect, the state establishes Islam as the official religion. It can be said, therefore, that entanglement or union between the religion and politics is the policy of Islam.

The Philippine Constitution guarantees religious liberty and recognizes it as one of the revered rights of the individual. It is, however a guarantee that largely relies on the Non-Establishment Clause. It views state interference with religion as dangerous to religious liberty. In effect, the constitutional proscription on religious liberty is envisioned to be achieved through state neutrality on religious matters.

In application, however, the Non-Establishment Clause has rarely been absolutely imposed. On this point, the case of *Everson v. Board of Education*³²¹ is instructive. The Court was resolute on the absolute separation of Church and State. Despite the absolutist language of the Court, it upheld a state authorizing the government to reimburse parents of Catholic school children for the cost of bus transportation to and from school. Clearly, the Non-Establishment Clause does not prohibit all government aid to religion. For as long as the primary purpose is secular and the measure does not foster excessive entanglement with religion, the Non-Establishment Clause is not violated.

The Free Exercise Clause recognizes the right of the individual to freely exercise his religion. It has a dual aspect: to prohibit compulsion of the acceptance of any creed or the practice of any form of worship, and recognize the freedom to act on one's beliefs. It further provides that the freedom to believe is absolute but the freedom to act is not. In *Reynolds v. United States*,³²² the Court enunciated a "belief-action" dichotomy wherein the free exercise clause completely insulates the realm of belief from State action, while leaving religiously motivated action, including expression, subject to police power of the State.

Clearly, this puts the minority Muslim Filipinos in a quandary. The above discussion presents to the Muslim Filipinos two problems. One is the practice of religion of the individual and the other is the effective mode of guaranteeing religious liberty.

In Islam, the five-times-a-day-prayer, the Friday rest and worship³²³ and fasting on Ramadan are absolutely protected. Under the Constitution and

Philippine law, they are not. The difficulty experienced by the Moros is due to two factors: one, the mostly Christian-influenced working conditions, and two, the Constitution's belief-action dichotomy. The first does not accommodate the Muslim religious duties, as evident in the established regular working days and hours. The second disallows religion as a reason for Moros not abiding by regulations of non-Muslim institutions. The present development of jurisprudence does not in any way begin to ease the difficulty experienced by Moros living and working in a Christian society.

These problems, however, can be solved through legislation. Congress can pass a law accommodating the practice of religion of the minority Muslim Filipinos' enforcement of the *Shari'ah* regarding crime and punishment. The absence of Philippine legislation recognizing an Islamic penal code effectively affects the Muslim Filipinos from acting according to the tenets of their religion. The Constitution grants them the freedom to believe in an Islamic penal code, but not the freedom to enforce it. The moment Muslim Filipinos start to enforce an Islamic penal code, they become criminals under Philippine law.

Regarding the mode of guaranteeing religious liberty, Islam posits an official recognition of religion while the Constitution posits a non-establishment of religion. Islam regards religious liberty as a sacred right and considers State participation as instrumental to its preservation and perfection. The Constitution also recognizes religious liberty but views State interference as destructive to society. It, therefore, places the Non-Establishment Clause as a legal bar to State interference in religion.

For the Muslim Filipinos, the pervading role of religion in their lives requires state recognition of religion. The state must play its important role in molding a community that lives out the Islamic ideals. The failure of the State to play its role results in the moral and spiritual erosion of the community and the individuals composing it. Thus, state participation is very important in the perfection of the Muslim Filipinos' practice of religion. This, however, does not mean that there is no protection to non-Muslim minorities or *dhimmis*. The *Shari'ah* has decreed that "there be no compulsion in religion." This is an all-powerful decree because even Allah adheres to it.

The Muslim Filipinos find themselves living in legal system that bars the State from interfering in the affairs of religion. It is also a legal system that contains principles that fail to conform to the creeds of Islam. The perfection or practice of Islam that the minority Muslim Filipinos has aspired and fought for the last five centuries remains an aspiration. The constitutional bar on the State's interference with religion has affected the capacity of the

321. 330 U.S. 1 (1947).

322. 98 U.S. 145 (1879).

323. According to Professor Yoram Dinstein: "legislation in an overwhelming Christian country pertaining to a weekly day of rest must take into account the religious practices of Jewish and Muslim minorities. Otherwise, it would

amount to de fact discrimination," in YORAM DINSTEIN, *THE PROTECTION OF MINORITIES AND HUMAN RIGHTS* (1992).

Muslim Filipinos from embodying an Islamic way of life. Muslim Filipinos encounter obstacles even in their ritual practices. Worse, Muslim Filipinos become criminals the moment they assert and enforce the Islamic penal code.

The predicament of the Muslim Filipinos is a cause for concern of the GRP. Again, the GRP is bound to uphold the Constitution but it cannot disregard the religious liberty of its Muslim minority. Perhaps, legislations accommodating the ritual practices of the Muslim Filipinos can remedy the situation. The same, however, remains subject to the Non-Establishment Clause in the Constitution. As the ritual practices are inherently religious, it is bound to fail the secular test for validity of the law.

If the GRP encounters great difficulty in accommodating the ritual practices of the Muslim Filipinos under the present Philippine legal system, enforcement of the Islamic penal code is even more troublesome.³²⁴ It does not only have to contend with the Non-Establishment Clause, it must abide by the constitutional provision and jurisprudence on cruel and inhuman punishment. Moreover, there are implications on the sovereignty of the Republic of the Philippine. The proscription of *Shari'ah* on crimes and punishments would understandably fail the Constitutional test. The GRP, therefore, is practically constitutionally barred from recognizing and upholding the religious liberty of the minority Muslim Filipinos. There must be a constitutional recognition of practice of religion in conformity with the Islamic concept as the present formulation is an effective negation of the Muslim Filipinos' practice of religion.

4. Political Principles

The political principles of Islam are viewed through the fundamental concept of *Tawhid*. *Tawhid* refers to the oneness of Allah, the unity and equality of man, man as the viceregent of Allah. It lays the foundation for a human society built on the responsibility of each person as god's representative where sovereignty is exclusively with Allah. Sovereignty, therefore, rest with Allah. As a political theory, there are four important subsumed concepts in *Tawhid*: *Shari'ah*, *Amanah*, *Khalifat* and *Shura*. The Philippine Constitution views it through the principle of republicanism. It views the government as of the people by the people and for the people. As declared in the Constitution, "[s]overeignty resides in the people and all

government authority emanates from the."³²⁵ Sovereignty, therefore, resides with the people. Thus, the following are the resulting contrapositions.

In Islam, *Shari'ah* is the embodiment of God's Will and is the fundamental law. Its source is Allah and this revelation is mainly found in the *Qur'an* and the *Sunnah*. For the Philippine Constitution, the fundamental law is the Constitution itself. Its source is the Filipino people as provided for in the preamble. It is, therefore, the embodiment of the will of the Filipino people.

The contraposition in the conception of *Shari'ah* and Philippine law is significant. On one hand, *Shari'ah* is enormously wider in scope and covers all aspects of human conduct. It is essentially religious and is an integral part of religion and its practice. There is, therefore an intrinsic unity between religion and politics in Islam. On the other hand, Philippine law is essentially secular and is traditionally and firmly insulated from religion and its influence. There is, therefore, a necessary consequence of separation of Church and State.

In the matter of the right of the people to administer their affairs, the same is governed by *Shari'ah* through the concept of *Amanah*. The people are mere trustees of God and exercise authority on earth by virtue of the power delegated by Allah. This concept of *Amanah* is interrelated with the concept *Khalifat* wherein the people act as a representative of God on earth and exercise authority by virtue of the powers delegated by God. As a *khalifah*, he must therefore act according to the *Shari'ah*. For the Philippine Constitution, the right of the people to administer their affairs is governed by the concept of people's sovereignty. The people are sovereign and they exercise their authority by virtue of a power vested in them by themselves. In effect, they act according to the laws they have enacted.

In Islam, the participation of the people in the affairs of the State is decreed by *Shari'ah* through the concept of *shura*. The political leaders are mandated to carry out the State affairs through consultation with the people. There is, however, no prescribed institutional form in which consultation must occur. Nevertheless, it is required that the leaders and the institutional form of the *shura* be grounded on the *Shari'ah*. In the Philippine Constitution, there is a semblance of *shura* in the form of election and the legislative framework or representation as well as the provisions on initiative and referendum. The incompatibility is in the fact that the consultation of the people in the constitution is not grounded on *Shari'ah* but on the sovereignty of the people.

The Philippine State cannot be legitimate in the eyes of the Muslim Filipinos if it fails to conform to the *Shari'ah*. It might coerce obedience, but

324. In line with its ideology of an Islamic way of life, the MILF executed in 11 May 1999 two Muslim men convicted by an MILF Court for robbery and murdering a Christian couple. This drew various reactions from different sectors of the Philippine society. Applying the provisions of the Revised Penal Code, however, the executioners committed murder and rebellion.

325. 1987 PHIL. CONST. art. 2 § 1.

Muslim Filipinos will not abandon their belief that state affairs be supervised by the teachings of the holy law. Why force on the Muslim Filipinos Western norms and not recognize their Islamic norms?

It is important to note that there was an "unconscious"³²⁶ effort in the Philippine Constitution to address this problem of irreconcilable principles in the form of the Autonomous Region in Muslim Mindanao. Despite the earnest and sincere effort of the drafters of the 1987 Philippine Constitution, the policy of national unity and integrity still prevailed. The ARMM is still very much subject to the countervailing provisions of the Constitution and national laws.

In effect, the constitutional accommodation of the Moro people's right to self-determination was negated by the express limitations. The framers failed to consider the reality that for the Moros, self-determination is their right to live and judge their actions according to *Shari'ah*.

On light of the failure of the ARMM, there must be an earnest rethinking of its conceptualization. On one hand, regional autonomy is raised to a constitutional level and thereby strengthened in its legal foundation. The same also makes the rationale for autonomy (diversity in cultures) part of "the constitutional corpus."³²⁷ On the other hand, by "permanently embedding inside the body of the Constitution" a limited autonomy under a central authority, it has also narrowed the constitutional space for an accommodation of a more determinative Islamic subsystem.³²⁸

B. Reconcilable Principles

The discussion above would seem to point to Islam being the antithesis of the Philippine Constitution. Practice of religion being the absolute and resolute duty of a Moro, the consequence of such a conclusion would be a perpetual struggle of the Moro people for liberation and independence. For a Moro, that is the ultimate destiny. For the GRP, that is the ultimate capitulation. There must be a middle ground and an earnest effort to look reconcilable principles.

There are two principles that can spell the difference: religious liberty and the people's role in governance.

326. It was an unconscious effort because the reason of the framers for including ARMM provisions in the Constitution was to recognize and accommodate the Muslim people's right to self-determination and not in consideration of their religion.

327. Joaquin G. Bernas, *The Challenge of Autonomy*, 3 MINDANAO LAW JOURNAL (1988).

328. Santos, *supra* note 316, at 23.

1. Religious Liberty

Islam and the Philippine Constitution guarantee religious liberty. Islam accords it the greatest protection that even Allah refrains from violating it. The Philippine Constitution includes it as part of the Bill of Rights so that it is protected from the interference of the government. They differ, however, in the role of the government. While Islam considers the role of the government as an integral part in its practice, the Constitution looks at the role of government as one of neutrality. There is, therefore, a crucial and valid distinction.

As one legal expert wrote, "there are certain equalities, such as the equality of each individual to freely exercise his own religion, which often require that religious differences be taken into account. Indeed, a generally applicable law may well have a disparate impact on different religions, inhibiting the practice of certain religions while not interfering with that of the others. In that case, religious differences should *ceteris paribus* be taken into account to constrain application of the law in question to permit the adherents of all religions involved to practice equally and freely their chosen religion."³²⁹ Moreover, religious liberty is superior to or of higher value than the separation of Church and State provision or the Non-Establishment Clause. Put differently, the Free Exercise Clause always prevails over the Non-Establishment Clause.

In this respect, there should be a constitutional accommodation of Islam in recognition of the Moro's concept of practice of religion that is intrinsically related to their right to self-determination. First, the provision on the separation of church and state should be amended. It must consider the Islamic concept of *Din wa Dawla* there must be no compulsion in the matter of beliefs especially where it contravenes a fundamental belief in another religion. In addition, the international standards do not require the separation of Church and State. Rather, the international requirement is that any relationship of the Church and State should not result in discrimination against those who are not of the majority religion.³³⁰ Secondly, the provision on the sovereignty of the people should be amended. The Constitution must be sensitive to the beliefs of the Moros. It should exclude the Moros from such principle and declare one that is consistent with the Moros' belief of sovereignty of God and viceregency of the people. Lastly, the portions on the ARMM should be amended to remove the clause that subject the autonomous region to national laws. There can be no real religious liberty

329. McConnel and Teivel, *Modern Constitutionalism as Interplay between Identity and Diversity*, cited in CONSTITUTIONALISM, IDENTITY, DIFFERENCE, AND LEGITIMACY: THEORETICAL PERSPECTIVE 10 (Michael Rosenfield ed., 1994).

330. FREEDOM OF RELIGION AND BELIEF: A WORLD REPORT (Kevin Boyle and Juliet Sheen eds. 1997).

for the Moros if national laws that do not conform to the *Shari'ah* are imposed on them.

In the case of religious minorities in an autonomous region where the Islamic system is fully enforced, their religious liberty is accorded the highest respect by the *Shari'ah*. Unlike the constitutional provision which violates the practice of Islam, the *Shari'ah* mandates the government to respect the practice of other religions. It must not discriminate and compel belief in Islam. Rather, it must accord protection.

2. Role of the people

Although Islam literally means "submission," there is no contradiction between Islam and the freedoms inherent in democracy, they are not only compatible, their association is inevitable.³³¹ The basic creeds of Islam stand firmly for individual liberty and representative government: Islamic government is only by consent and consultation of the people.

Islam and the Philippine Constitution mandate the empowerment of the people. Allah delegates the political authority to the people through the concept of *Khilafat*. The people, therefore, have delegated power to choose their leaders. In this instance, the *Shari'ah* decrees the application of *shura*. The process of *shura* means that decision-making belong to the community as a whole.³³² The consultation can take the form of direct election by the people or an election by representatives of the people. Essential, it is the people who determine the course of their governance.

The Philippine Constitution recognizes the political authority to be vested with the people when it declared that "sovereignty resides with people, and all government authority emanates from them."³³³ The people, therefore, have the power to choose their leader. In this regard, the Constitution has provided for the process of election in determining the leaders of the state. It is though this republican form of governance that the people largely exercise their political authority. The Constitution also provides for mechanisms of direct democracy such as initiative and referendum. In addition, there are consultation mechanisms encouraged by the Constitution and which have been made effective through the Local Government Code.³³⁴

It is readily apparent that Islam and the Constitution are in conformity with regard to the political authority of the people. The only difference is

331. Bernard Lewis, *Islam and Liberal Democracy, A Historical Overview*, JOURNAL OF DEMOCRACY 52, 68 (1996).

332. *Id.* at 73-74.

333. 1987 PHIL. CONST. art 2 § 1.

334. R.A. 6734, Organic Act of ARMM (1989).

the source of the authority. While Islam recognizes that the political authority of the people is delegated by Allah, the Philippine Constitution recognizes it as an original power of the people.

In this light, the GRP is under obligation to "consult" the Muslim People whether they want an Islamic system and not the previous options given to the Muslim people that were "un-Islamic," thus, effectively ensuring their rejection by majority of the Muslim people. Such a consultation is consonant with the constitution and the Islamic Law. The Constitution recognizes the supremacy of the people. Islam recognizes the important role of the people in their affairs as a viceregent of God. Moreover, in a consultation in the form of a referendum, the voice of the Muslim People now becomes the voice of God in the exercise of their viceregency.

VI. SUMMARY AND CONCLUSION

The *Bangsa Moro* is a historically and culturally distinct and separate nation for the Christian majority and deserves this status under the universal principle of self-determination; and Islam is the religion and way of life of the *Bangsa Moro* which requires a separate political and administrative framework from the Western concept and principle of separation of church and state. The latter is similarly important because the *Bangsa Moro* embraces Islam as the central theme, not only of his religious practices, but all other aspects of like including, the government and economy.

Commissioner Lugum Uka 1986 Constitutional Commission

It is all about a *way of life*.

The present problem between the Republic of the Philippines and the Muslim People is all about a way of life.

The Moros and the Christians Filipinos are people of the same Malay race. Before Islam came to the Philippines, all its inhabitants had a commonality or common origin. Though the inhabitants were divided into different ethno-linguistic or geographical groups, there was no question in their minds that they were of the same race or blood.³³⁵

The arrival of Islam in the ninth century introduces a new way of life. It brought with it new laws, new ethical standards and a new outlook in the meaning and direction of life. The Muslims began to develop the consciousness of belonging to a wider Islamic community — the *Ummah*. One of the most important contributions of Islam, however, was the centralized political structure in the form of the sultanate. It made Islam a social and political force such that by the time of Spain's arrival, the Muslims

335. *The Muslim Filipino Minority, in THE CRESCENT IN THE EAST* (Peter G. Gowing, Rafael Israeli eds. 1982).

were already in Luzon and the Visayas and were trading with the British, the Dutch and the Chinese. Most historians would agree that had Spain not made a timely arrival, the Philippines would be a Muslim country. By the time of Spain's the *Dar ul-Islam* (the Abode of Islam) was firmly in place in Mindanao and Sulu.

Spain came to the Philippines with the express objective of colonization and Christianization. The Spaniards, however, were surprised to find people adhering to Islam — the religion of the Moors, their rules and adversary for 800 years. In some sort of thought transference, they began to call these people Moros. After their success in colonizing and converting the native to Christianity in Luzon and Visayas, they trained their guns on the Moros of Mindanao and Sulu. Thus, the beginning of 333 years of war between the Moros and Spain.

For 333 year, the Moros zealously defended the *Dar ul-Islam* against Spain. The Moros, therefore, developed a distinct identity intensified by Islam and self-preservation far different from the Christianized natives — the Indios. The Indios, on the other hand, adopted the Christian religion with greater zeal than the Spaniards. They were so devoted to it that they willingly accepted Spain's hegemony and became her slaves. They adopted Spain's laws, her systems and the Spaniards' seething hatred of the Moros.

The gap, however, did not stop with the differences in history and culture. It was made worse by the fact that Spain used the Indios in their war against Moros. Spain also made sure that the Indios feared, disliked, and hated the Moros with their frequent staging of Moro-Moro plays. The Moros retaliated with raids on the coastal communities of the *indios*. There was, thus, a Moro problem for the Indios and a Christian Problem for the Moros.

In the end, Spain left a "heritage of suspicion, if not hatred,"³³⁶ between the Moros and the Christian Filipinos.

It was in this condition that America found the inhabitants of the Philippines. America, however, easily crushed the rebellion of the Christian Filipinos who willingly accepted their rule. The Americans easily assimilated the Christian Filipinos into their own system of government including their principle of separation of Church and state. The principle of separation of Church and State was not entirely foreign to the Christian Filipinos. It was the same principle they adopted in the Malolos Constitution. It was not long before the American began to transfer the reins of government to the Christian Filipinos.

336. Cesar Adib Majul, Speech for the Spanish Embassy (August 16, 1975).

It was, however, a different matter for the Moros. America's policy toward the Moros started with appeasement. They forged a treaty wherein America committed to respect the religion and political affairs of the Moros. Later, the treaty lost its significance and America official abrogated it. It was clear that America had no intention of honoring the treaty and was resolute on colonizing the Moros. The Moros, again, saw the need for defending *Dar ul-Islam*. When organized resistance under the sultanate failed, individual Moros began to take up the defense of *Dar ul-Islam* through the phenomenon of *parang sabillullah*.

After establishing effective rule in the Moro areas, the Americans began to impose their laws. America, however, saw their political regime in the Philippines as one in which Church and State were firmly separate. America began to implement major programs in the Muslim South which were entirely secular from the point of view of their ideology. For the Moros, these programs were far from secular but were fundamental assaults on their Islamic faith.

Thus, while the Christian Filipinos began to adapt and perfect the American and Christian principles, the Moros were reinforcing Islamic principles. Today, the Philippine Constitution is the embodiment of American principles that many Muslim Filipinos still find repugnant to their faith.

The Muslim Filipinos have an intensely deep sense of Islamic identity. It is an identity characterized by an Islamic way of life. It is an identity that began in the ninth century and profoundly nurtured by Spain's and America's camping of its extirpation. It is an identity that is ten centuries old and which undertook a fundamental revival in the 1960s and 1970s when the Moros again felt the threat of physical and religious extinction in light of the Philippine governments' policies. Corollary to this revival of Islamic identity was the Islamic revivalism movement in the Muslim world. There is now a re-awakening of the worldwide Islamic community or the *Ummah* that has manifested itself in the Philippines in the form of the Organization of Islamic Conference's mediation in the armed conflict in Muslim Mindanao.

The assault on the Islamic identity and the revival of renewed enthusiasm for an Islamic way of life has brought the Moro people to once again fight. In the past, the sultanate led the organized resistance. When the Sultanate fell, individual Moros continued the struggle through the institution known as *parang sabillullah*. Today, the MNLF the MILF, and the upstart Abu Sayyaf are carrying the torch of the armed struggle. They may have ideological and ethnic differences but in the end, they are all believers of Islam and united in its *Ummah*.

The seven million Muslim Filipinos today live with the question: Do I follow the fundamental law of the land or the fundamental law of my faith?

Again, Moros are Muslims and will never aspire to violate the creed of Islam. In the eyes of Allah, they are obedient servants. In the eyes of the Republic of the Philippines, they are intransigent dissidents.

For the love God, why does the GRP put the Muslim Filipinos in such a situation? Are they less Filipino than the Christian Filipinos? Is the GRP just interested in the wealth of their land?

In fairness to the GRP, it must be acknowledged that it has tried to remedy the situation. As a vestige of colonialism, it saw the problem as a Muslim Problem and its first remedy was the American formula of integration. It adopted the 1935 Constitution without special provision concerning the Moros all in the name of national unity and integrity. It continued the enactment of national laws without due regard to the Islamic beliefs of the Moros. Worse, the land of the Moros was being given away to Christian settlers from Luzon and Visayas.

In the 1971 Constitutional Convention, the Moro voice was raided. The Muslim delegates' proposals ranged from federal form of government to complete a political autonomy. The Moro voice was, however, lost to the cacophony of the majority. The same objectionable provisions of the Constitution were again incorporated as part of the fundamental law of the land. In the year thereafter, the Philippines experienced an armed rebellion never before equaled in magnitude.

The GRP was forced to the negotiating table and had to work under the mediation of the Organization of Islamic Conference. This led to the Tripoli Agreement. The revelry for peace was quickly dashed by violations of the agreements by the Marcos administration. The Moros were again back on the warpath.

The Aquino administration started with a pursuit for peace with the Moro people. Its promising beginning was betrayed by its machination to undercut the bilateral talks.³³⁷ In the end, the government unilaterally imposed its solution by mandating the creation of the Autonomous region in Muslim Mindanao in the 1987 Constitution. Its main purpose was to allow the Muslim culture to flourish unhampered by the dominance of another culture. The same purpose was rendered ineffectual by the same constitution when it provided that the ARMM would be subject to the provisions of the

337. Santos, *supra* note 315. According to Atty. Soliman Santos, the Aquino administration adopted a policy to de-internationalize the MNLF, avoid reference to the Tripoli Agreement and OIC mediation, and discourage negotiations in order to bide time for processes related to the 1987 Constitution, particularly the enactment of the Organic Act for ARMM with the collapse of the negotiations, the administration shifted to new peace strategy called the "multilateral consensus-building approach."

Constitution and national laws.³³⁸ Again, the same objectionable provisions were made applicable to the Muslim Filipinos. Thus, to this day, the conflict in Mindanao continues to endure.

The resolution to the conflict in Muslim Mindanao has been staring the GRP in its face. The GRP, however, has refused to see and make an effective response to the reality. It is the reality that the Muslim People have a deep sense of Islamic identity that calls for the living out of an Islamic way of life. It is the reality that the Muslim People is yearning for political authority that will perfect their *Ibadah*. It is the reality that the GRP must recognize the Islamic concept of practice of religion and play its role in the practice of Islam by the Muslim Filipinos.

The GRP's refusal, however, is understandable. It is bound to act in accordance with the Constitution - the fundamental law of the nation which posits principles that are in contraposition with that of the fundamental Islamic principles. The cardinal question, which the GRP has to answer to the Muslim Filipinos, is whether the constitutional principles on practice of religion is so important to its preservation that disregarding the Muslim Filipinos' religious liberty is an inevitability. Hopefully not.

The GRP must recognize that Muslim Filipinos are also citizens of the Philippines with equal rights as the other citizens. Moreover, the GRP must also recognize the validity of the Muslim Filipino' aspiration to practice their religion that is essentially related to their right to self-determination. Lest the GRP forgets; the right to practice religion and the right to self-determination are internationally protected human rights. Therefore, there must be a constitutional accommodation of the Islamic concept of practice of religion.

VII. RECOMMENDATIONS

A. Trust

The conflict in Mindanao has sown deep-seated animosity and prejudice. There is a need to re-establish trust between the Muslim Filipinos and the GRP. The administration of former President Fidel V. Ramos made significant headway in this respect. The 1992 Final Peace Agreement between the MNLF and the Republic of the Philippines is the ultimate manifestation of this trust. This trust, however, has been significantly eroded, as the provisions of the Agreement have been largely unimplemented. On one hand, the MNLF has consistently blamed the GRP for its failure to

338. The grant of self-determination to the Moros in the 1987 Constitution was actually more of a limitation than a grant. Under the Tripoli Agreement, the autonomous regions were only made subject to the Constitution and there was no explicit mention of national laws.

fulfill its part of the Agreement. On the other hand, the GRP is consistent in its avowal that it is fulfilling its part of the Agreement. The GRP pleads that its acts must be within the bound of the Constitution.

Today, the Muslim People are one again in the threshold of unsheathing the swords of war. The GRP must contemplate its position: will it recognize the Muslim People's Islamic concept of practice of religion or will it continue its policies of attraction, integration, and assimilation as dictated by an American and Christian concept that negates the Muslim People's "way of life." Clearly the first choice is the rational choice.

B. Constitutional Accommodation

1. Proposal of Atty. Soliman Santos

In his thesis entitled "Constitutional Accommodation of a Moro Islamic System in the Philippines," Soliman Santos proposed the creation of a Special Islamic Region. The proposed formula draws much from the "One Country, Two Systems" concept of the Hong Kong model, and from comparative constitutional models of treaty constitutionalism which also has some basis in Philippine vis-à-vis American jurisprudence and in Moro and Islamic history. The peace agreement would partake of the nature of a treaty with a view to some constitutional change.³³⁹ The proposed region is one with full political autonomy in conformity with the Islamic concept of practice of religion. It grants full recognition to the Muslim People the opportunity to free themselves from being subject to the present objectionable provisions of the Constitution and national laws. Thus, the proposed constitutional amendment:

There shall be created a Special Islamic region to meet the aspiration for a system of life and governance suitable and acceptable to the Bangsamoro people who opt for it. This region shall exercise maximum autonomy with independent legislative, executive, and judicial powers under an Islamic system, as the Philippine constitutional system shall not be practiced there. This region shall be established pursuant to a peace agreement which shall have constitutional status as defining, among other, the relation of constitutional association between the region and the Bangsamoro people, on one hand, and the republic and the Filipino people, on the other hand. This constitutional arrangement shall include personal or cultural autonomy for the Moros outside the region, and guarantees for the protection of human rights.³⁴⁰

2. The provision on separation of Church and State should not apply to the Moros. The proposed Constitutional amendment of Article II, Section 6:

The separation of Church and State shall be inviolable except with respect to the Autonomous Region of Muslim Mindanao or a Special Islamic Region.

3. The provision on Non-Establishment and Free Exercise of religion should recognize the Islamic concept of practice of religion. The proposed Constitutional amendment of Article III, Section 5.

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

This provision, however, shall be interpreted or applied with due consideration to the relevant concepts of the religion concerned.

4. The provision on sovereignty of the people should be amended to recognize the Muslim People's Islamic concept of sovereignty of God and viceregency of people. The proposed constitutional amendment to be added to Article II, Section 1:

The Republic of the Philippines recognizes the application of the Islamic concept of sovereignty of God and viceregency of the people with respect to the Autonomous region in Muslim Mindanao or a Special Islamic Region.

5. An alternative proposal in case the above recommendations are not taken is to amend the constitutional provisions on the Autonomous Region of Muslim Mindanao and make it truly autonomous by removing the provisions that it be subject to the provisions of the Constitution and national laws.

6. The provisions of the Muslim Code of Personal Laws which are "un-Islamic" should be amended. In addition, a law must be passed recognizing Islamic holy days to be effective in the entire Philippines. Moreover, there must be further study on other provision of the Constitution and national laws that negatively affect the Islamic practice of religion.

7. In light of the importance of peace and inter-faith understanding, it is my further recommendation that the study of law in the Philippines should also involve study of the Islamic system of law.

VIII. FINAL REMARKS

But if you want peace, then let us have that peace and see to it that it is just, comprehensive and durable peace. Because peace, based on a hypocritical foundation, will never work.

Nur Misuari

It is the warmest foe of the proponent that the reader was enlightened about the situation of the Muslim People in the Philippines – their struggle in the past, the reasons for their present armed struggle and the role of Islam in

339. Santos, *supra* note 315.

340. *Id.*